COMPENDIUM OF MORAL THEOLOGY

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I

Human Acts to Contracts

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Title Page and Approvals

COMPENDIUM

OF MORAL THEOLOGY

OF FATHER JOHN PETER GURY, S.J.

REVISED BY THE AUTHOR

AND

ENRICHED WITH NOTES

BY ANTONIUS BALLERINI

OF THE SAME SOCIETY

PROFESSOR IN THE ROMAN COLLEGE

EIGHTH EDITION

MORE POLISHED AND ENLARGED WITH NEW CARES, ESPECIALLY WITH ANSWERS TO THE ALPHONSIAN VINDICATIONS

VOLUME ONE

ROME

FROM THE POLYGLOT PRESS

OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH

1884 The editors reserve to themselves the rights which are theirs by law.

Since the work whose title is *Compendium of Moral Theology of Father John Peter Gury, S.J., revised by the Author and enriched with notes by Antonius Ballerini of the same Society, Professor in the Roman College*, etc., has been reviewed by certain theologians of the same Society to whom this was entrusted, and since they have judged that it can be published, we grant permission that it be committed to type, if this shall seem good to those whom it concerns.

In testimony of which we have given these letters, signed by our hand and furnished with the seal of our Society.

Rome, 15 October 1874.

PETER BECKX, Superior General of the Society of Jesus.

IMPRIMATUR

Fr. VINCENTIUS M. GATTI, O.P.

Master of the Sacred Apostolic Palace.

To the Benevolent Reader (Ballerini)

TO THE BENEVOLENT READER

ANTONIUS BALLERINI, S.J.

In the letters which I published in the year just past, [1] in order to dispel the calumnies cast without cause upon this *Compendium* and the attached Notes by a certain anonymous man, [2] I already said that, on a more opportune occasion, I would satisfy other very grave complaints as well as accusations which certain anonymous Theologians from the Venerable Congregation of the Most Holy Redeemer had moved against this same *Compendium* and Notes, first indeed in the *Additional Summary* for the cause of St. Alphonsus, [3] and then in the volume entitled *Alphonsian Vindications*.

[1] See *Univers*, 25 June 1873.

[2] See *Univers*, 28 May 1873.

[3] To indicate this volume I shall use the letters S. A.; but to indicate the authors of the *Vindications*, the letters Vv.

And indeed I had proposed to myself to perform that work in the Notes to be added to the *Medulla*, or brief *Compendium of Moral Theology*, by the author Hermann Busembaum; I was preparing to publish that quite excellent little work for the use of the School, with suitable additions. But if I had to grieve that the narrowness of time, and especially the very well-known calamities by which it happened that we were tossed about, have until now introduced some delay in carrying out this plan, there has now been obtained, in preparing this third edition of Gury, another advantage by no means slight for the additional purpose now proposed. For whatever labor and space the necessity of placing before the Reader's eyes either the context of Gury or of the Notes, which had given occasion to the complaints and accusations of the anonymous Theologians, would have required for itself in adding Notes to Busembaum's *Medulla*, none, as is evident, is required here, since texts of this kind already stand forth complete in this very work.

Wherefore this one thing now remains: that in their own places I indicate the observations and arguments which the Alphonsian Vindicators have objected to each question, and that I subjoin to them, as the matter may require, a very brief answer. I said, first, the observations and arguments, whatever they may be; for as to jests, rebukes, and other things of this sort, and very many things which do not pertain to the matter, there is no intention to dwell upon them, nor ought there to be. I said, secondly, to each question; for although, so far as the moral system of St. Alphonsus is concerned, rather than follow the Vindicators through a thousand windings, it seemed a more opportune and more effective answer to have placed before the eyes the opinions of St. Alphonsus in complete agreement with the opinions of Father Gury; nevertheless, with respect to the remaining questions, the Reader will find from these things that nothing has been omitted which the Vindicators judged worthy of censure.

Moreover, there are two things which can in some measure commend this third edition coming forth from the Roman College. One is that, the difficulties having been dissolved which the industry of the Vindicators gathered from every side, certain very grave questions may now seem to have been brought almost to the condition of a matter adjudged. The other is that whatever pertains both to Censures and to the faculty of absolving from them is now found to have been brought exactly to the norm of the new Law introduced by the Constitution *Apostolicae Sedis* of our Most Holy Lord Pope Pius IX.

Notice Prefixed to the Second Edition

NOTICE

PREFIXED TO THE SECOND EDITION Scarcely a few months had passed from the edition of this work which was prepared at Rome and at Turin in the years 66 and 67 of this century, when, almost all the copies having been sold sooner than expected, it became necessary to proceed to the preparation of another edition. And although there was no need to think of changing the plan of a book so approved in the schools, nevertheless, as much as time allowed, diligent labor was applied so that it might come forth much enlarged and more suitable for use. But in what respects this edition differs from the former, receive in a few words, friendly Reader.

I. The form of the type having been somewhat reduced, and the pages having been made a little larger, each volume has been reduced to a more convenient bulk.

II. Hence, since in the preceding edition (namely, lest the second volume, already immense in itself, should grow beyond measure) the appendix had been omitted, into which Father Gury had cast both certain catalogues of condemned propositions and a small index of writers on moral matters, space remained for restoring these now. Nevertheless, it seemed good to prefix these rather to the first volume than to add them to the later one, both for other reasons and also so that each volume would not differ too greatly in size.

III. We shall also present a fuller series of proscribed theses. For although, adhering to Father Gury's plan, we have in mind for the most part to report no others than those which pertain to morals, nevertheless the Author left us room to add several more: he had brought forward only a few from Michael de Molinos, and none from those proscribed by Pius V in Michael Baius, by Innocent XII concerning the most pure love of God, and by Pius VI in the Synod of Pistoia.

IV. But as regards the small index of writers on moral matters, the one which the Author had given having been omitted as too meager, we have copied almost entirely that which the very distinguished Father Michael Haringer, priest of the Congregation of the Most Holy Redeemer, inserted in his excellent introduction to the moral theology of St. Alphonsus; since it sets forth the writers cited by St. Alphonsus, and thereafter the judgment of the same most holy man concerning them.

V. Finally, it pleased us to remove a certain confusion introduced by a double series of notes, of which some, written in very small letters, had Father Gury as author, revising his work for twenty and more years; while others had first been added in the Roman edition. As regards the former, we have taken care that all of them, each in its own place, be inserted into the text, which moreover in this edition we have not seldom polished. But to the Notes of another hand, which alone now remain, no moderate accession has been made in the present edition. These things I wished to say to you. Farewell.

Father Gury's Preface to the Reader

PREFACE OF FATHER GURY

TO THE READER You have, most courteous Reader, in this small book a treatment of the matter of moral theology, brief indeed, yet complete, unless I am mistaken, put together from the doctrine of the most approved Doctors, both ancient and recent. But since, by the supreme judgment of the Holy See, ST. ALPHONSUS DE LIGORIO has in this recent age shed brilliant light upon this science, nothing seemed to me preferable or more certain than to follow this excellent guide, and to present his doctrine digested in a certain new form and order.

As regards method, I have most willingly followed that which seemed plainer. And so, at the very beginnings of each treatment, you will have the definition and circumscription of the matter; and that it might be most accurate and fit the matter well, I have applied every effort. Hence you will find various divisions of the matter under consideration, or, as it were, the different faces which the thing offers when viewed from different sides. When the matter has thus been placed in the middle, the step will be made to principles, upon which, as upon so many hinges, the whole solution of the questions turns. These indeed will not be many; but they will be those which contain in themselves the whole force, and which, having been set forth by the weightier Theologians, have deserved to be sanctioned by common suffrage. Once these have been established, both the disputation and the descent to consequences will be easy, that is, to the solution of questions, which in moral matters is the immediate end. But since in these disciplines you will scarcely find any argument in which even the Doctors themselves are in agreement with one another, there will be a suitable place for resolving controversies; this I shall do according to the mode of questions, setting opposite opinions against one another, and indicating thereafter which I judge the more preferable or truly probable. This is the way, this the order, of almost the whole treatment. At times you will desire a richer supply of reasons, a greater number of authorities, and in some places also a fuller explanation. But then it will not be out of place to remember that this is nothing other than a *Compendium*, in which, if anything is lacking from those things which would render the matter complete in all its parts, that indeed will be lacking which ought altogether to be lacking from a *Compendium*.

As regards the manner of writing, in it you will find brevity according to the nature of the matters; not seldom, without doubt, you will censure dryness. As regards brevity, as a work of this kind required, I have pursued it as much as possible, yet in such a way that, while I labor to be brief, I may not become obscure. Therefore you will neither be overwhelmed by the force of words, nor, as I hope, ever wander in darkness. But as regards dryness, this has always been certain and firmly persuaded to me: that the charms and graces of diction are very alien from these matters. Therefore, provided that the matter is clear, even if it appears less graceful and adorned, I am not greatly anxious. It is my intention to furnish you a key fit for opening the treasury of this science. But yours, you will say, is an iron key. Let it be so; provided it opens, that will suffice. Try its use; and if it is able to unlock the treasury of the moral disciplines, I have nothing else in my wishes. I shall receive an ample reward for my labor if this little Work redounds to the greater glory of God and to your utility. One thing

remains: that I ask you, most courteous Reader, to be of a benevolent mind; and if pardon must at any time be given, I ask that you kindly grant it. Farewell.

Index of Writers

INDEX OF WRITERS It seemed good to take a catalogue of writers on moral matters, rather than from Father Gury, who had listed only a few at the end of the second volume, almost from the *Introduction* which Father Michael Haringer, priest of the Congregation of the Most Holy Redeemer and distinguished professor of moral theology, prefixed to the Regensburg edition, in the year 1846, of the moral theology of St. Alphonsus. For this catalogue is not only fuller, but also indicates the character of the Writers by means of certain signs; and this indeed turns out to be very opportune and most useful for students of this discipline, especially beginners. Moreover, it pleased us now and then to add to the name of the Authors the titles of Works, and also some writers. These additions you will find expressed in different characters, which are commonly called italics.

Father Haringer prefixed this notice to his catalogue: "So that the reader may have not only bare names, but may also be able to judge concerning their merits and authority, wherever we found in St. Alphonsus a judgment concerning them, we have noted this by adding signs: wherefore it must be observed that by a single asterisk * is marked an author praised for knowledge, at least as learned, or even as weighty and classic; by two asterisks ** is marked an author who is weighty and probabilist; by the sign + is marked a weighty probabiliorist doctor; but by +* a rigid author; the milder authors are always named specially."

* Abbas (Nicolaus de Tudeschis), Benedictine, Abbot of Monacensis, Archbishop of Palermo, under both of which names he is cited (he wrote *Commentaries on the Books of the Decretals*, *Counsels*, *Questions*, *Practice*), born 1370, died 1443.

** Abelly Ludovicus, French, Bishop of Rodez and familiar of St. Vincent de Paul, whose life he wrote (*Theological Marrow*), born 1604, died 1691.

** Adrian VI, Belgian Pope, had previously written various epistles on the fourth book of the *Sentences*. Died 1523. Aegidius Romanus, of the Order of St. Augustine, the Most Founded Doctor, disciple of St. Thomas, died 1316.

Albertus Magnus, German (of the Order of St. Dominic, Archbishop of Regensburg, teacher of St. Thomas), born 1193, died 1280.

Albitius Franciscus, Italian, Cardinal (*On Inconstancy in Faith*, *On Inconstancy in Judgments*, *On the Jurisdiction of Cardinals in their Titles*), born 1623, died 1684.

Alensis, or Alexander of Hales, English, of the Order of St. Francis (teacher of St. Thomas, St. Bonaventure, and Scotus; hence called the Doctor of Doctors), died 1245.

** Alvarez Didacus, Spanish, Dominican, professor of theology in his homeland, then at Rome, afterwards Archbishop of Trani, a very celebrated man (says St. Alphonsus) on account of the disputations defended by him in favor of predetermining grace, died 1640.

** Amicus Franciscus, Italian, S.J., taught theology at Naples, Aquila, and Graz, and there was made chancellor of the university; died 1651.

** Amort Eusebius, German, regular canon of Polling and of St. John Lateran, theologian of the Bishop of Augsburg, often praised by St. Alphonsus as a man thoroughly known everywhere for his various and learned works. He committed his moral and scholastic theology to type only after it had first been reviewed by Benedict XIV. He excellently defended probabilism, but in practical questions he was much more severe than St. Alphonsus; born 1692, died 1775.

Anacletus. See Reiffenstuel.

+ Andegavenses collationes. Augmented with notes by His Eminence Gousset, they appeared at Paris in 1829.

** Angelus Ioan. de Clavasio, of the Order of Friars Minor, author of the *Angelic Summa*, died 1495.

** Angles Ios., Spanish, of the Order of St. Francis, Bishop of Bosa in Sardinia, around the end of the 16th century.

+* Antoine Paulus Gabriel, S.J., author of a very rigid opinion (*Homo apostolicus* XVI.108; *Theologia*, book VI, n. 505), born 1679, died 1743.

** Antoninus, saint, of the Order of St. Dominic, Archbishop of Florence (his works have rather recently been reprinted at Verona by the care of the Ballerini. Whether more exactly and faithfully than before? Let others see. Thus Fr. Ant. Zacharias), born 1389, died 1459.

** Aravius or Arauxus Franciscus, Spanish Dominican, taught theology for 20 years at Salamanca, and thereafter was elected Archbishop of Segovia, where he died in the odor of sanctity in 1664.

Armilla. See Fumus.

** Arragonius, Petrus, Spanish, of the Order of St. Augustine, died around 1600.

** Arriaga Rodericus de, Spanish, S.J., was sent into Bohemia in 1624, was chancellor of the University of Prague, and died there in 1667.

** Arsdekin Ricardus, Irish, S.J., taught theology at Louvain and Antwerp, and wrote after the middle of the 17th century.

Astesanus, Italian, of the Order of Minors, wrote around 1330.

Aureolus Petrus, French, Franciscan, Cardinal and Archbishop of Aix, the Eloquent and Elegant Doctor, died around 1323.

Avendano Didacus de, Spanish, S.J., taught theology at Lima in America, died around 1670.

** Aversa Raphael, Neapolitan, cleric regular minor, on account of distinguished merits was five times elected superior general of his order. Innocent X offered him the episcopal church of Nocera, and Alexander VII that of Mardo; but he steadfastly refused, died 1657.

** Azorius Ioan., S.J., conspicuous for skill in languages, talent, and knowledge of theology, for integrity and simplicity of life, and for candor and cheerfulness of soul, adorned the Society of Jesus for a long age, and at last, broken by labors, died at Rome in 1607.

B

Babenstuber Ludovicus, German, Benedictine, 18th century.

** Bail Ludovicus, French, Sorbonne doctor and penitentiary of Paris, 17th century.

** Baldellus Nicolaus, Italian, S.J., penitentiary in the Vatican church (*Disputations from Moral Theology*), born 1572, died 1655.

+ Ballerini Petrus, Veronese, born 1690, died 1764.

+ Ballerini Hieronymus, brother of the same; they are called by St. Alphonsus followers of the moderate rigid opinion, born 1702, died 1764.

** Bancelius Ludovicus, Dominican and dean of the faculty of Avignon, died 1685.

** Bannez Dominicus, Spanish, Dominican, professor of theology at Complutum, Valladolid, and Salamanca; he greatly aided St. Teresa in the work of reformation, and was her confessor and spiritual guide; born 1527, died 1604.

** Barbosa Augustinus, Bishop of Ugento, celebrated canonist (*On the Office of a Bishop*, *On the Office of a Parish Priest*, *On Ecclesiastical Law*), died 1648.

** Barbosa Petrus, Portuguese, Doctor of both laws, died 1638.

** Bardus Franciscus, Sicilian, S.J., died 1661.

+* Baronius Vincentius, Dominican. His moral theology, as too rigid, was placed on the Index. He wrote at Louvain, around 1670.

Bartholomaeus a S. Fausto, Cistercian (*Treasury of Religious*, *Mirror of Confessors*), 17th century.

** Bassaeus Eligius, French, Capuchin (*Flowers of All Practical Theology*), died around 1650.

Baumgartner Reinhardus, German, S.J., *Conclusions Drawn from the Five Books of the Decretals*, etc. Rome, 1759.

Bauny Stephanus, French, S.J. (*Summa of Cases of Conscience*), died 1649.

** Beatus Gabriel, S.J., *Moral Questions*. Rome, 1663. Becanus Martinus, Belgian, S.J., taught theology for 22 years at Wurzburg, Mainz, and Vienna in Austria with great admiration; born 1561, died 1624.

Beia Ludovicus de, Portuguese, Augustinian, wrote *Answers of Cases*, around 1587.

Benaglio Ioseph, Count, *On Attrition*, 1846.

Bernal Augustinus, Spanish, S.J., a man of outstanding erudition and piety (*On the Sacraments in General, the Eucharist, and Order*), died 1642.

** Berteaut Bartolus, Parisian doctor, wrote *The Rule of a Prudent and Pious Confessor*, etc., around 1637.

+* Berti Laurentius, Italian (*On Theological Disciplines*), born 1696, died 1766.

* Biel Gabriel, German, of the Order of Clerics Regular of the Common Life, professor at Tubingen, died 1495.

Billuart Carolus, Belgian, born 1685, died 1757.

Binetus Stephanus, French, S.J., wrote under the fictitious name of Franciscus Fontanus, born 1569, died 1639.

Binsfeldius Petrus, German, suffragan of Trier (*On the Confessions of Evildoers and Witches*, *Pastoral*, *On Usury*), died 1606.

** Bissus Bernardus, Benedictine, wrote in the name of the whole Cassinese academy against Thyrsus Gonzalez, 1694.

Blanchis Paulus, Venetian, Dominican, wrote around 1623.

Bona Ioan., Cardinal (*On the Sacrifice of the Mass*, *Guidance to Heaven*, etc.), born 1609, died 1674.

** Bonacina Martinus, doctor of Milan, bishop and nuncio of Urban VIII at the Austrian court (*Moral Works*), died 1631.

** Bonaespei Franciscus, Carmelite, wrote 1659.

Bonagratia Habsensis, Capuchin, *Little Summa of Regular Questions*, flourished 1664.

Bonartius Oliverius, Belgian, S.J. (*On the Canonical Hours*), died 1655.

Bonaventure, saint, of the Order of Minors, Cardinal and Bishop of Albano, the Seraphic Doctor, born 1221, died 1274.

** Bordonus Franciscus, Italian, of the Order of St. Francis.

** Bosco Ioan. a, Batavian, Franciscan (*Sacramental Theology*), around 1665.

** Bossius Ioan., Barnabite, superior general of his order, died 1665.

Boudewins Michael, Belgian, wrote *The Medico-Theological Winnowing-Fan*, 1666.

** Bouvier Io. Bapt., Bishop of Le Mans (*Theological Institutions for the Use of Seminaries*), died 1855.

** Bresserus Mart., Belgian, S.J., rector of the college of Bruges, died 1635.

Burghaber Adamus, Bavarian, S.J. (*Three Centuries of Cases*), born 1608, died 1668.

** Busembaum Hermannus, German, S.J., rector of the college of Hildesheim, died 1668.

C + Cabassutius Ioan., French, of the Congregation of the Oratory (*Theory and Practice of Canon Law*), born 1604, died 1685.

* Caietanus (Thomas de Vio), prior general of the Order of St. Dominic, Cardinal and Archbishop of Palermo (*On the Summa of St. Thomas*, *Summa of Cases*, *Opuscula*), born 1469, died 1534.

+* Camargo (De) Ignatius, S.J. (*Rule of Moral Uprightness*), died 1702.

** Candidus Vincentius, Dominican, master of the sacred palace under Innocent X, who esteemed him as a guide of the wise and a teacher of solid piety; died 1654.

* Canus Melchior, Spanish, Dominican, Bishop of the Canaries, a very celebrated theologian, was present at the Council of Trent. St. Alphonsus calls him a most learned, most erudite, and classic author (*Theological Commonplaces*, etc.), born 1523, died 1566.

Capreolus Ioan., French, of the Order of St. Dominic, died 1415.

Caramuel (Ioan. de Lobkowitz), Cistercian, Abbot of Mesros, Bishop of Vigevano in Italy. St. Alphonsus calls him the prince of laxists (*Fundamental Theology*, *Moral Theology*, *Regular Theology*), born 1602, died 1649.

** Cardenas (Ioan. de), Spanish, S.J. (*Theological Crisis*), around 1700.

+ Carrière Iosephus, French, of the Congregation of St. Sulpice (*Greater Theological Lectures*, *On Contracts*, and *On Marriage*), died 1864.

** Caspensis Ludovicus, of the Order of St. Francis, around 1635.

* Castropalaus (Palaus) Ferdinandus, Spanish, S.J., conspicuous from boyhood for talent and piety, was venerated by his equals in theological questions as an oracle. When warned of imminent death he showed signs of unusual joy, frankly confessing that by his conscience he was accused of no mortal fault in his past life; thus he most peacefully fell asleep in the Lord (*Moral Work*), 1633.

** Catalani Petrus, S.J. (*Moral Theology*), 1728.

Chapeauville Ioan., Belgian, born 1551, died 1617.

Chokier Erasmus a, Belgian, canon of Liege, wrote (*On the Jurisdiction of the Ordinary*, etc.), 1621.

Clericatus Ioan., provost of Padua.

Cocq Florentinus, canon of the Premonstratensian Order (*Moral Theology*), died 1626.

+ Collet Petrus, French, continuator of Tournely, born 1697, died 1770.

** Comitolus Paulus, Italian, S.J. (*Counsels or Moral Replies*) [1], born 1546, died 1626. +* Concina Daniel, Italian, called by St. Alphonsus a most rigid author, born 1686, died 1756.

[1] By calumny Nicolius counted Comitolus among the enemies of probabilism. Thyrsus Gonzalez incautiously copied this error from Nicolius, and after him others thereafter.

** Coninchius (Koninch) Aegidius, Belgian, S.J., a disciple not unequal to the great Lessius, taught at Louvain (*On Human Acts, Faith, Hope, Charity, the Sacraments, Censures*), born 1571, died 1633.

+* Contensonius Vincentius, French, Dominican, a most rigid author according to St. Alphonsus, died 1674.

Continuator of Sporer. See Katzenberger.

Corduba Antonius de, Spanish, Franciscan, wrote in 1553.

Coriolanus (Franciscus a Coriolano), Capuchin (*On Reserved Cases*), flourished 1618.

Corneius Petrus, Spanish, of the Order of Carmelites, taught theology at Salamanca, died 1618.

** Corradus Pyrrhus, Neapolitan canon (*Practice of Dispensations*), 17th century.

* Covarruvias Didacus, Spanish, very celebrated disciple of Martinus Navarrus, distinguished jurist, Bishop of Segovia, born 1512, died 1577.

** Croix (Claudius La-Croix), Belgian, S.J., taught theology in the University of Cologne, born 1652, died 1714.

Crux Ioan. de la, Italian, Dominican, died 1613.

+* Cuniliati Fulgentius, Italian, born 1685, died 1759.

Curiel Ioan. Alphons., doctor of Salamanca, died 1609.

D

De Iustis Vincentius, nobleman of Lucca (*On Matrimonial Impediments and Dispensations*), flourished 1691.

** Delbene Thomas, Italian, cleric regular, wrote (*On Ecclesiastical Immunity*, etc.) 1649.

Delrio Martinus Antonius, Belgian, S.J. (*Magical Investigations*), born 1551, died 1608.

Diana Antoninus, cleric regular (Theatine), consultor of the sacred office in Sicily, an author too benign [2], born 1585, died 1663.

[2] Franciscus Antonius Zacharia excellently vindicated Diana, a man otherwise most distinguished in knowledge and erudition, from the note of laxity.

** Dicastillus Ioan., Neapolitan, S.J., taught theology in the University of Murcia and Toledo, then at Ingolstadt. He was no less pious than learned (*On the Sacraments, Oath, and Censures. On Justice and Law*, etc.), born 1585, died 1653.

Dionysius the Carthusian, Belgian, born 1402, died 1471.

Dript Laurentius, Benedictine, *Archidiaconal Mirror*, in the year 1646.

Duarte Didacus, of the Order of St. Francis, *Brief Exposition of the Condemned Propositions*, Rome, 1712.

** Duarte Franciscus, Spanish, S.J., born 1559, died 1601.

** Du Hamel Ioan. Bapt., professor at Paris (*Speculative and Practical Theology*), born 1624, died 1706.

Dupinius Ludovicus, French, Jansenist, born 1657, died 1719.

Durandus de S. Portiano, Dominican, Master of the Sacred Palace, and Bishop, 1320.

** Duvallius Andreas, royal professor in the Sorbonne and dean of the theological faculty. He was a friend and spiritual guide of St. Vincent de Paul (*On St. Thomas, On the Power of the Pontiff*), born 1554, died 1638.

E

** Ehrentreich Adamus, German, S.J., *Declaration of the Principles concerning the Use of a Probable Opinion*. Rome, 1699.

** Elbel Beniamin, German, of the Order of Friars Minor, lecturer in theology and synodal examiner of the Bishop of Passau, died after 1750.

+ Elizalde Mich. de, Spanish, S.J., wrote (under the fictitious name of Antonius Celladeus: *Right Doctrine of Morals*), around 1690.

Engel Ludovicus, Benedictine, *College of the Whole of Canon Law*, 1688.

** Escobar Antonius de, of Valladolid, S.J. (*Universal Moral Theology*), born 1589, died 1669.

** Esparsa Mart., Spanish, S.J. (*Theological Course*), around 1666.

Eugenius Lombardus V. Sfondrati, Cardinal.

F

+* Fagnanus Prosper, for many years secretary of the sacred congregation of the council, easily the chief of rigid authors (according to St. Alphonsus) (*On the Books of the Decretals*), born 1598, died

1678.

** Fagundez Stephanus, Portuguese, S.J., taught theology at Lisbon (*On the Precepts of the Decalogue and of the Church. On Justice and Contracts*), born 1577, died 1645.

** Farinaccius Prosper, Roman jurist (*Decisions of the Roman Rota*), died 1618.

Felinus. See Sandaeus.

** Fenek Ioannes Lucas, parish priest at Rome, *Flowers of Cases of Conscience*.

** Ferraris Lucius, Italian, of the Order of Minors, consultor of the sacred office (*Juridical, Canonical Library*, etc.), died after 1760. ** Filliuccius Vincentius, Italian, S.J., was professor of theology in the Roman College, then respondent for questions of conscience and penitentiary of the Pope (*Moral Questions. Course*, etc.), born 1556, died 1622.

** Fragosa Ioan. Bapt., Portuguese, S.J., died 1639.

** Francolinus Balth., Italian, S.J. (*Roman Cleric. On the Sorrow Required for the Sacrament of Penance*, etc.), 18th century.

+* Franzoia Angelus, of Padua, still more rigid, says St. Alphonsus, than Father Concina.

Frassen Claudius, French, of the Order of Minors, born 1620, died 1714.

** Fumus Bartholomaeus, Italian, Dominican and inquisitor general. He is also called Armilla from his summa so named, died 1545.

G

** Gallego Barnabas, Spanish, of the Order of St. Dominic, died around 1661.

** Gamachaeus Philippus, Sorbonne doctor and professor, Abbot of St. Julian of Tours, born 1568, died 1625.

Gandavensis Henricus, Sorbonne professor, then archdeacon of Tournai, the Solemn Doctor, born 1219, died 1295.

** Garcias Nicolaus, Spanish, professor of civil and canon law, canon of Avila (*On Benefices. On Dispensations*), 17th century.

Gavantus Bartholomaeus, Italian, cleric regular of St. Paul (Barnabite) (*On the Rubrics of the Missal and Breviary*), died 1640.

+* Genettus Franciscus, French, Bishop of Vaison, born 1640, died 1702.

Gerson (Ioan. Charlier), chancellor of the University of Paris, born 1363, died 1429.

** Gesualdus de Bononiis, Franciscan, professor of theology and qualifier of the sacred office in the kingdom of Sicily, equally outstanding in piety and doctrine, 16th century.

** Gibertus Ioan. Petrus, French, born 1660, died 1736.

Gigas Hieronymus, Italian, legal expert, flourished around 1548.

Giraldi Ubaldi, of the Clerics Regular of the Pious Schools, *Exposition of Pontifical Law*, 1769.

Giribaldus Sebastianus, Italian, cleric regular of St. Paul, wrote in the year 1700.

Gisbertus Ioan., French, S.J., born 1639, died 1711.

Gobat Georgius, German, S.J., taught theology at Fribourg in Switzerland and at Constance. An author very much erudite and abounding in experience, but fairly benign [3] (*Sacramental Experiences. A Quinary of Treatises*), born 1600, died 1679.

[3] Others have excellently vindicated Gobat from the note of laxity. See below, V *Vindications*.

Gomez Antonius, Spanish, jurist of Salamanca, wrote around 1550.

+* Gonet Ioan. Bapt., French, Dominican, born 1616, died 1681.

Gonzalez Tellez Emmanuel. *On the Books of the Decretals*.

Gonzalez Hieronymus, *Gloss on the Rule of the Sacred Chancery*, 1569.

+* Gonzalez Thyrsus, Spanish, first professor of theology, then superior general of the Society of Jesus. He gave much labor to this, that probabiliorism might be taught in the schools of the Society of Jesus, and for this reason he called probabiliorists from Spain to Rome; he himself also published a work on the right use of probable opinions, where, defining a probable opinion, he says that it is probable which, when all things have been considered, appears true to the one acting. "I do not know," says St. Alphonsus, "how the aforementioned authors (where he speaks of Gonzalez, Habert, Fagnanus, etc.), by asserting that it is not licit to use for acting anything except morally certain opinions, when in this way they in reality utterly reject the use of probable opinions, although in words they seem to admit it; I do not know, I say, how they can be excused from the condemned proposition which said: it is not licit to follow an opinion, among probable opinions, even the most probable"; died 1705.

** Gordonus Iac., Scottish, S.J., confessor of Louis XIII, King of France, born 1552, died 1641.

Gormaz Ioan. Bapt., Spanish, S.J., *Theological Course*.

* Gotti Vincentius, of Bologna, Dominican, devoted himself to studies at Bologna and Salamanca; then he himself taught theology at Rome; in the course of time he was elected prior, provincial, and inquisitor of the order; finally, on account of distinguished merits and rare knowledge, he was created Patriarch of Jerusalem and Cardinal by Benedict XIII; born 1664, died 1742.

** Graffius, or Iacobus de Graffis, Cassinese abbot, wrote, 1693.

** Granadus Iac., Spanish, S.J., shone equally in knowledge and piety, and was held by all in the highest esteem; born 1562, died 1632.

Gratianus of Bologna, Benedictine, compiler of the decree, or first part of canon law, in the middle of the 12th century.

** Gravina Dominicus, Neapolitan, Dominican, was in successive times professor of theology at Rome, vicar general of his congregation, and procurator general of the whole order; died 1643.

** Gravina Iosephus Maria, Neapolitan, S.J., *Apologetic Treatise on Probabilism*, 1755.

Gregorius Ariminensis, Augustinian; the Most Excellent Doctor; died 1358.

** Guttierez Ioan., Spanish jurist, around 1580.

+* Habert Ludovicus, French, most rigid Sorbonne doctor (cf. Gonzalez). Moreover this man, says St. Alphonsus, did not hesitate to assert that opinion which, according to Bellarmine, is altogether erroneous, namely, that the Pope, even when defining from the chair, both in matter of faith and of morals, can err: perhaps because this most false opinion, and one commonly rejected by our authors, seems to the Gauls themselves morally certain and immune from fear; born 1635, died 1717.

** Hacquetus Ioan. Bapt., Irish, Dominican, taught theology at Milan, Naples, and Rome; died around 1685.

Harduinus Ioan., French, S.J., a very learned man, but plainly singular in his opinions; born 1646, died 1729.

Haunoldus Christophorus, Bavarian, S.J. (*On Contracts*), died 1630.

** Hauzeur Mathias, Flemish, definitor and provincial of the Order of Friars Minor, died 1650.

+* Henno Franciscus, Belgian, of the Order of St. Francis, 17th century.

+* Henricus a S. Ignatio, Belgian, Carmelite (*Ethics of Love*, which work was condemned), died 1720.

** Henriquez Henricus, Portuguese, S.J., taught theology at Cordoba and Salamanca, where he had the celebrated Father Suarez as a disciple (*Summa of Moral Theology*), born 1536, died 1608.

** Herinx Guillelmus, Belgian, Franciscan, on account of his merits was elected Bishop of Ypres; born 1536, died 1608.

** Holzmann, German, 18th century.

Homobonus de Bonis, of the Order of Clerics Regular of St. Paul (*Morals*).

Hostiensis Henricus de Segusia, Bishop of Ostia (whence the name) and Cardinal, very celebrated doctor of both laws (*Golden Summa*), died 1271.

** Humbertus, prior general of the Order of St. Dominic, died 1277.

** Hurtadus Gasparus, Spanish, S.J., taught theology at Complutum, and there was elected dean of the faculty (*On the Sacraments*), born 1575, died 1646.

Hurtadus Petrus, de Mendoza, Spanish, S.J. (*On Faith, Hope, Charity, Justice*, etc.), born 1578, died 1651.

Hurtadus Thomas, Spanish, cleric regular minor (*On Residence*, etc.), died 1659.

** Huygens Gomarus, doctor of Louvain, familiar of Quesnellius, born 1631, died 1702.

I

** Ildephonsus Ioan. Bapt., Spanish, Dominican, rector of the college of Zaragoza (he published his work by formal precept and decree of the General Chapter of the Dominicans celebrated at Rome), died 1639.

Illsung Iacobus, German, S.J., taught at Ingolstadt (*Universal Practical Theology*), 1693.

Ioannes Maior, professor at Paris, around 1528.

** Ioannes a S. Thoma, Portuguese, of the Order of St. Dominic, died around 1664.

** Iosephus a S. Ianuario (*Selected Questions*), 17th century.

** Isambertus Nicolaus, French, Sorbonne doctor, friend of St. Vincent de Paul, died 1642.

K Katzemberger Kilianus, German, of the Order of Minors, continuator of Sporer, 18th century.

Kercne Simon, S.J., *On the Fourth Book of the Decretals*, 1713.

Krimer Ferdinandus, German, S.J. (*Canonical Questions on the Five Books of the Decretals*), 18th century.

Kugler Ioannes, German, S.J., chancellor of the University of Wroclaw, wrote on marriage and betrothals around 1712.

L

Lambertini Prosper, Cardinal, afterwards Pope Benedict XIV, born 1675, died 1758.

Lancellotti Ioan. Paulus, Italian, very celebrated legal expert, born 1511, died 1591.

** Lanfrancus Nicolaus, Polish, S.J., a man very distinguished in wisdom and virtue, born 1575, died 1652.

** Lao Andreas, Dominican, 17th century.

+* Launoius Ioannes, French, Sorbonne doctor, very hostile to the apostolic See, born 1603, died 1678.

Laurentius Augustinus, S.J., *Theological Syntagmata*, etc., born 1692.

** Laymannus Paulus, German, S.J., born at Innsbruck, taught philosophy, moral theology, and canon law, of which he was most expert, at Ingolstadt, Munich, and Dillingen. A man profoundly learned and, what is rare, most modest and most humble. In canon law, which he also illustrated with commentaries, he was held in such esteem that even secular doctors of other academies took care to have his dictations copied for themselves, even for a price. He was consulted everywhere from the most remote places on the most difficult matters as though an oracle. He seemed without deceit, patient of labors, with his spirit placed beyond hope and fear, ready to serve all and, by contempt of himself, casting himself beneath all. At the end he was touched by plague at Constance; lest perhaps he infect another, he immediately withdrew himself into a separate place, dissuading others lest on his account they expose themselves to the danger of contagion; and in this humility of soul he left mortals. He is a classic doctor, in whom we find an equal knowledge of Sacred Scripture, the holy Fathers, the canons of the Church, and moral theologians; wherefore Muzzarelli says that he was second to no moral theologian, or almost none; born 1576, died 1625.

Leander a SS. Sacramento, French, of the Order of the Most Holy Trinity, an author too benign (*Summa of Nine Parts*), died 1667.

Le Dent, Belgian, S.J., *On Attrition from Fear of Hell*, 1667.

** Ledesma Bartholomaeus de, Spanish, of the Order of St. Dominic, Bishop of Antequera in America, died 1604. ** Ledesma Petrus, Spanish, Dominican, died 1616.

+ Le Drou Petrus Lambertus. *On Contrition and Attrition*, 1708.

** Lessius Leonardus, Belgian, is to be numbered among the greatest ornaments of the Society of Jesus, and we can scarcely suffice to praise him. From youthful age even to his end, always ill and

broken by pains, he seemed to draw out life without flesh; wherefore it is to be wondered how he could write so much and excel so singularly in all doctrines, sacred and profane. The wisest men of his age, such as Suarez, Vasquez, Molina, and others, sought out his judgment in the gravest affairs of the sciences. Nothing was sadder to him than to hear praises of himself. Yet amid pains he was always cheerful and consoled others. What shall I say of his austerity toward himself and singular devotion toward the Blessed Virgin Mary, on whom he said perseverance in vocation depended? He was an outstanding emulator of angelic purity, and once, when he had treated of sins of luxury, he frankly confessed that he had not even felt the first motions of the flesh. To say it in few words, he was an exemplar of all virtues. The Supreme Pontiffs Paul V and Sixtus V esteemed him very highly; moreover St. Francis de Sales thanked him for his work on justice and the other cardinal virtues; St. Charles Borromeo commended his works to confessors; and St. Alphonsus likewise numbers him among the classic doctors (*On Justice and Law, Supplement to I-II,* in which there are various cases of conscience), born 1534, died 1623.

Leurenius Petrus, German, S.J., wrote (*Beneficial Forum*), born 1534, died 1623.

** Lezana Ioan. Bapt., Spanish, Carmelite, taught theology at Toledo, Complutum, and Rome. The Supreme Pontiffs Urban VIII, Innocent X, and Alexander VII esteemed him highly and employed him in very grave matters. He was consultor of the congregation of the index and of rites, assistant of six generals, and procurator general of his order (*Summa of Regular Questions, Great Sea, Moral Consultations*), born 1586, died 1659.

** Ligorio (De) St. Alphonsus, Bishop of St. Agatha of the Goths and Founder of the Congregation of the Most Holy Redeemer, *Moral Theology*. *Apostolic Man*, etc. The Sacred Penitentiary declared that anyone can safely follow his doctrine; died 1787.

Lohner Tobias, Bavarian, S.J., wrote (*Instructions for Confessors, On the Mass, Divine Office*, etc.), born 1619, died around 1680.

** Longus Franciscus a Coriolano, Italian, Capuchin, 17th century.

** Lopez Ludovicus, Spanish, of the Order of St. Dominic, died 1596.

** Lorca Petrus de, Spanish, Cistercian, died 1602.

** Lott Lud. Bertrandus, Dominican, died 1653.

Lotterius Melchior, Italian, jurist (*On Beneficiary Matters*).

Luca, Ioan. Bapt. de, Italian, Cardinal (*Theater of Truth and Justice*), born 1617, died 1683.

** Lugo Franciscus de, Spanish, S.J., was professor of theology, then a missionary among the Indians; but, having been recalled to Rome, was made censor of books to be published by the Society. But when he could not endure the esteem brought to himself from the presence of his brother, then a Cardinal, he returned to Spain, and there finished his life in the odor of sanctity. The greater part of the works which he had written perished in a shipwreck; those which remain are highly esteemed (*On God, On the Sacraments*), born 1580, died 1652.

** Lugo Ioan. de, Spanish, brother of Franciscus de Lugo, younger in years, but still more excellent in praise, Cardinal of the holy Roman Church, a singular ornament of the Society of Jesus. He was of such disposition and such talent that as a boy of three years he read books, and in the fourteenth year

of his age publicly defended theses from logic. Moved by the example of his brother, though his father was unwilling, he embraced the Society of Jesus. Having completed his studies, he taught philosophy and theology at Valladolid for 10 years, and at Rome for 20 years. Conspicuous for vast wisdom and profound humility, and esteemed by all, he himself carefully fled honors; but honors follow the one fleeing. When, suspecting no such thing, he had been created Cardinal by Urban VIII, he went to the Supreme Pontiff and humbly asked whether His Holiness commanded this to him in virtue of holy obedience. The Pontiff answered: "Yes, altogether we impose upon you a formal and most formal precept." When this had been said, the humble father, obediently acquiescing, reverently submitted his head to His Holiness placing the red hat upon him. Having been made Cardinal, he nevertheless did not change his religious life. Having been duly provided with the sacraments by Cardinal Sfortia Pallavicino, formerly his most beloved disciple in theology, and fortified with the pontifical blessing, he rendered his soul to God. St. Alphonsus says (book III, 552) that Lugo after St. Thomas can without temerity be called easily the chief among other theologians (*On Law and Justice, On Faith, The Sacraments in General, The Eucharist, Penance. Moral Replies*), born 1583, died 1660.

** Lupus Christianus, Flemish, of the Order of St. Augustine. Clement IX esteemed him highly and wished to raise him to the episcopate; but he preferred to remain at Louvain, where he was professor and dean of the faculty; born 1612, died 1681.

Lyranus (Nicolaus de Lyra), French, of the Order of St. Francis, died 1349.

M

Machado de Chaves Ioan., archdeacon of Lima in America, died 1653.

Maior Ioan., Scot, professor at Paris, born 1478, died 1548.

** Malderus Ioan., Belgian, Bishop of Antwerp, died 1633.

Maldonatus Ioan., Spanish, S.J., very celebrated commentator on the Gospels, on account of his immense erudition was called to Rome by Gregory XIII to prepare a new edition of the Septuagint, and there finished his life; born 1534, died 1583.

** Malettus Carolus, Sorbonne doctor, born 1608, died 1628.

Mangionus Valentinus, Italian, S.J., *On Religious Poverty*, died 1660.

Mansi Ioan. Dominicus, Italian, celebrated collector of councils, born 1692, died 1769. Marchantius Iacobus, dean of Gouvensis, wrote (*Pastoral Resolutions*), around 1630.

** Marchantius Petrus, Belgian, Franciscan, held the first offices of his order (*Sacramental Tribunal*), born 1585, died 1661.

Martinez Gregorius, Spanish, Dominican, provincial of his order, died 1668.

Martinon Ioan., French, S.J., died 1662.

Mascardus Ios., Italian, jurist (*On Proofs*), died 1595.

** Mastrius Bartholomaeus, Italian, of the Order of Minors, died 1669.

Maurus Sylvester, Italian, S.J. (*Theological Questions*), born 1619, died 1672.

** Mazzotta Nicolaus, Neapolitan, S.J. (*Moral Theology*), died 1748.

** Medina Bartholomaeus, Spanish, Dominican, celebrated professor of Salamanca, who first reduced the doctrine concerning probable opinions into a system (*Expositions on St. Thomas*), born 1528, died 1581.

** Medina Ioan., Spanish, theologian of Complutum, born 1490, died 1546.

Megala Marcellus (*Canonical Criminal Practice. Canonical Moral Resolutions*, etc.).

Mendo Andreas, S.J. (*Balance of Opinions*).

Menochius Iacobus, Italian, celebrated jurist (*On Proofs*), born 1532, died 1607.

Merati Caietanus Maria, cleric regular, born 1668.

Meratius Ludovicus, French, S.J., died 1664.

+* Merbes Bonus. *Christian Summa*. It smells of Baianism.

+* Mercorus Iulius, Dominican, most keen champion of the rigid opinion, died 1658.

+* Merenda Antonius, Italian (his work was condemned), born 1578, died 1657.

Merolla Franciscus, Neapolitan, of the Congregation of the Oratory (*Moral Theology*), 17th century.

Michel Augustinus, German, born 1661, died 1751.

** Milante, Neapolitan, Bishop, died 1749.

Molfesius Andreas, Italian, Theatine, around 1613.

* Molina Ludovicus, Spanish, S.J., very celebrated author of the work *On Justice and Law*, and of another, *On the Concord of Grace and Free Will*, born 1555, died 1600.

Monacellus Franciscus (*On the Rules of the Chancery*).

Montesinos Ludovicus, Spanish, died 1621.

Moya Matthaeus, Spanish, S.J. His moral questions, according to Rassler, as too benign, were prohibited at Rome and handed over to fire; but afterward, corrected, they appeared at Cologne with the approbation of superiors (*Selected Moral Questions*), died after 1672.

Muniessa Thomas, Spanish, S.J., *Stimulus of Conscience*, 1698.

N ** Naldus Antonius, Italian, cleric regular, doctor of both laws, around 1600.

+* Natalis Alexander, French, of the Order of St. Dominic, rigid in moral doctrines, born 1639, died 1724.

* Navarrus (Martinus Azpilcueta de Navarra), Spanish, canon regular, on account of great knowledge in theology and canon law was called to Rome and made penitentiary. In him, before the other virtues, liberality toward the needy especially excelled. (*Commentary on Canon Law. Enchiridion or Manual*, etc.) Having been born ninety-two years, died 1586.

* Navarrus Petrus (or Navarettus), Spanish, Dominican (*On Restitution*, etc.), around 1590.

Navarrus Tiburtius, Spanish, of the Order of Minors, 16th century.

Nazarius Ioan. Paulus, Italian, Dominican, was highly esteemed by Clement VIII and was sent with the apostolic nuncio to Bohemia to extirpate heresies; died 1645.

** Neusser Bruno, French, professor of theology and provincial of the Recollect Friars of Cologne, wrote (a most complete *Theologico-Moral-Canonical Polyanthaea*), 1680.

+* Nicole Petrus, French, Jansenist, born 1625, died 1695.

Noceti Carolus, S.J., *Truth Vindicated*, Rome, 1753.

Novo-castro Andreas, Franciscan, most ingenious Doctor.

** Nugnus Didacus, Spanish, Dominican, 17th century.

O

Ochagavius Petrus, Spanish, 17th century.

Onnate Petrus de, Spanish, S.J., missionary in the Peruvian province, afterward provincial of Paraguay (*On Contracts*), born 1567, died 1646.

+* Opstraedt Ioannes, *Theological Dissertation. On the Practice of Administering the Sacrament of Penance*, etc. Entered into the Index of prohibited books.

* Oviedo Franciscus de, Spanish, S.J. (*On St. Thomas I-II. Likewise on Faith, Hope, and Charity*), born 1602, died 1651.

P

Palacius Michael, Spanish, 16th century.

Palaus. See Castropalaus.

* Pallavicinus Sfortia, S.J., Cardinal, very celebrated author of the history of the Council of Trent (*Assertions on Universal Theology*), born 1607, died 1667. * Paludanus (Petrus de Palude), French, Dominican, Patriarch of Jerusalem, died 1342.

Panormitanus. See Abbas.

Pardus Emmanuel, Spanish, S.J., 1664.

Parisius Flaminius, jurist (*On the Resignation of Benefices*).

Pasqualigo Zacharias, Italian, Theatine cleric regular, an author too benign (*On the Sacrifice of the New Law*), 1630.

Passerinus Petrus Maria, Dominican (*On Canonical Election*), 1694.

+* Patutius Vincentius, Italian, Dominican, bitter adversary of St. Alphonsus, author of moral theology, born 1700, died 1769.

Pavone Ios. Maria, Neapolitan, of the Congregation of the Most Holy Redeemer, died at the end of the 18th century.

Pax Iordanus, Bishop and canonist.

** Pelbartus de Temeswar, of the Order of St. Francis.

Pellizarius Franciscus, Italian, S.J. (*Manual of Regulars. On Nuns*), died 1651.

** Perez Antonius, Spanish, S.J., born 1583, died 1649.

Perez Martinus, Spanish, S.J., at once most excellent in piety and talent (*On Marriage*, in the year 1656).

Pesantius Alexander, Roman, doctor of theology and of both laws, 1617.

Petra Vincentius, Cardinal, *Commentary on the Apostolic Constitutions*.

+* Petrocorensis, anonymous theologian, who published moral theology for the use of the seminary of Perigueux.

Petschacher Benedictus, Benedictine. *On Restitution*, in the year 1676.

Peyrinis (Laurentius de), of the Order of Minims (*On the Privileges of Regulars*, etc.), died around 1620.

Phoebeus Franc., Italian, S.J., *Institutions of Canon Law*, died 1706.

Piasecius Paulus, Polish, doctor of both laws, archdeacon of Warsaw (*Episcopal and Ecclesiastical Practice*), around 1665.

** Pichler Vitus, German, S.J., professor at Ingolstadt (*Canon Law. Canonical Questions*), died 1750.

Pignatellus Iacobus, Italian (*Canonical Consultations*), around 1645.

Pirhing Henricus, Bavarian, S.J., celebrated canonist (*Method of Canon Law*, etc.), died around 1670.

Pittonius Franciscus Maria, Bishop of Imeria, canonist.

Platelius Iacobus, Belgian, S.J. (*Synopsis of the Theological Course*), born 1608, died 1681.

Polancus Ioan., S.J. (*Directory of the Confessor. Method of Helping the Dying*), 1617.

+* Pontas Ioannes, French (*Dictionary of Cases of Conscience*), born 1638, died 1728.

** Pontius Basilius, Spanish, Augustinian (*On Marriage*), died 1629.

Pontius Ioan., Spanish, Franciscan (*Theological Course*), around 1644.

Portel Laurentius, Portuguese, of the Order of St. Francis, a pious and wise theologian (*Moral Replies. Doubts of Regulars*), died around 1640.

** Possevinus Antonius, Italian, S.J., apostolic nuncio in Poland, Russia, and Sweden. He was confessor of St. Francis de Sales when the latter was engaged in studies at Padua; born 1534, died 1611.

Potestas Felix, Italian, of the Order of Minors (*Ecclesiastical Examination*).

** Prado Martinus de, Spanish, Dominican, died 1668.

** Praepositus Ioan., Belgian, S.J., a man of sincere piety, born 1571, died 1634.

Q

Quaranta Stephanus, Italian, doctor of both laws, 17th century.

Quarti Paulus Maria, Italian, of the Congregation of Clerics Regular (*On the Rubrics of the Mass*), 1655.

Quintanadvenas Antonius de, Spanish, S.J. (*Singular Matters of Moral Theology*), died 1651.

R

Raymundus de Pennafort, saint, born 1175, died 1275.

Raynaudus Theophilus, French, S.J. (*Various Moral Works*), born 1583, died 1663.

Rebellus Ferdinandus, Portuguese, S.J. (*On the Obligations of Justice, Religion, and Charity*), born 1547, died 1608.

Rebuffus Petrus, French, Parisian jurist (*Practice of Benefices*, etc., 1610).

Reding Augustinus, Benedictine. *Scholastic Theology*, 1667.

Redoanus Guillelmus, *On Ecclesiastical Spoils. On Simony*, 1570.

** Reginaldus Valerius, French, S.J., disciple of Maldonatus. He was a man no less learned than holy, and especially most devoted toward the Most Holy Sacrament. St. Francis de Sales and St. Charles Borromeo commended his works to the clergy; and St. Alphonsus likewise numbers him among the classic doctors (*Practice of the Penitentiary Forum. On the Prudence of the Confessor*), died 1623.

** Reiffenstuel Anacletus, Bavarian, of the Order of Minors of St. Francis, celebrated canonist, cited rather often under the name Anacletus (*Canon Law. Moral Theology*), 18th century.

** Reuter Ioannes, German, S.J., distinguished by solidity of doctrine, neatness, and order of matters. *Moral Theology*, died 1762.

Rhodes Georgius de, French, S.J. (*Scholastic Theology*), died 1664.

Riccius Aloysius, Neapolitan canon (*Golden Practice of the Ecclesiastical Forum*), 1674.

** Rodriguez Emmanuel, Portuguese, of the Order of St. Francis (*Summa of Cases, Regular and Canonical Questions*), born 1551, died 1649. ** Roncaglia Constantinus, Italian, of the Congregation of the Mother of God (*Moral Theology*), 18th century.

Rosa Thomas de. *On Executors of Apostolic Letters*, 1683.

Rosell Ioseph, Carthusian, *Practice of Laying Down a Doubtful Conscience and Scruples*, 1656.

Rosella. See Trovamala.

Rosmer Paulus, Belgian, S.J. (*On Human Acts. On Law and Justice. On Penance*), died 1664.

S

** Sa Emmanuel, Portuguese, S.J. Saint Pius V esteemed him highly and employed him in the new edition of the sacred books (*Aphorisms of Confessors*), born 1530, died 1596.

** Sabinus Franciscus, of Bologna, of the Order of Minors, 17th century.

+ Saettler Gaspar, Doctor of Strasbourg. *Universal Moral Theology*, 18th century.

** Salas Ioan. de, Spanish, S.J. (*On II-II of St. Thomas. On Contracts*), died 1613.

** Salmanticenses, Discalced Carmelite Fathers of the city of Salamanca (*Theological Course*), 17th century.

Salmeron Alphonsus, Spanish, S.J., companion of St. Ignatius, was present at the Council of Trent.

** Salonius Mich., Spanish, of the Order of St. Augustine (*On Law and Justice*, etc.), 17th century.

** Sanchez Thomas, Spanish, S.J. (*Moral Work on the Decalogue. On Marriage*), born 1551, died 1610.

Sancius (Sanchez) Ioan., Spanish, doctor of both laws, an author too benign (*Selected Disputations*), around 1620.

** Santarellus Antonius, Italian, S.J., born 1569, died 1649.

** Sayrus Gregorius, English, Benedictine of Monte Cassino (*Royal Key. On Censures*), died 1602.

Sbroccius Iacobus. *On the Vicar of the Bishop*, 1592.

Schiara Anton. Thomas, cleric regular, *Warlike Theology*, 1707.

** Schildere Ludovicus de, Belgian, S.J. (*On the Principles of Forming Conscience*), born 1606, died 1667.

Schmalzgrueber Franciscus, S.J., *Universal Ecclesiastical Law*.

Scotus Ioan. Duns, Franciscan, the Subtle Doctor, died 1308.

** Serra Ioan. Angelus, Italian, died 1775.

** Sfondratus Coelestinus, Benedictine, taught canon law at Salzburg; then Abbot of the Monastery of St. Gall; finally he was created Cardinal; born 1649, died 1696.

* Silvester (Prieras), Italian, master of the sacred Palace and superior general of the Order of St. Dominic (*Silvestrine Summa*), died 1523.

Simanchus Iacobus, Italian, Bishop Pacensis.

Simonet Edmundus, French, born 1662, died 1733.

+* Sinnichius Ioan., Irish, doctor of Louvain, defender of Jansenius, who did not hesitate to assert: "Jansenius cannot be condemned except with Pelagius laughing and Augustine weeping." The same is the author of the condemned proposition which said that it is not licit, among probable opinions, to follow the most probable; died 1666.

Sorbo Hieronymus de, Capuchin.

** Sotus Dominicus, Spanish, of the Order of St. Dominic, taught theology for 30 years in the University of Salamanca and was present at the Council of Trent (*On the Fourth Book of the Sentences. On Justice and Law*), born 1494, died 1560.

Sotus Petrus, Spanish, of the Order of St. Dominic (*On the Formation of Priests*), died 1563.

Spe Fridericus, German, S.J., *Criminal Caution*, died 1635.

Sperellus Alexander, Italian, Bishop of Gubbio (*Decisions of the Ecclesiastical Forum*), around 1638.

** Sporer Patritius, German, of Passau, of the Order of St. Francis, definitor of his order. Concerning this author St. Alphonsus says that he was in his opinions fairly equitable and perhaps sometimes more benign than is fitting (*Moral Theology*, etc.), died after 1700.

Stephanus a S. Paulo, Carmelite (*Moral Theology*).

** Stoz Matthaeus, German, S.J. (*Penitential Tribunal*), born 1614, died 1678.

** Struggl Marcus M., outstanding theologian from the Order of Servants of the Blessed Virgin Mary. *Moral Theology according to the Sacred Canons and Approved Authors*, etc., 1758.

** Suarez Franciscus, Spanish, S.J., a man of most founded knowledge and profound humility. He taught theology with highest praise at Complutum, Salamanca, and Rome, and left 23 folio volumes besides manuscripts. Benedict XIV named him a luminary of theology. Bossuet praises him especially as, so to speak, a doctor of every kind of knowledge; and St. Alphonsus numbers him among the classic doctors. He was of such sanctity of life that, dying, from sweet jubilation he could exclaim that he had not thought departure to be so easy. Many thought that the sciences had been infused into him divinely; born 1548, died 1617.

Suarez Ioan., Portuguese, of the Order of St. Augustine, Bishop of Coimbra, was present at the Council of Trent; died 1580.

** Sylvius Franciscus, Belgian, canon and dean of Saint Amatus of Douai, where he taught theology for more than 30 years. A man at once learned and holy; born 1581, died 1649.

T

+* Taberna Ioan. Bapt., Belgian, S.J. (*Synopsis of Practical Theology*) [4], around 1700. Tabiena Ioan., Italian, Dominican (*Tabiena Summa, or Summa of Summas*), around 1525.

[4] There were those who accused Taberna rather of laxity. Others thereafter drove this note away from him. See below, V *Vindications*.

Tamburini Ascanius, of the Vallumbrosan Congregation. *On the Law of Abbots*.

Tamburini Thomas, Sicilian, S.J., taught theology for 24 years, and afterward was made censor of books and consultor of the sacred Office. An author too benign (*On the Decalogue*, etc.), born 1591, died 1675.

Tancredus Vincentius, Italian, S.J. (*Moral Questions, On Marriage, On the Virtue of Religion*), born 1609, died 1659.

** Tanner Adam, German, S.J., born at Innsbruck, taught theology at Ingolstadt and Munich for 20 years; but, his fame increasing, the Emperor Matthias summoned him to Vienna, that he might explain theology in place of Martinus Becanus; Ferdinand II, however, gave him as chancellor to the University of Prague when he entrusted it to the Society of Jesus. Finally, with health opposing him and Gustavus Adolphus invading Bavaria, having returned into Tyrol, he died on the journey itself. Skilled in various languages, lover of ecclesiastical history, unwearied investigator of the holy Fathers, he possessed great authority, which religious virtues still increased; born 1572, died 1632.

** Terillus Antonius, English, S.J., most erudite doctor and professor of Louvain, standard-bearer of the probabilists, as Amort says (*On Probable Conscience, the Rule of Morals*), around 1668.

Thesaurus Carolus, S.J., *On Ecclesiastical Penalties*.

Thomas Aquinas, saint, the Angelic Doctor, born 1227, died 1274.

Thomassinus Ludovicus, French, of the Congregation of the Oratory (*Old and New Discipline of the Church concerning Benefices*, etc.), born 1619, died 1695.

Tiraquellus Andreas, French, celebrated legal expert (*On the Privileges of a Pious Cause*), died 1558.

** Toletus Franciscus, Spanish, was a singular ornament of the Society of Jesus, and with Bellarmine, Lugo, and Pallavicino was held worthy to be assumed into the sacred college of Cardinals. He so excellently joined highest knowledge with profound humility and devotion that many doubted whether they should admire his sanctity or doctrine more. His instruction of priests was received with the highest praise of the Christian world, and was commended to the clergy by St. Francis de Sales as containing safe doctrine. Cabassutius, although an antiprobabilist, did not hesitate to say that many ages would scarcely see a man of such merit, and that no praises would suffice for Cardinal Toledo; born 1532, died 1596 [5].

[5] His *Exposition on the Summa of Theology of St. Thomas Aquinas* was first published from the autograph at Rome, by the types of the Sacred Congregation de Propaganda Fide, in the years 1869 and 1870, comprised in four volumes in quarto.

Tonduti Petrus Franciscus de. (*Canonical Questions and Resolutions*, etc.).

Trovamala Ioan. Bapt. de, Italian, of the Order of Minors, author of the summa which is called *Rosella*, 15th century.

** Trullenchus Ioan., Spanish (*Practice of the Sacraments*), died 1633.

Tuccius Stephanus, Italian, S.J., 16th century.

Turrecremata Ioan. de, Spanish, of the Order of St. Dominic, Cardinal, Bishop of Sabina, born 1388, died 1468.

Turrianus Aloysius, Spanish, S.J. (*On I-II of St. Thomas. On Penance. On Virtues and Vices*), born 1562, died 1635.

Tuschus Dominicus, Cardinal (*Practical Conclusions of Law*), died 1620.

U

Ubaldis Petrus de, Italian, celebrated jurist, born 1400.

Ugolinus Bartholomaeus, Italian, of the Order of Hermits of St. Augustine (*On Censures and Irregularities*), 16th century.

Urbanus ab Ascensione, Carmelite, 1648.

Ursaya Dominicus, Roman jurist.

V

Valente Franciscus, Portuguese, S.J., *Concord of Pontifical Law with Caesarean Law*, died 1662.

** Valentia Gregorius a, Spanish, S.J., taught philosophy and theology at Rome, Ingolstadt, and Dillingen (*Theological Commentary on the Questions of St. Thomas*, etc.), born 1543, died 1603.

Valentin, French, wrote in French on the Precepts and the Priestly Office, died 1847.

Van-Espen (Zegerus Bernardus), Belgian, a man most hostile to the apostolic See, born 1646, died 1728.

** Vasquez Gabriel, Spanish, S.J., taught theology for 30 years at Rome and Complutum. In him virtue seemed to contend with doctrine, obedience with talent, piety with wisdom. Benedict XIV

named him and Suarez the two luminaries of theology; born 1551, died 1604.

Vega Alphonsus, Spanish, of the Order of Minors, around 1596.

Vega Andreas, Franciscan, a man outstanding in doctrine and theologian of the Council of Trent.

** Velasco Achatius, Spanish, of the Order of St. Dominic, Bishop of Orihuela, died 1765.

Velasquez Ioan. Ant., Spanish, S.J., born 1585, died 1669.

Ventriglia Ioan. Bapt., Italian, Bishop of Caserta.

Veracrux Alphonsus, Spanish, 16th century.

Verricellus Angelus Maria, Italian, cleric regular (*On Apostolic Missions*), 17th century.

** Victoria Franciscus de, Spanish, Dominican, had very celebrated disciples, Dominicus Soto, Bartholomaeus Medina, and Melchior Canus, who called him the supreme teacher of theology and the best leader; died 1549. ** Vidal Marcus, Italian, cleric regular and professor of theology, 16th century.

Viexmontius Claudius, Parisian. *Salutary Penance of the Sinner*, 1595.

** Villalobos Henricus de, Spanish, Franciscan (*Golden Candelabrum on the Sacraments and Censures*), around 1620.

** Villar Thomas, Spanish, of the Order of St. Dominic, around 1650.

Gobatian Vindications, or examination of the propositions which the Bishop of Arras condemned from the works of Father Gobat, 1706.

Vindications of Taberna, or the Anonymous Author who defended Taberna against the condemnation of the Bishop of Arras, 1706.

** Viva Dominicus, Italian, S.J., taught theology for 30 years at Naples. Benedict XIV mentions him with praise (*Condemned Theses. Theologico-Moral Course*), died around 1710.

Vivaldus Martinus Alphonsus, Italian, canon regular of the Congregation of the Most Holy Savior, around 1590.

Vogler Iosephus, German, S.J., cultivator of law, theologian, *Concerning the Obligations of Restitution*, 18th century.

** Voit Edmundus, German, S.J., *Practical Moral Theology*, died toward the end of the 18th century.

Volpiliere Philippus de. *Speculative and Practical Theology*, 1590.

W

Wadingus Petrus, Irish, S.J. (*On Contracts*), born 1586, died 1644.

Wagnereck, Bavarian, of the Society of Jesus, *Exegetical Commentary on the Decretals*, 1665.

Waldensis Thomas, English, died 1430.

+* Wendrochius Guillelmus, most rigid Jansenist, whose book on probabilism was condemned and handed over to the flames, 17th century.

Wex Iacobus, German, S.J. (*Caroline-Canonical Ariadne*), 17th century.

Wiestner Iacobus, German, S.J. (*Canonical Institutions*), 17th century.

+* Wigandt Martinus, German, Dominican, professor of theology in the University of Vienna, 16th century.

Wiggers Ioan., Belgian, doctor of Louvain, a very learned and pious man, born 1571, died 1639.

+ Witassus Carolus, French, Sorbonne doctor, born 1660, died 1716.

Z

Zabarella Paulus, Cardinal, of Padua, Augustinian.

** Zacharia Franciscus Anton., Italian, S.J., born 1712, died 1796.

Zacchias Paulus, Roman physician. *Medico-Legal Questions*, 17th century.

Zambranus Melchior, Spanish (*Golden Decisions of Cases of Conscience*), around 1604.

Zanardus Michael, Italian, an author too benign, born 1570, died 1641.

Zecchius Laelius, jurist, canon of Brescia. *On the Ecclesiastical Republic*, etc., around 1580.

Zechius Franc. Xav., German, S.J., professor at Ingolstadt, died around 1750.

** Zerola Thomas, Italian, Bishop of Minorca (*Episcopal Practice. Practice of the Sacrament of Penance*), died 1663.

Zoesius Henricus, J.U.D. at Louvain. *On the Whole of Canon Law*, died 1627.

Zumel Franciscus, Spanish, of the Order of Mercy, died 1706.

Zypus Franciscus, jurist, vicar general of Antwerp. *Replies on Canon Law. On Ecclesiastical Jurisdiction. New Pontifical Law*.

Chronological Series of Condemned Propositions

CHRONOLOGICAL SERIES

OF CONDEMNED PROPOSITIONS FROM THE YEAR 1418 AGAINST JOHN WICLIFFE, TO THE YEAR 1864 AGAINST MORE RECENT ERRORS.

NUM. I.

The 45 articles of John Wicliffe, condemned in the Council of Constance, Session 45, in the year 1418.

1. The substance of material bread and likewise the substance of material wine remain in the Sacrament of the altar.
2. The accidents of bread do not remain without a subject in the same Sacrament.
3. Christ is not in the same Sacrament identically and really by His own bodily presence.
4. If a Bishop or priest exists in mortal sin, he does not ordain, does not consecrate, does not confect, does not baptize.
5. It is not founded in the Gospel that Christ ordained the Mass.
6. God ought to obey the devil.
7. If a man has been duly contrite, every exterior Confession is superfluous and useless to him.
8. If the Pope is foreknown and evil, and consequently a member of the devil, he does not have power over the faithful given to him by anyone, unless perhaps by Caesar.
9. After Urban VI no one is to be received as Pope, but one must live according to the custom of the Greeks under one's own laws.
10. It is against sacred Scripture that ecclesiastical men should have possessions.
11. No Prelate ought to excommunicate anyone unless he first knows him to be excommunicated by God; and he who so excommunicates becomes by this a heretic or excommunicated.
12. A Prelate excommunicating a cleric who has appealed to the king or to the Council of the kingdom is by that very fact a traitor of the king and the kingdom.
13. Those who cease to preach or to hear the word of God because of the excommunication of men are excommunicated, and in the judgment of God will be held traitors.

14. It is licit for any deacon or presbyter to preach the word of God without the authority of the apostolic See or of a Catholic Bishop.

15. No one is a civil lord, no one is a Prelate, no one is a Bishop, while he is in mortal sin.

16. Temporal lords can at their own judgment take away temporal goods from the Church, when possessors habitually delinquent, that is, delinquent from habit, not only by act.

17. The people can at their own judgment correct delinquent lords.

18. Tithes are pure alms, and parishioners can, because of the sins of their prelates, take them away at their pleasure.

19. Special prayers, applied to one person by prelates or religious, do not profit the same person more than general prayers, other things being equal.

20. One conferring alms upon friars is excommunicated by that fact.

21. If anyone enters any private religion whatever, whether of possessors or of mendicants, he is rendered more inept and more unfit for the observance of the commandments of God.

22. The saints, instituting private religions, sinned by so instituting.

23. Religious living in private religions are not of the Christian religion.

24. Friars are bound to acquire sustenance by the labor of their hands, and not by mendicancy.

25. All are simoniacs who oblige themselves to pray for others, when those others assist them in temporal things.

26. The prayer of one foreknown avails no one.

27. All things happen by absolute necessity.

28. The confirmation of youths, the Ordination of clerics, the consecration of places are reserved to the Pope and Bishops because of cupidity for temporal gain and honor.

29. Universities, studies, colleges, graduations, and masterships in the same were introduced by vain heathenism; they profit the Church as much as the devil.

30. The excommunication of the Pope or of any Prelate is not to be feared, because it is the censure of Antichrist.

31. Those founding cloisters sin; and those entering are devilish men.

32. To enrich the clergy is against the rule of Christ.

33. Pope Sylvester and the Emperor Constantine erred by endowing the Church.

34. All orders of mendicants are heretics, and those giving alms to them are excommunicated.

35. Those entering religion, or any order, are by that very fact unfit for observing the divine precepts, and consequently for arriving at the kingdom of heaven, unless they apostatize from the same.

36. The Pope, with all his clerics having possession, are heretics because they have possessions, and those consenting to them, namely all secular lords and the other laymen.

37. The Roman Church is the synagogue of Satan, nor is the Pope the proximate and immediate Vicar of Christ and of the Apostles.

38. The decretal epistles are apocryphal, and seduce from the Faith of Christ; and clerics who study them are fools.

39. The Emperor and secular lords were seduced by the devil, that they might enrich the Church with temporal goods.

40. The election of the Pope by Cardinals was introduced by the devil.

41. It is not of necessity of salvation to believe that the Roman Church is supreme among the other churches.

42. It is foolish to believe in the indulgences of the Pope and Bishops.

43. Oaths are illicit which are made to strengthen human contracts and civil commerce.

44. Augustine, Benedict, and Bernard are condemned, unless they repented of this, that they had possessions, and instituted and entered religions; and thus, from the Pope even to the last religious, all are heretics.

45. All religions indiscriminately were introduced by the devil.

NUM. II.

The 30 articles of John Hus, condemned as above.

1. The one holy universal Church is the totality of the predestined.

2. Paul was never a member of the devil, although he did certain acts similar to the acts of those maligning the Church.

3. The foreknown are not parts of the Church, since no part of it finally falls away from it, because the charity of predestination, which binds it, will not fall away.

4. The two natures, Divinity and Humanity, are one Christ.

5. The foreknown, even if at some time he is in grace according to present justice, nevertheless is never part of the holy Church; and the predestined always remains a member of the Church,

although at some time he falls away from adventitious grace, but not from the grace of predestination.

6. Taking the Church for the convocation of the predestined, whether they have been in grace or not according to present justice, in this way the Church is an article of Faith.

7. Peter is not, nor was he, the head of the holy Catholic Church.

8. Priests living criminally in whatever way pollute the power of the Priesthood, and as unfaithful sons they think unfaithfully concerning the seven Sacraments of the Church, concerning the keys, offices, censures, morals, ceremonies and sacred things of the Church, the veneration of relics, indulgences, and Orders.

9. The papal dignity grew from Caesar, and the perfection and institution of the Pope emanated from the power of Caesar.

10. No one without revelation would reasonably assert of himself or another that he was head of a particular Church; nor is the Roman Pontiff head of the particular Roman Church.

11. It is not necessary to believe that this man, whoever is Roman Pontiff, is head of any particular holy Church, unless God has predestined him.

12. No one bears the place of Christ or Peter unless he follows him in morals, since no other following is more pertinent, nor otherwise does he receive from God procuratorial power; because for that office of vicarship both conformity of morals and the authority of the institutor are required.

13. The Pope is not the true and manifest successor of Peter, prince of the apostles, if he lives with morals contrary to Peter; and if he seeks avarice, then he is the vicar of Judas Iscariot. And with equal evidence the Cardinals are not true and manifest successors of the College of the other apostles of Christ, unless they have lived according to the custom of the apostles, observing the commands and counsels of our Lord Jesus Christ.

14. Doctors holding that someone to be amended by ecclesiastical censure, if he is unwilling to be corrected, must be handed over to secular judgment, certainly follow in this the Pontiffs, scribes, and Pharisees, who handed Christ, unwilling to obey them in all things, over to secular judgment, saying, "It is not lawful for us to kill anyone"; and that such persons are murderers more grave than Pilate.

15. Ecclesiastical obedience is obedience according to the invention of the priests of the Church, beyond the express authority of Scripture.

16. The immediate division of human works is that they are either virtuous or vicious; because if a man is vicious and does anything, then he acts viciously; and if he is virtuous and does anything, then he acts virtuously; because just as vice, which is called a crime or mortal sin, universally infects the acts of a vicious man, so virtue vivifies all the acts of a virtuous man.

17. Priests of Christ living according to His law, and having knowledge of Scripture and affection for building up the people, ought to preach notwithstanding a pretended excommunication. But if the Pope or some Prelate commands a priest so disposed not to preach, the subject ought not to obey.

18. Each one receives the office of preaching by command, who accedes to the Priesthood; and that command he ought to execute, notwithstanding a pretended excommunication.

19. By ecclesiastical censures of excommunication, suspension, and interdict, for its own exaltation the clergy subjects the lay people to itself, protects avarice, and prepares the way for Antichrist. Moreover, an evident sign that such censures proceed from Antichrist is that they call them in their processes fulminations, by which the clergy proceeds most chiefly against those who lay bare the wickedness of Antichrist, who will usurp the clergy most greatly for himself.

20. If the Pope is evil, and especially if he is foreknown, then, like Judas the apostle, he is of the devil, a thief, and a son of perdition, and is not the head of the holy militant Church, since he is not even a member of it.

21. The grace of predestination is the bond by which the body of the Church and any member of it is joined indissolubly to Christ the head.

22. An evil and foreknown Pope or Prelate is equivocally a pastor, and truly a thief and robber.

23. The Pope ought not to be called most holy, even according to office; because otherwise the king also ought to be called most holy according to office, and torturers and heralds would be called holy; indeed even the devil ought to be called holy, since he is an officer of God.

24. If the Pope lives contrary to Christ, even if he ascended by a right and legitimate election according to the vulgar human constitution, nevertheless he would ascend from elsewhere than through Christ, even granted that he entered by an election principally made by God; for Judas Iscariot was rightly and legitimately elected by God Christ Jesus to the episcopate, and nevertheless he ascended elsewhere to the sheepfold of the sheep.

25. The condemnation of the 45 articles of John Wicliffe, made by the doctors, is irrational and unjust and badly made; the cause alleged by them is fictitious, namely from this, that none of them is Catholic, but each of them either is heretical, or erroneous, or scandalous.

26. Not by that very fact that the electors, or the greater part of them, have consented by living voice according to the rites of men into some person, by that very fact is that person legitimately elected, or by that very fact is he the true and manifest successor or vicar of Peter the apostle or of another apostle in ecclesiastical office; whence, whether the electors have elected well or badly, we ought to believe the works of the one elected; for by that very fact by which someone works more abundantly and meritoriously for the advancement of the Church, he has from God more abundant faculty for this.

27. There is not a spark of appearance that there must be one head in spiritual matters ruling the Church, which always converses and is preserved with the militant Church itself.

28. Christ without such monstrous heads would better rule His Church through His true disciples scattered throughout the whole world.

29. The apostles and faithful priests of the Lord strenuously ruled the Church in things necessary for salvation before the office of Pope had been introduced; so they would do, with the Pope lacking by highest possibility, even until the day of judgment.

30. No one is a civil lord, no one is a Prelate, no one is a Bishop, while he is in mortal sin.

NUM. III.

The 9 propositions of Master Peter of Osma, condemned in the Congregation of Complutum, and then by Sixtus IV, in the year 1479.

1. Mortal sins, as to the guilt and punishment of the other age, are blotted out by contrition of heart alone without order to the keys.

2. Confession of sins in species was useful to the Church by some statute, not by divine law.

3. Depraved thoughts ought not to be confessed, but are blotted out by displeasure alone without order to the keys.

4. Confession ought to be secret, that is, of secret sins, not of manifest ones.

5. Penitents are not to be absolved unless the penance enjoined upon them has first been completed.

6. The Pope cannot indulge for any man the punishment of purgatory.

7. The Church of the city of Rome can err.

8. The Pope cannot dispense in the statutes of the universal Church.

9. The Sacrament of Penance, as to the conferral of sacramental grace, is of nature, not of any institution of the Old or New Testament.

Condemned as scandalous and heretical.

NUM. IV.

The 41 errors of Martin Luther, condemned by Leo X, by the bull *Exurge Domine*, etc., 16 May 1520.

1. It is a heretical opinion, but usual, that the sacraments of the new law give justifying grace to those who do not place an obstacle.

2. To deny that remaining sin is in a child after baptism is to trample Paul and Christ at once.

3. The tinder of sin, even if no actual sin is present, delays the soul departing from the body from entrance into heaven.

4. The imperfect charity of one dying necessarily brings with itself great fear, which by itself alone is enough to make the punishment of purgatory, and impedes entrance into the kingdom.

5. That there are three parts of Penance, contrition, confession, and satisfaction, is founded neither in sacred Scripture nor in the ancient holy Christian doctors.

6. Contrition which is prepared by discussion, collation, and detestation of sins, by which someone reviews his years in the bitterness of his soul, weighing the gravity and multitude of sins, the loss of eternal beatitude, and the acquisition of eternal damnation, this contrition makes a hypocrite, indeed rather a sinner.

7. Most true is the proverb, and more excellent than all doctrine about contritions given up to this point: to do no more thereafter is the highest penance; the best penance is a new life.

8. In no way presume to confess venial sins, nor even all mortal sins, because it is impossible that you know all mortal sins. Whence the primitive Church confessed only manifest mortal sins.

9. While we wish to confess all things purely, we do nothing else than that we wish to leave nothing to the mercy of God to be forgiven.

10. Sins are remitted to no one unless, when the priest remits, he believes them to be remitted to himself; indeed the sin would remain unless he believed it remitted. For the remission of sin and the gift of grace is not sufficient, but it is also necessary to believe that it has been remitted.

11. In no way trust that you are absolved on account of your contrition, but on account of the word of Christ, "Whatever you shall loose," etc. (Matt. XVI). Hence, I say, trust, if you have obtained the absolution of the priest, and firmly believe yourself absolved, and you will truly be absolved, whatever may be the case concerning contrition.

12. If, per impossibile, one confessed were not contrite, or the priest absolved not seriously but in jest; if nevertheless he believes himself absolved, he is most truly absolved.

13. In the sacrament of Penance and the remission of guilt the Pope or Bishop does no more than the lowest priest; indeed, where there is no priest, any Christian does just as much, even if it were a woman or a child.

14. No one ought to answer the priest that he is contrite, nor should the priest ask it.

15. Great is the error of those who approach the sacrament of the Eucharist relying on this, that they have confessed, that they are not conscious to themselves of any mortal sin, that they have sent ahead their prayers and preparations: all those eat and drink judgment to themselves. But if they believe and trust that they will obtain grace there, this faith alone makes them pure and worthy.

16. It seems advisable that the Church in a general Council should decree that laymen are to communicate under both species; nor are the Bohemians communicating under both species heretics, but schismatics.

17. The treasures of the Church, whence the Pope gives indulgences, are not the merits of Christ and the saints.

18. Indulgences are pious frauds of the faithful, and remissions of good works; and they are of the number of those things which are licit, and not of the number of those things which are expedient.

19. Indulgences, for those who truly obtain them, do not avail for the remission of punishment owed for actual sins before divine justice.

20. Those believing indulgences to be salutary and useful for the fruits of the spirit are seduced.

21. Indulgences are necessary only for public crimes, and are properly granted only to the hard and impatient.

22. For six kinds of men indulgences are neither necessary nor useful: namely, for the dead or dying, the sick, the legitimately impeded, those who have not committed crimes, those who have committed crimes but not public ones, those who do better things.

23. Excommunications are only external punishments, nor do they deprive a man of the common spiritual prayers of the Church.

24. Christians are to be taught to love excommunication more than to fear it.

25. The Roman Pontiff, successor of Peter, is not the vicar of Christ over all the Churches of the whole world instituted by Christ Himself in blessed Peter.

26. The word of Christ to Peter: "Whatever you shall loose upon earth," etc. (Matt. XVI), is extended only to things bound by Peter himself.

27. It is certain that it is absolutely not in the hand of the Church or Pope to establish articles of Faith, indeed not even laws of morals or of good works.

28. If the Pope with a great part of the Church thought thus or thus, and also did not err, still it is not a sin or heresy to think the contrary, especially in a matter not necessary for salvation, until by a universal Council the one shall have been rejected and the other approved.

29. A way has been made for us of enervating the authority of Councils, and of freely contradicting their acts, and of judging their decrees, and confidently confessing whatever seems true, whether it has been approved or rejected by any Council.

30. Some articles of John Hus condemned in the Council of Constance are most Christian, most true, and evangelical, which not even the universal Church could condemn.

31. In every good work the just man sins.

32. A good work done in the best way is venial sin.

33. That heretics are burned is against the will of the Spirit.

34. To fight against the Turks is to resist God visiting our iniquities through them.

35. No one is certain that he is not always sinning mortally, because of the most hidden vice of pride.

36. Free will after sin is a thing of title only; and while it does what is in itself, it sins mortally.

37. Purgatory cannot be proved from sacred Scripture which is in the canon.

38. The souls in purgatory are not secure concerning their salvation, at least all of them; nor has it been proved by any reasons or Scriptures that they are outside the state of meriting or of increasing charity.

39. The souls in purgatory sin without intermission, as long as they seek rest and shudder at punishments.

40. Souls liberated from purgatory by the suffrages of the living are less blessed than if they had satisfied by themselves.

41. Ecclesiastical prelates and secular princes would not do badly if they destroyed all sacks of mendicancy.

NUM. V.

The 79 propositions of Michael Baius, condemned by St. Pius V, by the bull *Ex omnibus afflictionibus*, etc., 1 Oct. 1567; also by Gregory XIII, by the bull *Provisionis nostrae*, etc., 29 Jan. 1579; and by Urban VIII, by the bull *In eminenti*, etc., 6 Mar. 1644.

1. Neither the merits of the angels nor of the first man while still whole are rightly called grace.

2. Just as an evil work from its own nature is meritorious of eternal death, so a good work from its own nature is meritorious of eternal life.

3. Both for the good angels and for the first man, if he had persevered in that state until the end of life, happiness would have been a reward, and not grace.

4. Eternal life was promised to man whole and to the angel in view of good works, and good works from the law of nature suffice of themselves for attaining it.

5. In the promise made to the angel and to the first man is contained the constitution of natural justice, by which, for good works without another respect, eternal life is promised to the just.

6. By natural law it was constituted for man that, if he persevered in obedience, he would pass over to that life in which he could not die.

7. The merits of the first man whole were gifts of the first creation; but according to the manner of speaking of sacred Scripture they are not rightly called grace; whence it comes about that they ought to be named only merits, not also grace.

8. In those redeemed through the grace of Christ, no good merit can be found which is conferred freely upon the unworthy.

9. The gifts granted to man whole and to the angel perhaps, by a reason not to be disapproved, can be called grace; but because, according to the usage of sacred Scripture, by the name of grace those gifts only are understood which are conferred through Jesus Christ upon those meriting badly and unworthy, therefore neither the merits nor the reward which is rendered to them ought to be called grace.

10. The payment of temporal punishment, which often remains after sin has been dismissed, and the resurrection of the body are properly to be ascribed only to the merits of Christ.

11. That, having lived piously and justly in this mortal life even to the end of life, we obtain eternal life, this is to be imputed properly not to the grace of God, but to the natural ordination constituted immediately at the beginning of creation by the just judgment of God; nor in this retribution of goods is regard had to the merit of Christ, but only to the first institution of the human race, in which it was constituted by natural law that, by the just judgment of God, eternal life should be rendered to the obedience of the commandments.

12. It is the opinion of Pelagius: a good work, done short of the grace of adoption, is not meritorious of the heavenly kingdom.

13. Good works done by the sons of adoption do not receive the character of merit from this, that they are done through the spirit of adoption inhabiting the hearts of the sons of God, but only from this, that they are conformable to the law, and that by them obedience to the law is rendered.

14. The good works of the just will not receive on the day of the last judgment a greater reward than by the just judgment of God they deserve to receive.

15. The character of merit does not consist in this, that he who works well has grace and the indwelling Holy Spirit, but only in this, that he obeys the divine law.

16. That is not true obedience of the law which is done without charity.

17. They think with Pelagius who say that it is necessary for the character of merit that man be raised by the grace of adoption to a deific state.

18. The works of catechumens, such as Faith and Penance done before the remission of sins, are merits of eternal life; which life they themselves will not obtain unless the impediments of

preceding offenses are first removed.

19. The works of justice and temperance which Christ did did not draw greater value from the dignity of the person working.

20. No sin from its own nature is venial, but every sin merits eternal punishment.

21. The sublimation and exaltation of human nature into fellowship with the divine nature was owed to the integrity of the first condition, and therefore is to be called natural, and not supernatural.

22. They think with Pelagius who understand the text of the Apostle to the Romans II, "The Gentiles who do not have the law, naturally do the things that are of the law," of Gentiles not having the grace of Faith.

23. Absurd is the opinion of those who say that man from the beginning, by some supernatural and gratuitous gift, was exalted above the condition of his nature, that by Faith, Hope, and Charity he might worship God supernaturally.

24. By vain and idle men, according to the foolishness of philosophers, the opinion was devised, which is to be rejected unto Pelagianism, that man from the beginning was so constituted that through gifts added over and above nature he was sublimated by the largess of the Creator and adopted as a son of God.

25. All works of unbelievers are sins, and the virtues of philosophers are vices.

26. The integrity of the first creation was not an undue exaltation of human nature, but its natural condition.

27. Free will, without the help of the grace of God, avails only for sinning.

28. It is a Pelagian error to say that free will avails for avoiding any sin.

29. Not only are they thieves and robbers who deny Christ, the way and door of truth and life, but also whoever teach that one can ascend into the way of justice, that is, any justice, from elsewhere than through Him.

30. Or that man can resist any temptation without the help of His grace, so that he is not led into it or overcome by it.

31. Perfect and sincere charity, which is from a pure heart and good conscience and unfeigned faith, can be in catechumens as well as in penitents without the remission of sins.

32. That charity which is the fullness of the law is not always joined with the remission of sins.

33. A catechumen lives justly, rightly, and holily, and observes the commandments of God, and fulfills the law through Charity, before the remission of sins has been obtained, which is at last received in the washing of Baptism.

34. That distinction of a double love, namely the natural by which God is loved as author of nature, and the gratuitous by which God is loved as beatifier, is vain and fictitious, and devised for mocking the sacred Letters and very many testimonies of the ancients.

35. Everything which a sinner, or servant of sin, does is sin.

36. Natural love, which arises from the powers of nature, is defended by some doctors from philosophy alone, through the elation of human presumption with injury to the cross of Christ.

37. He thinks with Pelagius who acknowledges anything of natural good, that is, which takes its rise from the powers of nature alone.

38. Every love of a rational creature is either vicious cupidity by which the world is loved, which is prohibited by John, or that praiseworthy charity by which, through the Holy Spirit poured forth in the heart, God is loved.

39. What is done voluntarily, even if it is done necessarily, nevertheless is done freely.

40. In all his acts the sinner serves dominant cupidity.

41. That mode of liberty which is from necessity is not found in the Scriptures under the name of liberty, but only the name of liberty from sin.

42. The justice by which the impious is justified through Faith consists formally in obedience to the commandments, which is justice of works; but not in some grace infused into the soul, by which man is adopted as a son of God and renewed according to the interior man and made a sharer of the divine nature, so that, thus renewed through the Holy Spirit, he can thereafter live well and obey the commandments of God.

43. In penitent men before the Sacrament of absolution, and in catechumens before Baptism, there is true justification, yet separated from the remission of sins.

44. By most works which are done by the faithful only that they may obey the commands of God, of which kind are obeying parents, returning a deposit, abstaining from homicide, from theft, from fornication, men are indeed justified, because they are obedience of the law and true justice of the law; nevertheless by these they do not obtain increments of virtues.

45. The Sacrifice of the Mass is not a sacrifice for any other reason than that general one by which every work is done so that man may adhere to God in holy society.

46. The voluntary does not pertain to the character of sin, nor is it a question of definition, but of cause and origin, whether every sin ought to be voluntary.

47. Whence original sin truly has the character of sin without any relation and respect to the will from which it had its origin.

48. Original sin is voluntary by the habitual will of the little child, and habitually dominates the little child, because he does not bear the contrary judgment of the will.

49. And from the dominating habitual will it comes about that a little child dying without the Sacrament of regeneration, when he shall have attained the use of reason, actually hates God, blasphemes God, and resists the law of God.

50. Depraved desires to which reason does not consent, and which man suffers unwillingly, are prohibited by the precept, "You shall not covet."

51. Concupiscence, or the law of the members, and its depraved desires, which men feel unwillingly, are true disobedience of the law.

52. Every crime is of that condition that it can infect its author and all posterity in that way in which the first transgression infected.

53. As much as is from the force of transgression, those who are born with lesser vices contract as much of evil merits from the generator as those who are born with greater ones.

54. This definitive opinion, that God has commanded nothing impossible to man, is falsely attributed to Augustine, since it is Pelagius's.

55. God could not from the beginning have created such a man as now is born.

56. In sin there are two things, act and guilt; but when the act passes, nothing remains except guilt or obligation to punishment.

57. Whence in the sacrament of Baptism or the absolution of the priest, properly only the guilt of sin is taken away, and the ministry of priests only liberates from guilt.

58. The penitent sinner is not vivified by the ministry of the absolving priest, but by God alone, who, suggesting and inspiring penance, vivifies and resuscitates him; by the ministry of the priest, however, only guilt is taken away.

59. When through alms and other works of penance we satisfy God for temporal punishments, we do not offer God a worthy price for our sins, as certain erring persons suppose (for otherwise we would be, at least in some part, redeemers); but we do something, in view of which the satisfaction of Christ is applied to us and communicated.

60. Through the sufferings of the Saints communicated in indulgences, our offenses are not properly redeemed; but through the communion of charity their sufferings are imparted to us, so that we may be worthy to be freed by the price of the Blood of Christ from the punishments owed for sins.

61. That distinction of doctors, that the commands of the divine law are fulfilled in two ways, in one way as to the substance of the works commanded only, in another way as to a certain definite mode, namely according to which they may be able to lead the one working to the eternal kingdom (that is, to the meritorious mode), is fictitious and to be exploded.

62. That distinction also, by which a work is said to be good in two ways, either because from the object and all circumstances it is right and good (which they have been accustomed to call morally good), or because it is meritorious of the eternal kingdom because it is from a living member of Christ through the spirit of charity, is to be rejected.

63. But also that distinction of a double justice, one which is done through the indwelling spirit of charity, the other which is done indeed from the inspiration of the Holy Spirit exciting the heart to penance, but not yet inhabiting the heart and pouring forth charity in it, by which the justification of the divine law may be fulfilled, is similarly rejected.

64. Likewise also that distinction of a double vivification, one by which the sinner is vivified while the purpose and beginning of penance and new life is inspired in him through the grace of God, the other by which he is vivified who is truly justified and becomes a living branch on the vine, Christ, is equally fictitious and by no means congruent with the Scriptures.

65. Not except by Pelagian error can any good, or non-evil, use of free will be admitted; and he who so thinks and teaches does injury to the grace of Christ.

66. Violence alone is opposed to the natural liberty of man.

67. Man sins, even damnably, in that which he does necessarily.

68. Purely negative unbelief, in those to whom Christ has not been preached, is sin.

69. The justification of the impious is done formally through obedience of the law, not through the hidden communication and inspiration of grace, which through it makes the justified fulfill the law.

70. A man existing in mortal sin, or in guilt of eternal damnation, can have true charity; and even perfect charity can stand together with guilt of eternal damnation.

71. Through contrition, even when joined with perfect charity and with the vow of receiving the Sacrament, crime is not remitted, outside the case of necessity or martyrdom, without actual reception of the Sacrament.

72. Absolutely all afflictions of the just are punishments of their sins; whence also Job and the martyrs suffered the things which they suffered because of their sins.

73. No one, except Christ, is without original sin; hence the blessed Virgin died because of sin contracted from Adam, and all her afflictions in this life, just as those of the other just, were punishments of actual or original sin.

74. Concupiscence in the reborn who have relapsed into mortal sin, in whom it now dominates, is sin, just as also the other depraved habits.

75. The depraved motions of concupiscence are, for the state of vitiated man, prohibited by the precept, "You shall not covet"; whence the man feeling them, and not consenting, transgresses

the precept, "You shall not covet"; although the transgression is not imputed unto sin.

76. As long as something of carnal concupiscence is in the one loving, he does not fulfill the precept, "You shall love the Lord your God from your whole heart."

77. The laborious satisfactions of the justified do not avail to expiate de condigno the temporal punishment remaining after guilt has been pardoned.

78. The immortality of the first man was not a benefit of grace, but a natural condition.

79. False is the opinion of doctors that the first man could have been created and instituted by God without natural justice.

NUM. VI.

The proposition by which the equality of Saints Peter and Paul is asserted, condemned by Innocent X, by decree of the general Congregation of the holy Roman and universal Inquisition, *Editus est*, etc., 29 Jan. 1647.

The Most Holy One, after the unanimous censure of the theologians specially deputed for this had been reported, and after the votes of the most eminent and most reverend Lord Cardinals General Inquisitors had been heard, judged and declared heretical this proposition: "St. Peter and St. Paul are two princes of the Church who make one, or are two chiefs and supreme leaders of the Catholic Church joined among themselves by highest unity, or are the twin summit of the universal Church which have most divinely coalesced into one, or are two supreme pastors and presidents of the Church who constitute one head," explained in such a way that it posits equality in every respect between St. Peter and St. Paul without subordination and subjection of St. Paul to St. Peter in the supreme power and governance of the universal Church.

NUM. VII.

The 5 propositions of Cornelius Jansen, excerpted from his book whose title is *Augustinus*, condemned by Innocent X, by the constitution *Cum occasione*, etc., 31 May 1653, and also by Alexander VII, by the constitution *Ad sanctam B. Petri Sedem*, etc., 16 Oct. 1665, then by the constitution *Regiminis apostolici*, etc., 15 Feb. 1664, in which he published a formulary, finally by Clement XI, by the constitution *Vineam Domini sabaoth*, etc., 16 July 1705.

1. Some precepts of God are impossible for just men willing and trying, according to the present powers which they have; the grace by which they may become possible is also lacking to them. Declared and condemned as rash, impious, blasphemous, to be condemned by anathema, and heretical.

2. Interior grace in the state of fallen nature is never resisted. Declared and condemned as heretical.

3. For meriting and demeriting in the state of fallen nature, liberty from necessity is not required in man, but liberty from coercion suffices. Declared and condemned as heretical.

4. The Semipelagians admitted the necessity of prevenient interior grace for individual acts, even for the beginning of Faith; and in this they were heretics, that they wanted that grace to be such that the human will could resist it or obey it. Declared and condemned as false and heretical.

5. It is Semipelagian to say that Christ died or shed His blood for absolutely all men. Declared and condemned as false, rash, scandalous, and (understood in that sense, that Christ died only for the salvation of the predestined) impious, blasphemous, insulting, derogating from divine piety, and heretical.

Formulary of Alexander VII.

"I, N., submit myself to the apostolic constitution of Innocent X, given on the day 31 May 1653, and to the constitution of Alexander VII, given on the day 16 October 1665, the Supreme Pontiffs, and the five propositions excerpted from the book of Cornelius Jansen, whose name is *Augustinus*, and in the sense intended by the same author, just as the apostolic See condemned them through the said constitutions, I with sincere mind reject and condemn, and so I swear. So may God help me, and these holy Gospels of God."

NUM. VIII. The 45 propositions condemned by Alexander VII by decrees of the general Congregation of the holy Roman and universal Inquisition, *Sanctissimus Dominus noster*, etc., 24 Sept. 1665, and 18 Mar. 1666.

Thursday, the 24th day of September in the year 1665.

Our Most Holy Lord heard, not without great sorrow of his soul, that several opinions, relaxing Christian discipline and bringing destruction upon souls, partly antiquated opinions being stirred up again, partly newly appearing, and that highest license of wanton minds was increasing more day by day, through which, in matters pertaining to conscience, a mode of opining had crept in wholly alien from evangelical simplicity and the doctrine of the holy Fathers; and if the faithful should follow it in practice as a right rule, an immense corruption of Christian life would creep in. Wherefore, lest at any time the way of salvation, which the supreme truth, God, whose words remain forever, defined to be narrow, should happen to be widened, or more truly perverted, unto the destruction of souls, the same Most Holy Lord, that, by pastoral solicitude, he might call the sheep entrusted to him from such a spacious and broad way, by which one goes to perdition, back into the right path, ordered the examination of the same opinions, etc.

1. A man at no time of his life is bound to elicit an act of Faith, Hope, and Charity by force of the divine precepts pertaining to those virtues.

2. A knightly man challenged to a duel can accept it, lest he incur the mark of timidity among others.

3. The opinion asserting that the bull *Coenae* only prohibits absolution of heresy and of other crimes when they are public, and that this does not derogate from the faculty of Trent, in which there is speech of hidden crimes, was seen and tolerated in the year 1629, 18 July, in the Consistory of the sacred Congregation of the most eminent Cardinals.

4. Regular prelates can in the forum of conscience absolve any seculars whatever from hidden heresy, and from excommunication incurred on account of it.

5. Although it is evident to you that Peter is a heretic, you are not bound to denounce him if you cannot prove it.

6. A confessor who in sacramental Confession gives to the penitent a paper to be read afterward, in which he incites to venery, is not judged to solicit in Confession, and therefore is not to be denounced.

7. The way of avoiding the obligation of denouncing solicitation is if the solicited person confesses with the solicitor; the latter can absolve him without the burden of denouncing.

8. A priest can licitly accept a double stipend for the same Mass, by applying to the petitioner even the most special part of the fruit corresponding to the celebrant himself, and this after the decree of Urban VIII.

9. After the decree of Urban, a priest to whom Masses to be celebrated are handed over can satisfy through another, with that lesser stipend conferred, another part of the stipend being retained for himself.

10. It is not against justice to accept a stipend for several Sacrifices and to offer one Sacrifice. Nor is it against fidelity, even if I promise, by a promise even confirmed by oath, to the one giving the stipend, that I will offer for no one else.

11. Sins omitted or forgotten in Confession because of imminent danger of life or because of another cause, we are not bound to express in a following Confession.

12. Mendicants can absolve from cases reserved to Bishops, without the faculty of the Bishops having been obtained for this.

13. He satisfies the precept of annual Confession who confesses to a regular presented to the Bishop, but unjustly rejected by him.

14. He who makes a voluntarily null Confession satisfies the precept of the Church.

15. A penitent by his own authority can substitute another for himself, who in his place may fulfill the penance.

16. Those who have a benefice with cure can choose for themselves as confessor a simple priest not approved by the Ordinary.

17. It is licit for a religious or cleric to kill a calumniator threatening to spread grave crimes about him or about his religion, when another mode of defending does not present itself; as it does not seem to present itself if the calumniator is prepared publicly and before very grave men to impute the aforesaid things either to the religious himself or to his religion, unless he is killed.

18. It is licit to kill a false accuser, false witnesses, and even a judge from whom an unjust sentence certainly threatens, if by another way the innocent person cannot avoid harm.

19. A husband killing by his own authority a wife caught in adultery does not sin.

20. Restitution imposed by Pius V upon beneficiaries not reciting is not owed in conscience before the declaratory sentence of the judge, because it is a penalty.

21. One having a collative chaplaincy or any other ecclesiastical benefice, if he is occupied with the study of letters, satisfies his obligation if he recites the Office through another.

22. It is not against justice not to confer ecclesiastical benefices gratis; because the collator conferring those ecclesiastical benefices, with money intervening, does not exact it for the conferral of the benefice, but as it were for a temporal emolument which he was not bound to confer upon you.

23. One breaking the fast of the Church, to which he is bound, does not sin mortally, unless he does this from contempt or disobedience, for instance because he does not wish to subject himself to the precept.

24. Mollities, sodomy, and bestiality are sins of the same lowest species; and therefore it is sufficient to say in Confession that one has procured pollution.

25. He who has had intercourse with an unmarried woman satisfies the precept of Confession by saying, "I committed with an unmarried woman a grave sin against chastity," without explaining intercourse.

26. When litigants have for themselves equally probable opinions, the judge can accept money for bringing sentence in favor of one rather than the other.

27. If a book is by some younger and modern author, the opinion ought to be judged probable, provided it is not established that it has been rejected by the apostolic See as improbable.

28. The people do not sin, even if without any cause they do not receive a law promulgated by the prince.

Thursday, the 18th day of March in the year 1666.

Propos. 29. On a day of fasting, he who rather often eats a small something does not break the fast.

30. All officials who labor bodily in the republic are excused from the obligation of fasting, nor ought they to make themselves certain whether the labor is compatible with fasting.

31. Absolutely all those who make a journey by riding are excused from the precept of fasting, however they make the journey, even if the journey is not necessary, and even if they complete a journey of one day.

32. It is not evident that the custom of not eating eggs and milk-foods in Lent obliges.

33. Restitution of fruits on account of omission of the Hours can be supplied through any alms whatever which the beneficiary had previously made from the fruits of his benefice.

34. On Palm Sunday, one reciting the Paschal Office satisfies the precept.

35. By one Office someone can satisfy a double precept for the present day and the morrow.

36. Regulars can in the forum of conscience use their privileges which have been expressly revoked by the Council of Trent.

37. Indulgences granted to Regulars, and revoked by Paul V, are today revalidated.

38. The mandate of Trent made to a priest, sacrificing from necessity with mortal sin, to confess as soon as possible, is a counsel, not a precept.

39. That particle "as soon as possible" is understood when the priest will confess in his own time.

40. The opinion is probable which says that a kiss had for carnal and sensible delight which arises from the kiss is only venial, with the danger of further consent and pollution excluded.

41. A concubinary is not to be obligated to cast out the concubine if she would be too useful for the delight of the concubinary, commonly *regalo*, while, with her lacking, he would conduct life too painfully, and other dishes would affect the concubinary with great disgust, and another maidservant would be found too difficultly.

42. It is licit for one lending to exact something beyond the principal, if he obliges himself not to ask back the principal until a certain time.

43. An annual legacy left for the soul does not last more than for ten years.

44. As to the forum of conscience, when the defendant has been corrected and his contumacy ceases, the censures cease.

45. Prohibited books, until they are expurgated, can be retained until, diligence having been applied, they are corrected.

All condemned and prohibited, at minimum, as scandalous.

NUM. IX.

The 65 propositions condemned by Innocent XI, by decree of the general Congregation of the holy Roman and universal Inquisition, *Sanctissimus Dominus noster*, etc., 2 Mar. 1679.

Thursday, the 2nd day of March 1679.

1. It is not illicit in conferring sacraments to follow a probable opinion concerning the validity of the sacrament, the safer one being left aside, unless law, agreement, or danger of incurring grave harm forbids it. Hence an opinion only probable is not to be used in the conferral of Baptism, of priestly Order, or episcopal Order.

2. I think it probable that a judge can judge according to an opinion even less probable.

3. Generally, while trusting in probability, whether intrinsic or extrinsic, however slight, provided one does not go outside the limits of probability, we do something, we always act prudently.

4. The unbeliever will be excused from unbelief, not believing, led by a less probable opinion.

5. Whether he sins mortally who would elicit an act of love of God only once in life, we do not dare to condemn.

6. It is probable that the precept of charity toward God does not oblige of itself even in individual rigorously taken five-year periods.

7. It obliges only then when we are bound to be justified, and we do not have another way by which we can be justified.

8. To eat and drink even to satiety for pleasure alone is not sin, provided it does not harm health, because natural appetite can licitly enjoy its acts.

9. The work of marriage exercised for pleasure alone is altogether without any fault or venial defect.

10. We are not bound to love our neighbor by an internal and formal act.

11. We can satisfy the precept of loving our neighbor by external acts alone.

12. You will scarcely find among secular persons, even among kings, anything superfluous to state. And thus scarcely anyone is bound to alms, when he is bound only from what is superfluous to state.

13. If you do it with due moderation, you can without mortal sin be saddened concerning the life of someone, and rejoice concerning his natural death, seek and desire it by an inefficacious affection, not indeed from displeasure with the person, but on account of some temporal emolument.

14. It is licit by an absolute desire to wish for the death of one's father, not indeed as an evil of the father, but as a good of the one wishing, because namely a rich inheritance is going to come to him.

15. It is licit for a son to rejoice over the parricide of his parent perpetrated by himself in drunkenness, on account of the immense riches thereafter obtained from the inheritance.

16. Faith is not judged to fall under a special precept and by itself.

17. It is enough to elicit an act of Faith once in life.

18. If someone is questioned by public power, to confess the Faith frankly, as glorious to God and the Faith, I counsel; to be silent, as sinful in itself, I do not condemn.

19. The will cannot bring it about that the assent of Faith in itself be firmer than the weight of reasons impelling to assent deserves.

20. Hence someone can prudently repudiate the assent which he had supernatural.

21. The assent of supernatural Faith and useful for salvation stands together with only probable knowledge of revelation, indeed with fear by which someone fears that God has not spoken.

22. Only Faith in one God seems necessary by necessity of means, but not explicit Faith in the Rewarder.

23. Faith broadly so called, from the testimony of creatures or a similar motive, suffices for justification.

24. To call God as witness of a light lie is not such great irreverence on account of which He would wish or be able to damn a man.

25. With cause it is licit to swear without the intention of swearing, whether the matter is light or grave.

26. If someone, either alone or before others, whether questioned or of his own accord, whether for the sake of recreation or for any other end, swears that he has not done something which in reality he has done, understanding within himself something else which he has not done, or another way than that in which he did it, or any other true addition, in reality he does not lie nor is he perjured.

27. A just cause of using these amphibologies is whenever it is necessary or useful for preserving the health of the body, honor, family goods, or for any other act of virtue, so that concealment of the truth is then judged expedient and studious.

28. He who, by means of recommendation or gift, has been promoted to a magistracy or public office, will be able with mental restriction to take the oath which by mandate of the king is customarily exacted from such persons, without having regard to the intention of the one exacting it, because he is not bound to confess a hidden crime.

29. Urgent grave fear is a just cause for simulating the administration of sacraments.

30. It is right for an honored man to kill an attacker who strives to bring calumny upon him, if otherwise this disgrace cannot be avoided; the same also must be said if someone strikes a slap, or beats with a staff, and after the inflicted slap or blow of the staff flees.

31. Regularly I can kill a thief for the preservation of one gold coin.

32. It is licit to defend by killing defense not only the things which we actually possess, but also those to which we have an inchoate right, and which we hope we will possess.

33. It is licit both for an heir and for a legatee to defend himself in such a way against one unjustly impeding either that the inheritance be entered upon or that the legacies be paid; just as also

for one having a right to a chair or prebend against one unjustly impeding possession of them.

34. It is licit to procure abortion before the animation of the fetus, lest a girl detected as pregnant be killed or defamed.

35. It seems probable that every fetus, as long as it is in the womb, lacks a rational soul, and then first begins to have the same when it is brought forth; and consequently it will have to be said that in no abortion is homicide committed.

36. It is permitted to steal not only in extreme necessity, but also in grave necessity.

37. Domestic male servants and female servants can secretly take from their masters to compensate their work, which they judge greater than the wage which they receive.

38. Someone is not bound under penalty of mortal sin to restore what has been taken away by a few thefts, however great the total sum may be.

39. He who moves or induces another to inflict grave harm on a third party is not bound to restitution of that inflicted harm.

40. A mohatra contract is licit, even with respect to the same person, and with a contract of resale previously entered into with the intention of gain.

41. Since money counted out is more precious than money to be counted, and there is no one who does not value present money more than future money, a creditor can exact something beyond the principal from the borrower, and by that title be excused from usury.

42. It is not usury when something beyond the principal is exacted as owed from benevolence and gratitude, but only if it is exacted as owed from justice.

43. Why would it not be only venial to strike down, by a false crime, the great authority of one detracting, harmful to oneself?

44. It is probable that he does not sin mortally who imposes a false crime on someone in order to defend his justice and honor. And if this is not probable, scarcely any opinion will be probable in theology.

45. To give a temporal thing for a spiritual thing is not simony when the temporal thing is not given as a price, but only as a motive for conferring or effecting the spiritual thing, or even when the temporal thing is only a gratuitous compensation for the spiritual, or conversely.

46. And this also has place even if the temporal thing is the principal motive of giving the spiritual thing, indeed even if it is the end of the spiritual thing itself, so that it is esteemed more highly than the spiritual thing.

47. When the Council of Trent said that those communicating in the sins of others sin mortally, who promote to churches any except those whom they themselves shall have judged more worthy and more useful to the Church, the Council seems either, first, by this to wish to

signify by "more worthy" nothing other than the worthiness of those to be chosen, the comparative being taken for the positive; or, secondly, by a less proper locution it places "more worthy" so as to exclude the unworthy, but not the worthy; or finally, thirdly, it speaks when there is a competition.

48. It seems so clear that fornication according to itself involves no malice, and is evil only because it is forbidden, that the contrary seems altogether discordant with reason.

49. Mollities is not prohibited by natural law. Whence, if God had not forbidden it, it would often be good, and sometimes obligatory under mortal sin.

50. Intercourse with a married woman, with the husband consenting, is not adultery; and therefore it is sufficient in Confession to say that one has fornicated.

51. A servant who, with shoulders placed beneath, knowingly helps his master climb through windows to deflower a virgin, and many times serves the same by carrying a ladder, opening a door, or cooperating in something similar, does not sin mortally if he does this from fear of notable detriment, for instance lest he be treated badly by his master, lest he be looked at with grim eyes, lest he be expelled from the house.

52. The precept of keeping feast days does not oblige under mortal sin, scandal being set aside, if contempt is absent.

53. He satisfies the precept of the Church concerning hearing Mass who hears two of its parts, indeed four, at the same time from different celebrants.

54. He who cannot recite Matins and Lauds, but can recite the remaining Hours, is bound to nothing, because the greater part draws the lesser to itself.

55. The precept of annual Communion is satisfied by a sacrilegious eating of the Lord.

56. Frequent Confession and Communion, even in those who live like the Gentiles, is a sign of predestination.

57. It is probable that natural attrition suffices, provided it is honorable.

58. We are not bound to confess to the Confessor asking the custom of any sin.

59. It is licit sacramentally to absolve those only half confessed, by reason of a great concourse of penitents, such as, for example, can happen on the day of some great festivity or indulgence.

60. To a penitent having a custom of sinning against the law of God, of nature, or of the Church, even if no hope of amendment appears, absolution is neither to be denied nor deferred, provided he says with his mouth that he is sorry and proposes amendment.

61. Sometimes one can be absolved who is situated in a proximate occasion of sinning, which he can omit and does not wish to omit; indeed he directly and on purpose seeks it, or thrusts himself into it.

62. A proximate occasion of sinning is not to be fled when some useful or honorable cause of not fleeing occurs.

63. It is licit to seek directly a proximate occasion of sinning, for our own spiritual or temporal good, or that of our neighbor.

64. A man is capable of absolution, however much he labors under ignorance of the mysteries of Faith, and even if through negligence, even culpable negligence, he does not know the mystery of the Most Holy Trinity and of the Incarnation of Our Lord Jesus Christ.

65. It suffices to have believed those mysteries once.

All condemned and prohibited, just as they lie, at minimum as scandalous and pernicious in practice.

The Supreme Pontiff concludes the decree with these words: Finally, that doctors or scholastics, or any others whatever, may hereafter abstain from injurious contentions, and that peace and charity may be consulted, the same Most Holy One commands them in virtue of holy obedience that, both in printed and manuscript books, and in theses, disputations, and preachings, they beware of every censure and note, as well as of any reproaches whatever against those propositions which are still disputed here and there among Catholics, until by the holy See, the matter having been known, judgment is pronounced concerning the same propositions.

Another proposition condemned under the same Innocent XI, in the year 1682.

It is licit to use knowledge acquired from confession, provided it is done without direct or indirect revelation and burdening of the penitent, unless another much graver thing should follow from non-use, in comparison with which the former is deservedly contemned.

The decree of Clement VIII, 26 May 1594, can also be recalled here.

Both Superiors existing for the time, and Confessors who afterward have been promoted to the rank of Superior, should most diligently beware lest they use for exterior governance that knowledge which they have had concerning the sins of others in confession. As to the sacrament of Penance, under Clement VIII, 19 July 1602, the following Proposition was proscribed.

It is licit through letters or an intermediary to confess sacramentally one's sins to an absent Confessor, and to obtain absolution from the same while absent.

NUM. X.

The 68 propositions of Michael de Molinos condemned by Innocent XI, by the Constitution *Caelestis Pastor*, etc., 20 Nov. 1687.

1. It is necessary for man to annihilate his powers, and this is the internal life.

2. To wish to operate actively is to offend God, who wishes Himself alone to be the one acting; and therefore it is necessary to abandon oneself in God wholly and totally, and afterward to remain as a lifeless body.

3. Vows concerning doing something are impeditive of perfection.

4. Natural activity is the enemy of grace, and impedes the operations of God and true perfection, because God wishes to operate in us without us.

5. By operating nothing, the soul annihilates itself and returns to the very principle and to its origin, which is the essence of God, in which it remains transformed and divinized; and God then remains in Himself, because then there are no longer two things united, but only one; and for this reason God lives and reigns in us, and the soul annihilates itself in operative being.

6. The internal way is that in which neither light nor love nor resignation is known, and it is not necessary to know God, and in this way one proceeds rightly.

7. The soul ought to think neither of reward nor of punishment, nor of paradise nor of hell, nor of death, nor of eternity.

8. It ought not to wish to know whether it walks with the will of God, whether it remains resigned with the same will or not; nor is it necessary that it wish to know its state or its own nothing, but it ought to remain as a lifeless body.

9. The soul ought to remember neither itself nor God nor any thing whatever, and in the internal way every reflection is harmful, even reflection on its human actions and on its own defects.

10. If by its own defects it scandalizes others, it is not necessary to reflect, provided the will of scandalizing is absent; and not to be able to reflect on one's own defects is the grace of God.

11. On doubts which occur, whether one proceeds rightly or not, it is not necessary to reflect.

12. He who has given his free will to God ought to have care about no thing, neither about hell nor paradise; nor ought he to have desire for his own perfection, nor for virtues, nor for his own sanctity, nor for his own salvation, whose hope he ought to purge away.

13. Free will having been resigned to God, thought and care about every one of our affairs must be left to the same God, and He must be left to do His divine will in us without us.

14. He who is resigned to the divine will, it is not fitting that he ask any thing from God, because to ask is imperfection, since it is an act of one's own will and choice, and it is to wish that the divine will be conformed to ours, and not that ours be conformed to the divine; and that of the Gospel, "Ask and you shall receive," was not said by Christ for internal souls, which do not wish to have a will; indeed souls of this kind arrive at this, that they cannot ask any thing from God.

15. Just as they ought not to ask any thing from God, so neither ought they to give thanks to Him for anything, because each is an act of one's own will.

16. It is not fitting to seek indulgences for the punishment owed for one's own sins, because it is better to satisfy divine justice than to seek divine mercy; since the former proceeds from pure love of God, and the latter from interested love of ourselves, nor is it pleasing to God nor meritorious, because it is to wish to flee the cross.

17. Free will having been handed over to God, and the care and thought of our soul left to Him, regard is no longer to be had of temptations; nor ought any other resistance be made to them except a negative one, no industry being applied; and if nature is moved, it must be allowed to be moved, because it is nature.

18. He who in prayer uses images, figures, species, and his own concepts does not adore God in spirit and truth.

19. He who loves God in that way in which reason argues or the intellect comprehends does not love the true God.

20. To assert that in prayer it is necessary to bring help to oneself by discourse and by thoughts, when God does not address the soul, is ignorance. God never speaks; His speech is operation, and He always operates in the soul when this soul does not impede Him by its discourses, thoughts, and operations.

21. In prayer it is necessary to remain in obscure and universal Faith, with quiet and forgetfulness of any particular and distinct thought of the attributes of God and of the Trinity, and thus to remain in the presence of God to adore and love Him and serve Him, but without the production of acts, because God does not take complacency in these.

22. This knowledge through Faith is not an act produced by the creature, but is knowledge handed over by God to the creature, which the creature does not know that it has, nor afterward knows that it has had; and the same is said of love.

23. Mystics with St. Bernard in the ladder of cloistered souls distinguish four steps: reading, meditation, prayer, and infused contemplation. He who always stops in the first never passes over to the second. He who always persists in the second never arrives at the third, which is our acquired contemplation, in which one must persist through the whole life, provided God does not draw the soul, without its expecting this, to infused contemplation; and when this ceases, the soul ought to return to the third step and remain in it, without ever returning further to the second or the first.

24. Whatever thoughts occur in prayer, even impure ones, even against God, the Saints, the Faith, and the sacraments, if they are not voluntarily nourished nor voluntarily expelled, but are tolerated with indifference and resignation, do not impede the prayer of Faith; indeed they make it more perfect, because the soul then remains more resigned to the divine will.

25. Even if sleep supervenes and one sleeps, nevertheless actual prayer and contemplation take place; because prayer and resignation are the same, and while resignation endures, prayer also endures.

26. Those three ways, purgative, illuminative, and unitive, are the greatest absurdity that has been said in mysticism, since there is only one way, namely the internal way.

27. He who desires and embraces sensible devotion does not desire nor seek God, but himself; and he acts badly, when he desires it and tries to have it, who walks by the internal way, both in sacred places and on solemn days.

28. Weariness of spiritual things is good, since through it self-love is purged.

29. When the internal soul loathes discourses about God and virtues, remains cold, feeling no fervor in itself, it is a good sign.

30. Everything sensible which is expressed in the spiritual life is abominable, foul, and unclean.

31. No meditative person exercises the true internal virtues, which ought not to be known by the senses. It is necessary to lose the virtues.

32. Neither before nor after Communion is any other preparation or thanksgiving required, for these internal souls, than permanence in solid passive resignation, because in a more perfect manner it supplies all acts of virtues which can and do take place in the ordinary way. And if on this occasion of Communion there arise motions of humiliation, petition, or thanksgiving, they are to be repressed, as often as it is not discerned that they are from a special impulse of God; otherwise they are impulses of nature not yet dead.

33. The soul which proceeds by this internal way acts badly if on solemn days it wishes by some particular effort to excite in itself some devout sense; since to the internal soul all days are equal, all festive. And the same is said of sacred places, because to souls of this kind all places are equal.

34. To give thanks to God by words and tongue is not for internal souls, which ought to remain in silence, placing no impediment before God so that He may operate in them; and the more they resign themselves to God, they experience that they cannot recite the Lord's prayer or Our Father.

35. It is not fitting for souls of this internal way to perform operations, even virtuous ones, from their own choice and activity; otherwise they would not be dead. Nor ought they to elicit acts of love toward the Blessed Virgin, the Saints, or the Humanity of Christ, because, since those objects are sensible, such is love toward them.

36. No creature, neither the Blessed Virgin nor the Saints, ought to sit in our heart, because God alone wishes to occupy and possess it.

37. On the occasion of temptations, even furious ones, the soul ought not to elicit explicit acts of the opposed virtues, but ought to remain in the aforesaid love and resignation.

38. The voluntary cross of mortifications is a heavy and fruitless weight, and therefore to be dismissed.

39. The holier works and penances which the Saints performed do not suffice to remove from the soul even one single adhesion.

40. The Blessed Virgin never performed any exterior work, and nevertheless was holier than all Saints. Therefore one can arrive at sanctity without exterior work.

41. God permits and wills, for humbling us and bringing us to true transformation, that in some perfect souls, even not possessed ones, the demon inflict violence on their bodies and make them commit carnal acts, even in wakefulness and without darkening of the mind, by physically moving their hands and other members against their will. And the same is said as to other acts sinful in themselves; in which case they are not sins, because consent is not present to these.

42. A case can be given that violences of this kind toward carnal acts happen at the same time on the part of two persons, namely male and female, and on the part of each an act follows.

43. In past ages God made saints by the ministry of tyrants; but now He makes them saints by the ministry of demons, who, by causing in them the aforesaid violences, makes them despise and annihilate themselves more, and resign themselves to God.

44. Job blasphemed, and nevertheless did not sin with his lips, because it was from the violence of the demon.

45. Saint Paul suffered violences of this kind from the demon in his body; whence he wrote: "Not the good which I will, this I do; but the evil which I do not will, this I do."

46. Violences of this kind are a means more proportioned to annihilating the soul and bringing it to true transformation and union, nor does another way remain; and this is the easier and safer way.

47. When violences of this kind occur, it is necessary to allow Satan to operate, applying no industry and no proper effort, but man ought to remain in his nothing; and even if pollutions and obscene acts with one's own hands, and even worse things, follow, it is not necessary to disquiet oneself, but scruples, doubts, and fears must be sent outside, because the soul becomes more illuminated, more strengthened, and more candid, and holy liberty is acquired. And before all things it is not necessary to confess these things, and it is done most holily by not confessing; because by this pact the demon is overcome, and the treasure of peace is acquired.

48. Satan, who inflicts violences of this kind, afterward persuades that they are grave offenses, so that the soul may disquiet itself, lest it progress further in the internal way; whence, to enervate his powers, it is better not to confess them, because they are not sins, nor even venial ones.

49. Job, from the violence of the demon, polluted himself with his own hands at the same time at which he had clean prayers toward God, thus interpreting the place from chapter XVI of Job.

50. David, Jeremiah, and many of the holy prophets suffered violences of this kind of these impure external operations.

51. In sacred Scripture there are many examples of violences toward external sinful acts: as that of Samson, who by violence killed himself with the Philistines, entered marriage with a foreign woman, and fornicated with the harlot Delilah, which otherwise were prohibited and would have been sins; of Judith, who lied to Holofernes; of Elisha, who cursed the boys; of Elijah, who burned the leaders with the troops of King Ahab. But whether the violence was performed immediately by God, or by the ministry of demons, as happens in other souls, is left in doubt.

52. When violences of this kind, even impure ones, happen without darkening of the mind, then the soul can be united to God, and in fact is always more united.

53. For knowing in practice whether some operation in other persons was violent, the rule which I have concerning this is not only the protestations of those souls, who protest that they have not consented to the said violences, or that they cannot swear that they consented to them, and seeing that they are souls who advance in the internal way; but I would take the rule from a certain actual light superior to human and theological knowledge, which makes me know with certainty, with internal certitude, that such an operation is violent; and I am certain that this light proceeds from God, because it comes to me joined with certainty that it comes from God, and leaves me not even a shadow of doubt to the contrary; in that way in which it sometimes happens that God, by revealing something, at the same time renders the soul certain that He Himself is the one who reveals, and the soul cannot doubt to the contrary.

54. Spiritual persons of the ordinary life will find themselves deceived and confounded at the hour of death, and with all passions to be purged in the other world.

55. Through this internal way one arrives, although with much suffering, at purging and extinguishing all passions, so that nothing further is felt, nothing, nothing; nor is any disquiet felt, as a dead body, nor does the soul allow itself to be moved any further.

56. The two laws and two cupidities, one of the soul and the other of self-love, endure as long as self-love endures; whence, when this has been purged and died, as is done through the internal way, those two laws and two cupidities are no longer present, nor is any further fall incurred, nor is anything felt any longer, not even venial sin.

57. Through acquired contemplation one arrives at the state of no longer committing sins, neither mortal nor venial.

58. One arrives at a state of this kind by no longer reflecting on one's own operations, because defects arise from reflection.

59. The internal way is separated from Confession, from confessors, and from cases of conscience, from theology, and philosophy.

60. For advanced souls, which begin to die to reflections, and even arrive at this, that they are dead, God sometimes makes Confession impossible, and He Himself supplies with as much preserving grace as they would receive in the sacrament; and therefore for souls of this kind it

is not good in such a case to approach the sacrament of Penance, because this is impossible in them.

61. The soul, when it arrives at mystical death, can no longer will anything other than what God wills, because it no longer has a will, and God has taken it away from it.

62. Through the internal way one arrives at a continual immovable state in imperturbable peace.

63. Through the internal way one arrives also at the death of the senses; indeed the sign that someone remains in the state of nothingness, that is, of mystical death, is if the exterior senses no longer represent sensible things, whence they are as if they were not, because they do not arrive at making the intellect apply itself to them.

64. A theologian has less disposition than a rude man for the state of a contemplative: first, because he does not have Faith so pure; second, because he is not so humble; third, because he does not so care for his own salvation; fourth, because he has a head stuffed with phantasms, species, opinions, and speculations, and the true light cannot enter into him.

65. Superiors are to be obeyed in the exterior, and the breadth of the vow of obedience of religious reaches only to the exterior. But in the interior the matter has itself otherwise, where God alone and the director enter.

66. A certain new doctrine in the Church of God is worthy of laughter, that the soul as to the internal ought to be governed by the Bishop; and that if the Bishop is not capable, the soul should approach him with its director. I call it a new doctrine because neither sacred Scripture, nor Councils, nor canons, nor bulls, nor saints, nor authors ever handed it down, nor can they hand it down; because the Church does not judge concerning hidden things, and the soul has the right of choosing whomever seems good to it.

67. To say that the internal must be manifested to the exterior tribunal of superiors, and that it is a sin not to do this, is manifest deception, because the Church does not judge concerning hidden things; and with these deceptions and simulations they prejudice their own souls.

68. In the world there is no faculty nor jurisdiction for commanding that the letters of a director be manifested as to the internal of the soul; and therefore it is necessary to note that this is an insult of Satan, etc.

Condemned respectively as heretical, suspect, erroneous, scandalous, blasphemous, offensive to pious ears, rash, relaxing and overturning of Christian discipline, and seditious.

NUM. XI.

The 2 propositions condemned by Alexander VIII, by the decree *Sanctissimus Dominus noster*, etc., 24 Aug. 1690.

1. Objective goodness consists in the agreement of the object with rational nature; formal goodness, however, in the conformity of the act with the rule of morals. For this it suffices that

the moral act tend to the ultimate end interpretatively: hence man is not bound to love, neither at the beginning nor in the course of his mortal life.

Declared and condemned as heretical.

2. Philosophical or moral sin is a human act disagreeing with rational nature and right reason; theological and mortal sin, however, is the free transgression of the divine law. Philosophical sin, however grave, in him who either does not know God or does not actually think of God, is a grave sin, but is not an offense of God, nor a mortal sin dissolving friendship with God, nor worthy of eternal punishment.

Declared and condemned as scandalous, rash, offensive to pious ears, and erroneous. Arnold had fabricated that one according to his own pleasure, and calumniously, as was his custom, attributed it to his adversaries.

NUM. XII.

The 31 propositions condemned by Alexander VIII, by the decree *Sanctissimus Dominus noster*, etc., 7 Dec. 1690.

1. In the state of fallen nature, for formal sin and demerit that liberty suffices by which it was voluntary and free in its cause, original sin, and the will of Adam sinning.

2. Even if there is invincible ignorance of natural law, in the state of fallen nature this does not excuse the one operating from formal sin.

3. It is not licit to follow an opinion, even the most probable among probable opinions.

4. He gave Himself for us as an oblation to God, not for the elect alone, but for all and only the faithful.

5. Pagans, Jews, heretics, and others of this kind receive no influence at all from Jesus Christ; and therefore from this you rightly infer that in them there is a bare and unarmed will without any sufficient grace.

6. Sufficient grace is not so much useful to our state as pernicious, so that therefore we can deservedly ask: From sufficient grace deliver us, O Lord.

7. Every deliberate human action is love of God or of the world; if of God, it is Charity of the Father; if of the world, cupidity of the flesh, that is, it is evil.

8. It is necessary for the unbeliever to sin in every work.

9. He truly sins who hates sin merely on account of its baseness and disagreement with nature, without any respect to God offended.

10. The intention by which someone detests evil and pursues good merely to obtain heavenly glory is not right nor pleasing to God.

11. Everything which is not from supernatural Christian Faith, which works through love, is sin.

12. When in great sinners every love fails, Faith also fails; and even if he seems to believe, it is not divine Faith, but human.

13. Whoever serves God even in view of eternal reward, if he lacks charity, does not lack vice, whenever he operates in view, even, of beatitude.

14. Fear of hell is not supernatural.

15. Attrition which is conceived from fear of hell and punishments, without love of benevolence of God for His own sake, is not a good and supernatural motion.

16. The order of sending satisfaction before absolution was introduced not by policy or institution of the Church, but by the very law and prescription of Christ, the nature of the matter itself dictating this in a certain way.

17. Through that practice of absolving immediately, the order of penance is inverted.

18. The modern custom as to the administration of the sacrament of Penance, even if the authority of very many men sustains it and long duration of much time confirms it, nevertheless is not held by the Church as a use, but as an abuse.

19. Man ought to do penance for original sin throughout his whole life.

20. Confessions made among religious are, for the most part, either sacrilegious or invalid.

21. A parishioner can suspect mendicants, who live on common alms, of imposing too light and incongruous a penance or satisfaction, on account of gain or profit of temporal support.

22. They are to be judged sacrilegious who claim a right to receiving Communion before they have done condign penance for their offenses.

23. Similarly, those are to be barred from sacred Communion in whom there is not yet the purest love of God, and free from every mixture.

24. The offering in the temple, which was made by the Blessed Virgin Mary on the day of her purification by two young doves, one for holocaust and the other for sins, sufficiently testifies that she needed purification, and that the Son who was offered was also stained by the stain of the Mother, according to the words of the law.

25. It is unlawful for a Christian to place in a church an image of God the Father sitting.

26. Praise which is offered to Mary, as Mary, is vain.

27. Baptism conferred under this form once was valid: "In the name of the Father," etc., those words having been omitted: "I baptize you."

28. Baptism is valid when conferred by a minister who observes every external rite and form of baptizing, but inwardly in his heart resolves with himself: I do not intend what the Church does.

29. Futile and so often convulsed is the assertion concerning the authority of the Roman Pontiff above an ecumenical Council, and his infallibility in deciding questions of Faith.

30. Wherever someone finds a doctrine clearly founded in Augustine, he can absolutely hold and teach it, without regard to any bull of the Pontiff.

31. The bull of Urban VIII, *In eminenti*, is surreptitious.

Condemned and prohibited respectively as rash, scandalous, ill-sounding, injurious, near to heresy, savoring of heresy, erroneous, schismatic, and heretical.

NUM. XIII.

The 23 propositions concerning most pure love toward God, condemned by Innocent XII, by the Brief *Cum alias*, etc., 12 Mar. 1699.

1. There is given a habitual state of love of God, which is pure charity and without any admixture of a motive of one's own interest. Neither fear of punishments nor desire of rewards any longer has part in it. God is no longer loved on account of merit, nor on account of perfection, nor on account of happiness to be found in loving.

2. In the state of contemplative or unitive life every interested motive of fear and hope is lost.

3. That which is essential in direction of the soul is to do nothing other than to follow grace step by step with infinite patience, precaution, and subtlety. It is necessary to keep oneself within these limits, so that God may be allowed to act, and never to lead to pure love except when God through interior unction begins to open the heart to this word, which is so hard to souls still affixed to themselves, and therefore can scandalize them or cast them into disturbance.

4. In the state of holy indifference the soul no longer has voluntary and deliberate desires on account of its own interest, except on those occasions in which it does not faithfully cooperate with all its grace.

5. In the same state of holy indifference we will nothing for ourselves, all things for God we will. We will nothing so that we may be perfect and blessed on account of our own interest; but we will every perfection and beatitude, insofar as it pleases God to effect that we will these things by the impression of His grace.

6. In this state of holy indifference we no longer will salvation as our own salvation, as eternal liberation, as the reward of our merits, as our greatest interest of all; but we will it with a full will as the glory and good pleasure of God, as a thing which He wills, and which He wills us to will on account of Himself.

7. Abandonment is nothing except abnegation, or renunciation of oneself, which Jesus Christ requires from us in the Gospel, after we have left all external things. This abnegation of ourselves is only as to our own interest... The extreme trials in which this abnegation or abandonment of oneself ought to be exercised are temptations by which a jealous God wills to purge love, showing it no refuge and no hope as to its own interest, even eternal.

8. All sacrifices which are customarily made by souls most greatly disinterested concerning their eternal beatitude are conditional... But this sacrifice cannot be absolute in the ordinary state. In one case of extreme trials this sacrifice becomes in some way absolute.

9. In extreme trials the soul can be invincibly persuaded, by a reflected persuasion, and one which is not the innermost depth of conscience, that it has been justly reprobated by God.

10. Then the soul, divided from itself, expires with Christ on the cross, saying: "God, my God, why have you abandoned me?" In this involuntary impression of despair it completes an absolute sacrifice of its own interest as to eternity.

11. In this state the soul loses every hope of its own interest; but it never loses in the superior part, that is, in its direct and intimate acts, perfect hope, which is the disinterested desire of the promises.

12. The director then can permit this soul simply to acquiesce in the loss of its own interest, and in the just condemnation which it believes has been imposed on it by God.

13. The inferior part of Christ on the cross did not communicate its involuntary disturbances to the superior.

14. In extreme trials for the purification of love there occurs a certain separation of the superior part of the soul from the inferior... In that separation the acts of the inferior part flow from an entirely blind and involuntary disturbance, for all that is voluntary and intellectual belongs to the superior part.

15. Meditation consists in discursive acts which are easily distinguished from one another... That composition of discursive and reflex acts is the proper exercise of interested love.

16. There is given a state of contemplation so sublime and so perfect that it becomes habitual, so that whenever the soul actually prays, its prayer is contemplative, not discursive. Then it no longer needs to return to meditation and its methodical acts.

17. Contemplative souls are deprived of the distinct, sensible, and reflex view of Jesus Christ at two different times... First, in the nascent fervor of their contemplation... Second, the soul loses the view of Jesus Christ in extreme trials.

18. In the passive state all distinct virtues are exercised, not by thinking that they are virtues. At any moment nothing else is thought than to do that which God wills; and jealous love at the same time brings it about that one no longer wills virtue for oneself, nor is one ever so endowed with virtue as when one is no longer affixed to virtue.

19. It can be said in this sense that the passive and disinterested soul no longer wills even love itself, insofar as it is its perfection and its happiness, but only insofar as it is that which God wills from us.

20. In confessing, transformed souls ought to detest their sins and condemn themselves, and desire the remission of their sins, not as their own purification and liberation, but as a thing which God wills, and wills us to will on account of His glory.

21. The holy mystics excluded exercises of virtues from the state of transformed souls.

22. Although this doctrine of pure love was the pure and simple evangelical perfection designated in the whole tradition, the ancient pastors did not commonly propose to the multitude of the just except exercises of interested love proportioned to their grace.

23. Pure love itself alone constitutes the whole interior life; and then it becomes the sole principle and sole motive of all acts which are deliberate and meritorious.

Condemned and reproved as, whether in the obvious sense of their words or with attention to the connection of the statements, rash, scandalous, ill-sounding, offensive to pious ears, pernicious in practice, and also respectively erroneous.

NUM. XIV.

The 101 propositions of Paschasius Quesnell, condemned by Clement XI by the Constitution *Unigenitus*, etc., 8 Sept. 1713.

1. What else remains to the soul which has lost God and His grace except sin, and the consequences of sin, proud poverty, and sluggish indigence, that is, general impotence for labor, for prayer, and for every good work?

2. The grace of Jesus Christ, the efficacious principle of good of any kind, is necessary for every good work; without it not only is nothing done, but neither can it be done.

3. In vain, Lord, do You command, if You Yourself do not give what You command.

4. Thus, Lord: all things are possible to him for whom You make all things possible, by working the same in him.

5. When God does not soften the heart through the interior unction of His grace, exhortations and exterior graces serve only to harden it more.

6. The difference between the Jewish and Christian covenant is that in the former God exacts the flight from sin and the fulfillment of the law from the sinner, leaving him in his impotence; but in the latter God gives to the sinner what He commands, by purifying him with His grace.

7. What utility is there for man in the old covenant, in which God left him to his own infirmity by imposing His law upon him? But what happiness is it not, to be admitted to a covenant in which God gives us what He asks from us?

8. We do not belong to the new covenant except insofar as we are sharers of that new grace which works in us that which God commands us.

9. The grace of Christ is supreme grace, without which we can never confess Christ, and with which we never deny Him.

10. Grace is the operation of the hand of almighty God, which nothing can impede or retard.

11. Grace is nothing other than the will of almighty God commanding and doing what He commands.

12. When God wishes to save a soul, at whatever time, in whatever place, the indubitable effect follows the will of God.

13. When God wishes to make a soul safe, and touches it with the hand of His interior grace, no human will resists Him.

14. However remote from salvation the obstinate sinner may be, when Jesus presents Himself to be seen by him by the saving light of His grace, he must surrender himself, run to Him, humble himself, and adore his Savior.

15. When God accompanies His command and His external speech with the unction of His Spirit and the interior force of His grace, He works in the heart that obedience which He asks.

16. There are no allurements which do not yield to the allurements of grace, because nothing resists the almighty.

17. Grace is that voice of the Father which teaches men interiorly and makes them come to Jesus Christ; whoever does not come to Him after he has heard the exterior voice of the Son is in no way taught by the Father.

18. The seed of the word, which the hand of God waters, always bears its fruit.

19. The grace of God is nothing other than His almighty will; this is the idea which God Himself hands down to us in all His Scriptures.

20. The true idea of grace is that God wills Himself to be obeyed by us, and He is obeyed; He commands, and all things are done; He speaks as Lord, and all things are submitted to Him.

21. The grace of Jesus Christ is strong, powerful, supreme, invincible grace, inasmuch as it is the operation of the omnipotent will, the sequel and imitation of the operation of God incarnating and resuscitating His Son.

22. The concord of the omnipotent operation of God in the heart of man with the free consent of his will is shown to us immediately in the incarnation, as in the fountain and archetype of all other operations of mercy and grace, which all are as gratuitous and as dependent on God as that original operation itself.

23. God Himself has handed down to us the idea of the omnipotent operation of His grace, signifying it by that operation which produces creatures from nothing and returns life to the dead.

24. The just idea which the centurion has concerning the omnipotence of God and Jesus Christ in healing bodies by the sole motion of His will is the image of the idea which ought to be had concerning the omnipotence of His grace in healing souls from cupidity.

25. God illuminates the soul and heals it, just as the body, by His will alone: He commands, and He is obeyed.

26. No graces are given except through Faith.

27. Faith is the first grace, and the fountain of all the others.

28. The first grace which God grants to the sinner is the remission of sins.

29. Outside the Church no grace is granted.

30. All whom God wills to save through Christ are infallibly saved.

31. The desires of Christ always have their effect: He brings peace into the innermost of hearts when He wishes it to them.

32. Jesus Christ handed Himself over to death to liberate forever by His Blood the firstborn, that is, the elect, from the hand of the exterminating angel.

33. Ah! how much one must have renounced earthly goods and oneself, in order that one may have confidence of appropriating to oneself, so to speak, Christ Jesus, His love, death, and mysteries! as Saint Paul does, saying: "Who loved me, and handed Himself over for me."

34. The grace of Adam produced only human merits.

35. The grace of Adam is the sequel of creation, and was owed to nature sound and whole.

36. The essential difference between the grace of Adam and the state of innocence and Christian grace is that the former each one would have received in his own person, but the latter is not received except in the person of Jesus Christ resurrected, to whom we are united.

37. The grace of Adam, by sanctifying him in himself, was proportioned to him; Christian grace, by sanctifying us in Jesus Christ, is omnipotent and worthy of the Son of God.

38. The sinner is not free except for evil, without the grace of the Liberator.

39. The will which grace does not prevent has nothing of light except for wandering, of ardor except for casting itself down, of strength except for wounding itself; it is capable of every evil, and incapable of every good.

40. Without grace, we can love nothing except unto our condemnation.

41. Every knowledge of God, even natural, even in ethnic philosophers, cannot come except from God; and without grace it produces only presumption, vanity, and opposition to God Himself in place of affections of adoration, gratitude, and love.

42. The grace of Christ alone renders man fit for the sacrifice of Faith; without this, nothing except impurity, nothing except unworthiness.

43. The first effect of baptismal grace is to make us die to sin, so that the spirit, heart, and senses have no more life for sin than a dead man has for the things of the world.

44. There are only two loves, whence all our volitions and actions are born: the love of God, which does all things for God and which God rewards, and the love by which we love ourselves and the world, which does not refer to God what ought to be referred to God, and for this very reason becomes evil.

45. When the love of God no longer reigns in the heart of sinners, it is necessary that carnal cupidity reign in it and corrupt all its actions.

46. Cupidity or charity makes the use of the senses good or evil.

47. Obedience of the law ought to flow from a fountain, and this fountain is charity. When the love of God is its interior principle, and the glory of God its end, then it is pure when it appears exteriorly; otherwise it is only hypocrisy or false justice.

48. What else can we be except darkness, except wandering, and except sin, without the light of Faith, without Christ, and without charity?

49. As there is no sin without love of ourselves, so there is no good work without love of God.

50. In vain do we cry to God, "My Father," if the spirit of charity is not the one that cries.

51. Faith justifies when it works, but it itself does not work except through charity.

52. All other means of salvation are contained in Faith as in their germ and seed; but this Faith is not without love and confidence.

53. Charity alone makes Christian actions in a Christian manner by relation to God and Jesus Christ.

54. Charity alone is that which speaks to God; it alone God hears.

55. God crowns nothing except charity; he who runs from another impulse and from another motive runs in vain.

56. God rewards nothing except charity, because charity alone honors God.

57. Everything is lacking to the sinner when hope is lacking to him; and there is no hope in God where there is no love of God.

58. There is neither God nor religion where there is not charity.

59. The prayer of the impious is a new sin; and what God grants to them is a new judgment upon them.

60. If fear of punishment alone animates penance, the more violent this penance is, the more it leads to desperation.

61. Fear only restrains the hand; but the heart is addicted to sin as long as it is not led by love of justice.

62. He who abstains from evil only by fear of punishment commits it in his heart and is already guilty before God.

63. One baptized is still under the law like a Jew, if he does not fulfill the law, or fulfills it from fear alone.

64. Under the curse of the law good is never done, because one sins either by doing evil, or by avoiding it only on account of fear.

65. Moses, the prophets, priests, and doctors of the law died without giving any son to God, since they made only slaves through fear.

66. He who wishes to approach God ought neither to come to Him with brutal passions, nor be led by natural instinct or by fear like beasts, but by Faith and by love like Sons.

67. Servile fear does not represent God to itself except as a hard, imperious, unjust, intractable Lord.

68. The goodness of God has shortened the way of salvation, by enclosing the whole in Faith and prayers.

69. Faith, the use, increase, and reward of Faith, all is a gift of the pure liberality of God.

70. God never afflicts the innocent; and afflictions always serve either for punishing sin or for purifying the sinner.

71. For his own preservation man can dispense himself from that law which God established for his utility.

72. The mark of the Christian Church is that it is Catholic, comprehending both all the angels of heaven and all the elect and just of earth and of all ages.

73. What is the Church except the assembly of the sons of God, remaining in His bosom, adopted in Christ, subsisting in His person, redeemed by His blood, living by His spirit, acting through His grace, and awaiting the grace of the future age?

74. The Church, or the whole Christ, has the incarnate Word as head, and all the saints as members.

75. The Church is one single man composed of many members, of whom Christ is the head, life, subsistence, and person; one single Christ composed of many saints, of whom He is the sanctifier.

76. Nothing is more spacious than the Church of God, because all the elect and just of all ages compose it.

77. He who does not lead a life worthy of the Son of God and of a member of Christ ceases interiorly to have God as Father and Christ as head.

78. Someone is separated from the elect people, of which the Jewish people was the figure and Jesus Christ is the head, as much by not living according to the Gospel as by not believing the Gospel.

79. It is useful and necessary at every time, in every place, and for every kind of persons, to study and know the spirit, piety, and mysteries of sacred Scripture.

80. The reading of sacred Scripture is for all.

81. The obscurity of the holy word of God is not for laymen a reason for dispensing themselves from its reading.

82. The Lord's day ought to be sanctified by Christians with readings of piety, and above all of the holy Scriptures. It is harmful to wish to draw a Christian back from this reading.

83. It is an illusion to persuade oneself that knowledge of the mysteries of Religion ought not to be communicated to women by reading of the sacred books. Not from the simplicity of women, but from the proud knowledge of men, has abuse of the Scriptures arisen, and heresies have been born.

84. To snatch the New Testament from the hands of Christians, or to keep it closed to them by taking away from them the mode of understanding it, is to close the mouth of Christ to them.

85. To forbid Christians the reading of sacred Scripture, especially of the Gospel, is to forbid the use of light to the sons of light, and to make them suffer a certain kind of excommunication.

86. To deprive the simple people of this consolation, of joining their voice to the voice of the whole Church, is a usage contrary to apostolic practice and to the intention of God.

87. A manner full of wisdom, light, and charity is to give souls time to bear with humility and to feel the state of sin, to ask for the spirit of penance and contrition, and to begin at least to satisfy the justice of God before they are reconciled.

88. We are ignorant of what sin and true penance are when we wish immediately to be restored to possession of those goods of which sin has despoiled us, and we refuse to bear the confusion

of that separation.

89. The fourteenth step of the conversion of the sinner is that, when he has now been reconciled, he has the right of assisting at the Sacrifice of the Church.

90. The Church has the authority of excommunicating, so that she may exercise it through the first pastors, with at least the presumed consent of the whole body.

91. Fear of unjust excommunication ought never to impede us from fulfilling our duty; we never depart from the Church, even when by the wickedness of men we seem to have been driven from it, when we are affixed by charity to God, Jesus Christ, and the Church itself.

92. To suffer in peace an unjust excommunication and anathema, rather than betray truth, is to imitate Saint Paul; so far is it from being to raise oneself against authority, or to tear unity.

93. Jesus sometimes heals the wounds which the hasty action of the first pastors the haste of men inflicts without His command. Jesus restores what they cut away by inconsiderate zeal.

94. Nothing casts a worse opinion of the Church into her enemies than to see dominion exercised there over the Faith of the faithful, and divisions fostered on account of things which injure neither Faith nor morals.

95. Truths have come to such a point that they are, as it were, a foreign tongue to most Christians, and the manner of preaching them is like an unknown idiom: so far is it removed from the simplicity of the apostles, and above the common understanding of the faithful; nor is it sufficiently adverted that this defect is one of the most sensible signs of the old age of the Church, and of the wrath of God against His sons.

96. God permits all powers to be contrary to the preachers of truth, so that its victory cannot be attributed except to divine grace.

97. Too often it happens that those members which are more holily and more strictly united to the Church are regarded and treated as unworthy to be in the Church, or as separated from her; but the just man lives by Faith, and not by the opinion of men.

98. The state of persecution and of punishments, which someone endures as a heretic, a flagitious man, and an impious man, is generally the last and most meritorious trial, as that which makes a man more conformable to Jesus Christ.

99. Perverseness, prejudice, obstinacy in refusing either to examine anything or to know that one has been deceived, daily change, with respect to many, into an odor of death that which God placed in His Church that it might be in her an odor of life, for example good books, instructions, holy examples, etc.

100. Deplorable time, in which God is believed to be honored by persecuting His truth and His disciples! This time has come... To be held and treated by ministers of Religion as impious and unworthy of all commerce with God, as a putrid member capable of corrupting all things in the

society of the saints, is for pious men a death more terrible than the death of the body. In vain does one flatter himself concerning the purity of his intentions and a certain zeal of Religion, by persecuting with flame and sword upright men, if he is blinded by his own passion, or carried away by another's, for this reason, that he wishes to examine nothing. Frequently we believe that we are sacrificing an impious man to God, and we sacrifice a servant of God to the devil.

101. Nothing is more opposed to the spirit of God and the doctrine of Jesus Christ than to make oaths common in the Church: because this is to multiply occasions of perjury, to spread snares for the weak and the ignorant, and to bring it about that the name and truth of God sometimes serve the counsel of the impious.

Declared and condemned as false, captious, ill-sounding, offensive to pious ears, scandalous, pernicious, rash, injurious to the Church and her practice, contumelious not only against the Church but also against the powers of the age, seditious, impious, blasphemous, suspected of heresy, and savoring of heresy itself, and also favoring heretics and heresies and even schism, erroneous, proximate to heresy, several times condemned, and finally heretical, and respectively manifestly renewing various heresies, and especially those which are contained in the famous propositions of Jansenius, and indeed received in that sense in which these were condemned.

Num. XV

Five propositions concerning the duel, condemned by Benedict XIV, in the Constitution *Detestabilem* etc., 10 Nov. 1752.

1. A military man who, unless he offers or accepts a duel, would be regarded as fearful, timid, abject, and unfit for military offices, and consequently would be deprived of the office by which he sustains himself and his own, or would have to lack forever the hope of a promotion otherwise owed to him and merited by him, would be free from fault and penalty, whether he offers or accepts the duel.

2. They also can be excused who accept a duel or challenge to it for the sake of defending honor or avoiding human contempt, when they certainly know that the fight will not follow, as being about to be prevented by others.

3. A leader or officer of the military, accepting a duel from grave fear of the loss of reputation and office, does not incur the ecclesiastical penalties laid down by the Church against duellists.

4. It is lawful, in the natural state of man, to accept and offer a duel, in order to preserve fortunes with honor, when the loss of them cannot be driven away by another remedy.

5. The asserted license for the natural state can also be applied to the state of an ill-ordered commonwealth, in which, namely, either by negligence or malice of the magistrate, justice is openly denied.

Condemned and prohibited as false, scandalous, and pernicious.

Num. XVI

Eighty-five propositions of the diocesan Synod of Pistoia, condemned by Pius VI, in the Constitution *Auctorem Fidei* etc., 28 August 1794, which is presented entire.

Condemnation by our Most Holy Lord, Lord Pius, by divine Providence Pope the Sixth, of very many propositions excerpted from the book printed in the Italian idiom under the title *Atti e decreti del Concilio diocesano di Pistoia dell'anno 1786, in Pistoia per Atto Bracali stampatore vescovile con approvazione*, with prohibition of the same book and of any other books whatsoever in its defense, whether perhaps already published or to be published hereafter.

Pius, Bishop, Servant of the Servants of God, to all the Christian faithful, greeting and apostolic blessing.

Looking to Jesus, the author and consummator of faith, the Apostle commands us [1] carefully to consider what kind and how great a contradiction He endured from sinners against Himself, so that, wearied by labors and dangers, we may not at any time fail in our souls, and almost collapse. To be armed and refreshed by this most salutary thought is especially necessary for us when, against the very body of Christ, which is the Church [2], the heat of that dire and never-ceasing conspiracy burns more fiercely: so that, strengthened by the Lord and in the power of His might, protected by the shield of Faith, we may be able to resist in the evil day, and extinguish all the fiery darts of the most wicked one [3]. In this movement of the times, indeed, in this most disturbed overturning of affairs, a grave struggle must be undergone by all good men against all enemies, of every kind, of the Christian name: graver for us, upon whom, on account of the care and government of the whole Flock entrusted to our Pastoral solicitude, there lies more than upon all others zeal for the Christian Religion [4]. But in this very heaviness of the burden which has been placed upon our shoulders, of bearing the burdens of all who are burdened, the more conscious we are to ourselves of our weakness, the more firmly the account of this apostolic office, divinely instituted in the person of blessed Peter, raises and sustains us unto hope: namely, that He who was never going to abandon the governance of the Church once handed over to Him by Christ, would Himself not cease to bear the burdens of apostolic government in those whom God had given to Him, by perpetual succession, as heirs to be protected and defended.

[1] To the Hebrews II.

[2] To the Colossians I.

[3] To the Ephesians VI.

[4] St. Siricius, epistle to Himerius of Tarragona, in Coustant.

And indeed in these afflictions, which surround us on every side, it has been added, as it were, to the heap of other troubles, that from where it was fitting for us to rejoice, from there we should draw greater sadness. For when someone set over the sacrosanct Church of God, under the name of priest, turns the very people of Christ from the path of truth headlong into the precipice of a wayward persuasion, and this in a most ample City; then indeed lamentation must be doubled, and greater solicitude employed [5].

[5] St. Coelestine I, epistle 12, in Coustant.

Indeed, not in the remotest lands, but in the middle light of Italy, under the eyes of the City, and near the thresholds of the Apostles, there was a Bishop distinguished by the honor of a double See (Scipio de Ricci, formerly Bishop of Pistoia and Prato), whom, as he approached us to receive the Pastoral office, we embraced with paternal charity: he in turn, in the very rite of his sacred ordination, bound himself by the religion of a solemn oath to due fidelity and obedience to us and to this apostolic See.

And this same man, not long after, when he was dismissed from our embrace with the kiss of peace and went to the peoples committed to him, surrounded by the frauds of accumulated teachers of perverse wisdom, began to aim at this: that the praiseworthy and peaceful form of Christian instruction, which previous Prelates, according to ecclesiastical rule, had long before brought in and almost fixed, he should not, as he ought, guard, cultivate, and perfect, but on the contrary, under the appearance of a fictitious reform, should disturb, shake, and utterly overthrow by introducing importunate novelties.

Moreover, when, also by our exhortation, he had applied his mind to a diocesan Synod, his stubborn pertinacity in his own opinion brought it about that, from where some remedy of wounds was to be sought, from there a graver ruin should arise. Indeed, after this Synod of Pistoia burst forth from the hiding places in which for some time it had lain hidden, there was no one thinking piously and wisely about the highest matter of Religion who did not immediately advert that this had been the design of the authors: that the seeds of depraved doctrines, which they had previously scattered through manifold little books, they might compact into one, as it were, into a body; that they might awaken errors long since proscribed; that they might derogate from the faith and authority of the apostolic decrees by which they were proscribed.

When we perceived these things, that, the graver they are in themselves, so much the more urgently they demanded the aid of our Pastoral solicitude, we did not delay to turn our mind to taking those counsels which seemed more suitable for healing or repressing the rising evil.

And first of all, mindful of the wise admonition of our Predecessor blessed Zosimus [6], that matters which are great desire a great weight of examination, we committed the Synod published by the Bishop first to four Bishops and to theologians from the secular clergy joined with them, to be examined; then we also deputed a Congregation of several Cardinals of the Holy Roman Church and of other Bishops, who should diligently weigh the whole series of the acts, compare places separated from one another, and discuss the excerpted judgments; whose votes, set forth before us by voice and in writing, we received. They judged both that the Synod as a whole should be reproved, and that very many propositions gathered from it, some indeed in themselves, others with attention to the connection of the judgments, should be struck with censures more or less severe. After their observations had been heard and weighed, this also was our care: that certain principal heads of depraved doctrines, selected from the whole Synod, to which especially the judgments, spread through the Synod and needing reprobation, are directly or indirectly referred, should thereafter be reduced into a definite order, and that to each of them its own peculiar censure should be appended.

[6] St. Zosimus, epistle 2, in Coustant.

But lest, from this very comparison of places or inquiry into judgments, although most accurately completed, obstinate men should seize an occasion for disparaging; so that this calumny perhaps already prepared might be met, we determined to use the wise counsel which, in repressing emerging

novelties of this kind, dangerous or harmful, several of our holy Predecessors, and also most grave Prelates, and even general Synods, had left commended and recommended by illustrious examples, as having been rightly and cautiously employed.

They knew the crafty art of deceiving among innovators, who, fearing the offense of Catholic ears, very often strive to cover the snares of their captious statements with deceitful wrappings of words, so that, amid the distinctions of meanings [7], the hidden error may flow more gently into minds, and it may happen that, the truth of the sentence having been corrupted by a very slight addition or change, the confession which worked salvation may by a certain subtle transition incline unto death. And indeed this involved and fallacious manner of disputing, while it is vicious in every kind of speech, is least of all to be borne in a Synod, whose chief praise is this: that in teaching it pursue a lucid manner of speaking, which leaves no danger of offense. Therefore, if anything has been committed against this in that kind, it cannot be defended by that deceitful excuse which is customarily brought forward, that those things which somewhere have slipped out more harshly stated are found in other places to have been explained more plainly or even corrected: as if that insolent license of affirming and denying and fighting with oneself at pleasure, which has always been the fraudulent cunning of innovators for the circumvention of error, availed rather to excuse error than to betray it; or as if to the unlearned especially, who perhaps have fallen upon this or that part of a Synod set forth to all in the vulgar tongue, there were always at hand other scattered places which would have to be inspected; or, even after these had been inspected, there were a sufficient faculty for each one to compose them by himself in such a way that, as those men wrongly babble, they would be able to escape every danger of error. A most destructive artifice indeed for insinuating error; which, detected wisely long ago in the letters of Nestorius, the Bishop of Constantinople, our Predecessor Coelestine [8] convicted with gravest rebuke: in which letters, namely, that crafty old man, tracked, detected, and held, undermining himself by his much speaking, while wrapping truths in obscurities, again confusing both, either confessed the things denied, or strove to deny the things confessed. To repel these snares, renewed too often in every age, no better way has been entered upon than that, by setting forth those judgments which under the hiding-place of ambiguity involve a dangerous and suspicious discrepancy of meanings, the perverse signification should be marked, under which there lay an error which Catholic judgment would reprove.

[7] St. Leo the Great, epistle 129, edition of Ballerini.

[8] St. Coelestine I, epistle 13, no. 2, in Coustant.

And we embraced this manner, full of moderation, the more willingly, the more we foresaw that it would be a great help for reconciling minds and bringing them to the unity of spirit in the bond of peace (which, by God's favor, we rejoice has already happily happened in many): first, to provide that to obstinate followers of the Synod, if any remain, which God avert, it should not be open hereafter, for stirring up new disturbances, to enlist for themselves, as companions and associates of their just condemnation, Catholic schools, which, wholly unwilling and resisting, by a certain distorted likeness of kindred words, in the express dissimilarity of opinions to which those schools testify, they strive to draw over to their own side. Then, if some pre-conceived milder opinion concerning the Synod has still deceived any imprudent persons, that for these also every place of complaint might be closed, who, if they think rightly, as they wish to seem, cannot take it ill that doctrines are

condemned which are so marked out, which bear before them errors from which they themselves profess that they are very far distant.

Yet we did not think that satisfaction had yet sufficiently been made from the heart to our gentleness, or rather to the charity which urges us toward our Brother, whom we wish by every aid, if we are still able, to succor [9]. Namely, that charity urges us by which our Predecessor Coelestine [10], induced even beyond what was right, or with a patience greater than seemed right, did not refuse to wait for priests needing correction. For with Augustine and the Milevitan Fathers we rather will and desire that men teaching depraved things be healed in the Church by Pastoral care, than, their salvation being despaired of, be cut away from her, if no necessity compels it [11].

[9] St. Coelestine I, epistle 14 to the people of Constantinople, no. 8, in Coustant.

[10] Epistle 13 to Nestorius, no. 9.

[11] Epistle 176, no. 4; 178, no. 2, Maurist edition.

To this end, lest any kind of office toward gaining our Brother should seem to have been omitted, before proceeding to further things we judged that the aforesaid Bishop should be summoned to us by most loving letters given to him by our command, promising that he would be received by us with a benevolent mind, and that he would not be forbidden freely and openly to bring forth the things which seemed to him to make for his case. Nor truly had all hope deserted us that it could happen that, if indeed he brought that teachable mind which, according to the sentence of the Apostle, Augustine [12] especially required in a Bishop, when simply and candidly, every contestation and bitterness having been removed, the principal heads of doctrines which seemed worthy of greater animadversion were proposed to him for recognition, then, easily collecting himself, he would not doubt to explain in a sounder sense those things which had been put ambiguously, and openly to repudiate those which bore before them manifest depravity; and thus, with great esteem for his name, and with the most joyful congratulation of all good men, in the most peaceful manner in which it could be done, the noises that had arisen in the Church might be suppressed by a most desired correction [13].

[12] Book 4, *On Baptism against the Donatists*, ch. 5, and book 5, ch. 26.

[13] St. Coelestine I, epistle 16, no. 2, in Coustant.

But now, since he has judged that the benefit offered should be less used by him, on the ground of inconvenient health, we can no longer delay satisfying our Apostolic office. The danger is not that of one or another diocese only. The universal Church is struck by any novelty whatsoever [14]. From every side for a long time now the judgment of the supreme apostolic See is not only awaited, but is demanded earnestly with assiduous and repeated prayers. Far be it that the voice of Peter should ever be silent in that his See, in which, perpetually living and presiding, he provides the truth of Faith to those seeking it [15]. A longer connivance in such matters is not safe, because to connive in such matters is almost of as much crime as it is to preach such irreligious things [16]. Therefore such a wound must be cut away, by which not one member is injured, but the whole body of the Church is wounded [17]. And, with divine mercy helping, provision must be made that, dissensions having been amputated, the Catholic Faith may be preserved inviolate, and, those who defend depraved things having been recalled from error, they whose Faith has been proved may be fortified by our authority [18].

[14] St. Coelestine I, epistle 21 to the Bishops of the Gauls.

[15] Chrysologus, epistle to Eutyches.

[16] St. Coelestine I, epistle 12, no. 2.

[17] The same, epistle 11 to Cyril, no. 3.

[18] St. Leo the Great, epistle 23 to Flavian of Constantinople, no. 2.

Therefore, after the light of the Holy Spirit had been implored both by our assiduous prayers and by the private and public prayers of pious Christian faithful, all things having been fully and maturely considered, we have judged that several propositions, doctrines, and judgments from the acts and decrees of the mentioned Synod, whether expressly handed down or insinuated through ambiguity, with notes and censures appended to each one, as was said above, should be condemned and reproved, just as by this our constitution, to have force in perpetuity, we condemn and reprove them.

Now they are those which follow:

Concerning the Obscuration of Truths in the Church

From the decree concerning grace, § 1.

1. The proposition which asserts that in these last centuries there has been spread a general obscuration over truths of graver moment, pertaining to Religion, and which are the basis of the Faith and of the moral doctrine of Jesus Christ;

Heretical.

Concerning the Power Attributed to the Community of the Church, So That Through It It May Be Communicated to Pastors

Convocatory epistle.

2. The proposition which establishes that the power given by God to the Church is to be communicated to Pastors, who are her ministers for the salvation of souls;

Understood thus, that the power of ecclesiastical ministry and governance is derived from the community of the faithful into the Pastors:

Heretical.

Concerning the Denomination of Ministerial Head Attributed to the Roman Pontiff

Decree concerning Faith, § 2.

3. Moreover, that which establishes that the Roman Pontiff is a ministerial head;

Explained thus, that the Roman Pontiff receives, not from Christ in the person of blessed Peter, but from the Church, the power of ministry by which, as Successor of Peter, true Vicar of Christ, and Head of the whole Church, he has power in the universal Church;

Heretical.

Concerning the Power of the Church as Regards Constituting and Sanctioning External Discipline

Decree concerning Faith, §§ 13, 14.

4. The proposition affirming that it would be an abuse of the authority of the Church, by transferring it beyond the limits of doctrine and morals, and by extending it to exterior things, and by force exacting that which depends on persuasion and the heart; and also that, much less, does it pertain to her to exact by exterior force subjection to her decrees;

Insofar as by those indeterminate words, extending to exterior things, it marks, as an abuse of the authority of the Church, the use of that power received from God, which the apostles themselves also used, in constituting and sanctioning exterior discipline:

Heretical.

5. In the part in which it insinuates that the Church does not have authority for exacting subjection to her decrees otherwise than through means which depend on persuasion;

Insofar as it intends that the Church does not have power conferred on her by God, not only of directing by counsels and persuasions, but also of commanding by laws, and of coercing and compelling the wayward and contumacious by exterior judgment and salutary punishments:

From Benedict XIV, in the brief *Ad assiduas* of the year 1755, to the Primates, Archbishops, and Bishops of the Kingdom of Poland.

Introducing into a system elsewhere condemned as heretical.

Rights Attributed to Bishops Beyond What Is Right

Decree concerning order, § 25.

6. The doctrine of the Synod, by which it professes itself persuaded that the Bishop has received from Christ all rights necessary for the good governance of his diocese;

Just as if, for the good governance of any diocese, there were not necessary superior ordinances pertaining either to Faith and morals, or to general discipline, the right of which belongs to the supreme Pontiffs and general Councils for the universal Church;

Schismatic, at least erroneous.

7. Likewise, in that it exhorts the Bishop to pursue vigorously a more perfect constitution of ecclesiastical discipline; and this, against all contrary customs, exemptions, reservations, which are opposed to the good order of the diocese, the greater glory of God, and the greater edification of the faithful; By this, that it supposes it to be lawful for a Bishop, by his own judgment and choice, to establish and decree against customs, exemptions, reservations, whether those which have place in the universal Church, or even in each province, without the permission and intervention of the superior hierarchical power by which they were introduced or approved, and have the force of law;

Introducing into schism and the subversion of hierarchical government, erroneous.

8. Likewise, because it also says that it is persuaded of this, that the rights of a Bishop received from Jesus Christ for governing the Church can neither be altered nor impeded, and that, when it has happened that the exercise of these rights has been interrupted for any cause whatever, the Bishop can always and ought to return to his original rights, as often as the greater good of his Church requires it;

In that it implies that the exercise of episcopal rights can be hindered or restrained by no superior power, whenever the Bishop by his own judgment shall have judged that this is less expedient for the greater good of his Church;

Introducing into schism and the subversion of hierarchical government, erroneous.

A Right Wrongly Attributed to Priests of an Inferior Order in Decrees of Faith and Discipline

Convocatory epistle.

9. The doctrine which establishes that the reformation of abuses concerning ecclesiastical discipline in diocesan Synods depends equally on the Bishop and parish priests, and ought to be established by them equally; and that without liberty of decision there would be an undue subjection to the suggestions and commands of Bishops;

False, rash, injurious to Episcopal authority, subversive of hierarchical government, favoring the Aerian heresy renewed by Calvin.

From the convocatory epistle, from the epistle to the vicars forane, from the oration to the Synod, § 8, from session 3.

10. Likewise the doctrine by which parish priests or other priests assembled in Synod are pronounced, together with the Bishop, judges of Faith, and at the same time it is implied that judgment in causes of Faith belongs to them by their own right, and indeed even by ordination received;

False, rash, subversive of the hierarchical order, detracting from the firmness of the definitions or dogmatic judgments of the Church, at least erroneous.

Synodal oration, § 8.

11. The sentence declaring that, according to the ancient institution of the forefathers, derived from apostolic times and preserved through the better ages of the Church, it had been received that decrees, or definitions, or sentences even of greater sees were not accepted unless they had been recognized and approved by the diocesan Synod;

False, rash, derogating, by reason of its generality, from the obedience owed to apostolic constitutions and also to sentences proceeding from a legitimate superior hierarchical power, fostering schism and heresy.

Calumnies Against Certain Decisions in Matter of Faith Issued for Some Centuries

Concerning Faith, § 12.

12. The assertions of the Synod, accepted comprehensively, concerning decisions in matter of Faith issued for some centuries, which it presents as decrees proceeding from one particular church or from a few pastors, supported by no sufficient authority, born for corrupting the purity of Faith and exciting disturbances, intruded by force, from which wounds have been inflicted that are still too recent;

False, captious, rash, scandalous, injurious to the Roman Pontiffs and to the Church, derogating from the obedience owed to apostolic constitutions, schismatic, pernicious, at least erroneous.

Concerning the So-Called Peace of Clement IX

Synodal oration, § 2, in the note.

13. The proposition related among the acts of the Synod, which implies that Clement IX restored peace to the Church through the approval of the distinction of right and fact in the subscription of the formulary prescribed by Alexander VII;

False, rash, injurious to Clement IX.

14. But insofar as it supports that distinction by extolling with praises the favorers of the same and by censuring their adversaries;

Rash, pernicious, injurious to the supreme Pontiffs, fostering schism and heresy.

Concerning the Joining Together of the Body of the Church

Appendix, no. 28.

15. The doctrine which proposes that the Church is to be considered as one mystical body joined together from Christ the Head and the faithful, who are His members, through an ineffable union, by which we wonderfully become with Him one sole priest, one sole victim, one sole perfect adorer of God the Father in spirit and truth;

Understood in this sense, that none belong to the body of the Church except the faithful who are perfect adorers in spirit and truth:

Heretical.

Concerning the State of Innocence

Concerning grace, §§ 4, 7; concerning the Sacraments in general, § 1; concerning Penance, § 4.

16. The doctrine of the Synod concerning the happy state of innocence, as it represents it in Adam before sin, embracing not only integrity, but also interior justice with an impulse toward God through the love of charity, and primitive holiness restored in some manner after the fall:

Insofar as, accepted comprehensively, it implies that that state was a sequel of creation, owed from the natural exigency and condition of human nature, not a gratuitous benefit of God;

False, elsewhere condemned in Baius and Quesnel, erroneous, favoring the Pelagian heresy.

Concerning Immortality Considered as a Natural Condition of Man

Concerning Baptism, § 2.

17. The proposition expressed in these words: taught by the Apostle, we regard death no longer as a natural condition of man, but truly as a just penalty of original fault:

Insofar as, under the name of the Apostle deceitfully alleged, it insinuates that death, which in the present state has been inflicted as a just penalty of sin through the just withdrawal of immortality, was not a natural condition of man, as though immortality had not been a gratuitous benefit, but a natural condition;

Captious, rash, injurious to the Apostle, elsewhere condemned.

Concerning the Condition of Man in the State of Nature

Concerning grace, § 10.

18. The doctrine of the Synod declaring that after the fall of Adam God announced the promise of the future liberator, and willed to console the human race through the hope of salvation which Jesus Christ was going to bring; yet that God willed that the human race should pass through various states before the fullness of times should come; and first, that in the state of nature man, left to his own lights, should learn to distrust his blind reason, and from his wanderings should move himself to desiring the help of a superior light:

The doctrine, as it lies, captious, and, understood of the desire for the aid of a superior light in order to the salvation promised through Christ, to conceive which man left to his own lights is supposed to have been able to move himself;

Suspect, favoring the Semipelagian heresy.

Concerning the Condition of Man Under the Law

Ibid.

19. Likewise, the doctrine which adds that man under the law, since he was powerless to observe it, became a transgressor, not indeed by the fault of the law, which was most holy, but by the fault of man, who under the law without grace became more and more a transgressor; and it adds that the law, if it did not heal the heart of man, brought it about that he should know his own evils, and, convinced of his own weakness, should desire the grace of the Mediator;

In the part in which it generally implies that man became a transgressor through non-observance of the law, which he was powerless to observe; as though He who is just could have commanded something impossible, or He who is merciful were going to condemn man for that which he could not avoid;

From St. Caesarius, sermon 73, in the appendix of St. Augustine, sermon 273, Maurist edition. From St. Augustine, *On Nature and Grace*, ch. 43; *On Grace and Free Will*, ch. 16; *Enarration on Psalm* 56, no. 1.

False, scandalous, impious, condemned in Baius.

20. In the part in which it is given to be understood that man under the law without grace could conceive a desire for the grace of the Mediator ordered to the salvation promised through Christ; as though grace itself does not bring it about that He is invoked by us;

From the Second Council of Orange, canon 3.

The proposition, as it lies, captious, suspect, favoring the Semipelagian heresy.

Concerning Illuminating and Exciting Grace

Concerning grace, § 11.

21. The proposition which asserts that the light of grace, when it is alone, provides nothing except that we know the unhappiness of our state and the gravity of our evil; that grace in such a case produces the same effect which the law produced; that therefore it is necessary that God create in our heart holy love, and inspire holy delectation contrary to the love dominant in us; that this holy love, this holy delectation, is properly the grace of Jesus Christ, the inspiration of charity, by which, the holy love having been known, we may act; that this is that root from which good works germinate; that this is the grace of the New Testament, which liberates us from the servitude of sin and establishes us as sons of God:

Insofar as it intends that that alone is properly the grace of Jesus Christ which creates holy love in the heart, and which makes us act, or also by which man, liberated from the servitude of sin, is established as a son of God; and that it is not also properly the grace of Christ, that grace by which the heart of man is touched through the illumination of the Holy Spirit (Trent, session 6, ch. 5); nor that true interior grace of Christ is given, which is resisted;

False, captious, introducing into the error condemned as heretical in the second proposition of Jansenius, and renewing it.

Concerning Faith as the First Grace

Concerning Faith, § 1.

22. The proposition which implies that Faith, from which the series of graces begins, and through which, as by the first voice, we are called to salvation and to the Church, is that very excellent virtue of Faith by which men are named faithful and are faithful;

Just as if that grace were not prior, which, as it prevents the will, so also prevents Faith;

From St. Augustine, *On the Gift of Perseverance*, ch. 16, no. 41; suspect of heresy, and savoring of it, elsewhere condemned in Quesnel, erroneous.

Concerning the Two-Fold Love

Concerning grace, § 8.

23. The doctrine of the Synod concerning the two-fold love (of dominant cupidity and of dominant charity), declaring that man without grace is under the servitude of sin, and that in that state he infects and corrupts all his actions through the general influence of dominant cupidity;

Insofar as it insinuates that in man, while he is under servitude or in the state of sin, destitute of that grace by which he is liberated from the servitude of sin and established as a son of God, cupidity so dominates that through the general influence of this all his actions are infected and corrupted in themselves; or that all works which are done before justification, in whatever manner they are done, are sins;

As though in all his acts the sinner serves dominant cupidity;

False, pernicious, introducing into the error condemned by the Council of Trent as heretical, again condemned in Baius, article 40, § 12.

24. But in the part in which between dominant cupidity and dominant charity no intermediate affections are placed, implanted by nature itself and by their own nature praiseworthy, which together with the love of beatitude and the natural propensity to good remained as the extreme lineaments and remnants of the image:

From St. Augustine, *On the Spirit and the Letter*, ch. 28.

Just as if between divine love, which leads us through to the kingdom, and illicit human love, which is condemned, there were not given lawful human love, which is not reprehended;

From St. Augustine, sermon 349 concerning charity, Maurist edition; false, elsewhere condemned.

Concerning Servile Fear

Concerning Penance, § 3.

25. The doctrine which generally presents fear of punishments only as not able to be called evil, if at least it reaches to restraining the hand;

As though the fear itself of gehenna, which Faith teaches must be inflicted for sin, is not in itself good and useful, as a supernatural gift and a motion inspired by God preparing for the love of justice:

False, rash, pernicious, injurious to divine gifts, elsewhere condemned, contrary to the doctrine of the Council of Trent, and also to the common sentence of the Fathers, that it is necessary, according to the customary order of preparation for justice, that fear enter first, through which charity may come: fear is the medicine, charity the health.

From St. Augustine, on the Epistle of John, ch. 4, tract 9, nos. 4, 5; on the Gospel of John, tract 41, no. 10; Enarration on Psalm 127, no. 7; sermon 157 concerning the words of the Apostle, no. 13; sermon 161 concerning the words of the Apostle, no. 8; sermon 349 concerning Charity, no. 7.

Concerning the Punishment of Those Dying with Original Sin Alone

Concerning Baptism, § 3.

26. The doctrine which explodes as a Pelagian fable that place of the lower regions (which the faithful commonly designate by the name of the limbo of children), in which the souls of those dying with original fault alone are punished with the punishment of loss, short of the punishment of fire;

Just as if, by this very fact, those who remove the punishment of fire introduced that place and middle state, free of fault and punishment, between the kingdom of God and eternal damnation, such as the Pelagians fabled;

False, rash, injurious to Catholic schools.

Concerning the Sacraments, and First concerning the Sacramental Form with the Added Condition

Concerning Baptism, § 12.

27. The deliberation of the Synod by which, under the pretext of adherence to ancient canons, in the case of doubtful Baptism, it declares its proposal of omitting mention of the conditional form;

Rash, contrary to the practice, law, and authority of the Church.

Concerning Participation of the Victim in the Sacrifice of the Mass

Concerning the Eucharist, § 6.

28. The proposition of the Synod by which, after it establishes that participation of the Victim is an essential part of the Sacrifice, it adds that nevertheless it does not condemn as illicit those Masses in which those standing by do not communicate sacramentally, for this reason, that these participate, although less perfectly, in the Victim itself by receiving it in spirit;

Insofar as it insinuates that something is lacking to the essence of the Sacrifice in that Sacrifice which is performed either with no one standing by, or with those standing by who participate in the Victim neither sacramentally nor spiritually; and as though those Masses ought to be condemned as illicit in which, the priest alone communicating, no one is present who communicates either sacramentally or spiritually;

False, erroneous, suspected of heresy, and savoring of it.

Concerning the Efficacy of the Rite of Consecration

Concerning the Eucharist, § 2.

29. The doctrine of the Synod, in that part in which, undertaking to hand down the doctrine of Faith concerning the rite of consecration, scholastic questions concerning the mode in which Christ is in the Eucharist having been removed, from which it exhorts parish priests fulfilling the office of teaching to abstain, with only these two things proposed: 1. that Christ after the

consecration is truly, really, substantially under the species; 2. that then every substance of bread and wine ceases, the species alone remaining; it entirely omits to make any mention of Transubstantiation, or the conversion of the whole substance of bread into the Body, and of the whole substance of wine into the Blood, which the Council of Trent defined as an article of Faith, and which is contained in the solemn profession of Faith;

Insofar as through an omission of this kind, inconsiderate and suspicious, the knowledge is withdrawn both of an article pertaining to Faith, and also of a word consecrated by the Church for guarding the profession of that article against heresies, and therefore it tends to introducing forgetfulness of it, as though it were a question merely scholastic;

Pernicious, derogating from the exposition of Catholic truth concerning the dogma of Transubstantiation, favoring heretics.

Concerning the Application of the Fruit of the Sacrifice

Concerning the Eucharist, § 8.

30. The doctrine of the Synod by which, while it professes to believe that the oblation of the Sacrifice extends itself to all, yet in such a way that in the liturgy there can be made a special commemoration of certain persons, both living and dead, by praying to God particularly for them, then immediately adds: Not, however, that we believe it to be in the choice of the priest to apply the fruits of the Sacrifice to whom he wills; rather, we condemn this error as greatly offending the rights of God, who alone distributes the fruits of the Sacrifice to whom He wills, and according to the measure which pleases Him; whence also consequently it disparages as false the opinion brought into the people, that those who furnish alms to the priest under the condition that he celebrate one Mass receive a special fruit from it;

Understood thus, that, beyond the particular commemoration and prayer, the special oblation itself or application of the Sacrifice which is made by the priest does not profit, other things being equal, those for whom it is applied more than any others; as though no special fruit would come from the special application which the Church commends and commands to be made for determined persons or orders of persons, especially by pastors for their sheep, which, as descending from divine precept, was expressly set forth by the sacred Synod of Trent;

Session 23, ch. 1, concerning reform. - Benedict XIV, constitution *Cum semper oblatas*, § 2.

False, rash, pernicious, injurious to the Church, introducing into an error elsewhere condemned in Wyclif.

Concerning the Fitting Order to Be Observed in Worship

Concerning the Eucharist, § 5.

31. The proposition of the Synod declaring that it is fitting, for the order of divine offices and the ancient custom, that in each temple there be only one altar, and that therefore it pleases it to restore that custom:

Rash, injurious to a most ancient, pious, and approved custom, flourishing in the Church, especially the Latin Church, for many centuries past.

Ibid.

32. Likewise, the prescription forbidding that reliquaries of sacred relics or flowers be placed upon altars;

Rash, injurious to the pious and approved custom of the Church.

Ibid., § 6.

33. The proposition of the Synod by which it shows that it desires the causes to be removed through which, in part, forgetfulness of the principles pertaining to the order of the liturgy has been introduced, by recalling it to a greater simplicity of rites, by setting it forth in the vulgar tongue, and by pronouncing it in a raised voice:

As though the prevailing order of the liturgy, received and approved by the Church, had in some part flowed from forgetfulness of the principles by which it ought to be ruled;

Rash, offensive to pious ears, contumelious toward the Church, favoring the reproaches of heretics against it.

Concerning the Order of Penance

Concerning Penance, § 7.

34. The declaration of the Synod by which, after it set forth beforehand that the order of canonical Penance had thus been established by the Church according to the example of the Apostles, so that it would be common to all, and not only for the punishment of fault but chiefly for disposition to grace, it adds that in that wonderful and august order it recognizes the whole dignity of the Sacrament, so necessary, free from the subtleties which have been added to it in the course of time;

As though, through the order by which, without the course of canonical Penance having been completed, this Sacrament has been accustomed to be administered throughout the whole Church, its dignity had been diminished;

Rash, scandalous, introducing contempt of the dignity of the Sacrament as it has been accustomed to be administered throughout the whole Church, injurious to the Church herself.

Concerning Penance, § 10, no. 4.

35. Proposition conceived in these words: If charity in the beginning always is weak, according to the ordinary way for obtaining an increase of this charity, it is necessary that the Priest cause those acts of humiliation and penance to precede, which in every age have been commended by the Church; to reduce these acts to a few prayers or to some fast after absolution has already been conferred seems rather a material desire of preserving for this sacrament the bare name of Penance, than an enlightened means suited to increasing that fervor of charity which ought to precede absolution: indeed, we are far from disapproving the practice of imposing penances

to be fulfilled even after absolution: if all our good works always have our defects joined to them, how much more ought we to fear lest we have admitted very many imperfections in the most difficult and important work of our reconciliation;

Insofar as it implies that the penances which are imposed to be fulfilled after absolution are to be considered rather as a supplement for defects admitted in the work of our reconciliation, than as truly sacramental and satisfactory penances for confessed sins; as though, in order that the true nature of the Sacrament, and not its bare name, be preserved, it were necessary, according to the ordinary way, that the acts of humiliation and penance which are imposed by way of sacramental satisfaction ought to precede absolution:

False, rash, injurious to the common practice of the Church, introducing into the error fixed with a note of heresy in Peter de Osma.

Concerning the Previous Disposition Necessary for Admitting Penitents to Reconciliation

Concerning grace, § 15.

36. The doctrine of the Synod by which, after it first stated that, when there shall be non-equivocal signs of the love of God dominating in the heart of man, he can deservedly be judged worthy to be admitted to participation of the blood of Jesus Christ, which is made in the Sacraments, it adds that supposititious conversions, which are made through attrition, are accustomed to be neither efficacious nor durable; consequently that the pastor of souls ought to insist upon non-equivocal signs of dominant charity before he admits his penitents to the Sacraments; which signs, as it then hands down (§ 17), the pastor will be able to deduce from stable cessation from sin, and fervor in good works; which fervor of charity it further presents (concerning Penance, § 10) as the disposition which ought to precede absolution;

Understood thus, that not only imperfect contrition, which commonly is given the name of attrition, even that which is joined with the love by which man begins to love God as the fountain of all justice, nor only contrition formed by charity, but also the fervor of dominant charity, and that indeed proved by long experiment through fervor in good works, is generally and absolutely required in order that a man be admitted to the Sacraments, and especially penitents to the benefit of absolution;

False, rash, disturbing to the peace of souls, contrary to the safe and approved practice in the Church, detracting from and injurious to the efficacy of the Sacrament.

Concerning the Authority of Absolving

Concerning Penance, § 10, no. 6.

37. The doctrine of the Synod which, concerning the authority of absolving received through Ordination, declares that, after the institution of dioceses and parishes, it is fitting that each one exercise this judgment over persons subject to him, either by reason of territory or by a certain personal right, for the reason that otherwise confusion and disturbance would be introduced:

Insofar as, after dioceses and parishes have been instituted, it declares only that it is fitting, for preventing confusion, that the power of absolving be exercised over subjects; understood thus, as though for the valid use of this power that ordinary or subdelegated jurisdiction were not necessary, without which Trent declares that absolution pronounced by a priest is of no moment;

False, rash, pernicious, contrary and injurious to Trent, erroneous.

Ibid., § 11.

38. Likewise the doctrine by which, after the Synod professed that it could not but admire that so venerable discipline of antiquity, which, as it says, did not so easily and perhaps never admit to Penance him who, after the first sin and the first reconciliation, had fallen back into fault, it adds that, by fear of perpetual exclusion from communion and peace, even at the article of death, a great bridle would be put upon those who little consider the evil of sin and fear it less;

Contrary to canon 13 of the First Council of Nicaea, to the decretal of Innocent I to Exuperius of Toulouse, and also to the decretal of Coelestine I to the Bishops of the provinces of Vienne and Narbonne, redolent of the depravity which the holy Pontiff abhors in that decretal.

Concerning the Confession of Venial Sins

Concerning Penance, § 12.

39. The declaration of the Synod on the confession of venial sins, which it says it wishes not to be frequented so greatly, lest confessions of this kind be rendered too contemptible;

Rash, pernicious, contrary to the practice of holy and pious persons approved by the sacred Council of Trent.

Concerning Indulgences

Concerning Penance, § 16.

40. The proposition asserting that an indulgence according to its precise notion is nothing else than the remission of a part of that penance which had been established by the canons for the sinner;

As though an indulgence, beyond the bare remission of canonical penalty, does not also avail for the remission of the temporal penalty owed before divine justice for actual sins;

False, rash, injurious to the merits of Christ, long ago condemned in article 19 of Luther.

Ibid.

41. Likewise, in that it is added that the scholastics, puffed up with their subtleties, introduced a badly understood treasury of the merits of Christ and of the Saints, and substituted for the clear notion of absolution from canonical penalty the confused and false notion of the application of merits;

As though the treasures of the Church, whence the Pope gives indulgences, are not the merits of Christ and of the Saints;

False, rash, injurious to the merits of Christ and of the Saints, long ago condemned in article 17 of Luther.

Ibid.

42. Likewise, in that it adds further that it is still more mournful that this chimerical application was willed to be transferred to the dead;

False, rash, offensive to pious ears, injurious to the Roman Pontiffs and to the practice and sense of the universal Church, introducing into the error fixed with a note of heresy in Peter de Osma, again condemned in article 22 of Luther.

Ibid.

43. Finally, in that it most shamelessly inveighs against tables of indulgences, privileged altars, etc.;

Rash, offensive to pious ears, scandalous, contumelious toward the supreme Pontiffs and toward the practice frequented throughout the whole Church.

Concerning the Reservation of Cases

Concerning Penance, § 19.

44. The proposition of the Synod asserting that the reservation of cases at the present time is nothing else than an improvident bond for inferior priests, and a sound empty of sense for penitents accustomed not to care very much for this reservation:

False, rash, ill-sounding, pernicious, contrary to the Council of Trent, injurious to the superior hierarchical power.

Ibid.

45. Likewise, concerning the hope which it shows there will be, that, once the ritual and the order of Penance have been reformed, reservations of this kind will have no further place:

Insofar as, with attention to the generality of the words, it implies that, through a reformation of the ritual and order of Penance made by the Bishop or Synod, cases can be abolished which the Synod of Trent (session 14, ch. 7) declares the Supreme Pontiffs to have been able, according to the supreme power handed over to them in the universal Church, to reserve by their own peculiar judgment;

A false proposition, rash, derogating from and injurious to the Council of Trent and to the authority of the supreme Pontiffs.

Concerning Censures

Concerning Penance, §§ 20, 22.

46. The proposition asserting that the effect of excommunication is only exterior, because by its nature it only excludes from the exterior communication of the Church:

As though excommunication were not a spiritual penalty, binding in heaven, obliging souls;

From St. Augustine, epistle 250 to Auxilius the Bishop; tract 50 on John, no. 12.

False, pernicious, condemned in article 23 of Luther, at least erroneous.

§§ 21, 23.

47. Likewise, the proposition which hands down that it is necessary according to natural and divine laws that a personal examination ought to precede either excommunication or suspension; and therefore that sentences called *ipso facto* have no other force except that of a serious threat without any actual effect;

False, rash, pernicious, injurious to the power of the Church, erroneous.

§ 22.

48. Likewise, that which pronounces useless and vain the formula introduced some centuries ago of absolving generally from excommunications into which the faithful person could have fallen:

False, rash, injurious to the practice of the Church.

§ 24.

49. Likewise, that which condemns as null and invalid suspensions *ex informata conscientia*:

False, pernicious, injurious to Trent.

Ibid.

50. Likewise, in that it insinuates that it is not lawful for the Bishop alone to use the power which nevertheless Trent (session 14, ch. 1, concerning reform) confers on him, of legitimately inflicting suspension *ex informata conscientia*;

Injurious to the jurisdiction of the Prelates of the Church.

Concerning Order

Concerning Order, § 4.

51. The doctrine of the Synod which presents that, in promoting to Orders, this manner, from the custom and institution of ancient discipline, was accustomed to be observed: that if any one of the clerics was distinguished by holiness of life, and was judged worthy to ascend to Sacred Orders, he was accustomed to be promoted to the Diaconate or Priesthood even if he had not received the inferior Orders; nor then was such ordination called *per saltum*, as it was called afterwards.

§ 5.

52. Likewise, that which implies that there was no other title of Ordinations than deputation to some special ministry, such as was prescribed in the Council of Chalcedon; adding (§ 6) that, as long as the Church conformed herself to these principles in the selection of sacred ministers, the ecclesiastical order flourished; but that those blessed days passed away, and new principles were thereafter introduced, by which discipline in the selection of ministers of the sanctuary was corrupted.

§ 7.

53. Likewise, that which refers among these very principles of corruption the fact that there was a departure from the old institution, by which, as it says (§ 3), the Church, insisting upon the footsteps of the Apostle, had determined that no one was to be admitted to the Priesthood except one who had preserved baptismal innocence;

Insofar as it implies that discipline was corrupted through decrees and institutes,

1. Either by which ordinations *per saltum* were forbidden;

2. Or by which, for the necessity and advantage of Churches, ordinations without title of a special office were approved, as especially by Trent ordination to the title of patrimony; with the obedience preserved by which those so ordained ought to serve the necessities of Churches by undertaking those offices to which they shall have been assigned by the Bishop according to place and time, just as from apostolic times it was accustomed to be done in the primitive Church;

3. Or by which, in canon law, a distinction of crimes was made, which renders delinquents irregular; as though by this distinction the Church had departed from the spirit of the Apostle, by not excluding generally and indistinctly from the ecclesiastical ministry all and every one who had not preserved baptismal innocence;

The doctrine in each of its parts false, rash, disturbing to the order introduced for the necessity and advantage of Churches, injurious to the discipline approved by the canons and especially by the decrees of Trent.

§ 13.

54. Likewise, that which marks as a shameful abuse ever to claim alms for celebrating Masses and administering Sacraments, and also to receive any revenue called of the stole, and generally any stipend and honorarium which is offered on the occasion of suffrages or of any parochial function;

As though ministers of the Church ought to be marked with the crime of shameful abuse, who according to the received and approved custom and institute of the Church use the right promulgated by the Apostle of receiving temporal things from those to whom spiritual things are ministered;

False, rash, injurious to ecclesiastical and pastoral right, injurious to the Church and her ministers.

§ 14.

55. Likewise, that which professes that it vehemently desires that some manner be found of removing the minor clergy (by which name it designates clerics of the inferior orders) from Cathedrals and Collegiate Churches, providing otherwise (namely, through upright and more advanced laymen, with a suitable stipend assigned) for the ministry of serving Masses and other offices, as Acolytes etc., as formerly, it says, was accustomed to be done, when offices of that kind had not been reduced to a mere appearance for receiving the greater Orders;

Insofar as it reprehends the institute by which provision is made that the functions of minor orders be performed or exercised only through those who have been constituted or enrolled in them (Fourth Provincial Council of Milan); and this according to the mind of Trent (session 23, ch. 17), that the functions of holy Orders, from the Diaconate to the Ostiariate, laudably received in the Church from apostolic times and in many places interrupted for some time, be recalled according to the sacred canons, and not be disparaged by heretics as idle;

A rash suggestion, offensive to pious ears, disturbing to the ecclesiastical ministry, diminishing the decorum to be preserved as far as possible in celebrating the mysteries, injurious to the duties and functions of the minor orders, and also to the discipline approved by the canons and especially by Trent, favoring the reproaches and calumnies of heretics against it.

§ 18.

56. The doctrine which establishes that in canonical impediments, which arise from delicts expressed in law, it seems fitting that no dispensation ever be either granted or admitted;

Injurious to canonical equity and moderation approved by the sacred Council of Trent, derogating from the authority and rights of the Church.

Ibid., § 22.

57. The prescription of the Synod which generally and indiscriminately rejects as an abuse any dispensation whatsoever, that more than one residential benefice be conferred on one and the same person; likewise, in that it adds that it is certain to itself that, according to the spirit of the Church, no one can enjoy more than one benefice, even a simple one:

By reason of its generality, derogating from the moderation of Trent, session 7, ch. 5, and session 24, ch. 17.

Concerning Betrothals and Matrimony

Memorial booklet concerning betrothals etc., § 2.

58. The proposition which establishes that betrothals properly so called contain a merely civil act, which disposes for celebrating Matrimony, and that the same are wholly subject to the prescription of civil laws;

As though an act disposing to a Sacrament were not, under this aspect, subject to the law of the Church; False, injurious to the right of the Church with regard also to the effects flowing from betrothals by force of canonical sanctions, derogating from the discipline constituted by the Church.

Concerning Matrimony, §§ 7, 11, 12.

59. The doctrine of the Synod asserting that it belongs originally to the supreme civil power alone to place upon the contract of Matrimony impediments of that kind which render it null and are called diriment; which original right moreover is said to be essentially connected with the right of dispensing; adding that, with the consent or connivance of princes supposed, the Church could justly constitute diriment impediments to the contract itself of Matrimony;

As though the Church had not always been able and were not able, by her own right, in the Marriages of Christians, to constitute impediments which not only impede Matrimony but also render it null as to the bond, by which Christians are held bound even in the lands of infidels, and to dispense in the same;

Overthrowing canons 3, 4, 9, 12 of session 24 of the Council of Trent; heretical.

The cited memorial booklet concerning betrothals, § 10.

60. Likewise, the request of the Synod to the civil power, that from the number of impediments it remove spiritual kinship, and that which is called of public honesty, whose origin is found in the collection of Justinian; then that it restrict the impediment of affinity and kinship, arising from any lawful or unlawful union whatsoever, to the fourth degree according to civil computation through the lateral and oblique line; yet in such a way that no hope be left of obtaining dispensation;

Insofar as it attributes to the civil power the right either of abolishing or restricting impediments constituted or approved by the authority of the Church; likewise in the part in which it supposes that the Church can be despoiled by the civil power of her right of dispensing over impediments constituted or approved by herself;

Subversive of the liberty and power of the Church, contrary to Trent, proceeding from the heretical principle condemned above.

Concerning Offices, Exercises, and Institutions Pertaining to Religious Worship — And First concerning the Adorable Humanity of Christ

Concerning Faith, § 3.

61. The proposition which asserts that to adore directly the humanity of Christ, but more so any part of it, would always be divine honor given to a creature;

Insofar as by this word directly it intends to reprove the worship of adoration which the faithful direct to the humanity of Christ, just as if such adoration, by which the humanity, and the very life-giving flesh of Christ, is adored, not indeed on account of itself and as naked flesh, but insofar as united to the divinity, were divine honor imparted to a creature, and not rather one and the same adoration by which the incarnate Word is adored with His own flesh;

From the Fifth General Council of Constantinople, canon 9.

False, captious, detracting from and injurious to the pious and due worship paid and to be paid by the faithful to the humanity of Christ.

Concerning prayer, § 10.

62. The doctrine which rejects devotion toward the most Sacred Heart of Jesus among the devotions which it marks as new, erroneous, or at least dangerous;

Understood of this devotion, as it has been approved by the apostolic See;

False, rash, pernicious, offensive to pious ears, injurious to the apostolic See.

Concerning prayer, § 10, and appendix, no. 32.

63. Likewise, in that it accuses worshipers of the Heart of Jesus also on this ground, that they do not advert that the most holy flesh of Christ, or any part of it, or even the whole humanity, cannot be adored with the worship of latria with separation or precision from the divinity;

As though the faithful adored the Heart of Jesus with separation or precision from the divinity, when they adore it as it is the Heart of Jesus, namely the Heart of the person of the Word, to whom it is inseparably united, in that manner in which the bloodless body of Christ during the triduum of death was adorable in the sepulcher without separation or precision from the divinity;

Captious, injurious to the faithful worshipers of the Heart of Christ.

Concerning the Order Prescribed in Undertaking Pious Exercises

Concerning prayer, § 14; appendix, no. 34.

64. The doctrine which universally marks as superstitious any efficacy whatsoever which is placed in a determinate number of prayers and pious salutations;

As though the efficacy which is taken not from the number considered in itself, but from the prescription of the Church determining beforehand a certain number of prayers or external actions for obtaining indulgences, for fulfilling penances, and generally for performing sacred and religious worship duly and in order, ought to be censured as superstitious;

False, rash, scandalous, pernicious, injurious to the piety of the faithful, derogating from the authority of the Church, erroneous.

Concerning Penance, § 10.

65. The proposition declaring that the irregular noise of new institutions, which have been called exercises or missions... perhaps never, or at least very rarely, reaches so far that they accomplish an absolute conversion; and that those exterior acts of commotion which appeared were nothing other than passing flashes of natural concussion;

Rash, ill-sounding, pernicious, injurious to a custom piously and salutarily frequented through the Church and founded in the word of God.

Concerning the Manner of Joining the Voice of the People with the Voice of the Church in Public Prayers

66. The proposition asserting that it would be contrary to apostolic practice and the counsels of God unless easier ways were prepared for the people of joining their voice with the voice of the whole Church;

Understood of the use of the vulgar tongue to be introduced into liturgical prayers;

False, rash, disturbing to the order prescribed for the celebration of the mysteries, easily productive of many evils.

Concerning the Reading of Sacred Scripture

From the note at the end of the decree concerning grace.

67. The doctrine presenting that nothing excuses from the reading of the sacred Scriptures except true inability; adding that the obscuration which has arisen from neglect of this precept over the primary truths of Religion openly betrays itself;

False, rash, disturbing to the peace of souls, elsewhere condemned in Quesnel.

Concerning Proscribed Books to Be Read Publicly in the Church

Concerning prayer, § 29.

68. The praise by which the Synod highly commends Quesnel's commentaries on the New Testament, and other works of others favoring Quesnellian errors, although proscribed; and proposes the same to parish priests, that each one in his own parishes read them through to the people after the other functions, as being filled with solid principles of Religion;

False, scandalous, rash, seditious, injurious to the Church, fostering schism and heresy.

Concerning Sacred Images

Concerning prayer, § 17.

69. The prescription which generally and indistinctly marks among images to be removed from the Church, as offering to the unlearned an occasion of error, images of the incomprehensible Trinity;

On account of its generality, rash, and contrary to the pious custom frequented through the Church, as though there existed no images of the most holy Trinity commonly approved and safely permitted;

From the brief *Sollicitudini nostrae* of Benedict XIV, of the year 1745.

70. Likewise, the doctrine and prescription generally reproving every special worship which the faithful are accustomed to bestow upon some image in particular, and to flee to that image rather than to another;

Rash, pernicious, injurious to the pious custom frequented through the Church, and also to that order of providence by which God so willed these things to be done, not in all memorials of the Saints, who divides His own proper things to each one as He wills.

From St. Augustine, epistle 78, to the clergy, elders, and whole people of the church of Hippo.

71. Likewise, that which forbids that images, especially of the blessed Virgin, be distinguished by any titles, except by denominations which are analogous to mysteries of which express mention is made in sacred Scripture;

As though other pious denominations could not be ascribed to images, which the Church approves and commends even in the public prayers themselves;

Rash, offensive to pious ears, injurious to the veneration owed especially to the blessed Virgin.

72. Likewise, that which wishes to extirpate as an abuse the custom by which certain images are kept veiled;

Rash, contrary to a custom frequent in the Church and introduced for fostering the piety of the faithful.

Concerning Feasts

Memorial booklet for the reform of feasts, § 3.

73. The proposition declaring that the institution of new feasts took its origin from neglect in observing the old ones, and from false notions of the nature and end of the same solemnities;

False, rash, scandalous, injurious to the Church, favoring the reproaches of heretics against feast days celebrated through the Church.

Ibid., § 8.

74. The deliberation of the Synod concerning transferring to Sunday the feasts instituted throughout the year, and this by reason of the right which it says it is persuaded belongs to the Bishop over ecclesiastical discipline in order to merely spiritual things; and therefore also of abrogating the precept of hearing Mass on days on which, from the former law of the Church, that precept even now flourishes; and also in that which it adds concerning transferring, by episcopal authority, to Advent the fasts to be observed throughout the year from the precept of the Church;

Insofar as it asserts that it is lawful for a Bishop by his own right to transfer days prescribed by the Church for celebrating feasts or fasts, or to abrogate the introduced precept of hearing Mass;

A false proposition, injurious to the right of general Councils and of the supreme Pontiffs, scandalous, favoring schism.

Concerning Oaths

Memorial booklet for the reform of oaths, § 5.

75. The doctrine which presents that, in the blessed times of the nascent Church, oaths were seen to be so alien from the documents of the divine Preceptor and from golden evangelical simplicity that to swear itself without extreme and unavoidable necessity would have been regarded as an irreligious act, unworthy of a Christian man; moreover, that the continued series of the Fathers demonstrates that oaths were held by common sense as forbidden; and from this it proceeds to disapprove the oaths which the ecclesiastical curia, following the norm of feudal jurisprudence, as it says, adopted in investitures and in the very sacred ordinations of Bishops; and it establishes that a law is therefore to be implored from the secular power for abolishing oaths which are exacted even in ecclesiastical Curiae for undertaking duties and offices, and generally for every curial act;

False, injurious to the Church, injurious to ecclesiastical right, subversive of the discipline introduced and approved by the canons.

Concerning Ecclesiastical Conferences

Concerning ecclesiastical conferences, § 1.

76. The attack by which the Synod agitates against scholasticism, as that which opened the way for finding new systems, discordant among themselves, concerning truths of greater price, and at length led to probabilism and laxism;

Insofar as it throws upon scholasticism the vices of private persons, who could abuse it or have abused it;

False, rash, injurious to the most holy men and doctors who cultivated scholasticism for the great good of the Catholic Religion, favoring the hostile reproaches of heretics against it.

Ibid.

77. Likewise, in that it adds that the change of the form of ecclesiastical government, by which it happened that the ministers of the Church came into forgetfulness of their rights, which at the same time are their obligations, finally brought the matter to this, that it caused the primitive notions of ecclesiastical ministry and pastoral solicitude to be obliterated;

As though through a change of government congruent with the discipline constituted and approved in the Church, the primitive notion of ecclesiastical ministry or pastoral solicitude could ever have been obliterated and lost;

False, rash, erroneous proposition.

§ 4.

78. The prescription of the Synod concerning the order of matters to be treated in conferences, by which, after it premised that in any article there must be distinguished that which pertains to faith and to the essence of Religion from that which is proper to discipline, it adds that in this very discipline there must be distinguished that which is necessary or useful for retaining the faithful in spirit from that which is useless or more burdensome than the liberty of the

children of the new covenant would suffer, but more still from that which is dangerous or harmful, as inducing to superstition and materialism;

Insofar as, by reason of the generality of the words, it comprehends and subjects to the prescribed examination even discipline constituted and approved by the Church; as though the Church, which is ruled by the Spirit of God, could constitute a discipline not only useless and more burdensome than Christian liberty would suffer, but also dangerous, harmful, inducing into superstition and materialism;

False, rash, scandalous, pernicious, offensive to pious ears, injurious to the Church and to the Spirit of God by whom she is ruled, at least erroneous.

Reproaches Against Certain Sentences Agitated in Catholic Schools Up to the Present

Oration to the Synod, § 2.

79. The assertion which attacks with reproaches and contumelies opinions agitated in Catholic schools, and concerning which the apostolic See has not yet judged that anything should be defined or pronounced;

False, rash, injurious to Catholic schools, derogating from the obedience owed to apostolic constitutions.

Concerning the Three Rules Placed by the Synod in Place of a Foundation for the Reform of Regulars

Memorial booklet for the reform of regulars, § 9.

80. Rule I, which establishes universally and indiscriminately that the regular or monastic state cannot by its nature be combined with the care of souls and with the duties of pastoral life, and therefore cannot come into part of the ecclesiastical hierarchy without, on the contrary, fighting against the principles of monastic life itself;

False, pernicious, injurious to the most holy Fathers and Prelates of the Church who joined institutes of regular life with the duties of the clerical order, contrary to the pious, ancient, approved custom of the Church and the sanctions of the supreme Pontiffs: As though monks, whom gravity of morals and holy institution of life and Faith commends, were not rightly, and not only without offense to Religion, but also with much usefulness to the Church, aggregated to the offices of clerics.

From St. Siricius, decretal epistle to Himerius of Tarragona, ch. 13.

81. Likewise, in that it adds that Saints Thomas and Bonaventure were so occupied in defending the institutes of mendicants against the highest men, that in their defenses less heat and greater accuracy would have been desired;

Scandalous, injurious to the most holy doctors, favoring the impious contumelies of condemned authors.

82. Rule II: That multiplication of orders and diversity naturally bring in disturbance and confusion; likewise in that which it premises (§ 4), that the founders of regulars who came forth after the monastic institutes, adding orders to orders, reforms to reforms, effected nothing else than to extend more and more the primary cause of evil;

Understood of orders and institutes approved by the holy See, as though the distinct variety of pious duties, to which distinct orders are devoted, ought by its nature to beget disturbance and confusion;

False, calumnious, injurious to the holy founders and their faithful pupils, and also to the supreme Pontiffs themselves.

83. Rule III, by which, after it premises that a small body dwelling within civil society, and almost without being a part of the same, fixes a small monarchy in the state and is always dangerous, it then, under this name, accuses private monasteries, associated by the bond of a common institute under one head especially, as so many special monarchies dangerous and harmful to the civil republic;

False, rash, injurious to regular institutes approved by the holy See for the advancement of Religion, favoring the attacks and calumnies of heretics against the same institutes.

Concerning the System or Complex of Ordinances Drawn from the Rules Brought Forward, and Comprised in the Eight Following Articles, for the Reform of Regulars

§ 10.

84. Art. I. Concerning retaining only one order in the Church, and concerning selecting before the others the rule of Saint Benedict, both on account of its excellence and on account of the illustrious merits of that order; yet in such a way that, in those things which perhaps will occur less congruent to the condition of the times, the instituted manner of life at Port-Royal should offer light for exploring what it is fitting to add, what to take away;

II. That those who shall have joined themselves to this order should not become sharers in the ecclesiastical hierarchy; nor should they be promoted to Sacred Orders, except at most one or two, to be initiated as curates or chaplains of the monastery, the rest remaining in the simple order of laymen;

III. That only one monastery should be admitted in each city, and that it should be placed outside the walls of the city in more hidden and more remote places;

IV. Among the occupations of monastic life its own part is to be preserved inviolate for labor of the hands, with suitable time nevertheless left to be spent on psalmody, or even, if it please anyone, on the study of letters; psalmody ought to be moderate, because its excessive length begets precipitation, trouble, wandering of mind; the more psalmodies, orations, and prayers were increased, by just the same equal proportion in every time the fervor and holiness of regulars was diminished;

V. That no distinction would be admitted among monks, whether devoted to choir or to ministries; that this inequality at every time excited very grave lawsuits and discords, and drove the spirit of

charity from communities of regulars;

VI. That a vow of perpetual stability is never to be tolerated; the old monks did not know it, who nevertheless were the consolation of the Church and the ornament of Christianity; vows of chastity, poverty, and obedience will not be admitted after the manner of a common and stable rule: if anyone shall wish to make those vows, either all or some, he will seek counsel and permission from the Bishop, who nevertheless will never permit them to be perpetual, nor to exceed the limits of a year; only the faculty will be given of renewing them under the same conditions;

VII. The Bishop will have every inspection over their life, studies, and progress in piety; it will pertain to him to admit and expel monks, yet always with the counsel of the companions having been accepted.

VIII. Regulars of orders which still remain, although priests, could also be admitted into this monastery, provided they wished in silence and solitude to attend to their own sanctification; in which case there would be place for dispensation in the general rule established at no. II, yet in such a way that they should not follow an institution of life differing from the others, so that not more than one or at most two Masses should be celebrated in a day, and it ought to be enough for the other priests to concelebrate together with the community;

Likewise for the Reform of Nuns

§ 11.

That perpetual vows up to the age of 40 or 45 are not to be admitted; that nuns are to be devoted to solid exercises, especially to labor; that they are to be called away from the carnal spirituality by which most of them are held; that it is to be weighed whether, as regards them, it would be better for the monastery to be left in the city.

A system subversive of the discipline now flourishing and already from antiquity approved and received, pernicious, opposed and injurious to apostolic constitutions and to the sanctions of several Councils, even general ones, and especially of Trent, favoring the reproaches and calumnies of heretics against monastic vows and regular institutes devoted to a more stable profession of the evangelical counsels.

Concerning Convocation of a National Council

Memorial booklet for convoking a national council, § 1.

85. The proposition declaring that any knowledge whatsoever of ecclesiastical history suffices, so that each one must acknowledge that the convocation of a national council is one of the canonical ways by which controversies pertaining to Religion are ended in the Church of the respective nations;

Understood thus, that controversies pertaining to Faith and morals, arising in any Church whatsoever, can be ended by a national council with an irrefragable judgment; as though inerrancy in questions of Faith and morals belonged to a national council;

Schismatic, heretical.

Therefore we command all Christian faithful of either sex that they presume not to think, teach, or preach concerning the said propositions and doctrines contrary to what is declared in this our constitution: so that whoever shall have taught, defended, published them, or any of them, jointly or separately, or shall have treated of them even by disputing publicly or privately, unless perhaps by impugning them, falls *ipso facto*, without any other declaration, under ecclesiastical censures and the other penalties established by law against those perpetrating similar things.

Moreover, through this express reprobation of the aforesaid propositions and doctrines, we in no way intend to approve other things contained in the same book: especially since in it there have been detected several propositions and doctrines either akin to those which above were condemned, or which bear before them both a rash contempt of common and approved doctrine and discipline, and especially a hostile mind against the Roman Pontiffs and the apostolic See.

We judge, however, that two things especially are to be noted, which concerning the most august mystery of the most holy Trinity in § 2 of the decree concerning Faith, if not from a depraved mind, certainly slipped out from the Synod too imprudently, and which can easily drive especially the unlearned and incautious into deception. The first is that, after it rightly premised that God remains one and most simple in His Being, immediately adding that the same God is distinguished in three persons, it wrongly departs from the common and approved formula in institutions of Christian doctrine, by which God is said to be one indeed in three distinct persons, not distinguished in three persons: by the change of this formula this danger of error creeps in by force of the words, that the divine essence may be thought distinct in the persons; which essence the Catholic Faith so confesses as one in distinct persons that at the same time it professes it as in itself altogether indistinct.

The other is what it hands down concerning the three divine persons themselves: that they, according to their personal and incommunicable properties, more exactly speaking, are expressed or named Father, Word, and Holy Spirit; as though the appellation of Son, consecrated in so many places of Scripture, by the very voice of the Father coming down from the heavens and from the cloud, and also by the formula of Baptism prescribed by Christ, and by that illustrious confession by which blessed Peter was pronounced so by Christ Himself, were less proper and exact; and as though it were not rather to be retained what, taught by Augustine, the Angelic teacher [19] in turn himself taught, that in the name of Word the same property is implied as in the name of Son, namely, Augustine saying [20]: He is called Word by that by which He is Son.

[19] St. Thomas, I, q. 34, art. 2, ad 3.

[20] St. Augustine, *On the Trinity*, book 7, ch. 2.

Nor must there be passed over in silence that signal temerity of the Synod, full of fraud, which dared not only to adorn with the fullest praises the declaration of the Gallican assembly of the year 1682, long ago disapproved by the apostolic See, but, in order to conciliate greater authority for it, to include it insidiously in the decree inscribed concerning Faith, openly to adopt the articles contained in it, and to seal the things handed down here and there through this very decree with a public and solemn profession of these articles. By this indeed there is offered to us not only a far graver reason for complaint concerning the Synod than there was to our predecessors concerning those assemblies, but also no slight injury is inflicted upon the Gallican church itself, which the Synod judged worthy that its authority should be called into patronage of errors by which that decree is contaminated.

Wherefore, since the acts of the Gallican assembly, as soon as they appeared, our predecessor venerable Innocent XI, by letters in the form of a brief on the second day of April of the year 1682, and afterwards more expressly Alexander VIII, by the constitution *Inter multiplices* on the fourth day of August of the year 1690, according to the account of their apostolic office, disapproved, rescinded, and declared null and void, pastoral solicitude requires of us much more strongly to reprove and condemn the recent adoption of these made in the Synod, affected with so many vices, as rash, scandalous, and especially, after the decrees of our predecessors had been issued, supremely injurious to this apostolic See, just as by this present our constitution we reprove and condemn it, and will it to be held as reproved and condemned.

To this kind of fraud belongs the fact that the Synod, having embraced in this very decree concerning Faith very many articles which the theologians of the faculty of Louvain referred to the judgment of Innocent XI, and also twelve others offered by Cardinal de Noailles to Benedict XIII, did not doubt to awaken from the reprobated second Council of Utrecht a vain and old fiction, and rashly to boast abroad in these words, namely, that it is most known to all Europe that those articles were subjected at Rome to a most severe examination, and not only came forth immune from any censure, but were also commended by the praised Roman Pontiffs; of which asserted commendation, however, not only does no authentic document exist, but rather the acts of the examination, which are preserved in the records of our supreme inquisition, oppose it; from these it appears only that no judgment was pronounced concerning them.

For these reasons, therefore, this very book, whose title is *Atti e decreti del Concilio diocesano di Pistoia dell'anno MDCCLXXXVI, in Pistoia per Atto Bracali stampatore vescovile con approvazione*, whether inscribed with the title set before it or with any other title whatsoever, wherever and in whatever idiom, in whatever edition or version, printed hitherto or to be printed, by apostolic authority and by the tenor of the present letters we prohibit and condemn; just as also all other books in defense of it or of its doctrine, perhaps already published or to be published, which God avert, either in writing or in print, and their reading, copying, retention, and use by all and singular Christian faithful we likewise prohibit and interdict, under penalty of excommunication to be incurred *ipso facto* by those acting contrary.

We further command venerable Brothers, Patriarchs, Archbishops and Bishops, and other Ordinaries of places, and also Inquisitors of heretical depravity, that they altogether coerce and compel all contradictors and rebels whatsoever, through the aforesaid censures and penalties and other remedies of law and fact, the aid even of the secular arm having been invoked for this, if there should be need.

We will, moreover, that to transcripts of these presents, even printed ones, subscribed by the hand of some public notary and fortified with the seal of a person constituted in ecclesiastical dignity, altogether the same faith be given as would be given to the original letters themselves, if they were exhibited or shown.

Therefore let it be lawful for no man to infringe this page of our declaration, condemnation, command, prohibition, and interdiction, or by rash daring to go contrary to it. But if anyone shall have presumed to attempt this, let him know that he will incur the indignation of almighty God and of blessed Peter and Paul, His apostles.

Given at Rome, at Saint Mary Major, in the year of the Lord's Incarnation one thousand seven hundred ninety-four, on the fifth day before the calends of September, in the twentieth year of our Pontificate.

PH. CARD. PRO-DATARY

R. CARD. BRASCHI DE HONESTIS

Seen by the Curia: I. MANASSEI

Place of the Lead: E. LIVIZZARI

Registered in the Secretariat of Briefs.

In the year from the Nativity of our Lord Jesus Christ one thousand seven hundred ninety-four, the twelfth indiction, and on the thirty-first day of August, in the twentieth year of the Pontificate of our most holy Father in Christ and our Lord, Lord Pius, by divine Providence Pope the Sixth, the above-mentioned apostolic letters were affixed and published at the doors of the Lateran Basilica, and of the Prince of the apostles, of the apostolic chancery, of the general curia on Monte Citorio, in the line of Campo de' Fiori, and in the other usual and customary places of the City, through me, Giovanni Renzoni, apostolic courier.

FELIX CASTELLACCI, Master of Couriers.

Propositions Condemned by Pius IX

We transcribe the Syllabus which the Pontiff, together with the Encyclical *Quanta cura*, on 8 December 1864, directed to the whole Christian World. We hand this down entire, together with some propositions fixed in the aforesaid Encyclical. Although several propositions contained in the Syllabus do not pertain to moral Theology, we would deem it an offense that such a monument be offered to the reader as if mutilated, nor do we wish to seem to take anything away from this pontifical Declaration, in which Peter has certainly spoken through the mouth of Pius IX.

Syllabus

Containing the principal errors of our age which are noted in the consistorial allocutions, in the encyclicals, and in other apostolic letters of our Most Holy Lord Pius Pope IX.

§ I

Pantheism, Naturalism, and absolute Rationalism.

1. No supreme, most wise and most provident divine Numen exists distinct from this universe of things, and God is the same as the nature of things, and therefore subject to changes; and God is really made in man and the world; and all things are God and have the very substance of God; and God is one and the same thing with the world, and therefore spirit with matter, necessity with liberty, true with false, good with evil, and just with unjust.

Alloc. *Maxima quidem*, 9 June 1862.

2. Every action of God upon men and the world must be denied.

Alloc. *Maxima quidem*, 9 June 1862.

3. Human reason, with no regard at all had for God, is the sole arbiter of true and false, good and evil; it is a law to itself, and by its natural powers suffices for caring for the good of men and peoples.

Alloc. *Maxima quidem*, 9 June 1862.

4. All truths of Religion derive from the native force of human reason;

hence reason is the chief norm by which man can and ought to attain knowledge of all truths of whatever kind. Encyclical letter *Qui pluribus*, 9 November 1846. - Encyclical letter *Singulari quidem*, 17 March 1856. - Alloc. *Maxima quidem*, 9 June 1862.

5. Divine revelation is imperfect, and therefore subject to continual and indefinite progress which corresponds to the progression of human reason.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Maxima quidem*, 9 June 1862.

6. The Faith of Christ is opposed to human reason; and divine revelation not only profits nothing, but even harms the perfection of man.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Maxima quidem*, 9 June 1862.

7. Prophecies and miracles, set forth and narrated in sacred Letters, are fictions of poets, and the mysteries of the Christian Faith are the sum of philosophical investigations; and in the books of both Testaments mythical inventions are contained; and Jesus Christ Himself is a mythical fiction.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Maxima quidem*, 9 June 1862.

§ II

Moderate Rationalism.

8. Since human reason is made equal to Religion itself, therefore theological disciplines are to be treated in the same way as philosophical ones.

Alloc. *Singulari quadam perfusi*, 9 December 1854.

9. All dogmas indiscriminately of the Christian Religion are the object of natural science or philosophy; and human reason, cultivated only historically, can from its natural powers and principles arrive at true science concerning all things, even the more hidden, provided that these dogmas have been proposed to reason itself as an object.

Letter to the Archbishop of Freising, *Gravissimas*, 11 December 1862. - Letter to the same, *Tuas libenter*, 21 December 1863.

10. Since the philosopher is one thing, philosophy another, the former has the right and office of submitting himself to the authority which he himself shall have proved true; but philosophy neither can nor ought to submit itself to any authority.

Letter to the Archbishop of Freising, *Gravissimas*, 11 December 1862. - Letter to the same, *Tuas libenter*, 21 December 1863.

11. The Church not only ought never to animadvert upon philosophy, but also ought to tolerate the errors of philosophy itself, and leave it to correct itself.

Letter to the Archbishop of Freising, *Gravissimas*, 11 December 1862.

12. The decrees of the apostolic See and of the Roman Congregations impede the free progress of science.

Letter to the Archbishop of Freising, *Tuas libenter*, 21 December 1863.

13. The method and principles by which the ancient scholastic Doctors cultivated Theology are by no means congruent with the necessities of our times and the progress of the sciences.

Letter to the Archbishop of Freising, *Tuas libenter*, 21 December 1863.

14. Philosophy is to be treated with no account had of supernatural revelation.

Letter to the Archbishop of Freising, *Tuas libenter*, 21 December 1863.

N. B. With the system of rationalism there cohere for the greatest part the errors of Antonius Gunther, which are condemned in the letter to the Cardinal Archbishop of Cologne, *Eximiam tuam*, 15 June 1847, and in the letter to the Bishop of Wroclaw, *Dolore haud mediocri*, 30 April 1860.

§ III

Indifferentism, Latitudinarianism.

15. It is free for each man to embrace and profess that religion which, led by the light of reason, he shall have thought true.

Apostolic letters *Multiplices inter*, 10 June 1851. - Alloc. *Maxima quidem*, 9 June 1862.

16. Men can find the way of eternal salvation in the worship of any religion whatsoever, and attain eternal salvation.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Ubi primum*, 17 December 1847. - Encyclical letter *Singulari quidem*, 17 March 1856.

17. At least one must have good hope concerning the eternal salvation of all those who in no way dwell in the true Church of Christ.

Alloc. *Singulari quadam*, 9 December 1854. - Encyclical letter *Quanto conficiamur*, 17 August 1863.

18. Protestantism is nothing other than a diverse form of the same true Christian Religion, in which it is given to please God equally as in the Catholic Church.

Encyclical letter *Noscitis et Nobiscum*, 8 December 1849.

§ IV

Socialism, Communism, Secret Societies, Bible Societies, Clerico-liberal Societies.

Pests of this kind are often reproved with most grave formulae of words in the encyclical letter *Qui pluribus*, 9 November 1846; in the allocution *Quibus quantisque*, 20 April 1849; in the encyclical letter *Noscitis et Nobiscum*, 8 December 1849; in the allocution *Singulari quadam*, 9 December 1854; in the encyclical letter *Quanto conficiamur moerore*, 15 August 1863.

§ V

Errors concerning the Church and her rights.

19. The Church is not a true and perfect society, plainly free, nor does she possess her own proper and constant rights conferred on her by her divine Founder; but it belongs to the civil power to define what are the rights of the Church and the limits within which she may exercise those same rights.

Alloc. *Singulari quadam*, 9 December 1854. - Alloc. *Multis gravibusque*, 17 December 1860. - Alloc. *Maxima quidem*, 9 June 1862.

20. Ecclesiastical power ought not to exercise its authority without the permission and consent of the civil Government.

Alloc. *Meminit unusquisque*, 30 September 1861.

21. The Church does not have the power of defining dogmatically that the Religion of the Catholic Church is the uniquely true Religion.

Apostolic letters *Multiplices inter*, 10 June 1851.

22. The obligation by which Catholic teachers and writers are altogether bound is restricted only to those things which are proposed by the infallible judgment of the Church as dogmas of Faith to be believed by all.

Letter to the Archbishop of Freising, *Tuas libenter*, 21 December 1863.

23. The Roman Pontiffs and Ecumenical Councils have departed from the limits of their power, have usurped the rights of Princes, and have erred even in defining matters of Faith and morals.

Apostolic letters *Multiplices inter*, 10 June 1851.

24. The Church does not have the power of inflicting force, nor any temporal power, direct or indirect.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

25. Besides the power inhering in the episcopate, another temporal power has been attributed, granted by the civil empire either expressly or tacitly, and therefore to be revoked, when it shall have pleased, by the civil empire.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

26. The Church does not have a native and legitimate right of acquiring and possessing.

Alloc. *Nunquam fore*, 15 December 1856. - Encyclical letter *Incredibili*, 17 September 1863.

27. The sacred Ministers of the Church and the Roman Pontiff are altogether to be excluded from every care and dominion of temporal things.

Alloc. *Maxima quidem*, 9 June 1862.

28. It is not lawful for Bishops, without the permission of the Government, even to promulgate Apostolic Letters themselves.

Alloc. *Nunquam fore*, 15 December 1856.

29. Graces granted by the Roman Pontiff ought to be esteemed as void unless they shall have been implored through the Government.

Alloc. *Nunquam fore*, 15 December 1856.

30. The immunity of the Church and of ecclesiastical persons had its origin from civil law.

Apostolic letters *Multiplices inter*, 10 June 1851.

31. The ecclesiastical forum for temporal causes of clerics, whether civil or criminal, must be entirely removed from the midst, even without the consultation and against the protest of the Apostolic See.

Alloc. *Acerbissimum*, 27 September 1852. - Alloc. *Nunquam fore*, 15 December 1856.

32. Without any violation of natural right and equity, the personal immunity by which clerics are exempted from the burden of undergoing and performing military service can be abrogated; and indeed civil progress demands this abrogation, especially in a society constituted according to the form of a freer government.

Letter to the Bishop of Mondovi, *Singularis Nobisque*, 29 September 1864.

33. It does not pertain uniquely to the ecclesiastical power of jurisdiction by its proper and native right to direct doctrine in theological matters.

Letter to the Archbishop of Freising, *Tuas libenter*, 21 December 1863.

34. The doctrine of those comparing the Roman Pontiff to a free Prince acting in the universal Church is a doctrine which prevailed in the middle age.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

35. Nothing prevents the Supreme Pontificate, by the judgment of some general Council or by the deed of all peoples, from being transferred from the Roman Bishop and City to another Bishop and another city.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

36. The definition of a National Council admits no further disputation, and the civil administration can bring the matter to these terms.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

37. National Churches, withdrawn from the authority of the Roman Pontiff and plainly divided from it, can be instituted.

Alloc. *Multis gravibusque*, 17 December 1860. - Alloc. *Iamdudum cernimus*, 18 March 1861.

38. Excessive arbitrariness of the Roman Pontiffs contributed to the division of the Church into eastern and western.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

§ VI

Errors concerning civil society considered both in itself and in its relations to the Church.

39. The state of the republic, as being the origin and fountain of all rights, possesses a certain right bounded by no limits. Alloc. *Maxima quidem*, 9 June 1862.

40. The doctrine of the Catholic Church is opposed to the good and advantages of human society.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Quibus quantisque*, 20 April 1849.

41. To the civil power, even when exercised by an infidel ruler, there belongs an indirect negative power in sacred matters; therefore there belongs to it not only the right which they call *exequatur*, but also the right of appeal, which they call from abuse.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

42. In a conflict of the laws of the two powers, civil law prevails.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

43. The lay power has authority to rescind, declare, and make void solemn agreements, commonly Concordats, entered into with the Apostolic See concerning the use of rights pertaining to ecclesiastical immunity, without its consent, indeed even with it protesting.

Alloc. *In consistoriali*, 1 November 1850. - Alloc. *Multis gravibusque*, 17 December 1860.

44. The civil authority can interfere in matters which pertain to religion, morals, and spiritual government. Hence it can judge concerning the instructions which the Pastors of the Church publish for the norm of consciences according to their office; indeed, it can decree concerning the administration of the divine Sacraments and the dispositions necessary for receiving them.

Alloc. *In consistoriali*, 1 November 1850. - Alloc. *Maxima quidem*, 9 June 1862.

45. The whole governance of public schools, in which the youth of some Christian republic is instructed, episcopal seminaries alone being excepted in some respect, can and ought to be attributed to civil authority, and indeed to be attributed in such a way that no right of any other authority whatsoever is recognized for interfering in the discipline of schools, in the governance of studies, in the conferral of degrees, or in the selection or approval of teachers.

Alloc. *In consistoriali*, 1 November 1850. - Alloc. *Quibus luctuosissimis*, 5 September 1854.

46. Indeed, in the very seminaries of Clerics, the method of studies to be used is subjected to civil authority.

Alloc. *Nunquam fore*, 15 December 1856.

47. The best account of civil society demands that popular schools, which are open to all boys of whatever class from the people, and generally public Institutes which are destined for handing down letters and the more severe disciplines and for caring for the education of youth, be exempt from every authority, moderating force, and interference of the Church, and be subjected to the full choice of civil and political authority according to the pleasures of rulers and according to the exact rule of the common opinions of the age.

Letter to the Archbishop of Freiburg, *Quum non sine*, 14 July 1864.

48. That method of instructing youth can be approved by Catholic men which is separated from the Catholic Faith and from the power of the Church, and which regards only, or at least primarily, the science of natural things and the ends of earthly social life.

Letter to the Archbishop of Freiburg, *Quum non sine*, 14 July 1864.

49. The civil authority can prevent sacred Prelates and the faithful people from communicating freely and mutually with the Roman Pontiff.

Alloc. *Maxima quidem*, 9 June 1862.

50. Lay authority has by itself the right of presenting Bishops, and can exact from them that they enter upon the administration of dioceses before they themselves receive canonical institution from the Holy See and Apostolic Letters.

Alloc. *Nunquam fore*, 15 December 1856.

51. Indeed, lay Government has the right of deposing Bishops from the exercise of pastoral ministry, nor is it bound to obey the Roman Pontiff in those things which regard the episcopate and the institution of Bishops.

Apostolic letters *Multiplices inter*, 10 June 1851. - Alloc. *Acerbissimum*, 27 September 1852.

52. Government can by its own right change the age prescribed by the Church for the religious profession of both women and men, and command all religious Families to admit no one to pronounce solemn vows without its permission.

Alloc. *Nunquam fore*, 15 December 1856.

53. Laws which pertain to guarding the state of religious Families and their rights and offices must be abrogated; indeed, civil Government can furnish aid to all those who wish to defect from the institute of religious life they have undertaken and to break solemn vows; and likewise it can utterly extinguish these same religious Families, as well as collegiate Churches and simple benefices even of the right of patronage, and subject and claim their goods and revenues for the administration and choice of the civil power.

Alloc. *Acerbissimum*, 27 September 1852. - Alloc. *Probe memineritis*, 22 January 1855. - Alloc. *Cum saepe*, 26 July 1855.

54. Kings and Princes not only are exempt from the jurisdiction of the Church, but also in deciding questions of jurisdiction are superior to the Church.

Apostolic letters *Multiplices inter*, 10 June 1851.

55. The Church is to be separated from the State, and the State from the Church.

Alloc. *Acerbissimum*, 27 September 1852.

§ VII

Errors concerning natural and Christian Ethics.

56. Laws of morals by no means need divine sanction, and there is least of all need that human laws be conformed to the law of nature or receive binding force from God.

Alloc. *Maxima quidem*, 9 June 1862.

57. The science of philosophical matters and morals, and likewise civil laws, can and ought to turn aside from divine and ecclesiastical authority.

Alloc. *Maxima quidem*, 9 June 1862.

58. No other forces are to be recognized except those which are placed in matter, and all moral discipline and uprightness ought to be placed in accumulating and increasing riches in whatever way, and in fulfilling pleasures.

Alloc. *Maxima quidem*, 9 June 1862. - Encyclical letter *Quanto conficiamur*, 10 August 1863.

59. Right consists in material fact, and all duties of men are an empty name, and all human facts have the force of right.

Alloc. *Maxima quidem*, 9 June 1862.

60. Authority is nothing other than the sum of number and material forces.

Alloc. *Maxima quidem*, 9 June 1862.

61. Successful injustice of fact brings no detriment to the sanctity of right.

Alloc. *Iamdudum cernimus*, 18 May 1861.

62. The principle which they call of non-intervention must be proclaimed and observed.

Alloc. *Novos et ante*, 28 September 1860.

63. It is lawful to refuse obedience to legitimate Princes, indeed even to rebel.

Encyclical letter *Qui pluribus*, 9 November 1846. - Alloc. *Quisque vestrum*, 4 October 1847. - Encyclical letter *Noscitis et Nobiscum*, 8 December 1849. - Apostolic letters *Cum catholica*, 26 March 1860.

64. Both the violation of any most holy oath, and any wicked and flagitious action repugnant to the eternal law, not only is by no means to be disapproved, but even is altogether lawful and to be extolled with the highest praises, when it is done for love of fatherland.

Alloc. *Quibus quantisque*, 20 April 1849.

§ VIII

Errors concerning Christian marriage.

65. In no manner can it be borne that Christ raised marriage to the dignity of a Sacrament.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

66. The Sacrament of Matrimony is nothing except something accessory to the contract and separable from it, and the Sacrament itself is situated in the nuptial blessing alone.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

67. By the law of nature the bond of marriage is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority.

Apostolic letters *Ad Apostolicae*, 22 August 1851. - Alloc. *Acerbissimum*, 27 September 1852.

68. The Church does not have the power of introducing impediments diriment of matrimony; but that power belongs to the civil authority, by which existing impediments are to be removed.

Apostolic letters *Multiplices inter*, 10 June 1851.

69. In later ages the Church began to introduce diriment impediments, not by her own right, but using that right which had been borrowed from the civil power.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

70. The Tridentine Canons which inflict the censure of anathema on those who dare to deny to the Church the faculty of introducing diriment impediments either are not dogmatic, or are to be understood of this borrowed power.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

71. The Tridentine form under penalty of invalidity does not bind where civil law has established another form beforehand, and wills that, this new form intervening, the marriage be valid.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

72. Boniface VIII was the first to assert that the vow of chastity emitted in ordination renders marriages null.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

73. By force of a merely civil contract, there can exist between Christians a true marriage in name; and it is false either that the contract of marriage between Christians is always a Sacrament, or that there is no contract if the Sacrament is excluded.

Apostolic letters *Ad Apostolicae*, 22 August 1851. - Letter of His Holiness Pius IX to the King of Sardinia, 9 September 1852. - Alloc. *Acerbissimum*, 27 September 1852. - Alloc. *Multis gravibusque*, 17 December 1860.

74. Matrimonial causes and betrothals by their own nature pertain to the civil forum.

Apostolic letters *Ad Apostolicae*, 22 August 1851. - Alloc. *Acerbissimum*, 27 September 1852.

N. B. Here two other errors can be relevant: concerning abolishing the celibacy of Clerics, and concerning preferring the state of marriage to the state of virginity. The former is pierced in the encyclical letter *Qui pluribus*, 9 November 1849; the latter in the apostolic letters *Multiplices inter*, 10 June 1851.

§ IX

Errors concerning the civil principate of the Roman Pontiff.

75. The sons of the Christian and Catholic Church dispute among themselves concerning the compatibility of the temporal kingdom with the spiritual.

Apostolic letters *Ad Apostolicae*, 22 August 1851.

76. The abrogation of the civil empire by which the Apostolic See possesses power would conduce very greatly to the liberty and happiness of the Church.

Alloc. *Quibus quantisque*, 20 April 1849.

N. B. Besides these errors explicitly noted, very many others are implicitly reproved by the doctrine proposed and asserted, which all Catholics ought to retain most firmly, concerning the civil principate of the Roman Pontiff. Doctrine of this kind is clearly handed down in the allocution *Quibus quantisque*, 20 April 1849; in the allocution *Si semper antea*, 20 May 1850; in the apostolic letters *Cum catholica Ecclesia*, 26 March 1860; in the allocution *Novos*, 28 September 1860; in the allocution *Iamdudum*, 18 March 1861; in the allocution *Maxima quidem*, 9 June 1862.

§ X

Errors which are referred to modern liberalism.

77. In this our age, it is no longer expedient that the Catholic Religion be held as the sole Religion of the State, all other worships whatsoever being excluded.

Alloc. *Nemo vestrum*, 26 July 1855.

78. Hence, laudably, in certain regions of the Catholic name, provision has been made by law that it be lawful for men immigrating there to have the public exercise of each one's own worship.

Alloc. *Acerbissimum*, 27 September 1852.

79. Indeed, it is false that civil liberty of any worship, and likewise the full power attributed to all of manifesting openly and publicly any opinions and thoughts whatever, conduces to corrupting the morals and minds of peoples more easily, and to propagating the pest of indifferentism.

Alloc. *Nunquam fore*, 15 December 1856.

80. The Roman Pontiff can and ought to reconcile and compose himself with progress, with liberalism, and with recent civilization.

Alloc. *Iamdudum cernimus*, 18 March 1861.

Addenda — FROM THE ENCYCLICAL OF PIUS IX, *Quanta cura*

Besides the aforesaid propositions, others are to be mentioned which Pius IX fixed in the Encyclical *Quanta cura*. These, moreover, are those of men who teach:

1. That the best account of public society and civil progress altogether require that human society be constituted and governed with no regard had for Religion, as if it did not exist, or at least with no distinction made between true and false religions.

2. That the best condition of society is that in which there is not acknowledged in the Empire the office of coercing, by established penalties, violators of the Catholic Religion, except insofar as

public peace demands.

3. That liberty of conscience and of worships is the proper right of each man whatsoever, which ought to be proclaimed and asserted by law in every rightly constituted society; and that there is in citizens a right to liberty in every mode, to be restrained by no ecclesiastical or civil authority, by which they may be able to manifest and declare their concepts whatsoever.

4. That the will of the people, manifested by what they call public opinion or by another reason, constitutes the supreme law freed from every divine and human right; and that in the political order consummated facts, by this very fact that they are consummated, have the force of right.

5. That the faculty by which citizens and the Church can openly bestow alms for the sake of Christian charity must be taken away, and the law by which on certain days servile works are prohibited on account of the worship of God must be removed from the midst.

6. That domestic society or the family borrows the whole account of its existence from civil law alone; and therefore that all rights of parents over children, but especially the right of caring for instruction and education, flow from and depend upon civil law alone.

7. That the Clergy, as hostile to true and useful science and to the progress of civilization, must be removed from every care and office of instructing and educating youth.

8. That laws of the Church do not oblige in conscience unless they are promulgated by the civil power; - that acts and decrees of the Roman Pontiffs pertaining to Religion and the Church need the sanction and approval, or at least the consent, of the civil power; - that Apostolic Constitutions by which secret Societies are condemned, whether in them an oath of preserving secrecy is exacted or not exacted, and their adherents and favorers are punished with anathema, have no force in those regions of the world where associations of this kind are tolerated by the civil government; - that the excommunication issued by the Council of Trent and the Roman Pontiffs against those who invade and usurp the rights and possessions of the Church rests upon a confusion of the spiritual order and of the civil and political order, for pursuing worldly good alone; - that the Church ought to decree nothing which could bind the consciences of the faithful in order to the use of temporal things; - that the right does not belong to the Church of coercing violators of her laws by temporal penalties; - that it is conformable to sacred Theology and to the principles of public law for the civil Government to assert and claim the ownership of goods which are possessed by Churches, by religious Families, and by other pious places.

9. That ecclesiastical power is not by divine right distinct from and independent of civil power, nor can distinction and independence of this kind be preserved without the essential rights of the civil power being invaded and usurped by the Church.

10. That assent and obedience can be refused without sin and without any loss of Catholic profession to those judgments and decrees of the Apostolic See whose object is declared to regard the general good of the Church, and her rights and discipline, provided it does not touch dogmas of faith and morals.

Concerning these propositions the Pontiff establishes thus:

> We reprove, proscribe, and condemn, by Our Apostolic authority, all and singular the depraved opinions and doctrines individually commemorated in these Letters, and we will and command that they be held by all sons of the Catholic Church altogether as reproved, proscribed, and condemned.

Things to Be Noted

I. Whenever a number from authors is indicated, it will have to be referred to the treatise concerning which the matter is being treated, in those authors: thus, for example, if in the treatise concerning Laws you find St. Lig. no. 40, understand: St. Lig. no. 40, in the treatise concerning Laws. But if at any time the cited place pertains to a different treatise, this will be expressly indicated.

II. Authors brought forward to confirm the doctrine, for the greater clarity of the treatment, we have referred to after the reasons have been set forth; therefore the reasons, at least all of them, are not on that account to be ascribed indiscriminately to the same authors; for their testimony is brought forward rather for confirmation of the doctrine than for confirmation of the reasons.

To Be Noted — Concerning the Formulas of Responses of the Most Holy Congregations

Sometimes in the responses of the S. C. there occur terms not of so easy an understanding. They are explained.

Dilata, that is, responding is deferred, so that the matter may be subjected to a more mature examination, as being of difficult solution.

Affirmative et amplius, *Negative et amplius*, that is, when the matter has been discussed in the S. C. sufficiently and more than sufficiently, and has been decided by full votes as it lies, such a question is no longer admitted.

Nihil, that is, the petition is not admitted, as being incongruous.

Relatum or *Lectum*, that is, when the petition shall have been reported or read in the S. C., it was not admitted.

These modes are by no means to be despised, since they have been introduced for avoiding longer circumlocutions of words.

Treatise on Human Acts

Since the whole of Moral Theology is occupied with directing human acts, we shall take the beginning of our treatment, as the order of things and common custom require, from human acts themselves. Therefore we must treat here 1. of the notion, 2. of the principles, 3. of the morality of human acts.

Chapter I. On the Notion of Human Acts

1. ○ DEFINITION. An act in general is the determination of a potency, or it is the faculty of acting placed in exercise, or also it is the exercise of the faculty of acting. The potency itself is customarily called first act, and its determination second act.

But a human act is that which proceeds from the deliberate will of man; or it is an act proceeding from a free will with advertence to the goodness or malice of the act.

For that alone can be called a human act which proceeds from man insofar as he is man, and differs from irrational creatures [1]. Now man acts then only, as such, when in acting he uses the faculties essential to himself, namely of knowing, willing, and freely determining himself; therefore there is not given an act properly human unless it proceeds from the deliberate or free will of man. Hence a human act at length is the same as a moral act. - St. Thomas, I-II, q. 1, art. 1.

[1] From this manner of speaking certain moderns, after Alasia, ineptly conclude that also any acts of the intellect, such as thought, perception, judgment, reasoning, and likewise acts of the will even not free, are altogether human acts, because, they say, they are perfected by those powers by which man essentially differs from brutes. They did not understand, namely, that the distinction of man from brutes is employed here by the Doctors not only as to the substance of the faculties, but especially as to the mode of operating (see Suarez, on I-II, Treatise 1, Disputation 2, Section 2, from no. 7). And indeed this abuse of innovating can bring only this fruit: both that men do not understand one another and move controversies which arise merely from the opinions of another not being perceived, and that in reading the books of the Doctors, indeed also ecclesiastical monuments and decrees, they undergo the gravest danger of erring.

Hence it differs from an act of man [2], which is done in man, or by man, without any deliberation, such as indeliberate acts, first-first motions, or acts of a man wholly distracted, sleeping, delirious, insane, drunk, or deprived in any way whatsoever of the use of reason [3].

[2] A certain modern, having rejected the customary distinction of the ancients into acts of man and human acts, introduced a new one of natural or animal acts and personal acts; for, as he says, the faculties of intellect and will, as the highest active principle, constitute personality. But from this an easy path lies open to grave errors; for if personality is constituted in the highest or supreme active principle, then God, for one nature or active principle, will have one person, but Christ, for a twofold nature, will have two.

[3] It has pleased some to distinguish manifold acts in man according as St. Gregory the Great (Homily 29 on the Gospel) said that man has something from every creature, so that consequently 1. some acts are called natural, as to live, vegetate, grow, etc.; 2. others animal, common also to brutes, as to eat, walk, etc.; 3. others of man, as to speak, laugh, understand, etc.; and 4. finally human, which proceed from a deliberate will; in these the intellect holds itself as condition, but the free will as cause.

2. ○ DIVISION. A human act is distinguished in many ways.

1. Elicited, or commanded. That is called elicited which is consummated in the will itself, as an act of love, hatred, desire. But commanded is that which, with the will commanding, is perfected by another potency, whether internal, as an act of thinking, or external, as an act of walking, writing.

2. Internal, or external. An internal act is that which is perfected only in the internal powers of the soul, such as an act of thinking, loving. But an external act, or mixed act, is that which the

will perfects through the organs of the body. An internal act is called more specially an act, and an external act is rather named an action [4].

[4] The consideration of an internal or external act now especially regards whether the internal act, for example the consent of the will, in any way comes forth exteriorly or is manifested; so that thence it may be gathered whether it is subjected to a law, or censure, or reservation, etc.

3. Good, evil, indifferent. A good act is called that which is conformable to right reason; evil, that which is not agreeable to it; indifferent, that which neither is conformable to the norm of reason nor is repugnant to it. - A good or indifferent act is also called licit [5]; but an evil act, illicit.

[5] Those who do not admit indifferent acts in the individual by that very fact hold any licit act also as morally good. See what is to be said below, Chapter III, Article 1.

4. Natural, or supernatural. The former is that which is produced by the powers of nature alone; but the latter, that which is perfected by the help of divine grace [6].

[6] A supernatural act is called meritorious either de condigno or de congruo, according as some retribution is repaid to it either from justice, or from the mere fittingness and benignity of God.

5. Valid, or invalid. A valid act is that which enjoys all the essentials required for producing its proper effect. But invalid is that which lacks even one of the essentials. Thus a contract is valid in which the things required for its validity, whether by natural law or by positive law, are found. Otherwise it must be held invalid.

Chapter II. On the Principles of Human Acts

3. ○ Three principles of human acts are numbered: 1. cognition, 2. will, 3. liberty. For these are constitutive of them, and therefore required for any act properly human, as is clear from the definition of a human act.

The will necessarily supposes previous cognition; for nothing can be the object of the will unless it has first been apprehended by means of the intellect. Hence the axiom: Nothing willed unless foreknown. But liberty supposes both. For liberty is the faculty of choosing, or of determining oneself to some act; but election cannot be made unless the will moves itself toward this or that foreknown part.

Article I. On the Voluntary

§ I. On the Voluntary in General

4. ○ DEFINITION. The voluntary, or a voluntary act, is called that which proceeds from the will with intellectual cognition of the end. The reason of this definition is clear from what has just been said, or from the necessity of previous cognition, so that the will can determine itself to an act.

Hence it differs 1. from the willed [1], which can be the object of the will even when inefficacious, and therefore without being the effect of the same will; thus rain poured upon dry land, as regards the farmer, will be called willed, but not voluntary; 2. from the spontaneous, which is done with merely sensitive and material cognition, and therefore imperfect, and is commonly also attributed to brutes.

[1] The willed, namely, is not said of an act of the will, but of the object into which the will tends; and this can happen, although the object does not depend on the will as an effect on its cause. I said, can happen; for what we call willed can also proceed from and depend on the will, so that it is both willed and voluntary. Thus, for example, while you move foot or hand, this motion will be called both willed and voluntary to you. Wherefore it hardly appears why the editor of the most recent French edition (Anicii 1873) requires for the notion of the willed that it not proceed from or depend on the will, since nothing is more contrary to the very frequent usage of Theologians.

5. ○ DIVISION. The voluntary is manifold, namely:

1. Perfect, or imperfect. The former is that which is done with full cognition and full consent of the will. But the latter is that which proceeds from somewhat obscure cognition or imperfect consent [2].

[2] Understand: where full deliberation is not present; in which matter there can be many degrees.

2. Voluntary simply, or in a certain respect. The former is that which is done from full deliberation and inclination of the will. But the latter is that which is done with consent of the will, but with some repugnance, or some inclination of the will toward the opposite [3].

[3] More commonly the Doctors employ this partition only with those acts in which there is something of the voluntary and at the same time of the involuntary; namely, when the affection of the will tends to two things which it cannot have at the

same time, and therefore, concerning one, rises efficaciously and embraces it; toward the other, inefficaciously, and therefore leaves this. Concerning one there is will, concerning the other velleity; toward one the will is borne absolutely, but toward the other conditionally, namely if the former is not to be lost; and thence comes the appellation of absolute or simple will, and of will in a certain respect, namely according to some regard or inefficacious complacency.

3. Direct, or indirect [4]. The former is that which is intended in itself, or per se, that is, that which is the immediate object of the will [5], as theft perpetrated by a thief, or killing intended by a malevolent murderer. The latter is called that which is not willed in itself, but in another directly willed, either as effect in cause, or as something connected with it, for example drunkenness in excessive drinking, or homicide from the rash throwing of a stone.

[4] Others, with St. Thomas (I-II, q. 6, art. 3), understand by the name of direct and indirect voluntary that which the Author soon designates by the expressions positive and negative voluntary. But the things handed down here express another partition of the voluntary in itself and the voluntary in cause.

[5] The immediate object of the will can also be an effect very remote, provided that it too is intended in itself. But you will call voluntary in cause that which is not indeed intended in itself, yet is foreseen to follow.

4. Positive, or negative. The former is said to be that which is from the will itself really acting, or that which requires a positive action, for instance reading. The latter is that which proceeds from the omission of an act depending on the will. Such is the omission of Mass in him who, adverting to the instant celebration of it, nevertheless continues to devote himself to study at home [6].

[6] More briefly and clearly you will say that it is called positive when the will elicits an act; negative, when the will elicits no act, but remains suspended. This distinction is employed when it is asked whether omission can be given without any act of the will. See Suarez on I-II, Treatise V, Disputation 3, Section 2.

5. Express, or tacit. It is called express if it is manifested by words or signs; but tacit if it is known to be present from some fact or even omission. Thus the sins of subjects are voluntary and imputable to a Superior if he does not oppose them, when otherwise he can and ought to do it [7]. Hence rule 43 of law: He who is silent seems to consent [8].

[7] In that example you have 1. tacit voluntary, as is clear; 2. voluntary in cause (the Author calls it indirect), insofar as the sins are judged effects of correction omitted by the Superior; and 3. negative voluntary (others with St. Thomas call it indirect), insofar as the effect comes from omission.

[8] For rightly understanding the axiom, He who is silent seems to consent, these rules can help. I. Someone is judged to consent in favorable matters. II. Likewise one silent where otherwise there intervenes some obligation or necessity of contradicting, and an available faculty for doing it; to this also pertains that saying: Knowledge and patience in those things which are of slight prejudice works consent. III. One silent, if anything is decreed unjustly or less rightly, where deliberation is made by common counsel and vote. IV. Likewise, one asked several things, who is silent concerning one thing while he refuses the rest. V. Add cases from the disposition of law, for example of a son silent in betrothals contracted for him by a parent.

6. Actual, virtual, habitual, and interpretative. It is called actual if it proceeds from the will actually influencing, as for example contrition in him who here and now elicits an act of penance. It is virtual if it comes by force of an act previously posited and continuing morally to influence the agent, as absolution imparted by a distracted confessor. It is called habitual if indeed it was once had, and not retracted, but now neither directly nor reflexively influences the will or the act. It is named interpretative if it has been had neither physically nor morally,

but can prudently be presumed, and would be had if it were thought about, or could be thought about. Thus a sick man deprived of his senses, if he has lived in a Christian manner, is judged to wish to receive extreme Unction [9].

[9] The interpretative voluntary differs from the tacit because in the former there is no consent, in the latter true consent is present. But each is customarily called presumed voluntary, because it is presumed to be present in its own manner.

6. You Will Resolve. - 1. In the same act there can be direct voluntary, or voluntary in itself, indirect voluntary, or voluntary in cause, and involuntary [10]. Example: Titius, seeking Caius his enemy unto death, attacks him, with danger also of injuring his companion, whom he sees associated with him; but with the bullet, besides both, he also strikes Sempronius, whom he neither saw nor could have suspected to be present there. Caius is struck from the direct voluntary of Titius; the companion from the voluntary in cause; and Sempronius apart from every voluntary.

[10] It is clear from the context that involuntary is not here said of what is against the will. Others call it not voluntary rather than involuntary. Otherwise this would have to be said not apart from, but against, the will.

2. Where there is no advertence to a precept, there is no voluntary in relation to it, and therefore no voluntary transgression of the precept, and therefore no sin. - St. Lig., no. 8.

3. Where there is half-full advertence of the mind, you have an act only half-voluntary, which even in violation of a grave precept does not exceed venial sin; thus it happens in those half-asleep, or distracted to other things. Hold the same concerning imperfect consent of the will. - St. Lig., ibid.

4. Some act can be voluntary under one respect, not however under another, according as it is known in one way or another: thus he who kills someone, being ignorant that he is a Priest, commits homicide, but not sacrilege. - St. Lig., ibid.

5. He who violates a grave precept, induced by human fear or threats of companions, posits an act simply voluntary, and indeed gravely sinful in grave matter [11], because he acts with full determination of the will, although he acts unwillingly, and would more gladly not have done this; nevertheless an act of this kind is also involuntary in a certain respect, and therefore becomes less culpable. - St. Lig., no. 21.

[11] Too hastily is this resolution placed here, which supposes that known point which will have to be discussed below concerning fear. Therefore, so that the resolution may be true, it must be supposed that the fear 1. did not greatly disturb the use of reason, and 2. does not excuse from observing the precept. For, as will be said below, fear of grave evil not only excuses from an ecclesiastical precept, for example of hearing Mass, but also from a positive divine precept, for example of confessing integrally, indeed even from natural divine law, for example of preserving a secret.

6. Not only actual voluntary, but also merely virtual voluntary influences the morality or validity of an act sufficiently in such a way that it is good or evil, valid or invalid; but otherwise one must speak concerning the habitual and interpretative, as becomes manifest from their definition.

7. Omission can be voluntary [12], just as a positive act of the will; nevertheless, unless a precept is included, it cannot be imputable unto fault. Thus one omitting Mass on a weekday does not sin. St. Lig., no. 11.

[12] Indeed, even the omission itself, if it is truly voluntary, that is, free, according to the truer doctrine cannot be understood without some act of the will. For it is necessary that the will determine itself to it, and choose it before the opposite. But a determination or election of this kind says a positive act of the will. And the equivocation on which the opposite opinion rests, namely that it admits that free omission happens without any act of the will, you will easily detect from St. Thomas (I-II, q. 71, art. 5).

§ II. On the Voluntary in Particular

Since in the other species of the voluntary no special difficulty occurs, we shall say only:

On the indirect voluntary, or voluntary in cause

7. Preliminary Notes. - The indirect voluntary, or voluntary in cause, as has been said, is not intended in itself, but is discerned as about to follow from another thing directly willed, as an effect from a cause. Nevertheless it is a true object of the will, although indirect; for he who wills the cause also wills the effect following from it, if he foresees this effect. Hence the saying: He who is the cause of the cause is the cause of the thing caused. Thus when someone sins before others, the scandal coming from his sin is imputed to him by reason of indirect voluntary.

But cause is distinguished manifoldly, namely:

1. Physical, or moral. The former is that which produces the effect by acting physically, as fire produces burning, the sun light. The latter is that which effectively moves another free cause to acting. Thus one commanding a homicide is a moral cause of the killing.

2. Immediate, or mediate. The former is that which produces an effect with no other cause intervening, for example if someone pierces the breast of another, he will be the immediate cause of his death. The latter, which does not produce the effect unless another cause is interposed. Hence moral cause is always a mediate cause.

3. Proximate, or remote. That is called proximate which has a necessary or ordinary connection with the effect. But remote is that which, although it is able to produce the effect, nevertheless does not have great force, and does not influence it notably; or it is that from which the effect for the most part does not come.

4. Cause per se, or per accidens. The former is that which by its nature tends and is ordered to producing the effect. Thus excessive drink is a cause per se of drunkenness. But the latter is that which, although it is not ordered by its nature to some effect, nevertheless sometimes, some circumstance intervening, can produce it. Thus homicide can follow from drunkenness. For the most part this last division falls back into the preceding one.

8. Principles. - I. Principle. A threefold condition is required so that an effect can be imputed to the agent, or to the one positing the cause, namely:

1. That the agent has foreseen the effect, at least in confusion. The reason is that an effect in no way foreseen can in no way be voluntary; for nothing is willed unless it has been foreknown. Hence drunkenness is not voluntary, nor to be imputed to him who becomes drunk from a little wine, whose force he did not know. Therefore, as some have contended, it is not sufficient for fault that the evil effect could or ought to have been foreseen; for the supposition must be denied, namely, that the effect can be foreseen if in fact it is not foreseen, at least in confusion; for the first idea of some thing is not in the power of man.

2. That the agent could have not posited the cause, or could have removed it once posited; for otherwise, liberty being lacking, the voluntary necessarily is lacking. Moreover an obligation cannot be given when this cannot be fulfilled. Hence the axiom: No one is held to the impossible. Hence also Augustine, *On Free Choice*, book III, ch. 18: For who sins in that which can in no way be guarded against?

3. That the agent, lest such an effect follow, is held not to posit the cause, or to remove it once posited. For if there is not given an obligation of avoiding the cause, the effect following from it cannot be imputed, because the agent uses his own right, and holds himself only permissively as regards the effect. Hence inordinate motions are not imputed to a physician or surgeon in the exercise of his art as if voluntary; because these are not bound to omit their art for the purpose of guarding against this effect, but on the contrary have a just reason for exercising it, as will be declared more from the following principle. - St. Thomas, I-II, q. 20, art. 5.

9. ○ II. Principle. It is lawful to posit a good or indifferent cause from which immediately follows a twofold effect, one good and the other evil, if there is present a proportionately grave cause, and the end of the agent is upright, namely, he does not intend the depraved effect. - St. Thomas, II-II, q. 64, art. 7.

The reason of this principle is that if this were not lawful, the agent would sin either from the intention of the depraved effect, or from the positing of the cause, or from the foreseeing of the evil effect. But none of these can be said.

For 1. this is not illicit by reason of the end, since it is supposed upright; 2. nor by reason of the apposition of the cause, since it is supposed good, or at least indifferent, or even if it is evil, nevertheless it is not evil on account of that effect about to follow; 3. nor from foreseeing the depraved effect, for in the hypothesis this is not intended, but merely permitted; and for permitting it there is present a proportionately grave and just cause.

But four conditions which are enunciated in this principle are altogether required, namely: 1. that the end of the agent be upright; 2. that the cause be good, or at least indifferent; 3. that the good effect be immediate; and 4. that there be present a grave reason for positing the cause, and that the agent not be held from justice, or from office, or from charity to omit it.

Therefore 1. a good end is required, that is, the agent ought not to intend the evil effect, because otherwise the evil effect would be voluntary in itself. For this reason neither ought he in any way to take complacency for himself concerning the depraved effect.

2. A good cause is required, or at least an indifferent one, namely, that the act be opposed to no law [1]. The reason is evident. For if the cause were evil in itself, it would introduce guilt per se.

[1] This statement extends more broadly than is proper. And indeed, he who unjustly kills a man posits a cause, on account of which creditors suffer harm, evil, indeed most evil; nor nevertheless is he therefore held to restitution, unless he intended that harm, according to the common opinion of the Doctors. Therefore the guilt to be considered here is not that which inheres in the cause in itself on account of opposition to any law whatever, but that which arises from the obligation of guarding against that effect.

3. It is required that the good effect follow at least equally immediately from the cause. The reason is that if the cause directly and immediately has a depraved effect, and the good effect comes only by means of that depraved effect, then good is sought from evil: but it is never lawful to perpetrate evil, however slight, for procuring any good whatsoever; for according to the very common axiom drawn from the Apostle, Rom. 3:8: Evil things must never be done that good things may come. Thus it is not lawful for you to lie, even to save the life of a man.

4. It is required that there be present a proportionately grave reason for positing the cause; because natural equity obliges us to avoid evils and to guard against harms to our neighbor, when we can do this without proportionately grave harm [2].

[2] Here, however, one must not weigh only the harm or inconvenience of the agent at that time, but also and much more the common inconvenience of all, if this were generally required.

Now in these cases, the greater the reason required for acting, the more nearly the cause touches the evil effect, the more probable the evil effect is, and the less right one has to the action considered in itself.

10. You Will Resolve. - 1. An evil effect which follows per accidens from a voluntary cause is not imputable unto fault, unless there is present an accidental circumstance from which the effect necessarily to be guarded against is foreseen: for example, to sell weapons per se is no evil; although it is evil to sell them to someone mad. The reason of the former part is that the evil effect, if perhaps it follows, unless it is intended, is not properly voluntary, since it is not contained in the cause through a necessary connection, nor is the cause ordered to an effect of this kind. Therefore the one positing the cause does not effectively influence the effect; and therefore the effect is not imputable. - Reuter, no. 15. - The reason of the other part is that you are held both from charity and from justice to avert harm which you can easily foresee from weapons handed over to a madman.

2. Blasphemies, impurities, quarrels, or injustices which are done in drunkenness are voluntary when they can be foreseen; but they are sufficiently foreseen from a custom of perpetrating such things in this state, and therefore they are voluntary in cause, and imputable unto sin.

3. A commander in war does not sin who, in time of siege, burns fields, etc., to ward off the enemy, although innocent inhabitants suffer per accidens. Likewise if he burns a tower in which, together with enemies, perhaps pilgrims foreign to the war are enclosed; because the cause of this harm is upright in itself; but the harm of the innocent follows merely per accidens, and is not intended, but only permitted.

4. A Priest does not sin who offers Communion to a hidden sinner publicly asking for it; because although sacrilege is a great evil, nevertheless the public harm about to follow from such a denial of the Eucharist is more to be avoided.

5. He does not sin who, needing money and not able to have it elsewhere, seeks a loan from a usurer who is going to exact unjust gain; because the petition for money per se is not the cause of the evil will of exacting unjust usuries, but his own depraved mind is to be imputed to the usurer alone.

6. A girl who, pregnant from a crime, procures an abortion to avoid infamy, sins gravely; the reason is that there is not present a sufficient cause for inflicting harm of this kind upon the offspring [3].

[3] You will seek the reason better from the things said at Principle II, no. 3, as may also be seen below at no. 403, in Resolution 1.

7. An advocate is not held to omit a just defense from which the death of an unjust aggressor is about to follow. The reason is that the condemnation which the evildoer ought to undergo does not follow from the just defense of the one attacked, but from the malice of the attacker, which was voluntary and free to him [4].

[4] It hardly appears why a question should be moved about this. For if it is lawful to accuse a guilty man, indeed if it is lawful also to desire from a right end the punishment of the guilty, what doubt can arise concerning the case proposed here?

8. If a cause remotely and lightly influences an evil effect, and from it there also follows some good effect, although it would not preponderate or would not be equivalent to the evil, there is no obligation of removing the cause; because a lesser reason is required for positing a cause that influences evil only lightly and remotely than if it influenced gravely and proximately. Hence you are not held to abstain from an honest and useful conversation on account of carnal motions arising from it. So Billuart, diss. 1, art. 1.

9. But if the cause remotely and lightly influencing is in itself venially evil, or if from it no good effect follows, there will be an obligation of removing it, but slight, and only under venial sin, unless there is question of grave harm to one's neighbor. The reason is that this obligation is to be estimated according to the quantity of the influence of the cause. For since the effect is not voluntary except in the cause, and is contained in the cause lightly and remotely, it is lightly voluntary in it, and therefore lightly imputable unto fault, and for this reason there is a slight obligation of removing the cause on account of that effect. Billuart, ibid.

10. The omission of acts about which a man in no way thinks is not even indirectly voluntary, because those acts entirely escape the advertence of the agent. Nevertheless such an omission can be voluntary and imputable in cause, if forgetfulness or inadvertence comes from preceding negligence [5].

[5] The authors of the *Vindiciae Alphonsinae* (p. 906) present these things as dissonant from the doctrine of St. Alphonsus (Book 4, no. 143), where he establishes that as many sins are committed as there were foreseen omissions, etc.; concerning

which doctrine the discussion will return in the Treatise on Sins. He will be a great Apollo, whoever knows how to divine where in these matters there is disagreement. To indicate these Authors, we shall henceforth use the sign VV.

11. He who knowingly posits the cause of an action or omission contracts malice before God in that instant, although the action or omission in reality does not follow; and therefore he is bound to confess it as willed. See *Casus*, t. 1, no. 7 and following.

On the same principles concerning the indirect voluntary and voluntary in cause, innumerable other resolutions depend, especially where there is question of scandal and of cooperation both toward another's sin and in harm to one's neighbor.

Article II. On the Free

11. ○ DEFINITION. That is called free which proceeds from the will determining itself with the power of not acting. But liberty is the faculty of acting or not acting, or the faculty of choosing one thing before another. Hence every free thing is voluntary, but not vice versa.

Although the free and the voluntary are distinguished in themselves, as is clear from the definition of each, nevertheless in the acts by which man as wayfarer tends to his end, they are not distinguished in reality; for as often as some act is voluntary, it is also free, and vice versa. The reason is that man as wayfarer, master of himself, in those things which are toward the end, never acts necessarily [1].

[1] Excellently, after his manner, St. Thomas (2, Dist. 25, q. 1, art. 2, o): If some good is proposed to the will which has the completed notion of good, as the last end, on account of which all things are desired, the will cannot not will this: whence no one cannot not wish to be happy, or wish to be wretched. But in those things which are ordered to the last end, nothing is found so evil that it does not have some good mixed in; nor anything so good that it suffices in all respects: whence however much good or evil is shown, it can always adhere to and do the contrary by reason of another thing which is in it, from which it is taken, if it is evil simply, as an apparent good, and if it is good simply, as an apparent evil; and hence it is that in all things which fall under election, the will remains free, having determination in this alone, that it naturally desires happiness, and not determinately in this or that. This doctrine, indeed, no less consonant with right reason than with the Catholic faith, manifestly shows in what place one must hold a certain recent philosophy, which under the pretext of the limits of human liberty vainly brings in innumerable acts to which man as wayfarer, otherwise master of himself, is necessarily borne.

DIVISION. A manifold species of liberty is distinguished.

1. Liberty from necessity, or liberty of indifference, or of election, which is immunity from every antecedent intrinsic necessity; and this is liberty properly and strictly so called.

2. Liberty from coercion, or liberty of spontaneity, which is immunity from every violence inflicted extrinsically.

3. Liberty of contradiction, which is the faculty of bearing oneself toward contradictories, for example, of studying or not studying.

4. Liberty of contrariety, through which someone can choose one thing, or the contrary of this, for example, to love, or to hold in hatred.

5. Liberty of specification, which is the faculty of bearing oneself toward diverse things, for example, to walk, to play, etc.

These things having been set forth, the chief foundations of Catholic doctrine are to be submitted in a few words.

Proposition I

12. ◦ Man in the state of fallen nature is free from every intrinsic necessity.

It is clear 1. from sacred Scripture. For thus Eccli. 31. 10: Eternal glory shall be to him who could transgress, and has not transgressed; to do evil things, and he has not done them. And Eccli. 15. 14: God from the beginning constituted man, and left him in the hand of his own counsel. He added his commandments and precepts: if thou wilt keep the commandments, they shall preserve thee... Before man are life and death, good and evil; that which shall please him shall be given to him. The same doctrine is confirmed from six hundred other places of sacred Scripture.

2. From reason. Man, by the consent of all, can merit and demerit, or elicit meritorious and demeritorious acts; but for this liberty from necessity is required: and indeed unless man were free for positing or not positing an act, he would not be master of his own act; therefore that act could not be imputed to him either unto merit or unto punishment. Besides, to what purpose would precepts be imposed on man? To what purpose would exhortations profit? To what purpose rewards, threats, and punishments, unless man possessed liberty? Finally, this is clear from intimate sense, since man senses himself to be free, and besides, intimate sense cannot deceive. Therefore...

3. From the definition of the Church. For thus it was sanctioned in the Council of Trent, session 6, canon 5: If anyone shall say that the free will of man after the sin of Adam has been lost and extinguished, or that it is a thing of title alone..., let him be anathema.

It is confirmed from the condemnation of the following proposition of Jansenius made by Innocent X: For meriting or demeriting in the state of fallen nature, liberty from necessity is not required, but liberty from coercion suffices [2].

[2] Observe besides that the liberty of Adam sinning does not suffice so that the actions of fallen man become moral and demeritorious. We have this defined in the proscription of this thesis of Christian Lupus, which is the first among the 31 condemned by Alexander VIII: In the state of fallen nature, for formal sin and demerit, that liberty suffices by which it was voluntary and free in its cause, original sin and the liberty of Adam sinning.

Proposition II

Man as wayfarer is not only free with liberty of contradiction, but also with liberty of contrariety, by which he can be borne toward evil.

It is clear from all the arguments and testimonies just related, for example, from those words: He could transgress..., do evil things, etc.

Moreover, the whole essence of free will is found in liberty of contradiction; for it consists in this, that it is the faculty of acting, or not acting: but liberty of contradiction supplies this, as is clear.

Therefore... Hence the power of sinning is not of the notion of free will. - See more on liberty in Dogmatic Theology.

Article III. On the Things Opposed to the Voluntary and the Free

Four things are opposed, namely ignorance, concupiscence, fear, and force or violence.

§ I. On Ignorance

13. ○ DEFINITION. Ignorance, taken generally, is the lack of knowledge.

DIVISION. Ignorance is distinguished:

1. Positive or negative, according as it is the lack of knowledge due, or not due, for example, ignorance of canon law in a rustic.

2. Of law, or of fact, according as it is concerned with the existence of a law or of a particular fact.

3. Vincible, or invincible, according as, diligence being applied, it can be overcome, or not. But it is invincible physically, if in no way it can be overcome [1]; morally, however, if, moral diligence being applied, it cannot be removed. That diligence is considered moral which prudent men, according to the gravity of the matter, are accustomed to apply. Moreover, vincible ignorance is not given unless there is known, at least in confusion, an obligation of inquiring further; because the first idea is not in the power of man.

[1] There is no use of this consideration in morals; for nowhere do Theologians inquire whether ignorance is physically, but only whether it is morally, vincible.

Hence mention must also be made of concomitant ignorance, by which someone is ignorant of what he is doing, but would still act, even if he were not ignorant. It in no way influences the act. - Scav.

Vincible ignorance is distinguished as threefold, namely 1. simply such, when some diligence, though not sufficient, is applied to drive it away; 2. crass or supine, when no or scarcely any study is placed in investigating the truth; 3. affected, when someone voluntarily flees the means of laying aside ignorance, lest he be drawn back from his purpose.

Perfect forgetfulness and full inadvertence are to be referred to invincible ignorance. But these, if they are not perfect and proceed from negligence, pertain to vincible ignorance.

4. Antecedent ignorance is that which precedes every will; consequent, however, that which in some way follows it [2].

[2] To the point St. Thomas (I-II, q. 6, art. 8): Ignorance is antecedently related to the will when it is not voluntary, and nevertheless is the cause of willing what otherwise one would not will... And such ignorance causes the involuntary simply.

But ignorance is consequently related to the will insofar as the ignorance itself is voluntary... But since the ignorance itself is voluntary... it cannot cause the involuntary simply; nevertheless it causes the involuntary in a certain respect, insofar as it precedes (that is, causes) the motion of the will toward doing something, which would not be, knowledge being present.

And from these things it is clear that antecedent ignorance is called that which is neither voluntary nor vincible, and thus neither culpable; but consequent ignorance is both voluntary and vincible, and more or less culpable.

14. Principles. - I. Invincible ignorance utterly removes the voluntary, both because it itself is not voluntary, and because nothing can be voluntary where there is no cognition. Therefore no act proceeding from invincible ignorance can be imputed to the agent.

Thus likewise one must determine concerning forgetfulness and perfect inadvertence, since the same reason recurs.

II. Vincible ignorance does not remove the voluntary. For ignorance of this sort, whether directly or indirectly, is truly voluntary. Nevertheless it lessens the voluntary, because it is the cause of willing that which, if it were absent, someone would never will. Say the same also, by parity of reason, concerning imperfect forgetfulness and inadvertence.

III. Crass ignorance and affected ignorance much less lessen the voluntary, and consequently sin. The reason is that the former arises from grave negligence, but the latter is retained deliberately for sinning more freely.

You Will Resolve. - 1. A spouse sinning with a woman whom he invincibly does not know to be the sister of his wife is guilty of adultery, but not of incest, as being invincibly ignorant of it.

2. Children who have done things illicit in themselves without any anguish of conscience or suspicion of malice, in reality have not sinned formally, even if they have already attained the use of reason; and therefore afterward they are not held to confess them, when they understand that they are illicit, since material sins are not matter of confession.

3. If a confessor or judge notices that he lacks sufficient knowledge for discharging his office as is fitting, and neglects to acquire the knowledge, or before he acquires it proceeds to exercise his function, he will be held for the errors which in some way at least he foresaw, because they are voluntary to him, at least in the cause.

4. If negligence in laying aside ignorance is culpable only venially, the deed following from it will be imputable only unto venial fault. The reason is that acts of this kind are voluntary, and thus culpable, only in the cause; therefore, since the cause, namely ignorance, does not reach grave fault, the effect also cannot exceed light fault.

See many other things on ignorance elsewhere passim, especially in the treatise on Conscience, on Laws, on Sins, and on Contracts in general, where error is treated. - See Cases, vol. I, no. 12 and following.

§ II. On Concupiscence

15. ○ DEFINITION. Concupiscence is a motion of the sensitive appetite, by which the will is borne toward a sensible good [1].

[1] Namely, by the name concupiscence here is understood not indeed that perpetual tinder of depraved desires inborn in us, concerning which the Apostle says (Rom. 7. 23): I see another law in my members fighting against the law of my mind, etc., but, as St. Thomas says after Damascene (3, Dist. 26, q. 1, art. 1): A motion of the sensible appetitive power, which is from the imagination of good or evil.

DIVISION. A twofold concupiscence is distinguished: one antecedent, and another consequent. The former is that which, in the order of causality, precedes any deliberation or consent of the will, and entices and draws it to consent. But the latter is that which, in the order of causality, follows an act of the will, either because a vehement motion of the will overflows into the inferior appetite, or because the will directly and deliberately excites this very appetite [2].

[2] A twofold consequent concupiscence must namely be distinguished; for one is, as it were, indirect from overflow, insofar as the motion of the will overflows into the appetite; but another is directly stirred by the will. The former must be called voluntary rather in the cause than in itself; otherwise, however, where someone excites the appetite, or studiously fosters and continues it once excited, as for example when someone purposely thinks about an enemy and injuries received, so that he may kindle hatred in himself or increase the desire of revenge. Thus (says Suarez on I-II, Treatise 2, Disputation 3, Section 3, no. 1) studious men excite in themselves similar affections for exercising actions better, and concerning this (concupiscence) Aristotle said (3 Ethics, ch. 8) that to operate from anger is not of a brave man, but to excite anger in oneself through the virtue of fortitude, so that one may operate better: he adduces Homer saying: send fury into virtue; and concerning this Augustine (*City of God*, book 14, ch. 9) says that the wise man cannot live in this life without affections. And to this indeed pertains that someone who is going to rebuke those whom he loves with tender affection ought in some manner to stir himself to applying rebuke seriously.

Principles. - I. Antecedent concupiscence, and therefore concupiscence not voluntary, the greater and more vehement it is, the more it lessens sin; indeed it can excuse from sin entirely. The reason is that the motion of the sensible appetite disturbs, lessens, or even impedes the judgment of reason; but causes which diminish the judgment of reason diminish also the voluntary. Therefore, since an act is sin insofar as it is voluntary, by that very fact concupiscence, while it lessens the voluntary, also lessens sin; and thus where concupiscence is more intense and stronger, there is less sin; indeed the account of sin will utterly cease if the motion of concupiscence totally impedes the use of reason. St. Thomas, I-II, q. 73, art. 6; and q. 77, art. 2, 6, and 7 [3].

[3] St. Thomas: Passion is sometimes so great that it totally takes away the use of reason, as is clear in those who become insane because of love or anger. And then, if such passion... was not voluntary... the act is rendered entirely involuntary, and consequently excuses totally from sin. But sometimes passion is not so great that it totally intercepts the use of reason. And then reason can exclude passion... Whence such passion does not totally excuse from sin. I-II, q. 77, art. 7.

II. Consequent concupiscence, and therefore voluntary, does not diminish sin, but rather increases it; or rather (as St. Thomas says, I-II, q. 77, art. 6) it is a sign of its magnitude, insofar as it demonstrates the intensity of the will toward the act of sin. St. Thomas, I-II, q. 77, art. 6.

The first part is proved, because sin consists in the act of the rational will, which by hypothesis precedes the motion of concupiscence, just as cause precedes effect. Therefore the later disturbance of reason which concupiscence introduces cannot affect the act of sinning which has already preceded, and therefore cannot lessen the account of the voluntary and of sin.

The second part is proved, because, as St. Thomas has it (*On Evil*, q. 3, art. 11): When from a strong motion of the will the sensitive appetite is moved to passion, passion adds merit or demerit, because it is a sign that the motion of the will is stronger: and in this way it is true that he who gives alms with greater compassion merits more [4], and he who sins with greater lust sins more: because this is a sign that the motion of the will is stronger.

[4] From these things it is clear that what is said here about the motions of the sensitive appetite pertains equally to evil and good acts. Hence St. Thomas applies the whole doctrine thus to good acts (I-II, q. 77, art. 6, ad 2): A good passion consequent upon the judgment of reason augments merit; but if it precedes, so that he is moved more from passion than from the judgment of reason toward acting well, such passion diminishes the goodness and praise of the act.

16. ○ Thus far concerning concupiscence, insofar as it is a passion of the sensitive appetite toward good or evil indifferent, and is considered by Theologians as lessening or even utterly taking away the voluntary. Now some other things must be said concerning concupiscence, insofar as by this name the tinder of depraved desires is designated, about which the Apostle often treats, and which is a propensity toward evil residing not only in the inferior, but also in the superior appetite [5].

[5] The more suitable place for disputing about these things commonly, and indeed deservedly, is reserved in the Treatise On Sins. For they in no way pertain to the present question about those things which lessen the voluntary or altogether take it away.

Principles. - I. However much the soul is struck by the goads of the depraved tinder, there will never be any stain of sin, unless in some way the will either consents to them, or does not impede them when it can and ought to impede them. Common and certain. - See St. Thomas, 2, dist. 34, q. 3, art. 1; and Quodlib. 4, art. 21.

II. First-first motions of the will, namely those which forestall any deliberation of reason, and are elicited before advertence is given to the object's agreement with the rule of morals, are altogether without fault. The reason is that insofar as they forestall deliberation of reason and advertence to moral malice, they are neither voluntary nor free, and consequently are without formal sin. Thus all Theologians.

III. Second-first motions of the will, namely those which follow upon some use of reason, yet are elicited with only slight, obscure, and imperfect advertence to the rule of morals, are in any grave matter also only venial sin. The reason is that acts of this kind are imperfectly free and only semi-deliberate; and thus on account of the imperfection of the act they are excused from grave fault. Thus likewise the Common opinion of Theologians.

You Will Resolve. - 1. Motions, however depraved, as long as they displease the will, even after advertence to the rule of morals, are free from every fault. The reason is that where there is displeasure of this kind, there is no consent. For concupiscence is not able to harm those not consenting, but manfully resisting through the grace of Christ, as the Synod of Trent teaches, session 5.

2. Motions of concupiscence, after advertence of reason, must be resisted at least through virtual displeasure, namely by distracting the mind to other things; nor is it sufficient then to hold oneself negatively or neutrally, even if the danger of consent seems absent. Thus commonly the Theologians.

3. But especially this holds regarding motions of concupiscence in venereal matter, which must not be retained even under the pretext of struggle and exercise of virtue.

4. Nevertheless there is no obligation of resisting carnal motions positively, since such resistance sometimes excites them more; and much less is material resistance necessary.

5. Not only regarding carnal motions, but also regarding motions against faith and charity, merely indirect resistance by distraction of the mind is to be counseled, rather than any direct resistance or opposition. - St. Alphonsus, book 5, no. 6.

6. Nor likewise are we held to positive resistance against any temptation which is prolonged for a long time; for this would be too troublesome and liable to innumerable scruples.

7. When the danger of consent is absent, in motions of concupiscence to hold oneself merely negatively, according to the truer opinion, is only a venial sin, although it concerns a grave object, and no other cause excusing from resistance is present. - St. Alphonsus, book 5, no. 9.

YOU WILL ASK: What are the remedies against motions of concupiscence?

I answer. Generally those which are opposed to their causes. Hence if they arise from imagination, this is to be restrained, or turned to other things; if from external objects, or occasions, these are to be fled, unless just reasons demand the contrary, or one is moved by all objects; if from temperament, or an abundance of humors, mortification is to be applied; if from fear, this must be conquered, or the motions must be despised. - See Cases, no. 21.

§ III. On Fear

17. ◦ DEFINITION. Fear is a trepidation of the mind on account of some present or future danger to oneself or to those closely connected.

DIVISION. Fear is commonly divided thus, namely:

1. Grave, or light fear, according as the evil feared is either grave, such as death, mutilation, hard imprisonment, notable detriment to reputation, great loss of goods, etc.; or, on the contrary, light, or a moderate inconvenience, such as the loss of a thing of slight moment, a small detriment to reputation, or even a grave one, but from a slight cause, or one which can easily be averted, etc.

But grave fear is absolutely or relatively so. Fear is called absolutely grave when evils truly grave in themselves are feared; but relatively grave when, although light in itself, it is nevertheless grave with respect to certain persons: thus children, women, the aged, are accustomed to be affected by a greater fear in the same danger than men of mature age.

2. Fear from within, or from without, according as it comes from an intrinsic cause, for example from disease, from infirmity of mind, etc., or from an extrinsic cause, whether free, namely from man, or necessary or natural, as from the elements, contagion, etc.

3. Fear justly or unjustly struck, according as the cause is just, for example that of deserved punishments, which is brought on; or unjust, that is, it is struck by injury.

Reverential fear also must be added, which is had when someone fears lest he have offended his parents or other Superiors. It is referred to just or unjust fear according as its cause is just or unjust. But it can be grave, if there is a prudent fear lest those who strike fear be held offended for a long time or gravely.

18. Principles. - I. An act posited from fear, however grave, is simply and absolutely voluntary and free. The reason is that through fear cognition on the part of the intellect is not taken away,

unless the mind is utterly disturbed, nor election on the part of the will, which always enjoys the faculty of determining itself to the opposite. - St. Lig., no. 21. - Hence those have always been held as apostates who, conquered by fear of torments, denied the Faith.

II. Those things which are done from fear, even if they are simply voluntary, nevertheless regularly [1] are also involuntary in a certain respect: whence also the gravity of fault is lessened. The reason is that when someone is impelled to act by fear alone, he so acts that, fear being absent, he would flee from acting; and therefore a work done from fear alone has joined with it a certain sadness and repugnance of the will, although inefficacious.

[1] It is said regularly; because sorrow for sins which is elicited from fear of divine vengeance excludes every account of true involuntary, or every deliberate affection toward sin.

III. If fear takes away the use of reason, the act, as is clear, can in no way be voluntary. But if it does not indeed take away the use of reason, but notably impedes it, the act will be imperfectly voluntary on account of imperfect cognition of the thing.

IV. Fear light in every respect, at least in the external forum [2], is not considered an efficacious cause of acts. For it is presumed that fear of this sort could easily have been contemned, and thus that the man acted entirely of his own accord.

[2] It is said in the external forum; because it is a mere presumption, since otherwise even light fear can in reality be the cause of acting, so that the act is indeed simply voluntary, yet also involuntary in a certain respect; and although light fear cannot excuse from any grave obligation, nevertheless, if it is unjustly struck, it probably gives the right in the forum of conscience that one not be obliged to a contract entered into from such fear. - St. Alphonsus, book 3, no. 718.

19. You Will Resolve. - 1. Light fear can never excuse from grave sin where the matter of the violated precept is grave.

2. Even grave fear does not excuse of itself from mortal sin, nor make a mortal sin venial, whenever the violation yields to contempt of the Faith or Religion, and generally whenever the law does not cease on account of some grave inconvenience, as will be said below in the Treatise on Laws, no. 108. Moreover, this kind of danger being removed, grave fear excuses from human law; because the legislator is not considered to wish to urge the obligation of the law with so great an inconvenience [3].

[3] But when fear exempts a delinquent from censures or other penalties, or when it impedes the value of acts, is disputed in its own places, where Vow, Contracts, Marriage, Censures, etc., are treated.

3. Fear, if it disturbs reason, excuses from mortal sin, as was said above, where concupiscence was treated, no. 15.

4. Fear coming from within or from natural causes does not prevent the act elicited from it from being simply voluntary, and able to be valid: thus a vow made from fear of death in the midst of shipwreck, or in grave sickness, is valid. - Reuter, no. 20. - Billuart, diss. 1, art. 7. - Elbel, no. 48. - See Cases, no. 17 and following.

§ IV. On Force, or Violence

20. ◦ DEFINITION. Force or violence is coercion which is inflicted on someone by an extrinsic and free cause, his will resisting.

DIVISION. A twofold violence is distinguished, namely absolute or in a certain respect, according as coercion is inflicted on someone resisting in every way, or resisting only to some extent [1].

[1] It happens in two ways that someone resists only to some extent, namely 1. when the force is not of such a kind that it cannot be broken or weakened by stubborn resistance; 2. or when someone does not suffer the force inflicted, whatever it may be, unwillingly.

Principles. - I. Elicited acts of the will can in no way be coerced, because force cannot be brought upon the will. Hence St. Anselm: No one unwilling (he says) can will, because no one can will not willing (On Free Choice, ch. 6). And St. Thomas: It is contrary to the notion of the act itself of the will that it be coerced or violent (I-II, q. 6, art. 4).

II. External acts [2] posited from absolute violence are in no way voluntary or free, and therefore neither sinful nor demeritorious; but external acts which are posited from violence only in a certain respect are more or less free according to the greater or lesser difficulty of resisting, or according to the greater or lesser affection with which someone suffers force. - St. Lig., nos. 17-18.

[2] Understand acts extrinsic to the will, which are elicited by other powers, whether external or internal. For not only the exterior members of the body, but even the interior faculties, such as imagination, the sensitive appetite, etc., can be moved by some extrinsic force, for example of an Angel, both good and evil, to some acts, while the will resists in vain.

21. You Will Resolve. - 1. A woman who resists in every way the violence which is brought upon her in no way sins, even if she suffers rape; for no one sins wholly unwilling.

2. Women suffering force sin gravely if through pusillanimity or vain fear, for example of offending the aggressor, etc., they do not resist as much as they can, even apart from danger of consent; because even if they do not consent to sensual pleasure, nevertheless while they resist less than is fitting, they equivalently consent to the violation of themselves and cooperate in the crime of another. - But whether a woman oppressed by force sins if, because of fear of death, she omits to cry out, is controverted. - It seems probably to be denied, apart from danger of consent. Indeed very probably, apart from the aforesaid danger, a woman is not held to cry out when there stands a danger of any notable harm, whether of infamy or of excessive shame; for if otherwise she already resists as much as she can, she is not held with so great an inconvenience to repel force. Thus expressly St. Lig., book 3, no. 430. Yet in practice the opposite manner of acting is to be advised, on account of some danger of consent [3]. - St. Lig., book 3, no. 368.

[3] But indeed if the danger of consent is present, the opposite manner of acting is not merely to be advised, but altogether to be enjoined. But if this kind of danger can prudently be judged absent, it does not appear that a penitent is easily to be induced to undergo grave danger of harm or infamy without an equal cause. Compare La Croix, book 3, part 1, no. 916.

3. Sometimes absolute and continuous resistance to coercion inflicted is not required, namely when on the one hand it would be useless, and on the other hand the matter at issue is less dangerous. Thus martyrs led to the temples of the pagans did not sin, although they walked. But in every case resistance must be made as much as is required to avert the danger of scandal, or injury to Religion.

Chapter III. On the Morality of Human Acts

It will be said 1. of the essence of morality; 2. of its sources.

Article I. On the Essence of Morality

22. ○ Not a few Theologians go off into various opinions and most intricate questions in order to explain and determine the essence of the morality of human acts. But according to the more common doctrine, the following things seem to have to be established:

I. The essence of morality consists primarily in the habitude or relation of the human act to the eternal law, which is the divine reason, or the will of God commanding the natural order to be preserved and forbidding it to be disturbed. The reason is that only the eternal law can be the primary rule of morals [1]. And indeed a rule of this kind must be infallible, indefectible, and able to oblige in conscience; but such is only the eternal law, from which alone the other laws receive the force of obliging: therefore. Thus from St. Thomas, I-II, q. 9, art. 2.

[1] That the eternal law may rightly be established as the rule of morals, or the norm of morality, it must be taken here more broadly, so that it indicates not only the order which must necessarily be observed, but also that which is fittingly observed. Otherwise the honesty of acts not commanded will be excluded.

II. The essence of morality consists secondarily in the habitude of the human act to right reason. The reason is that only right reason can manifest to man the eternal law, or the primary rule of morals. Therefore right reason is the subjective rule manifesting the primary rule. Therefore the essence of morality consists secondarily in the conformity or difformity of the human act with right reason. - St. Thomas, I-II, q. 94, art. 4.

23. You Will Resolve. - 1. Therefore that and only that is a moral entity which is subject to the rule of morals, or to the law of God commanding, forbidding, or permitting [2]. For through that alone we are ordered to our ultimate end, or disordered from it. Therefore, that our acts may be good, they ought to be in some way conformable to the divine will, since it is the highest and primary rule of morals.

[2] ** This disjunctive is less apt: for not every act which is not commanded or prohibited ought to be called merely permitted, nor would you aptly call the profession of the evangelical counsels merely permitted.

2. Liberty is pre-required as the foundation of morality; for otherwise the act would not be human, and thus all sins and merits would be taken out of the way. Therefore...

3. It is false that the essence of morality is to be placed in liberty alone. For the imputability of a human act unto praise or blame, unto reward or punishment, follows upon the morality of the act itself; but an act is not worthy of praise or blame only because it is free, but also and especially because it is conformable or difform to the rules of morals, or to the divine will. Therefore...

4. A fortiori it is false that morality consists in the voluntary alone. For the voluntary without liberty is worthy neither of praise nor of blame [3], since man without liberty is not master of his own act.

[3] ** That the merely voluntary suffices for the notion of merit and demerit is the Jansenian heresy after Luther, Calvin, etc. See above, no. 12.

24. Questions. - YOU WILL ASK 1. Whether acts properly indifferent, or lacking morality, are given, either in species or in the individual?

I answer 1. It is certain that indifferent acts in species are given, or acts which in their species are without morality. For there are acts which, considered in themselves, abstracting from end and circumstances, have no agreement or repugnance with law or right reason, and therefore are to be reckoned neither good nor evil. Thus to walk, to write, and innumerable similar things are acts indifferent per se.

I answer 2. But there is controversy regarding acts in the individual, or considered in the agent.

The first opinion, more common and more probable, denies this with St. Thomas. The reason is that man, acting deliberately, necessarily proposes some end to himself; for he ought to act as man. Moreover, the end which he proposes to himself is necessarily good or evil, or conformable to reason, or not conformable: therefore in no case will there be given an act properly indifferent in the individual [4].

[4] ** Compare St. Thomas, I-II, q. 18, art. 9. St. Alphonsus (book 5, On Human Acts, no. XLIV) added also this argument to the arguments of St. Thomas: Besides these things, man is held to refer all his acts to God when he acts with deliberation and for some end. For the Apostle says, 1 Cor. 10: Whether you eat, or drink, or do anything else, do all things unto the glory of God. If therefore he refers it to God at least by a virtual intention, the act will be good; if he does not refer it, it will be evil; therefore no act is indifferent.

This argument indeed the holy Doctor took almost to the letter from Collet (*On Human Acts*, ch. 6, sect. 2, conclusion 1), to whom (he says) I send the one who studiously seeks this question treated more at length....

But indeed it must not be dissembled that this is pressed by very grave difficulties, nor are there lacking rocks which scarcely or not even scarcely can be avoided. And in reality Collet himself observes that both John Hus, and Luther, and Baius, and Jansenius, and Quesnel took arms from here for the defense of their errors; to whom must be added those pseudo-theologians of Louvain, Laurentius Neessen, Macarius Havermans, Ioannes Sinnichius, Gerardus Van Werm, Gregorius Van Goorlaechem, etc., as may be seen in Cardinal Aguirre (*Theology of St. Anselm*, disp. 130): and to decline these rocks Collet had to flee to the absurdities which you may see below (note to § 32, question 1).

Moreover, that the matter may be clear, not many words are needed. For, according to this doctrine, lest an act be evil, and therefore sin, a relation to God, at least virtual, is necessary. Moreover, that is called virtual which remains by virtue of a previously had actual relation, and has not been revoked (as Collet rightly says in the cited place) through a contrary act, namely sin; the same thing is repeated also by Cardinal Gotti, alleged by VV. (page 130). Therefore, as often as either no actual relation has preceded, or one previously had has already been retracted through a contrary act, all consequent acts will lack the necessary virtual relation, and thus will be evil. And since referring acts to God, or to the glory of God, pertains to the theological virtue of charity, as is evidently shown below, and the actual relation of works to God is nothing else, as St. Thomas has it (2, Dist. 40, q. 1, art. 5, ad 6), than that the habit of charity go forth into act, it manifestly follows that he who either has never elicited an act of charity, or has lost the habit of charity through sin, sins in every deliberate work. Therefore we have revived the condemned doctrine that both unbelievers and sinners always sin in every work of theirs.

Nor indeed can these consequences be ascribed to the doctrine of St. Thomas. For he certainly teaches that it falls under the precept of charity that all things be referred to God; but at the same time he teaches that this precept does not always urge, but only when man is held to elicit an act of charity; otherwise he nowhere says that a relation of this kind is so necessary

for the moral goodness of acts that, if this is lacking, they are deprived of every moral goodness and thus, as the opinion of the Jansenists and of Collet has it, become evil. And these things indeed will appear better below, where the discussion of this relation of works to God will return.

Moreover, if any others, to prove that no act in the individual is indifferent, invoked the sentence of the Apostle, they argued from it only that any act ought to be referable to the ultimate end, and for this reason ought to be honest, and therefore ought to have an honest and reason-consonant proximate end. But, as is clear, what is said about an actual or virtual relation to the glory of God, in which the influence of a preceding actual relation perseveres, pertains nothing to this. Wherefore that argument of Collet cannot be drawn from here: either man refers the act to God at least virtually, and thus it will be good; or he does not refer it, and thus it will be evil. Indeed, rather, the relation of an act to God, as ultimate end, supposes the act already to be referable per se, and thus to exist as honest from the proximate end.

The second opinion affirms this with the Scotists. Their reason is that it is not clear that there is a law of intending a positively good end in all things, since such a law is unknown to many doctors. For does right reason dictate that a man acts badly when he posits an action permitted by God, and nevertheless does not refer it to a positively honest end [5]? not however as to moral goodness. See 2, Dist. 28, art. 2, q. 3. Indeed Gabriel Vasquez also shows that Scotus must be understood thus. On I-II, disp. 217, ch. 1, no. 6.

[5] Father Staidel attributes this opinion to St. Bonaventure in the Dissertation on Human Acts prefixed to volume I of Gabriel Antoine, no. 278. But in reality the holy Doctor at most affirms this concerning the indifference of acts as to the merit of eternal life,

Moreover, although each opinion, as far as appearance goes, is opposed, nevertheless it does not seem to differ so greatly. For according to all, a depraved end must always be excluded; otherwise an act, however indifferent in itself, would become evil. But an end is called good by Thomists which is held as indifferent by their adversaries. For the matter is of an end not supernatural, but naturally good or honest. Moreover he is led by a naturally honest end who acts on account of an end naturally intrinsic to the work, or on account of that to which the work by its own nature is ordered.

25. ○ YOU WILL ASK 2. Whether the external act adds morality to the internal act?

I answer 1. Per se the external act adds no morality to the internal act, and thus neither increases nor diminishes the substantial merit or demerit of the internal act. - The reason is that all morality is taken from the intrinsic, or from the will; nor does the external act have any imputability unto merit or demerit proper to itself and distinct from the imputability of the internal act. Wherefore the external act is not formally, but only materially, honest or dishonest.

It is also clear from sacred Scripture, which often reckons the will for the deed itself. Thus in Gen. 22 God said to Abraham, who only willed to immolate his son: Because thou hast done this thing, and hast not spared thy son... I will bless thee. And in Matt. 5 Christ himself said: He who shall look upon a woman to lust after her has already committed adultery with her in his heart. - Nor does the obligation of declaring the external act in confession stand in the way; for it must be declared because it constitutes one and the same act with the internal act, as will be said where the integrity of confession is treated.

I answer 2. Nevertheless per accidens the external act for the most part increases morality, because very often it is the occasion why the goodness or malice of the internal act is increased, for example, that it be prolonged, or multiplied, etc. For the internal act is increased on account of the

arduousness of the good external work, or the delight of the evil one, or on account of the longer delay of time necessary in completing the external work.

Besides, often in the external work there is scandal or harm to the neighbor, or on the contrary good edification, from which the morality of the internal act is also increased. Thus commonly the Theologians. Compare Suarez, *On the Goodness of Human Acts*, disp. X, sect. 1.

Article II. On the Sources of Morality

The sources of morality are named those principles which give to human acts species, or a modification of species, in the genus of morals.

Three sources of morality are numbered, namely 1. the object of the act; 2. its circumstances; 3. the end of the agent. These three are altogether required for a good act; if even one is evil, the act will become evil. Hence the well-known axiom: Good from an integral cause, evil from any defect whatsoever.

§ I. On the Object

26. ○ The object is that about which the moral act is concerned, and in which the will of the agent is proximately and per se terminated.

The object is good, or evil, or indifferent, according as it agrees or does not agree with reason, law, or right order, or holds itself apart from law or right order. Likewise it can be intrinsically good or evil, that is, by reason of itself from the requirement of right order; or not intrinsically, but only by reason of a positive precept.

I say: From the object morally considered is taken the first and essential morality of a human act; for the morality which the object gives to an action is conceived before every other which may come either from the end or from the circumstances.

The morality which is taken from the object is called morality, or objective goodness or malice. - If the object is in itself indifferent, it will receive its morality from the end or from the circumstances.

Intrinsically evil objects, however, are of a threefold class, namely 1. Some are such absolutely, and independently of every circumstance, because of themselves they involve repugnance with right order absolutely necessary, as hatred of God, blasphemy, etc. - 2. Others are intrinsically evil, not precisely in themselves, but by reason of an adjunct or of some condition which depends on the dominative power of God or of man: such are the taking away of another's thing, injury to body or reputation, and similar things which sometimes become lawful. - 3. Finally, others are evil only by reason of danger which they ordinarily have joined to them, as the sight of a base object, the reading of a depraved book, etc. These, a reasonable cause being given and the danger being removed, can become lawful.

§ II. On Circumstances

27. ○ Circumstances are accidental determinations of an act, without which it could exist as to substance, and which nevertheless in some way touch upon its morality. Hence

circumstances are not the object of the act, because they are touched upon by the will only secondarily.

Seven classes of circumstances are numbered, expressed in this little verse:

Who, what, where, by what aids, why, how, when?

Namely: Who, or what sort is the agent, married, cleric, etc.? - what, or what is the accidental quality or quantity of the object? - where, or in what place, whether sacred or profane? etc. - by what aids, that is, what means, instruments, etc., did the agent use? - why, or from what end, namely extrinsic? - how, namely whether maliciously, or in good faith, whether in an intense or remiss manner, whether advertently or not? - when, that is, at what or how much time?

I say: A human act takes true morality from circumstances. The reason is that circumstances determine the act as moral, namely as having a relation of agreement or disagreement with reason and right order; indeed sometimes circumstances alone introduce agreement or disagreement of this kind into an act, as happens in acts indifferent from the object.

Hence 1. some circumstances are those which pertain to the morality of the act; - 2. others are those which contribute nothing to it, and therefore must be held wholly indifferent; - 3. others are those which leave the object in the same moral species, and others which change the species itself, or add a new species. Of the former, some aggravate the malice, but others lessen it, and do this gravely or lightly [1].

[1] If circumstances so lessen or aggravate sin that from mortal it becomes venial, or vice versa, then they are said to transfer the act into another theological species.

YOU WILL ASK: Whether a lightly evil circumstance always corrupts the whole good act?

I answer. No. For the substance of the good act can remain unharmed notwithstanding a circumstance of this kind; whence that act is infected only in part. Thus, for example, the agent does not lose the whole merit of a good work, nor its principal part, although he may have given consent to some incident temptation of vainglory. - Billuart, diss. 4, art. 4. - See what is to be said below concerning the end, no. 30.

§ III. On the End

28. ○ An end in general is that for the sake of which something is done.

It is twofold, namely the end of the work, that is, the end intrinsic to the work itself and toward which the work tends per se; and the end of the worker, that is, extrinsic to the work, and toward which the agent directs his intention at will, or which the agent has set before himself [1]. We must speak only about this latter end, since it alone is properly called the end.

[1] These two ends sometimes fall into the same thing, sometimes one is added to the other, sometimes, with the intrinsic end of the work set aside, one alone directs the act extrinsically.

Now that end is 1. intermediate or ultimate, according as it is referred to another end, or the will rests in it; - 2. positively ultimate, or negatively ultimate, according as it is intended or not intended with the exclusion of another end; - 3. primary or secondary, according as it is the totally motive

cause of the act, or only partially impulsive. Again the ultimate end can be explicitly or implicitly intended, according as the agent is moved expressly or only virtually by an end of this kind.

I say 1. A human act takes true morality from the end. The reason is that the end can express an order of conformity and deformity to right reason. Thus it is conformable to right reason not only to give alms, but also to give it unto the remission of sins; just as likewise it is repugnant to right reason not only to steal, but also to steal in order to make oneself drunk.

I say 2. He sins who acts for the sake of delight alone [2]. The reason is that he acts inordinately, perverting the order of things instituted by the author of nature. For according to the order instituted by the author of nature, delight is on account of operation, and not vice versa: namely, delight is like salt and a certain condiment, which serves to entice to actions of life necessary or useful. Therefore delight is only a means for carrying out actions more easily, better, and more constantly, but not the ultimate end of the action. For thus St. Thomas: The divine intellect, which is the institutor of nature, appended delights for the sake of operations. I-II, q. 4, art. 2.

[2] It is one thing to act for the sake of delight, another to act for the sake of delight alone. This latter positively excludes a further end of the work; but this exclusion of an end is inordinate, and indeed not only in desiring delight, but also in an act of any virtue whatever; because even an act of virtue, if it is exercised in such a way, or so stopped in itself, that the higher or ultimate end is positively excluded, by that very fact will already become vicious.

But that first thing involves no inordination of this kind. For first, delight, as St. Thomas says (*Against the Gentiles*, book 3, ch. 26, no. 6), is good and to be desired if it follows a good operation; and it is proper to the virtue of temperance to moderate the use of delightful things, and indeed to draw back from those things which are against reason, but not from those which are convenient according to reason (see St. Thomas, II-II, q. 141, art. 1, ad 1). But then the further end is not excluded, except perhaps negatively only. But a negative exclusion of the end does not vitiate the act; for it is not necessary for the honesty of an action to think about the further end, or even about the intrinsic end of the work. Therefore, that someone may honestly take delight from play, or food, or rest, it is in no way necessary that he think about the end, whether intrinsic or further, of play, or food, or rest; but it is sufficient that he apprehend the action as consonant with right reason, or also that he find nothing in it contrary to the order of reason; since, as St. Thomas has it (Supplement, q. 49, art. 4), from the same thing some act has that it is not evil in the genus of morals, and that it is good, because no act is indifferent.

From this the reason plainly comes forth why propositions VIII and IX concerning the work of marriage or the act of eating on account of pleasure alone were deservedly proscribed by Innocent XI. For they labor under an intrinsic vice on account of the predicate alone, which positively excludes any other ends, unto which actions of this kind are ordered. For otherwise, that someone is enticed and moved to the work by an appetite for delight, just as also to labor by hope of reward or wages, is consonant with the order of nature, as St. Thomas has it in the cited place. Compare the Salmanticenses (*On Marriage*, ch. 3, no. 33), Viva (*On Proposition VIII of Innocent XI*, no. 6), Duarte (*Exposition of Condemned Propositions*, no. 162), Roncaglia (*On Marriage*, q. II, ch. 1, q. 2, resp. 2), Pontius (*On Marriage*, book X, ch. 8, no. 6), Azor (part I, book 2, ch. 5, q. 4), etc.

It is confirmed from proposition 8 condemned by Innocent XI, which sounds thus: To eat and drink unto satiety on account of pleasure alone is not a sin, provided it does not harm health, because the natural appetite can lawfully enjoy its own acts. - Nevertheless this disorder is not grave per se, and therefore does not exceed venial sin; because ordinarily the ultimate end [3] is not excluded, not even implicitly, unless there is question of those of whom the Apostle says, Phil. 3. 19: Whose God is their belly.

[3] The Author understands the ultimate end of human life, not the intrinsic end of those works about which the discussion is held. Moreover, that ultimate end is excluded through any grave sin, which the Author deservedly supposes in those whose God, as the Apostle says, is the belly.

29. You Will Resolve. - 1. Every election of an evil means is evil, but not conversely is every election of a good means good. Thus no one is praised because he abstains from drink out of avarice; but he must be held guilty who steals money in order to give alms.

2. He who chooses an honest means for an honest end posits an act of twofold honesty [4], if each honesty is intended. Likewise he is guilty of twofold malice who chooses an evil means for an evil end, for instance if someone steals money in order to make himself drunk.

[4] ** St. Alphonsus (On Human Acts, no. XXXVIII), after Collet (*On Human Acts*, ch. 6, art. 2, sect. 2, conclusion 3), writes that this doctrine is common among theologians, with Vasquez alone excepted. But this exception of Vasquez is a mere hallucination of Collet, who here did not have accurately before his eyes the distinctions and conclusions of the schools. Namely, so that in the case there be a twofold goodness of the act, it is necessary that the means be loved not only because it is useful for the end, but also because it is good in itself. To this pertain those words of Becanus (*On Human Acts*, ch. 4, q. 3, no. 6): When the object of election, which is good per se, is not loved in any way on account of itself, but only on account of the end, then the goodness of the object does nothing to the matter. But when it is loved both on account of itself, insofar as it is good per se, and on account of the end, insofar as it is useful for obtaining that end, then the goodness of the object remains with the goodness of the end. For this reason the Author adds that phrase: If each honesty is intended. And to this Vasquez pertains (On I-II, disp. 51, ch. 3, no. 13; which place Collet alleges), where he says: When someone choosing a work of one virtue from the intention of the end of another virtue is then not allured by the goodness of the virtue of which that matter is, and chooses that work only as useful for the end, it is effected that that election has only the goodness of the end.

But to avoid Collet's hallucinations, even where a twofold honesty or goodness in reality comes to the act, the doctrine of the school must be inspected, which Suarez expresses thus (On I-II, treatise 3, disp. 6, sect. 2, no. 2): It can happen that an honest object is not indeed willed on account of its own honesty, yet its honesty is willed in itself and per se on account of another end.....; for one good can be useful for another not only by reason of its matter, but also by reason of its honesty; and then indeed the honesty of one object or act can be loved in itself, although it is not loved precisely on account of itself, but on account of another end. And soon the same Suarez says (ibid., no. 3): Concerning an act of this kind almost all also agree that it has essential and first goodness from the end, but not from the material object nor from its honesty. Thus St. Thomas can be taken (3 *Against the Gentiles*, ch. 138), where he signifies that abstinence done from vow has, besides the goodness of temperance, also the goodness of religion: indeed that it is more praiseworthy from the vow than from abstinence.

From these things someone could conclude with Collet that according to Suarez a twofold goodness is denied in an act of temperance. But theologians do not so speak, although they call one goodness essential, the other accidental. Thus also Vasquez (cited disp. 51, ch. 2): If however the means has from itself proper goodness... even if the election had proper goodness from the means, nevertheless it would take also the species of another goodness from the end, so that that goodness would be primary and substantial, insofar as it is election, but that which it would have from the means according to itself would be secondary to it and as it were accidental.

3. He who employs an evil means for a good end contracts only the malice of the means, for example, if someone lies to free his neighbor from danger. Likewise conversely, he who employs an honest means for an evil end contracts only the malice of the end.

4. He who employs an indifferent means for a good or evil end contracts only the goodness or malice of the end. Thus, for example, if you undertake a journey in order to show the way to a pilgrim, you have only the merit of the end; likewise if you sing in order to cause annoyance to another, you have only the guilt of the end. But in confession it is not necessary to declare the circumstance of means of this kind, as is clear.

30. Questions. - YOU WILL ASK 1. Whether any evil end corrupts the whole goodness of the act?

I answer 1. A gravely evil end always entirely infects the act, however good the object may be in itself. For that act can be good in no part, since the agent, by sinning mortally, totally recedes from God.

I answer 2. A lightly evil end also corrupts the whole act, if it is the total end, or at least the primary end, of the agent. For if it is total, it encompasses the whole object, and therefore infects the whole, because the agent, by an evil end, wills the good under the aspect of evil, and therefore, as it is willed by him, it is evil. St. Thomas, I-II, q. 19, art. 7. - This is also clear from the words of Christ, Matt. 6. 23: If thy eye is wicked, thy whole body will be dark. Hence the gifts of Cain, although good in themselves, displeased God as proceeding from an evil end.

But if a twofold end is had, and the evil one is primary, it must be resolved in the same way, because that act is still chosen so that it may be an instrument for evil, and therefore it is vitiated substantially.

I answer 3. But if a lightly evil end is merely secondary, more probably it does not corrupt the whole act, which will be partly good, partly evil. The reason is that that act retains its goodness from the object; but the evil end holds itself only concomitantly, and does not influence the very substance of the action. If it were otherwise, fewer good acts would be found. - Billuart, diss. 4, art. 4. - Gerdil, On Human Acts, and others commonly.

31. ○ YOU WILL ASK 2. Whether all actions, that they may be morally good, ought to be informed by the motive of charity?

I answer. No. For acts elicited from the motive of other virtues are good per se, as are acts of Faith, Hope, etc. This is also clear from the Council of Trent, session 14, ch. 4, where it is declared that attrition is a gift of God and disposes the penitent to justification. Likewise session 6, canon 31, where it is said: If anyone shall say that the justified man sins while he works well with a view to eternal recompense, let him be anathema.

YOU WILL ASK 3. Whether all our actions, that they may be honest, ought to be referred to God from a supernatural motive, or one apprehended through Faith?

I answer. No. For otherwise all the works of unbelievers would be sins, which doctrine has been condemned by the Church.

YOU WILL ASK 4. Whether all our actions ought to be referred to God, according to the words of the Apostle, 1 Cor. 10. 31: Do all things unto the glory of God?

I answer. Concerning the obligation, which is drawn from the cited text, of referring actions to God, the obscure and often entangled opinions of certain more recent authors being set aside, the common doctrine of the ancients is altogether to be preferred, which is contained in these headings.

And first indeed, the words of Paul, from the common opinion of the Doctors, pertain to the virtue of charity, and, no otherwise than the precept of charity, can be taken both in a negative and in an affirmative sense.

If they are taken in a negative sense, they signify: Do nothing against God [5]; and thus, according to the opinion of all, indeed from the very nature of the matter, they contain a precept, namely of not sinning. Nevertheless this precept does not give species to sin, because sins take their species not from a general virtue or law, but from special precepts, for example, not killing, not blaspheming.

[5] See St. Thomas, 2, Dist. 40, q. 1, art. 5, ad 7, and St. Bonaventure, 2, Dist. 41, art. 1, q. 3, ad 1.

But if the words of Paul are understood in an affirmative sense, the Doctors dissent somewhat among themselves, and they neither explain them in the same way nor attribute the same force to them.

For some, with St. Bonaventure, judged that through those words Paul insinuates that individual actions, or at least individual series of actions subordinated among themselves, be referred to God actually, or by an actual relation. Nevertheless at the same time they contended that Paul there had handed down no precept, but a mere counsel. - See St. Bonaventure, 2, dist. 41, art. 1, q. 3, ad 1 and ad 6.

But others, more commonly with St. Thomas, teach that a precept is in reality contained in the words of the Apostle. But lest someone be carried from this into absurdities [6], it is plainly necessary to retain the integral doctrine of St. Thomas on this matter.

[6] Notable was the fraud of the Jansenists, that they contended the words of Paul to be preceptive, alleging these things from St. Thomas (lecture 3 on Colossians, ch. 3): Some say that this is counsel; but this is not true; but they did not explain the Pauline sentence with St. Thomas, but with St. Bonaventure, where he says (2, Dist. 41, art. 1, q. 3, ad 1): The Apostle admonishes... that we refer any work of ours to God: and concerning any work dividedly we can do this. From this, however, they concluded that sin is committed as often as any work is not actually referred to God. And since to refer works to God pertains to charity, among other things they inferred this also, that unbelievers and sinners, as being those who do not have charity, sin in every work.

Moreover not a few among the more recent, although they abhor this condemned error, nevertheless while they themselves also mingle the disparate interpretations of St. Thomas and St. Bonaventure of the Pauline text into one thing, fall into another inconvenience. For on the one hand they call back the words of Paul with St. Thomas to a precept; but on the other hand they place the reason of this precept in that which St. Bonaventure required merely for the account of merit, namely that individual actions, or at least individual series of actions, be actually referred to God; and thus, while they establish that this actual relation of all works is obligatory, they bring the matter to this, that scarcely anyone can be found who, on account of this omitted relation of works to God, does not daily and everywhere stain himself with manifold guilt, as Gazzaniga in reality concluded (and indeed coherently) (*On Human Acts*, diss. 2, ch. 4, no. 87); and Collet adds (*On Human Acts*, ch. 6, art. 1, sect. 2) that there is not given invincible ignorance which perhaps excuses from this sin. Nor indeed do they sufficiently remedy this inconvenience by so restricting that obligation that it suffices daily, or several times in the day, as Collet says (in the cited place), or at least in the morning, to have referred works to God. For 1. this does not effect that individual actions or individual series of actions subordinated among themselves are actually referred to God according to the mind of St. Bonaventure, and thus that manifold guilt of omissions is absent; 2. since this actual relation is not distinguished from an act of perfect charity, they now infer an obligation hitherto unheard of in the schools, namely of eliciting an act of charity several times in the day or at least once in the morning daily. And from these things it is sufficiently clear that no reason for avoiding these inconveniences is at hand, unless either we deny with St. Bonaventure that a positive precept is contained in the words of Paul, or, if indeed we contend better with St. Thomas that a precept is uttered in them, we take also the explanation of the precept, as it is expounded in the text of the Author, from the same holy Doctor.

**And indeed it were to be wished that St. Alphonsus, who excellently wrote (Treatise on Human Acts, at the beginning): I think one must not depart from the sound doctrine of the Angelic Doctor where it can be had; for with him as guide in theological matters one walks with unoffending foot; it were to be wished, I say, that the holy Doctor in this question also had followed the Angelic Doctor rather than Collet, the continuator of Tournely. For, insisting on his footsteps, he writes (ibid., no. XLIV): Hence for practice we gather: It is necessary several times in the day, at least in the morning, generally to offer to God all one's acts, so that thus the precept of the Apostle may be fulfilled, at least with the virtual intention of doing all things unto the glory of God. The most manifest sense of these words is, namely, that to fulfill the precept of the Apostle it is necessary that several times in the day, at least in the morning, all actions be actually offered to God, so that thus all daily actions and words may thereafter be referred to the glory of God at least by virtual intention. Whence he adds: For the actual relation of all words or works into an honest good is not required, which would be an unbearable burden, and a thing entangled with six hundred scruples, but the virtual suffices, as we have said.

In the preceding edition of this Compendium, care was taken to soften this opinion of the holy Doctor in some way. But VV., both in St. A. (pages 114, 115) and in V. (pages 127-134), took this as an insult cast upon the holy Doctor. They object against it 1. that the Doctors who stand for the obligation of a daily relation of acts are in no way to be counted among those who demand an actual relation of all actions, and 2. that they in no way affirm that an act of charity must be elicited daily: all of which are beside the matter, because the question here is not what other Doctors have said; and besides they rest on a false supposition, as though the alleged Doctors (if you except Collet) defend the obligation of a daily relation. That would be to the point which VV. then added, namely that St. Alphonsus wished to signify not that to which we are held, but merely what is expedient and congruous, to have wished to signify. But this is very difficult, and too alien from likelihood. For 1. when he says: Hence for practice it is concluded, etc., he surely wishes to draw a consequence from those things which he had set forth, namely that the words of the Apostle contain a precept, not however a mere counsel. Therefore the consequence necessarily regards the thing commanded, not the thing of counsel; otherwise he would have said nothing at all about that which it most interests us to know and which the connection of the discourse demanded, namely to what we are held by force of that precept. 2. Granted, the word it is necessary is sometimes taken for that which is merely useful and congruous. Thus, for example, we say that for leading life in a Christian manner it is necessary that a suitable time be granted to pious meditation, examination of conscience, etc. But not so in the present matter. For here the discussion is expressly about fulfilling a precept, that is, about the obligation which the precept necessarily imposes, and which it is necessary to furnish in order that satisfaction be made to the precept. Therefore the word it is necessary here necessarily signifies the necessity which obligation imposes. Nor is it strange that this word, according to the diverse matter of the question, has a diverse sense. Thus if you say that it is necessary that Mass be heard daily, and the Holy Eucharist be received every eight days or at least every month, this will have been said very well if the discussion is about fostering piety, etc.; but badly if this is about fulfilling the precepts of the Church, which command both that Mass be heard on feast days and that the Holy Eucharist be received at paschal time.

Therefore we shall certainly say that the industrious zeal of VV. for protecting the doctrine of the holy Doctor is commendable. But perhaps zeal of this kind will not be most acceptable to the holy Doctor whenever it departs from the boundaries of truth.

Therefore St. Thomas, having made a distinction between actual relation, namely that by which a work is actually directed to God, and virtual relation, namely when the force of the first ordering or relation remains in the actions that follow, establishes:

1. That the actual relation, by which individual actions, even taken distributively, are actually ordered to God, is not of precept, but of counsel [7].

[7] Thus St. Thomas in the same text which the Jansenists fraudulently truncated (lecture 3 on Colossians, ch. 3): Some say that this is counsel; but this is not true. But it must be said that it is not necessary that all things be referred to God actually. And elsewhere (2, Dist. 40, q. 1, art. 5, ad 7): If (the sentence of Paul) is understood affirmatively... in such a way that actual ordering to God is actually joined to each of our actions, it can be understood in two ways, either distributively or collectively. If distributively, this is the sense: whatever action you do, it is better if you actually order it to God; and thus it is counsel. But if it is taken collectively, this is the sense: so do all your works that there be none of them which you do not actually order to God; and this is neither precept nor counsel, but the end of the precept, to which one arrives through the fulfillment of the precept: for thus the Saints in the fatherland refer their acts to God.

2. That the virtual relation of all works is of precept [8]. For this, however, two things are required and suffice: first indeed on the part of the work, that it be morally honest, or infected by no stain of mortal or venial sin. The other on the part of the agent, that he at some time has elicited, and has not retracted by grave fault, an act of charity by which man orders himself and all his things to God as ultimate end [9].

[8] Thus St. Thomas (I-II, q. 100, art. 10, ad 2): It is contained under the precept of charity that God be loved from the whole heart; to which it pertains that all things be referred to God; and therefore man cannot fulfill the precept of charity unless all things also are referred to God. And again (Disputed Questions On Virtues, q. 2, art. 11, ad 2): That all things be

referred to God virtually pertains to the perfection of charity, to which all are held. And ibid., ad 3: To refer all things virtually to God falls under the precept of charity, since this is nothing else than to have God as ultimate end.

[9] Thus St. Thomas (2, Dist. 40, q. 1, art. 5, ad 6): Nor yet is it necessary that an actual intention ordering to the ultimate end be always joined to any action which is directed to some proximate end; but it suffices that at some time all those ends be actually referred to the ultimate end; as happens when someone thinks of directing himself wholly to the love of God: for then whatever he orders to himself will be ordered to God.

3. As to the time of eliciting this act of charity, by which man orders himself and all his things to God, nothing is specially commanded beyond that which is commonly accustomed to be handed down in the schools concerning the precept of eliciting an act of charity at some time [10], where the precept of charity is treated.

[10] St. Thomas (in the cited place): And if it is asked when it is necessary to refer an act to the ultimate end, this is nothing else than to ask when it is necessary for the habit of charity to go forth into act: because whenever the habit of charity goes forth into act, there is made an ordering of the whole man to the ultimate end, and consequently of all those things which are ordered to him as goods to himself.

Moreover, this doctrine will borrow light from the following questions, which, these principles of St. Thomas having been set down beforehand, are easily solved.

32. ∘ YOU WILL ASK 5. What relation of the work to God is required and suffices that it be morally honest [11]?

[11] This question is necessary not only because of the Jansenists, who contend that the defect of relation to God from charity effects that all works of unbelievers and sinners are so many sins, but also because of certain opinions of Catholics who, incautiously having borrowed certain principles from Jansenian books, then, to avoid their erroneous consequences, came into certain absurd opinions. Thus, for example, Collet (*On Human Acts*, ch. 6, art. 1, sect. 2), lest from that doctrine which above (in the note to the preceding number) we said St. Alphonsus borrowed less cautiously from him, he conclude that unbelievers and sinners sin in every work, asserted by a twofold absurdity that those who do not have charity are not held by this precept of Paul, or certainly that satisfaction is made to this precept although works are referred to God not from charity, but from a certain reverence toward God. Others no less absurdly drew forth I know not what initial charity, by which works are referred to God; and they thought that the Jansenian error was sufficiently guarded against by affirming that from the defect of a relation of this kind only deliberate acts are infected by sin: as though indeed either the Jansenists, or those who disputed against them, had a question about indeliberate acts!

I answer 1. It ought to have aptitude so that it can be referred to God, namely, to contain no inordination of mortal or venial fault by which it is impeded from being referable to God [12].

[12] St. Thomas (lecture 7 on 1 Cor., ch. 10, v. 31): This relation unto the glory of God is understood either in act, or in aptitude of referring, which is not only in good things, but also in indifferent things (namely, from the object).

I answer 2. It is not necessary that the work actually be directed to God, because the obligation of actually referring works to God is not distinguished from the precept of charity. But this, as being affirmative, does not oblige for always; and thus we are held actually to refer works to God only then when, as we said above, we are held by precept to an act of charity [13].

[13] Thus St. Thomas (2, Dist. 41, q. 1, art. 2, ad 4): It must be said that we are not obliged to this, that any act actually be directed to that end into which faith alone can direct; because affirmative precepts do not oblige for always, although they always oblige. And therefore it is not necessary that an act of unbelievers which is not ordered to that end always be a sin; but only for that time at which they are held to refer their act to the ultimate end: namely, when they will be held to elicit an act of charity; concerning which one must altogether see what the same holy Doctor has, I-II, q. 89, art. 6. To this pertain those things which St. Thomas has to the same point, lecture 3 on Romans, ch. XIV: In an unbelieving man there is the

good of nature together with unbelief. And therefore when some unbeliever does some good from the dictate of reason, not referring it to evil, he does not sin.

YOU WILL ASK 6. What relation of the work to God is required and suffices that the work be meritorious?

I answer with St. Thomas (On Charity, single question, art. 11, ad 2), that two things are required: 1. that man has ordered himself to God by an act of charity; 2. that the work be morally honest. Thus he: When someone orders himself to God as to an end, in all the things which he does on account of himself there remains the intention of the ultimate end, which is God: whence in all things he can merit, if he has charity. And elsewhere (*On Evil*, q. 2, art. 5, objection X): It is clear that he who has charity has ordered himself and all his things to God, to whom he adheres as to the ultimate end. Therefore whatever he orders either to himself or to whatever else of his own, he acts meritoriously, even if he does not actually think about God, unless he is impeded by some inordination of the act which is not referable to God: but this cannot be unless it is at least a venial sin. Hence, according to St. Thomas, in him who is in grace, no act is indifferent even as to the notion of merit: for either it is evil at least venially, and thus it is demeritorious; or it is morally good, and thus it will be meritorious. - St. Thomas, ibid. [14], and 2, dist. 40, q. 1, art. 5, o.

[14] Thus namely in the same place St. Thomas concludes: Therefore every act of one having charity is either meritorious or is sin, and none indifferent.

YOU WILL ASK 7. Whether for merit it is necessary to renew the intention more often, or actually to refer acts to the glory of God, for example, on individual days?

I answer. No. For it suffices that at some time all things be actually referred to the ultimate end, as happens when someone directs and orders himself wholly to God through an act of charity: for then whatever he orders to himself will be ordered to God, and the force of the first ordering remains in all following actions, just as also the force of the ultimate end remains in all things ordered to it. Thus St. Thomas, 2, dist. 40, q. 1, art. 5, ad 6 and 7. - Therefore so long as someone has not fallen from the state of grace, any actions of his, provided they are not sins [15], are meritorious, although he in no way renews the intention of directing works to God. Nevertheless it is an excellent counsel to renew this intention more often, both because these are so many acts of charity, and because in this way fervor of spirit is wonderfully stirred up and fostered.

[15] Therefore St. Thomas (on ch. 3 of Isaiah, at the end), speaking of dancing games, has these things: Play according to itself is not evil; otherwise there would not be virtue in plays, which is called Eutrapelia..., but according as it is ordered to a diverse end and clothed with diverse circumstances it can be an act of virtue or of vice. For because it is impossible always to act in the active and contemplative life, therefore it is necessary sometimes to interpose joys amid cares, lest the soul be broken by too much severity, and so that man may devote himself more promptly to the works of the virtues. And if play is done with such an end, with other circumstances, it will be an act of virtue and can be meritorious, if it is informed by grace (namely, if the one playing is in the state of grace). But these circumstances seem to have to be observed in dancing play, that the person not be unbecoming, such as a cleric or religious: that it be at a time of joy, as on account of liberation, or at weddings, and things of this kind: that it be done with honest persons and with honest song, and that the gestures not be too wanton (namely, too free), and if there are any things of this kind. But if it is done to provoke wantonness, and according to other circumstances, it is clear that the act will be vicious.

And (ibid.) on the adornment of women: It must be said that adornment must be measured according to the mode and measure of the person, and the intention. For if women wear ornaments becoming according to their state and dignity, and hold themselves moderately in their deeds according to the custom of the country, it will be an act of the virtue of modesty, which places a mode in walking, standing, habit, and all exterior motions, and can be meritorious if it is with grace.

Likewise if she does it so that she may decently please her husband, whom she has or ought to receive, and so that he may be drawn back from other women. But if they have ornaments more precious than becomes them, it will be arrogance; or deformed by the vice of luxury, if they do it to provoke desire of themselves.

And again (2, Dist. 40, q. 1, art. 5): Eating and drinking with the mode of temperance preserved, and playing for recreation with the mode of eutrapelia preserved, which holds the mean in play..., will be meritorious in him who has charity.

YOU WILL ASK 8. Whether, that actions may be meritorious, it is necessary to act from a supernatural motive, or at least to think about God?

I answer 1. These things indeed are necessary for acquiring grace or justification. For no one, as St. Thomas says (on Hebrews, ch. XI, lecture 2), can please God unless he approaches Him. But no one approaches God except through faith.

I answer 2. Just as it is not necessary that he who goes along a way think about the end at every step, so, for this, that the end of some action be God or charity, it is not necessary that, in doing that action, someone think about God and charity [16], but it suffices that previously, through an act of charity, all actions at some time have been ordered to the end which is God. - See St. Thomas, I-II, q. 1, art. 6, ad 3; and 2, dist. 38, q. 1, art. 1, ad 4.

[16] St. Thomas (*On Evil*, q. 2, art. 5, objection 10): For some act to be meritorious in one having charity, it is not required that it be actually referred to God, but it suffices that it be actually referred to some convenient end.

And 2, Dist. 38, q. 1, art. 1, ad 4: For the end of some action to be God or charity, it is not necessary that in doing that action someone think about God or charity...; but it is necessary that previously there has been thought about the end, which is charity or God.

And *On Evil*, q. 9, art. 2: It sometimes happens that man does not actually order some act to God, while nevertheless that act of itself does not contain any inordination by reason of which it is not referable to God; and yet because the mind of man is habitually related to God as to an end (namely, it is in the state of grace), that act not only is not a sin, but also is a meritorious act.

Compare Cajetan (in commentary on I-II, q. 100, art. 10), Valentia (on I-II, disp. 8, q. 6, point 3), Becanus (*On Grace*, ch. 5, q. 1, no. 13), Montesinos (on I-II, q. 1, art. 4, question 1, no. 13), and Cardinal Aguirre (*Theology of St. Anselm*, disp. 130, no. 147), and also St. Francis de Sales (*Treatise on the Love of God*, part 2, book 6, ch. 8, alias book 12, ch. 8), from whom you will learn that these doctrines existed as common in Catholic schools.

Appendix. On the Merit of Human Acts

33. ◦ A meritorious act is a good work, posited with grace, and worthy of a reward or retribution.

Merit is distinguished as twofold: 1. merit de condigno, to which reward is due from justice, that is, from the promise of God; 2. merit de congruo, to which reward is not due from justice, but from a certain becomingness and liberality of God.

I say 1. A just man operating through grace can truly and properly merit de condigno. - It is clear from Matt. 5. 12: Your reward is abundant in heaven; and 2 Tim. 4. 8: There is laid up for me a crown of justice, which the Lord, the just judge, will render to me on that day. It is also clear from Trent, session 6, ch. 15, where eternal life is declared to be a reward to be rendered, from the promise of God, to the merits of those working well.

I say 2. Man, even a sinner and unbeliever, can by acts posited with grace merit de congruo. - It is clear from various places of Sacred Scripture in which are related examples of sinners and gentiles to

whom God granted abundant graces in consideration of their good works. Thus in Acts of the Apostles 10 Cornelius is said to have obtained conversion to the true Faith by his alms and prayers [1].

[1] The example of Cornelius perhaps is less to the point. For he must not be held as an unbeliever, who in the sacred letters (Acts 10. 2) is called religious and fearing God, nor as a sinner, who (ibid., v. 22) is called just and fearing God. But he can be considered justified through charity. For before the Gospel was promulgated to him, faith in Christ was not necessary for him in order to have charity.

YOU WILL ASK 2. What can man merit de condigno?

Hence good works done from grace are of a threefold genus, namely 1. Living works, or good works done in the state of sanctifying grace. - 2. Mortified works, or good works which indeed were performed in the state of grace, but lost all merit through subsequent mortal sin, yet with sanctifying grace recovered, they revive. - 3. Dead works, which are done in the state of mortal sin. But these, although they do not have the reward of eternal life, can nevertheless be profitable for merit de congruo.

34. Questions. - YOU WILL ASK 1. What is required for merit de condigno?

I answer. It is required 1. that the act be free; for otherwise it would not be a human act; 2. that it be honest; otherwise it would not be worthy of reward; 3. that it be posited from grace; otherwise it would not have proportion to supernatural life and reward; 4. that the agent be in the state of grace, because a sinner is not a son or friend of God, to whom the promises are due.

I answer 1. He can merit an increase of sanctifying grace, and eternal glory, which follows it. - It is clear from the Council of Trent, session 6, ch. 16.

I answer 2. A just man cannot de condigno merit final perseverance, nor efficacious graces, because these are gratuitous gifts which God has not promised.

YOU WILL ASK 3. What can man merit de congruo?

I answer 1. A sinner, through good works, for example, fasting, almsgiving, prayers, can merit de congruo the help of grace, so that he may avoid sin and come to justification.

I answer 2. A just man can merit de congruo 1. for himself efficacious graces and final perseverance; 2. for others first grace and helps of further grace.

YOU WILL ASK 4. Whether a work, that it be meritorious de condigno, ought to be of supererogation, or not commanded?

I answer. No. For it is clear from Trent, session 6, canon 26, that all works which are done in God merit eternal life; but works which are of precept are themselves also done in God; therefore by them also man merits eternal life.

35. ∘ YOU WILL ASK 5. Whether for merit de condigno an act elicited from charity is required?

I answer. Although very grave authors, as Bellarmine says (*On Justification*, book 5, ch. 15), and among these Vasquez (on I-II, disp. 217, ch. 4, no. 38), judged that all good works of a justified man from grace are meritorious of eternal life, even with no preceding relation of the work to God from charity, for example, the good works of a man justified by force of the sacrament before he elicits an act of

charity; nevertheless the more common and more probable opinion further requires that works be referred to God actually or virtually from charity. And indeed we have already seen above what suffices for that virtual relation of works to God, from the common opinion of the Doctors with St. Thomas; they require this alone, namely, that when in its time the precept of charity urges, man has at some time ordered himself and all his things to God through an act of this virtue [2], although afterward while acting he thinks neither of God nor of charity. Yet St. Bonaventure (2 Dist. 41, art. 1, q. 3, in the body and ad 2) seems to demand something more, and to require for merit that this ordering to God be made for each work, or at least for each series of works; and if it is lacking, God neither rewards the work nor imputes it as a fault. Hence he says (ibid., ad 6): *If a work of another kind were begun, the intention would have to be renewed, in order that the work might be meritorious.* Nevertheless, since (ibid.) he judges that for the merit of regular observance in a Religious the act of charity suffices by which he vowed from the beginning to carry the burden of Religion; indeed, since for merit (ibid.) he holds it enough if a just man, thinking nothing of God, only considers that the work, for example obeying, is good, he scarcely differs in reality from St. Thomas; indeed Vasquez (disp. cit., ch. 2, n. 9) does not hesitate to draw St. Bonaventure over into his own opinion, or at least into the opinion of St. Thomas.

[2] If you say: If St. Thomas demands this alone, why elsewhere for merit does he require that individual acts be formed, ordered, commanded by charity? For thus he says (*On Truth*, q. 14, art. 5, ad 13): In one having charity there cannot be any act of virtue unless it is formed by charity. For either it will be ordered to the due end, and this cannot be except through charity in one having charity; or it is not ordered to the due end, and thus it will not be an act of virtue.

I answer. These words mean nothing else than that an act of any virtue be ordered to God, or to that highest good which is the object of charity. Whence St. Thomas (3, Dist. 27, q. 1, art. 4, q. 3): That charity is the mover of all the other virtues is clear from this, that the good itself which is the object of charity under the notion of end is the end of the virtues. And then he adds:

And according to this charity is said to command their acts.

For the same reason, charity is called by St. Thomas the form of the virtues (*On Virtues*, q. 2, art. 3): The acts of all the other virtues are ordered to the proper end of charity, which is the highest good... And to this extent charity is called the form of all the virtues, insofar namely as all the acts of all the virtues are ordered to the loved highest good.

For the same reason, charity, according to the holy Doctor, is said to command the virtues (2, Dist. 40, q. 1, art. 5): Since charity commands all the virtues... it is necessary that whatever is ordered to the end of some virtue be ordered to the end of charity (namely, to the object of charity, which is the highest good); and since every good act is ordered to the end of some virtue, it will remain ordered to the end of charity, and thus it will be meritorious. And so eating and drinking with the mode of temperance preserved, and playing for recreation with the mode of eutrapelia preserved..., will be meritorious in him who has charity.

Nor yet is it necessary that while someone acts, he think about the ends of the virtues as to be ordered to the end of charity. Thus St. Thomas (2, Dist. 40, q. 1, art. 5, ad 3): Not only an act of charity is meritorious, but also an act of the other virtues insofar as they are informed by grace; although they cannot be meritorious except insofar as they are reduced to the end of charity. But it is not necessary that acts always be reduced to that end (of charity); but it suffices for the efficacy of meriting that they be reduced to the ends of the other virtues; for he who intends to preserve chastity, even if he thinks nothing about charity, clearly merits, if he has grace. But every act tending to some good, unless it tends to it inordinately, has for its end the good of some virtue; because the virtues sufficiently perfect concerning all things which can be good for men.

End of the Treatise on Human Acts.

Treatise On Conscience

36. ◦ DEFINITION. Conscience is the practical dictate of reason, or a practical judgment by which we judge that something can or ought to be done, because it is good or commanded, or that it must be omitted, because it is evil [1]. - Hence it differs from synderesis, which dictates only general principles.

[1] The necessity of some conscience, that is, of a judgment about the honesty or dishonesty of an action, for moral good or evil is manifest. For an act cannot be imputed to a man of which he is not master. But man is master of his own acts through free will, by which he determines himself. But there is not nor can there be any will of that honesty or dishonesty which the agent does not know, since the will is not borne into the unknown. Therefore no honesty or dishonesty (understand formal, not merely material), or no moral good or evil, can be present in acts unless and insofar as some judgment of reason concerning their honesty or dishonesty precedes them. And thus indeed according to the first and best-known elements of philosophy and moral theology, indeed also of the sense common to the human race. Although these things are most manifest, nevertheless there was reserved to Italy in our age this most unhappy distinction, that, dressed in a philosophical mantle and as though restoring collapsed moral science, a doctrine should range through it with impunity, by force of which moral acts without any conscience must be admitted, and indeed acts which are to be judged not only morally good or evil, but also meritorious or demeritorious, and yet were elicited without any otherwise preceding judgment concerning their honesty or dishonesty! In what way these things cohere with Catholic dogma, others certainly may see; as to the philosophizing, let this for the present be sufficient for us to oppose to it: How empty it is in things!

Division. Conscience is distinguished:

1. Right, or erroneous, according as it dictates the true or the false [2].

[2] Some wish to oppose true rather than right to erroneous; because they contend that right conscience is present also in those who act from invincibly erroneous conscience. The matter, as is clear, is about a manner of speaking.

2. Certain, or doubtful, according as the mind firmly judges that something is good or evil, or, on the contrary, suspended, hesitates concerning the honesty of an action.

3. Scrupulous, or lax, according as either from an empty motive it apprehends sin where there is none, or on the contrary, for a slighter cause, presumes sin to be absent, or holds as light what is grave.

4. Probable, or improbable, according as from a grave or weak motive the mind is inclined to opine [3]. - Of each separately [4].

[3] Common usage has it that probability or improbability be said of opinion rather than of conscience.

[4] A distinction must not be omitted which recurs everywhere among the Authors, namely, that conscience is called either antecedent or consequent, according as judgment concerning the honesty of the act either precedes the act itself or follows it. On this matter the Christian people must certainly be taught that the formal goodness of acts

Beautifully St. Thomas (I, q. 79, art. 13) thus describes the offices of both antecedent and consequent conscience: Conscience is said to testify, to bind or incite, or also to accuse, or also to bite back or reprove. And all these things follow upon the application of some cognition or knowledge of ours to those things which we do. This application indeed happens in three ways: in one way according as we recognize that we have done something or have not done it...; and according to

this conscience is said to testify (here you have consequent conscience, although not moral). In another way it is applied according as through our conscience we judge that something must be done; and according to this conscience is said to bind or incite (this pertains to antecedent conscience). In a third way it is applied according as through conscience we judge that something which has been done was well done or not well done; and according to this conscience is said to excuse or accuse, or to bite back (which things pertain to consequent conscience).

or malice is not taken from consequent conscience, but from antecedent. For the uneducated are often deceived, who, while they either read books or hear sermons, judge that they have sinned in certain things, when during the act they had never thought about the malice of those acts, or certainly about some gravity of fault, nor had suspected it.

Chapter I. On Right and Erroneous Conscience

37. ○ DEFINITION. Right conscience is that which represents the object as it is in itself; otherwise it must be called erroneous; and indeed it is called invincibly or vincibly erroneous according as the ignorance or error is inculpable or culpable.

Principles. - I. A right conscience commanding must always be followed, because conscience is the proximate rule of the will, derived from the first and highest rule of all human actions. - St. Lig., no. 3.

II. An invincibly erroneous conscience commanding must likewise be followed in every case; because it is altogether to be equated subjectively with right conscience, and because, according to the Apostle, Everything which is not from faith (or according to conscience) is sin. - St. Lig., no. 5.

III. An invincibly erroneous conscience permitting exempts from every sin, because there can be no sin where no malice is apprehended. - St. Lig., ibid.

IV. It is not licit to follow a vincibly erroneous conscience permitting or commanding, because, since by hypothesis the error is vincible, whoever acts with such a conscience errs voluntarily. Nor is it licit to act against it when commanding, because one so acting does that which he judges to be prohibited, and therefore sins. Therefore before action that conscience must be laid aside through inquiry into the truth [1]. - St. Lig., no. 4.

[1] These things hold concerning him who here and now in some way adverts to or suspects the necessity of inquiring before he acts. But it can also happen, as Croix warns (book 1, no. 42), that an error indeed was once culpable, which nevertheless at present someone no longer adverts to, for example, if a confessor once did not sufficiently cultivate theology, or from negligence interrupted its study for too long. And concerning this it is most truly said with St. Thomas (*On Truth*, q. 17, art. 8, objection 8), that he is never excused from sin, whether he acts according to conscience or against it. And the reason is clear, because that old sin is always present, namely culpable ignorance of those things which one is held to know. Nor is this guilt incurred while someone is now about to act; but it is the fault of diligence once omitted, and independent of the present action; therefore its gravity must be taken not from the action now to be posited, but from the common principles concerning sins of ignorance. And from here the true reason also is clear why in the case he who acts against conscience is more guilty than he who acts according to it. For the latter has only the aforesaid guilt of ignorance. But the former, besides this, adds another present guilt of an action posited against conscience. But if someone has retracted the fault of ignorance by suitable penance and by adding diligence, as is fitting, it is clear that he is to be equated with one who labors under invincible ignorance.

38. You Will Resolve. - 1. He who thinks that it is a fast when it is not, on account of erroneous conscience sins against the precept if he does not fast.

2. If someone lies in order to free his neighbor from danger of life, inculpably thinking that from charity he is held to this, he does a good act; and if he does not lie, he sins against charity.

3. He who with some doubt thinks that he must lie or steal in order to assist his neighbor cannot follow such a conscience nor act against it; but he ought, if he can, to inquire, lay it aside, and afterward act; for such an error is vincible.

YOU WILL ASK. By what signs can the Confessor know that error is vincible in the penitent?

I answer. Let him ask 1. whether he adverted to some indecency in this act? 2. whether his conscience dictated to him that at least the Confessor, or another prudent man, should be asked? 3. whether he neglected the occasion of asking from shame [2] or fear? If the penitent responds affirmatively to one or the other of these, he can be considered to be in culpable error; otherwise, if he denies all. - See Cases, no. 37.

[2] Nevertheless certain persons, as experience teaches, are sometimes prevented by shame from asking even about those things which have no guilt.

Chapter II. On Certain and Doubtful Conscience

Article I. On Certain Conscience

39. ○ DEFINITION. Certain conscience is that by which someone firmly and without fear of erring judges that something is good or evil.

DIVISION. Certitude is usually distinguished as threefold:

1. Metaphysical, which belongs to those propositions in which the attribute belongs essentially to the subject, and therefore is immutable.

2. Physical, which is founded on the constant order by which the world is ruled; this stands firm as long as physical laws are constant, and are considered to have been constant.

3. Moral, which rests upon the laws by which men are ruled in their acts.

Again moral certitude is subdivided into perfect and imperfect. The former is that which is so founded on moral laws that it is clearly perceived that the proposition cannot be false. This is mediately reduced to metaphysical certitude. The latter is that which belongs to those propositions in which it is not absolutely repugnant for error to be present, although it could happen only with the greatest difficulty. This admits various degrees.

Likewise some certitude is direct, which is obtained through certain arguments intrinsic to the matter; another is indirect, which is had from some extrinsic principle, for example, the authority of the Church.

Principles. - I. Certain conscience alone is the right rule of morals. The reason is 1. because everything which is not from faith is sin. Rom. 14. 23; 2. because one acting with a conscience not certain violates the obligation of inquiring into the truth, and therefore sins formally [1].

[1] Namely, precepts oblige us not only not knowingly to violate them, but also not to transgress them through negligence in inquiring. And from this is the guilt of him who acts while doubting about the honesty of the act. Concerning this matter Suarez (*On Censures*, disp. 40, sect. 5, no. 12): As long as man does not do what is in him to lay aside doubt, whatever of danger there is in such an operation is imputed to him; for the ignorance which intervenes there is vincible, and therefore cannot excuse from fault. Hence not even he is immune from this fault who, while acting rashly, embraces that part which agrees with the right norm of acting.

II. Morally certain conscience, even imperfect, suffices. The reason is 1. because one acting with such a conscience truly acts from faith; - 2. because absolute certitude often cannot be had; - 3. because it is clear from the common opinion of the Doctors and from universal practice [2].

[2] Whatever is lacking in a plainly firm certitude in the case is always supplied through reflex principles, as will soon be said where probable opinion is treated. For otherwise certitude concerning the honesty of the action must be firm, as below it will occur to note concerning the theories of the probabiliorists.

Article II. On Doubtful Conscience

40. ○ DEFINITION. Doubtful conscience is that which remains suspended concerning the honesty of an action. For doubt is the suspension of assent between opposites [1].

[1] Carefully observe the distinction between doubt, suspicion, and opinion; which St. Thomas explains briefly thus (II-II, q. 2, art. 1): Certain acts of the intellect have unformed thought without firm assent, whether they incline to neither part, as happens to one doubting; or incline more to one part, but are tempted by some slight sign, as happens to one suspecting; or adhere to one part, yet with fear of the other, which happens to one opining.

DIVISION. A manifold doubt is distinguished, namely:

1. Positive, or negative, according as grave reasons for doubting are present, or only slight ones, or even none: or doubt is positive when the mind suspends assent on account of the apparent equality of reasons; but negative when the mind suspends assent from defect of reasons [2].

[2] Concerning these things St. Thomas says (*On Truth*, q. 14, art. 1): Our intellect... sometimes is not inclined more to one than to another, either because of the defect of things moving it, as in those problems concerning which we do not have reasons, or because of the apparent equality of those things which move to each part: and this is the disposition of one doubting, who fluctuates between the two parts of contradiction. But sometimes the intellect is inclined more to one than to the other; nevertheless that which inclines it does not move the intellect sufficiently for this, that it determine it totally to one part; whence it indeed accepts one part, yet always doubts about the opposite: and this is the disposition of one opining. These are the words of the holy Doctor; from them gather that certain more recent authors do not accurately confuse positive doubt with the state of one opining for either part. For doubt excludes assent; but opinion has some assent.

2. Of law, or of fact, according as it is concerned with the existence of a law, or its obligation, or with some particular fact.

3. Speculative, or practical, according as it is concerned with abstract cognition of truth and in common, or with truth which here and now is ordered to a work.

But speculative doubt can also be divided into speculative simply, when one doubts about a thing not pertaining to morals; and into speculative-practical, when one doubts about a general principle of morals, or about the goodness of an action taken in itself, and nevertheless the inquiry is not ordered to the work actually to be carried out; but if it is concerned with an action to be posited here and now, it is called by some practical-practical doubt.

41. Principles. - I. It is never licit to operate with a practically doubtful conscience, but the safer part is to be followed. The reason is clear from what has just been said concerning certain conscience, principle 1. - But sometimes it is licit to operate with a speculatively doubtful conscience, namely when, the practical doubt having been laid aside from a practically certain dictate, or from certain reflex principles, conscience is formed, as we shall soon say in treating probabilism.

II. Merely negative doubt must be held as nothing; because it is founded on a reason utterly none, or very slight: therefore even if it remains, nevertheless the obligation urges, or liberty stands [3], according as it existed before; nor can it effect that the moral certitude of the opposite be overturned. But if a prudent suspicion of error arises for you, you are held to inquire. Therefore when hereafter cases of negative doubt occur, once this rule has been established, you will easily dissolve them, and for that reason we shall attend only to positive doubt. - St. Lig., no. 24.

[3] Negative doubt is suspension of assent on account of defect of reasons for each part of the contradiction. Therefore, since here on the other side a certain law or liberty is supposed, doubt is taken in a certain broad sense for an empty suspicion.

42. You Will Resolve. - 1. As often as someone doubts whether the act which he is here and now about to posit is licit or not, he is held to apply diligence suitable for investigating the truth, according to the gravity of the matter and the condition of the person and place; let him consult upright and skilled men, investigate their practice, and weigh the reasons with the sole study of truth: for otherwise he exposes himself to the danger of violating the law from negligence in inquiry, and by that very fact sins.

2. If he cannot inquire, nor by himself is able to weigh the reasons of each part, nor in another way, for example through reflex principles, free himself from doubt, let him embrace the safer part; because otherwise he would act in practical-practical doubt, that is, with a truly doubtful conscience, and without any certain judgment concerning the honesty of the action.

3. He who, with diligent and sufficient inquiry having been performed, still doubts whether there is present a law commanding or prohibiting, is not held to obey it; because he can form conscience for himself from a reflex principle, namely, that a law which cannot be found cannot oblige, as will be said below, where probabilism is treated.

4. They act ineptly who, after an act already committed or omitted, inquire among the Doctors or from a Confessor whether they have sinned; for past sin does not depend on the following judgment of a Doctor or Confessor, but on the practical dictate which someone had in acting. - Nevertheless he acts prudently who asks so that he may know the truth, namely, in what way in the future in a similar case he can or ought to conduct himself.

43. Questions. - YOU WILL ASK 1. Whether one operating with practical doubt about the gravity of sin sins gravely?

I answer. Yes. For he who acts with a practically doubtful conscience, according to common principles sins with that species of sin, both moral and theological, about which practically, while he acts, he doubts. The reason is that he violates an obligation surely grave of taking precautions lest through voluntary ignorance or inadvertence he fall into transgressions of the law which can be grave.

YOU WILL ASK 2. Whether he sins gravely who knows that his action is evil, but does not advert to its gravity?

I answer. Some judge that this man sins gravely or lightly according as the object of sin is in itself grave or light; but others always gravely [4]; finally others only venially, provided that he does not apprehend grave malice, at least in confusion; which nevertheless cannot be supposed where the matter treated is notably grave [5]. - St. Lig., no. 23.

[4] These namely suppose this man so disposed in mind that he wishes to act even if the fault is grave.

[5] Nevertheless these opinions can scarcely be called opposed, because they treat not of the same hypothesis, but of a diverse one; wherefore they can easily be reconciled.

YOU WILL ASK 3. What must be done in the case of a perplexed conscience, when namely someone, placed between two precepts, remains doubtful which of the two he ought to follow?

I answer. Hold the following rules in perplexity:

1. Consult, if you can, a Confessor or other prudent men; because in that case ignorance is vincible.

2. If you cannot consult, and there is a necessity of acting, because the action cannot be suspended without grave harm, choose what seems to you the lesser evil, yet not so that you do evil, but so that you recede more from evil. But know that the law of an inferior order ought to yield to the law of a superior order.

3. If each precept seems equally grave to you, choose anything, and you will not sin; for there is not given a necessity of sinning. - St. Lig., no. 10. - See Cases, no. 43.

Chapter III. On Scrupulous and Lax Conscience

Article I. On Scrupulous Conscience

Scrupulous conscience is said to be that which from a slight, indeed even empty, cause doubts concerning the honesty of some action, and therefore fears sin where there is no sin. For a scruple is an empty apprehension, or a slight suspicion, by which someone falsely judges something to be sin. But the word scruple is said to be taken from little stones, or scruples, which, entering the shoes of travelers, create trouble for the feet.

We shall speak briefly of the causes, signs, harms, and remedies of scruples, and also of the rules for scrupulous penitents and their Confessors.

I. Causes of Scruples

44. ○ The principal causes of scruples are the following:

1. Divine permission. Not indeed as though God sends false apprehensions, but because, permitting these things, He withdraws His light, namely so that man, having fallen into anxieties, may return to the heart, betake himself to better fruit, learn to have recourse to God, and by patiently sustaining anguish make satisfaction for sins, increase merit, etc.

2. Operation of the devil. For the devil skillfully knows how to fabricate scruples, by stirring the blood, altering the humors, placing various images before the imagination, composing diverse species, so that he may form a severe and false image of sin, trouble the mind, draw it back from spiritual progress, and finally cast it into dejection of spirit, or even into despair.

3. A melancholic and phlegmatic temperament. For melancholics are for the most part suspicious and tenacious of the things which they apprehend, and therefore prone to every suspicion of evil; and since they are of a cold temperament, they are more easily liable to fear and pusillanimity, and are frightened at the first appearance of evil.

4. Weakness of the head, or a defect of natural judgment in persons inclined to fear; likewise pusillanimity and dejection of spirit, on account of which someone does not know how to contemn fears.

5. Excessive solicitude for avoiding everything which has the appearance of evil; for while the scrupulous person continually cries out to himself: beware of sin... pay attention to yourself..., he frightens and disturbs himself without cause.

6. Association with the scrupulous; to which also pertains direction received from a scrupulous Confessor, the reading of cases of conscience and of stricter ascetical authors done by someone incautious and less understanding; likewise a fastidious flight from any human conversation.

II. Signs of Scruples, or of a Conscience Liable to Scruples

45. ○ It is of very great importance that directors of souls discern the truly scrupulous from the false. For often those are thought scrupulous who are not, and vice versa; and from this immense errors in direction flow, with no small danger of spiritual harm: therefore much circumspection is needed here. The principal signs of scruples are:

1. Pertinacity of judgment, by which someone refuses to obey the counsels of the Confessor or of wise men; and while he consults various persons, he acquiesces in the judgment of none; indeed the more he hears, the more he is entangled.

2. Frequent change of judgment from slight motives, whence frequent inconstancy in acting, and continual disturbance of mind.

3. Fear of sinning in all things, joined with pertinacity of mind against the judgment of the Confessor, of prudent persons, or even against one's own judgment: whence follows frequent questioning concerning the responses of the Confessor, and repeated inquiry whether, in acting according to the counsel given, conscience can be immune from fault.

4. Impertinent reflections about circumstances which were present in the action or could have been present, and certitude anxiously sought in all things.

5. Obstinacy in always repeating the same sin in confession, or in holding that as sin which has already several times been declared by the Confessor not to be such.

6. Continual anxiety concerning past confessions, notwithstanding the judgment of the Confessor, or the repetition of confessions.

- But he cannot be judged scrupulous, at least immediately, 1. who is moderately solicitous or anxious lest he offend God; 2. who after a life spent in sins is still troubled, and after confession does not seem to himself to have made satisfaction, but wishes rather to confess and expiate sins; 3. who still deliberately consents to grave sins, although after the sin has been committed he is greatly troubled and confesses anxiously, for there is a just cause of anxiety, at least moderate: nevertheless even in this one there can be a truly scrupulous person; 4. who in only one or another case has a passing scruple, and does not doubt whether he has sinned in this or that.

Moreover it sometimes happens that the Confessor, after hearing a penitent the first or second time, cannot immediately decide whether he is scrupulous, even if this penitent appears anxious about many things; since some just and reasonable cause of anxieties can be present. But much less can a scrupulous Confessor easily judge whether a penitent is scrupulous, or only fearful. - Lacroix, book 4, no. 517, etc.

III. Harms of Scruples

46. ○ Scruples generally draw with them grave inconveniences and spiritual harms, and often also bodily harms, provided they have not been sent by God, but persevere from the fault of man. The principal harms of scruples are the following:

1. They harm the body; for through continual anguishes they constrict the heart, corrupt the blood, consume the vital spirits, and weaken the head.

2. They make the scrupulous person unfit for acting fruitfully with the neighbor; for most scrupulous persons are severe and morose toward household members no less than toward outsiders.

3. They harm obedience, or even totally impede it; since the scrupulous person rather follows trifles and mockeries of the imagination: thus he is driven to acting against the will of God, which is manifested to him through the spiritual father or director.

4. They weaken, or even utterly take away, the study and love of prayer; because they enervate the force of the mind, distract it by leading it to trifles, fill the spirit with anxieties, and make it unfit for union with God. Hence follows not only ceasing spiritual gain, but also immense arising harm.

5. They break fortitude: for what great thing would one dare who is wholly occupied in trifles, and, victory over his passions having been neglected, is so easily cast down in spirit?

6. They greatly lessen hope, or even destroy it, because the matter is finally brought to this, that confidence in God having been lost, one declines into laxity. For how will he trust in God as he ought, who always regards Him as a most severe exactor? Therefore the scrupulous person, unless he fights strongly against scruples, will soon be driven by them into despair, and will loosen the reins to his desires, or at least will lead a most wretched life and with great danger of damnation.

IV. Remedies of Scruples

47. ○ Scruples are frequently concerned 1. with daily actions; 2. with depraved thoughts; 3. with confessions. Therefore:

I. To scrupulous persons who in all actions are troubled by fear of sinning, it must be enjoined that they act strenuously against scruples, and abstain from confessing them, unless they are most certain that sin is present there. For although by so acting they sometimes sin materially, nevertheless they will not sin formally by reason of the obedience which they ought to furnish to the Confessor. - St. Lig., no. 17.

II. To scrupulous persons who fear to give, or to have given, assent to any depraved thought against chastity, Faith, or Charity, it must be imposed that they despise these thoughts as mere phantasms, and abstain from confession of thoughts of this kind, unless they can swear that they truly consented to them. - St. Lig., no. 15.

III. To scrupulous persons who are always anxious about confessions, especially past ones, it must be prohibited that they think any more about the faults of past life, nor speak a word about them in confession, unless they can swear 1. that they perpetrated mortal sins; 2. that they never confessed them, especially if they have already completed a general confession. - St. Lig., no. 16.

Moreover the scrupulous and fearful, anxious about past confessions, are to be questioned thus: 1. Did you knowingly conceal a grave sin? 2. Did you propose to repeat sins? If they answer negatively to each demand, their confession must be pronounced valid.

V. Rules for the Scrupulous

48. ○ 1. In moral matters certitude is not to be sought in all things. This holds for all; but it must be applied especially to the scrupulous.

2. Supreme and blind obedience is to be furnished to the Confessor, and one must proceed in all things with great humility and confidence.

3. Doubt which could seem reasonable in others must be wholly despised in the scrupulous.

4. It is licit, indeed often obligatory, and sometimes under grave obligation, to fight against scruples. - St. Lig., no. 17.

5. Confession must never be repeated unless it was certainly sacrilegious; nor must the examination of the last confession ever be renewed, even if doubt about a grave sin omitted seems to arise.

6. Scruples are to be contemned; nor must the scrupulous ever dispute with themselves about these things.

VI. Rules for Confessors

1. Let the Confessor examine whether the penitent is truly scrupulous..., whether in all things..., and what is the origin of the scruples.

2. Let him be patient, kindly, and strong. These words of the Apostle, 2 Tim. 4. 2, pertain to him: Be instant in season, out of season; reprove, entreat, rebuke in all patience and doctrine.

3. Let him respond to one asking without hesitation and with command; let him not easily add reasons to responses; nor let sins already confessed be repeated several times.

4. Let him commend to the scrupulous person great confidence in the goodness of God, frequent prayer, flight from idleness, brevity of examination, humility of heart.

5. With the scrupulous person let him use general rules, not particular ones; for by these the scrupulous person cannot be directed, because he is unfit for applying them. - See Cases, no. 48.

Article II. On Lax Conscience

49. ○ Lax conscience is said to be that which from a lighter reason judges that what is illicit is licit; or finds only venial sin where there is mortal: namely it is that which, without sufficient reason, bends judgment in favor of liberty either to avoiding the law, or to diminishing the gravity of fault.

How dangerous such a conscience is, as is readily clear to those who attend, since it casts souls into the broad way which leads to perdition.

It can be distinguished threefold, namely 1. lax conscience simply, which extends liberty more than is right; 2. cauterized conscience, which from a long habit of sinning weighs grave sins, indeed even most grave ones, as nothing [1]; 3. pharisaic conscience, which makes great things small, and conversely small things great. It takes its name from the Pharisees, who, while they swallowed camels, by eating with unwashed hands and by passing over empty traditions, judged themselves guilty of great sin.

[1] This happens also from that reprobate sense into which men of this kind, having a blinded heart, come.

50. ○ The things which generally pertain to lax conscience are comprised in these few words.

I. He sins gravely who, knowingly obeying a lax conscience, transgresses some law in a grave matter. And indeed ignorance of this kind, as voluntary, can easily be overcome; therefore it can in no way be excused from mortal sin on the pretext of ignorance.

II. Indeed he can sin more gravely even in a light matter, if his rashness impels him to acting with every dictate disregarded and contemned. Compare what we said above about doubtful conscience. Question 1, no. 43.

YOU WILL ASK. What are the causes, effects, and remedies of a lax conscience?

I answer to the first. The causes are omission of prayer, tepidity of soul, excessive solicitude for temporal things, and the habit of sinning, which takes away horror of sin; familiarity with vicious men; a soft life, which enervates the heart and turns it away from spiritual things.

I answer to the second. The effects are blindness of mind, hardness of heart, which is scarcely accustomed to be moved by any means, obduration in evil which induces the greatest danger of salvation, according to that saying of the Apostle, Rom. 2. 5: According to thy hardness and impenitent heart, thou treasurest up to thyself wrath in the day of wrath.

I answer to the third. The following remedies among others can be proposed: humble and assiduous prayer; sacred exercises; pious meditation on the last things according to that saying, Eccli. 7. 40: Remember thy last things, and thou shalt not sin forever; frequent reading of pious books; daily examination of conscience; frequent recourse to the sacrament of Penance; flight from the evil, and conversation with the good.

Chapter IV. On Probable and Improbable Conscience

One must treat of three things, namely 1. the nature, 2. the efficacy, 3. the use of probability.

Article I. On the Nature of Probability

51. ○ Opinion in general is assent to one or the other with fear of the opposite; or it is adherence to one of two contradictories with fear of the other.

But probable opinion, or probable sentence, is a judgment resting on a grave motive, though with fear concerning the opposite. - But improbable opinion is a judgment which is destitute of a solid motive.

52. ○ Division of probability. Probability is distinguished:

1. Intrinsic, or extrinsic, according as it rests either on reasons drawn from the nature of the thing, or on authority [1]. Each can be greater or lesser.

[1] Extrinsic probability supposes intrinsic; namely the authority of Doctors has force insofar as it can or must be judged that they were moved to holding some sentence by some grave reason. Wherefore if perhaps you detect that they have asserted something while relying on a weak or even altogether false foundation, their authority certainly adds no moment to the assertions.

2. Of law, or of fact, according as it is concerned with the existence of law, or its application, or with some fact.

3. Speculative, or practical, according as it regards a thing in general, abstracting from circumstances, or an act proximately to be posited [2].

[2] Perhaps you would more clearly call opinion or sentence speculative or practical according as it is or is not ordered to directing an action which here and now in reality must be posited.

4. Absolute, or relative, according as it appears such to all or to most, or only to one or a few.

5. Solitary, or comparative, according as it appears such considered in itself alone, or by comparison instituted with the foundations of the contradictory proposition [3].

[3] More commonly the Doctors call that absolute which the Author calls solitary; but they are accustomed to call the other relative.

6. Certain, or doubtful or slight, according as it rests on motives either certainly solid, or only doubtfully solid.

Comparative probability is divided by degrees into three kinds, namely 1. into greater probability, 2. lesser, 3. equal. For any proposition can be more probable, or equally, or less probable than the opposite, according as it rests on more solid, or equally, or less solid motives. - But the more probable opinion itself also admits various degrees: for it is a little or notably more probable,

according as its motives are a little or notably graver than the motives of the opposite. It is also called most probable if it enjoys a most grave motive. Most probable, says St. Lig., no. 40, is that which rests on a most grave foundation: wherefore the opposite is considered SLIGHTLY or DOUBTFULLY probable.

Besides, an opinion is safe, or safer, or less safe, according as it simply favors the law, or favors it more or less. Therefore a more probable opinion is not always safer, since greater probability can also stand for liberty.

Various systems concerning probability.

63.† - 1. Absolute tutiorism, or rigorism, according to which the safer part, that is, the part favoring the law, must always be followed [4].

[4] Namely, these hold that the safer part must be followed unless it is certain that nothing favors the law against liberty; whence according to them it is not licit to act according to the most probable opinion favoring liberty. This doctrine was condemned in the third of the thirty propositions proscribed by Alexander VIII.

2. Mitigated tutiorism, according to which it is licit only to follow the most probable part favoring liberty.

3. Probabiliorism, according to which the opinion favoring the law must always be held, unless the opposite is notably more probable [5].

[5] Since according to St. Alphonsus a notably more probable proposition has against itself only a slightly or doubtfully probable one, here rather mitigated tutiorism is being described.

4. Equiprobabilism, according to which it is not licit to follow the less safe opinion unless it is as probable as the opposite, or nearly as probable [6].

[6] Some have called St. Alphonsus de Ligorio the author of this system. But this neither ought nor can be so understood, as though the holy man at some time receded from the common system of probabilism, which he himself also defended most keenly. See the Dissertation *On the Moral System of St. Alphonsus*, which was delivered at the Roman College in the solemn restoration of studies in the year 1863, and is available at Rome from Io. Bencivenga.

5. Probabilism, according to which it is licit to follow a less safe and also less probable opinion, provided that it enjoys true and solid probability.

6. Laxism, from which it is always lawful to follow opinions even slightly probable; but this system too was condemned, as will be clear below.

Hence, according to the various opinions concerning the value of probability, theologians have obtained various names, so that they are called either rigorists, or mitigated tutiorists, - probabiliorists, - equiprobabilists, - probabilists, - laxists.

54. Conclusions From What Has Been Said. - 1. Probability from its nature necessarily requires that it exclude certitude, even merely moral certitude; for by this alone can it differ from certitude [7].

[7] Probability cannot be joined at the same time with certitude, both because it differs far from certitude, and because probability which has certitude against itself wholly vanishes.

2. Hence every probability, however great it may have been, is altogether destroyed when certitude of the contradictory proposition supervenes.

3. An opinion must certainly be held probable which, the Church tolerating, is common among theologians [8], or is taught by St. Thomas and his school, or is asserted as probable by most theologians; or even which five or six theologians outstanding in probity, judgment, and knowledge hold absolutely as true, unless a certain reason against that opinion appears.

[8] When the common opinion of Theologians stands for some doctrine, we have probability of this kind such that (unless a plainly grave reason observed by no one, or a clear authority, stands in the way) it is rash to resist it. See Canus, *On Theological Places*, book 8, ch. 4.

4. That opinion is certainly probable for a learned and upright man which he himself knows he has diligently examined, and which he experiences himself, without inordinate affection, to detect as true or certainly probable [9] on account of grave reasons.

[9] Namely, it is not necessary that he remain without fear concerning the opposite.

5. Concerning the intrinsic probability of law, commonly only the most learned and those most versed in the moral matter can judge, since they alone can know that nothing certain is opposed to them.

6. A man moderately learned can judge concerning the extrinsic probability of an opinion, if, rightly understanding the state of the question, he finds it asserted by authors greater than every exception, that is, altogether approved among theologians.

7. One author, if he is greater than every exception, and brings a reason which others have not examined or have not sufficiently solved, while he himself suitably solves the reasons of others, can make his own opinion certainly probable, although it is contrary to the common opinion.

8. An uneducated man, hearing from a man whom he himself judges upright, prudent and learned, that some opinion is certainly probable, can hold it as such: for he is not able to weigh the matter per se, nor is any other means at hand for him of knowing extrinsic probability... - Lacroix..., etc.

Article II. On the Efficacy of Probability for Forming Conscience

55. ◦ The efficacy of probability is situated in its force for forming the ultimate dictate of conscience, practically certain. But from those things which we asserted in no. 39, certain conscience alone is the right rule of morals. In what way, then, can it happen that from even greater probability it is sometimes licit to act? Certainly this is not licit by force of probability alone. Therefore recourse must be had to some morally certain principle, so that certitude may be had. Therefore one must now discuss what probability avails for this end; namely, whether sometimes, with solid reasons favoring both the law and liberty, we can consider ourselves free from the very bond of the law.

That we may discuss and resolve these questions, we establish the following theses.

First Thesis

It is not licit to follow a probable opinion, nor a more probable one, with the safer one left aside, as often as there is an absolute obligation of obtaining some determinate end, which the use of a means probably unfit would bring into danger; then therefore the safer part must be followed.

56. ○ It is proved. Whoever is compelled to obtain an end absolutely and more certainly, is held to choose those means by which he is certainly going to attain the end. But the end can be obtained certainly only through the safer part: for by hypothesis the means, only probably apt, brings into danger the end which I am held absolutely to attain. Therefore it is not licit to use a means only probably apt, but more apt and the same safer means must be chosen [1]. Therefore the safer part must be followed.

[1] It must be denied that in these circumstances any probability remains for the opinion. For from what has been said above, no probability remains for liberty where a certain law militates against it. But thus the matter stands in the case. It is certainly a law that I cannot inflict injury on another; and therefore it is certainly a law that I am held to guard against a probable danger of another's harm, since it is injurious to bring a probable danger of harm to another. Therefore as often as from my action a probable danger threatens another, the action is manifestly illicit, as being opposed to a certain law.

52.† Hence You Will Resolve. - 1. In those things which are necessary for salvation by necessity of means, you are held to follow the safer; for a most grave obligation urges everyone certainly to care for the eternal salvation of his own soul; therefore means absolutely safe and certain must be applied [2]. Therefore in matters pertaining to the Faith or to the true Religion, the safer opinion must necessarily be followed, opposite probability being set aside [3]. Hence the following proposition was condemned by Innocent XI under no. 4: An unbeliever not believing, led by a less probable opinion, will be excused from unbelief [4]. - St. Lig., no. 43.

[2] Hence if you are uncertain whether you were baptized, or if you prudently doubt whether your grave sins were duly expiated through confession, you are held to seek the grace of justification by suitable means.

[3] This most grave obligation of natural law is violated by all those who, perhaps thinking themselves unfit for another examination, nevertheless confess that salvation can be obtained in the Catholic Church; but in the meantime neglect to embrace it, because they think they can be saved also in their own sect. For at least this can and ought to cast grave doubt upon them, that against the opinion of their own salvation they have the opinion of all Catholics; and therefore the obligation either of inquiring more diligently into the matter, or certainly of choosing the safer part, cannot be hidden from them.

[4] Beware, nevertheless, lest you conclude from this that anyone, when faith is at issue, is obliged to adhere to an opinion, even a more probable one. For by the same Innocent XI the sentence was proscribed (prop. 21) that supernatural assent of faith, useful for salvation, stands with only probable knowledge of revelation, and with fear by which someone fears that God has not spoken. Therefore from that fourth condemned proposition you will conclude this one thing: that that unbeliever is not excused if, led by a probable opinion, he remains tranquilly in his sect; for he would fail in a grave obligation of solicitously applying those means by which he may reach the truth.

2. A hunter fearing lest by discharging shot at a wild animal he perhaps injure some man cannot fire, even if he judged more probably that the danger is absent; for this danger, if perhaps it is present, cannot be removed by a contrary probability, even a greater one.

3. A physician and surgeon are held to apply the safer medicines and remedies which can be had here and now; because by a tacit contract they have obliged themselves to obtaining the end

more securely, insofar as it can be done. The same must likewise be said of all others who have contracted some obligation of this kind toward the neighbor [5]. - St. Lig., no. 44.

[5] Thus a judge is held to render a sentence according to the more probable reasons. On this matter you have proposition 2 condemned by Innocent XI: I think probably that a judge can judge according to an opinion even less probable.

4. The minister of a Sacrament, where its validity is at issue, unless the defect is supplied by the Church, or a case of necessity urges, is held, insofar as he can, to follow the safer part, with the less safe probable, or even more probable, one left aside; the reason is that otherwise he would expose the Sacrament to danger of nullity, and his neighbor to danger of spiritual harm. Hence deservedly the proposition was condemned by Innocent XI under no. 1: It is not illicit in conferring Sacraments to follow a probable opinion concerning the validity of the Sacrament, with the safer one left aside. - St. Lig., no. 48.

I said 1. unless the defect is supplied by the Church; for sometimes the Church can and is considered to supply that which is lacking for the validity of a Sacrament: and this indeed can happen in two sacraments, namely in the sacrament of Penance, if for a grave reason it is conferred with doubtful jurisdiction, or with probable jurisdiction, and in the sacrament of Matrimony, when it is celebrated with a doubtful impediment of ecclesiastical law, or even if the delegation of the assisting Priest is doubtful, as will be said in its own place. - St. Lig., no. 50.

I said 2. unless a case of necessity urges: because since the Sacraments are for men, they must be ministered to a man constituted in grave danger of life in the best way in which it can be done, even with mere probability, indeed with slight and very slight probability concerning their value. - St. Lig., no. 49, and others commonly.

Second Thesis

It is not licit to follow an opinion slightly probable, with the safer one left aside [6].

[6] ** However manifestly Father Gury opens his mind in this thesis; however Father Ballerini in the attached note said that the opposite doctrine is condemnable; indeed however the same Father Ballerini in the little Dissertation already reprinted several times *On the Moral System of St. Alphonsus* clearly professed that no one of sound mind could have adhered to this condemnable doctrine, namely with these words (final proposition): Certainly no one of sound mind, to speak with Dominicus Viva, taught or could teach that men act prudently and licitly if they rest on an opinion in no way probable, of which sort the adversaries whom the thesis of St. Alphonsus attacks are...; nevertheless both VV. (page 38) and their French Confrere (see *Univers*, May 8, 1873) do not hesitate to accuse both Gury and Ballerini, as though they profess this condemnable and foolish doctrine, on which account (ibid.) they furthermore traduce them as supporters of laxism, liberalism, and rationalism. Perhaps you will wonder, friendly reader, at these monstrosities; but you will be more stupefied that, although in the preceding words Father Ballerini proclaims that that condemnable doctrine which St. Alphonsus attacks could not have been defended except by those who lacked a sound mind, VV. accuse Ballerini not once, but again and again (see Additional Summary, cols. 499 and 507; and V., page 112), because he made a blasphemous jest against St. Alphonsus and in the alleged words traduced him as a man not of sound mind. And in these few things you have some specimen, candid reader, of what sort is the method by which VV. undertook to attack both Gury's Compendium and the added notes.

58. ○ It is proved. For a slightly probable opinion, as has been said, rests on light motives, which cannot attract the assent of a prudent man; whence from them it cannot be persuaded that the existence of the law is uncertain. But it is illicit to follow some opinion, with the safer one left aside, unless the law can be said to be invincibly

unknown; but the law cannot be considered unknown unless by solid reasons it is proved to be uncertain. Therefore....

It is also clear from the third proposition condemned by Innocent XI: Generally, when trusting in intrinsic or extrinsic probability, however slight, provided that one does not depart from the limits of probability, we do something, we always act prudently [7].

[7] Another vice is present in the preceding proposition, on account of which it could be condemned, because namely while it always, and thus in every case, affirms the use of probability to be licit, it comprehends also those cases in which a certain law forbids it, as was said at the preceding thesis, no. 56, 57. Nevertheless if with most more recent authors by the name slight probability you understand that which is not equal to eliciting a prudent assent, and therefore cannot even cast prudent doubt on the existence of the law, the proposition will be condemnable also on account of the reason brought in the text. Dominicus Viva (*On Proposition III Condemned by Innocent XI*, no. 1) attributed this false opinion to Tamburini, Bresserus, and Amicus; but from mere lack of diligence. For 1. Tamburini (*On the Decalogue*, book 1, ch. 3, § III, no. 11) expressly cautions lest the probability of the other proposition be so great that it cast the opposite down from probability, and thus the intellect can prudently assent. 2. Bresserus (*On Conscience*, book 3, ch. 6, no. 77) discusses an opinion for which a reason of great moment militates. 3. Finally Amicus (*Scholastic Theology*, vol. 3, disp. 15, sect. 3, no. 49) speaks not of slight probability, but of slight assent, which he ascribes to a probable opinion having a more probable one against itself.

Third Thesis

It is licit to follow the most probable opinion, and even the more probable one, with the safer one left aside, where there is question only of the honesty of the action.

59. ○ It is proved 1. As to the most probable. It is clear 1. from the condemnation of the proposition of Sinnichius, which is the third of the thirty-one proscribed by Alexander VIII and is of this sort: It is not licit to follow an opinion even the most probable among probable ones. Therefore it is licit to follow at least the most probable opinion. Besides, in this condemned proposition there is question of a less safe most probable opinion, since no one ever denied that it is licit to follow the safer most probable one. Therefore. - It is clear 2. from the fact that according to St. Ligorius and others, where a most probable opinion is given, the opposite proposition becomes slightly probable, as was said above (no. 52) in the definition of the most probable opinion. For it is not conceived how a solid reason can stand on one side, if on the other side a most grave foundation of thinking otherwise appears. Therefore with the most probable opinion standing, a very slight fear of erring remains, and therefore, if not absolute certitude, at least some broad moral certitude of the law's non-existence is had. Therefore, etc.

It is proved 2. As to the more probable. That must be admitted as true in which all theologians agree; for it cannot be supposed that all theologians have fallen into error by unanimous consent. Moreover, if you except the very few rigorists, all agree in crowds in admitting this doctrine, at least if there is question of an opinion truly more probable.

Moreover, if you wish to inquire into the intrinsic reason of this sentence, no other solid reason seems able to be brought except that by which the following proposition concerning the liceity of the use of moderate probabilism is accustomed to be proved, namely that the law, if perhaps it is present, is altogether unknown, and therefore that it cannot oblige.

Fourth Thesis

It is licit to follow an opinion truly and solidly probable, with the safer one, equally probable or even truly more probable, left aside, where there is question only of the licit or illicit [8].

[8] ** Thus also St. Alphonsus, who (Dissertation according to the Naples edition, year 1755), after, as he says (no. 1), to avoid ambiguities and equivocations, he set forth beforehand this definition of a more probable opinion: More probable is that which rests on a graver foundation, but also with prudent fear of the opposite, so that the contrary is also truly probable, or gravely verisimilar, although less so; then (ibid., no. 3) writes: We undertake to prove the last, more benign and most common sentence, namely that it is licit to use a probable opinion even in concurrence with a more probable one for the law, whenever the former has a certain and grave foundation. Concerning this thesis then (ibid., no. 52) he puts forward this judgment: Our sentence, namely that it is licit to follow a probable opinion for liberty, with the more probable one left aside, is far more probable, or most probable, indeed morally or in a broad way certain. This is clear from the arguments set forth above..... These arguments indeed are each strong enough to show the moral certitude of our sentence; much more when joined together. Moreover even the Authors of the Alphonsian Vindications concede, indeed contend, that St. Doctor never changed his sentence.

This proposition can be demonstrated by a threefold genus of arguments, namely 1. from reason; 2. from authority; 3. from the consequences which flow from the opposite sentence.

I. Argument from Reason

60. ○ From reason one can argue thus: There is no obligation unless it is certain concerning it; but it is not certain concerning the obligation of observing a law against which true and solid probability militates. Therefore there is no obligation of following the safer part, with the truly probable opinion left aside; therefore it is licit to follow a truly probable opinion, with the safer, even more probable, one left aside.

I. THE MAJOR IS PROVED from the necessity of cognition for obligation. For he is not obligated who invincibly does not know that he is obligated. But in the hypothesis I invincibly do not know that I am obligated. Therefore I cannot truly and properly judge myself bound by obligation; therefore in reality I am not obligated.

61. ○ The proposition is confirmed from the doctrine of St. Thomas. For thus he himself says in the *Disputed Questions on Truth*, q. 17, art. 3: No one is bound by any precept except by means of knowledge of that precept... The same virtue is that by which a precept binds and by which conscience binds, since the precept does not bind except by virtue of knowledge. Whence thus: no one is bound except by virtue of knowledge; but, from St. Thomas, to be bound by virtue of knowledge is the same as to have a certain obligation. Therefore no one is bound unless his obligation is certain to him. - And indeed St. Ligorius chiefly uses this argument in *Moral System*, § II.

62. ○ II. THE MINOR IS PROVED, namely it is not certain concerning the obligation of observing a law probably not existing. For by hypothesis the law is uncertain, since true and solid probability is supposed against it; therefore also the obligation following from it is uncertain. For a greater degree of certitude cannot be given in the obligation than in the law from which it proceeds; otherwise the certain would arise from the uncertain. Therefore.

It is confirmed. A certain obligation, as effect of law, supposes a certain cause or law. For if the effect could be certain without the cause being certain, the effect could exist without a cause; which is repugnant. Therefore there is not a certain obligation where the law is uncertain, or probably not existing. Therefore.

63. Nor say that, the directly certain law being deficient, there exists another indirectly certain law producing a certain obligation. For if such a law could be feigned, either it would be a law of avoiding the danger of sinning, or a law of following the safer; moreover neither can be feigned.

1. Not a law of avoiding the danger of sinning. For 1. the objection can be turned back against the probabiliorists themselves; since, such a law being supposed, it would no longer be licit to follow even the solidly more probable, with the safer one rejected, because even then such a danger would be present. - 2. That law could not certainly exist, and therefore certainly oblige me, except insofar as there truly was a danger of sinning formally in the violation of the direct law which probably does not exist; moreover there is no danger of sinning formally, since that direct law, as uncertain, produces no certain obligation, as is clear from what has been said. Therefore if perhaps that wholly uncertain law exists, there will be only a material violation of the law: therefore no sin will be present.

2. Nor a law of following the safer. For 1. if such a law were feigned, it would be strong also against the adversaries, and would lead us into tutiorism, proscribed in the condemnation of the proposition of Sinnichius: It is not licit to follow an opinion even the most probable among probable ones. 2. That law of following the safer would suppose that it is not simply safe to disregard a law probably not existing: moreover this is false where there is question only of the licit or illicit. For it is safe enough to avoid sin and the danger of sin. Moreover sin and the danger of sin are avoided by not fulfilling a direct law probably not existing, as was said above. Therefore.

II. Argument from Authority

64. ○ It is clear from various heads, namely:

1. From the more common consent of authors through several centuries. For from the time when the dispute concerning probabilism arose, namely from the middle of the sixteenth century, innumerable authors at once from every nation, state, condition, and from all Religious Orders undertook its patronage, among whom not a few shine forth illustrious by the fame of doctrine, such as Suarez, Cardinal de Lugo, Lessius, Eusebius Amort, Bonacina, etc., and in more recent times St. Alphonsus de Ligorio. But if some among so great a multitude of Doctors perhaps seem to have extended the limits of probabilism too much [9], let us surely guard against a danger of this kind, yet retaining the limits of true probabilism, namely by not admitting an opinion as probable unless it rests on a solid foundation, or unless solid reasons militate for it, according as nearly all, even before St. Ligorius, understood probabilism [10]. moral questions, which is sought from the principles of probabilism, was also very familiar to the most ancient Fathers of the Church, and indeed in matters of the gravest moment.

[9] Beware, nevertheless, lest you think that the lax opinions which had to be rejected are generally due to probabilism (as certain persons have either imprudently or even fraudulently suggested) as their proper source. And indeed with slight trouble from those Authors who are accustomed to be sold as probabiliorists, a lengthy catalogue could be brought forth of those laxities, of which no one has yet been able to bring forth an example from the books of the probabilists.

[10] And thus concerning an opinion which rests on a grave foundation, whether intrinsic or extrinsic, must be understood certain sayings of the old Doctors which St. Antoninus reports (*Summa*, part I, title 3, ch. 10, § 10). For after he set forth beforehand that sometimes there are contrary opinions among Doctors greatest in sanctity and knowledge in moral matter even necessary for salvation, and proved this by the example of St. Thomas, who holds that after a fall into mortal sin it is not necessary that someone immediately confess under precept when a supply of a confessor has been had, while nevertheless Hugh of St. Victor and St. Bonaventure are of the contrary opinion in this: but neither of their opinions is reproved, although the opinion of Blessed Thomas is more commonly held, which nevertheless seems less safe; then to confirm that which he had established, namely that with good conscience someone can hold one part of some opinion and operate according to it,... especially when someone applies diligence in inquiring and does not find something which sufficiently moves him to this, that it is illicit, he subjoins these things: Likewise Ulricus in the *Summa* says that if someone concerning some doubtful thing to be done consults those more skilled, about which he has no express authority, whether it is so or not: provided that he forms for himself a good conscience, even if the matter holds itself otherwise than that which he thinks and which was advised to him, he is excused, because he did what he could, and God requires no more. Likewise from the responses which seem to have been given by Albert the Great, it is had that a simple brother or any man can with salvation follow in counsels whichever opinion he wishes, provided that he follows the opinion of some great Doctor. Hostiensis also says...: Where there are diverse opinions and diverse judgments, the more humane and more equitable is always to be preferred.... William also in the gloss of Raymond says that in the niceties of law, where even the wise doubt, ignorance is excusable. Nevertheless if someone in good faith chooses that part or that, he ought not on this account to have a conscience too scrupulous. Likewise Peter de Palude says... that if a confessor doubted whether that, concerning which the one confessing neither repents nor confesses, were mortal, and the one confessing says that he did this by counsel of skilled men, concerning whom from life and knowledge it is probable that they would not advise except well, he can conform himself to that judgment. Geoffrey of Fontibus seems to think the same in these contrary opinions which are tolerated by the Church. Thus St. Antoninus; from which it is sufficiently clear how much those are deluded who ascribe the beginnings of this doctrine and practice to Bartholomaeus Medina, otherwise an excellent theologian from the Order of Preachers, as though he first introduced it. For from the things adduced above it manifestly shines forth that, as to substance, it preceded even the age of scholastic theology. And worthy indeed to be read is the Dissertation which Christian Lupus published on this argument (Works, vol. XI, diss. I), in which it is splendidly shown that the method of solving questions

65. ◦ 2. From the doctrine commonly handed down in this time. For if the schools spread through the whole world are inspected, in very many of them the doctrine of moderate Probabilism will be found handed down and defended, especially at Rome, which rightly must be considered as the center of theological sciences, and where false doctrine, and indeed publicly, while the Church is silent, certainly cannot be taught. So likewise in all Italy, Spain, Germany, etc. - In France itself also the doctrine of St. Ligorius, which certainly altogether recoils from probabiliorism, is now received daily with almost unanimous applause.

3. From the approval of the Church, at least implicit, in the approval of the works of St. Ligorius. For the sacred Congregation of Rites solemnly declared that there is nothing worthy of censure in the works of the holy Doctor. Again in the decree of the Sacred Penitentiary (5 July 1831), approved by the Supreme Pontiff Gregory XVI, any professor of theology can follow and teach all the opinions which St. Ligorius professes in his Moral Theology, nor is the Confessor to be disturbed who follows the same opinions in the practice of the sacred tribunal of Penance [11].

[11] To this pertain the words of our Most Holy Lord Pope Pius IX in the letter given to Peter Scavini on 7 April 1847: We vehemently congratulate you, because in composing these theological Institutions you had nothing more ancient than to propagate more and more the salutary doctrines of Alphonsus Maria de Ligorio, a most holy and learned man, and to imbue with them especially the minds of ecclesiastical youth.

III. Argument from Consequences

66. ○ I. In the system of the probabiliorists there would follow a difficulty too grave for Confessors. For the Confessor would expose himself to the danger of sinning because of a defect of sufficient diligence in weighing the various degrees of probability, especially in the matter of restitution, when from two equally probable opinions he would follow one. For if he assumed the more benign sentence, he would sin by permitting that in which he apprehended a deformity probably existing. If he acted according to the stricter sentence, he would sin by imposing an uncertain yoke on the penitent [12]. Besides, although the stricter sentence appears more probable to him, when will he be certain that it is truly such, and that the opposite one does not seem more probable to another Confessor? Nor could anyone undertake the office of Confessor, unless perhaps he had been so versed in moral theology that he could certainly distinguish between more probable and less probable opinions: for the burden of doing includes the burden of knowing; but very few are able to furnish this [13]. Hence there follows also that contradiction of Confessors who, though professing probabiliorism, nevertheless not rarely keep saying that they cannot apply the principles of probabiliorism rigorously [14] in the administration of the sacrament of Penance; and so they hold one thing in theory, but the wholly opposite in practice. Being constituted in anxieties, there are not lacking those who easily judge that to be more probable which at other times they would have held less probable. Would it not be better to establish and admit milder principles with so many most wise Doctors, and to lead them into practice more exactly?

[12] Hence one must repeat that Confessors imbued with the principles of probabiliorism, and otherwise of a timorous conscience, for the most part flee the sacred ministry of hearing confessions, harassed, of course, by dreadful anxieties, or certainly devote all their labor to cultivating in spirit certain little devout persons.

[13] ** Concerning this matter St. Alphonsus thus says (Dissertation, edition of the year 1755, no. 17): Such appearance (namely of greater probability) cannot constitute a certain rule of acting, since it can deceive in many ways. For not rarely some opinion, which appears more probable to one person, will appear less probable to another; indeed to oneself an opinion which yesterday was less probable will appear more probable today.

And again (ibid., no. 42), giving the reason why a more probable opinion cannot oblige, he brings forward the same reason: For some opinion, which is more probable to me, will often be less probable to others; and therefore the law would be particular only for those to whom that opinion appeared more probable. But this certainly would be against the nature of law, which for the common good must necessarily be universal, and proposed universally, lest the people, who are held to observe it, be more often divided and perplexed concerning the truth to be embraced, while each preacher or confessor, from the diversity of opinions, would often instruct the faithful according to his own sense.

Then the holy Doctor solves the objection, showing that these inconveniences press only those who wish some obligation to arise from a more probable opinion. Thus he says (ibid., no. 43): Nor is it valid to say that, by following the benign sentence (what the benign sentence may be, see above, Note to thesis IV), deformity also can intervene, since the same opinion can seem probable to one person, improbable to another. It is not denied that this can happen; but it will always be true that when some opinion possesses solid probability, and rests on a certain grave foundation, it will be judged probable among the greatest part of the wise: and this will already be enough for conserving the universal uniformity of the observance of law, notwithstanding that among some particular person it is not probable; for that which rarely happens

does not take away universal conformity. Yet this certainly does not occur concerning the estimation of more probable opinions; because, since greater or lesser probability depends on moral motives, namely on judgment and weighing of reasons, which some draw from one principle, others from another, it happens not rarely, but commonly, that what is stronger to one appears weaker to another.

Besides, the holy Doctor intimates the difficulties and inconveniences which would follow the necessity, if there were any, of determining certainly which opinion is truly more probable in preference to the opposite. Thus he says (ibid., no. 48): BUT THAT WE BECOME CERTAIN THAT SOME OPINION... IS TRULY MORE PROBABLE, OR HAS THE REQUIRED PREPONDERANCE, THIS IS MORALLY IMPOSSIBLE. For either that preponderance is small; and who will be secure that the opinion is truly more probable? For since the excess is modest, it can with difficulty be perceived certainly. Or the preponderance is great; and who will be able to judge that it reaches a sufficient measure, so that the safer opinion (in the present matter let us say, the opposite, or less safe one) is judged false or at least slightly probable? And so we would always have to act with a practical doubt.

Hence concerning the anxieties which the obligation both of knowing and of following the more probable things would bring, the holy Doctor brings forward these things (ibid.) from Ven. Father Segneri: Either I am held to follow the more probable things in themselves, and then when shall I know what opinion is truly more probable in so many cases, where grave reasons and authorities occur opposed on this side and on that? Or the more probable things for me, and the anxieties would be increased; for often I would have to judge my opinion to be more probable against another sentence of several wise men; and then who will render me safe, that my opinion is certainly more probable, and more notable with that notable preponderance which some of the adversaries require? How will I be certain that I myself have understood well and solved well the opposite reasons? That the dictate of conscience, which I formed for myself, is sufficiently certain and safe? That I have not been hallucinated by my own sense, so that, if I err, my error is truly invincible and inculpable?

But that the common sentence lacks these inconveniences, the holy Doctor thus continues (ibid., no. 50): But they do not expose themselves to that danger who follow an opinion certainly probable, although less so. Because after they have been made certain concerning the probability of the opinion, they are not held to apply greater diligence. For when some opinion rests on a grave and certain foundation, there is no longer a moral or prudent hope of finding certain truth; and therefore if they are mistaken, they are mistaken invincibly.

[14] The principles of probabiliorism rigorously admitted, as they were defended by the older authors, for example Gonzalez, Antoine, Gennett, Sinnichius, etc., labor under another inconvenience, and one not slight, which also did not escape the eyes of St. Alphonsus (cf. Index of Authors, which Father Michael Haringer prefixed to St. Alphonsus' Theology, see Gonzalez, page LXV, Ratisbon edition 1846). For they do not deny, nor can they deny, that which is confessed among all and ought to be, namely (see above no. 39 with note), that for an act to be honest, a certain conscience concerning the honesty of it is altogether required. But on the other hand, to acquire this certitude concerning the honesty of the action, they neither wish nor are able to invoke for themselves any support from reflex principles, just as they attack it in adversaries. Therefore it is necessary that they borrow a certitude of this kind altogether from direct principles, or from the innermost and proper reasons of each matter. Hence that saying of Antoine (On Conscience, ch. 4, q. 1): It is not licit (to follow probable conscience), unless the probability is so great that it excludes every reasonable fear of falsity, and produces certitude at least relative: because, as I said in ch. 2, for not sinning there is required a certain judgment, at least by moral certitude, by which doubt and the fear of sin, at least reasonable fear, is prudently excluded. And again (q. 3, no. 4) he gives the reason, because an opinion only equally probable standing for liberty cannot bring moral certitude, which is at least required for not sinning. Nor otherwise does Gonzalez, at the very front of his work, assume for himself the task of proving that, for someone licitly to be able to follow a probable opinion favoring liberty..., it is altogether necessary that that opinion... be judged by him to be true by an absolute, firm, and non-fluctuating judgment: which certainly are the marks of certitude. Hence after he contends (disp. IV, § XII, in the title) that a certain and evident practical judgment is necessary for acting rightly, he adds (see Index, under Reflection) that the one acting must make the opinion his own by direct assent. But now, from the sentence of all (see St. Alph., Apostolic Man, tr. 3, no. 2, and Viva on proposition 3 of Alexander VIII, no. 2), a sentence at least morally certain differs from a most probable opinion in this, that the former excludes every prudent fear of the opposite, but the latter does not. Therefore from their sentence, not only by their words expressly, but also from the intrinsic force and nature of the system itself, it follows that not even the most probable opinion suffices for acting rightly. Hence that saying of St. Alphonsus (l.c.): I do not know how the aforesaid authors, by asserting that it is not licit to use in acting any but morally certain sentences, since thus in reality they utterly reprobate the use of probable opinions, although in words they seem to admit it; I do not know, I say, how they can be excused from the condemned proposition,

which said (it is the third of the thirty-one proscribed by Alexander VIII): It is not licit to follow the most probable opinion among probable ones.

67. ○ II. A most troublesome difficulty for the faithful would follow. For in doubts there would be imposed on them an obligation of inquiring what opinion is more probable; since the obligation of operating according to the more probable includes the necessary duty of inquiring into it. But for the most part there is a moral impossibility of distinguishing between the more probable and the less probable; for even to the learned this is often very difficult. And indeed I ask, whether I am held to the more probable in itself or absolutely, or as to me or relatively? If the former, whence shall I know it? If the latter, again either there is question of intrinsic probability, or extrinsic. If of the latter, what school must be followed?... what Doctors must be consulted?... If of the former, the difficulty increases: whence shall I know whether I am sufficiently fit for this judgment? whether I am in invincible ignorance or not? Therefore being uncertain, and pressed by doubts, what shall I do? Shall I have recourse to Masters? But by hypothesis it belongs to me to judge. Therefore it becomes manifest how many and how great anxieties threaten the faithful from that necessity of following the more probable or the safer. - Segneri, little work on probability.

68. ○ III. There would follow a perpetual fluctuation of doctrine. For from probabiliorism there follows a perpetual fluctuation of doctrine among the probabiliorists themselves, as daily experience proves. But this discrepancy arises also from the very nature of probabiliorism. For it is impossible that they agree in fact; for, with the obligation of following the opinion which appears more probable to each one being posited, necessarily some will resolve for the affirmative part, others for the negative. One will bind, another will loose; and what appears more probable to you will very easily seem equally or less probable to another. Hence there will follow confusion of decisions, perplexity of the faithful, and anxieties of the Confessors themselves, who from some supposed excess of probability will impose most grave obligations. But probabilism rightly understood lacks inconveniences of this sort, at least for the most part. For only two things are to be weighed by probabilists, namely certain obligations, and merely probable obligations. But although the true probability is not always clear, nevertheless no one does not see that, ordinarily speaking, it is much easier to discern whether a solid reason or authority is had against the law, than to pronounce a judgment concerning some excess of probability. Therefore... etc....

69. Objections. - 1. It is objected from Sacred Scripture, Eccli. 3. 27: He that loves danger shall perish in it. But probabilists love danger by following an equally or less probable opinion. Therefore... - Eccli. 37. 20: Before all thy works let the true word go before thee. But in probabilism there is not a true word. Therefore... - 1 Thess. 5. 22: Abstain from every appearance of evil. But probabilists permit one to follow an appearance of evil. Therefore...

I answer 1. What is this to the matter? An empty and vacuous application!

I answer 2. I retort. For these objected places of Scripture, understood thus, would not permit even the use of probabiliorism. For in a more probable opinion against the law there is a danger of sin [15], a

word not true..., an appearance of evil....

[15] ** Indeed St. Alphonsus (*On the Moral System*), by an argument to the man, observes that not even those are immune from danger of this sort who otherwise hold that the use of an opinion against the law is licit only when it is most probable. For he reasons thus: As the most probable opinion does not lack every prudent fear that it is false, so the opinion opposite to the most probable does not lack every prudent motive that it is true.... Now I ask.... in what way will he who judges it illicit to expose himself to the danger of transgressing the law, wishing to follow the most probable, ever be able in practice with tranquil conscience to be induced to believe firmly that the opinion standing for the law is not truly probable? Where will he find a balance so exact that it renders him secure that the opinion standing for the law lacks so much weight of probability as would make it probable?

I answer 3. Directly. To the first: there the question is of final impenitence, as is clear from the context: A hard heart shall fare ill at the last; and he that loves danger shall perish in it. Besides, no danger is present where no sin is detected.

To the second: among us the true word is the reflex principle itself, which produces practical certitude, and therefore the act placed from it is conformable to truth.

To the third: he abstains from an appearance of evil who does that in which he sees no sin; for then he does not discern even the appearance of sin.

70. ○ It is objected 2. from Canon Law. In Canon Law this rule is handed down everywhere: In doubts the safer part must be chosen. Thus in the chapter *Illud Dominus*, on an excommunicated cleric.

I answer 1. I retort. If the matter is thus, then it is not licit even for you to follow an opinion, however more probable, against the law, because it is not the safer way. Consequently you will have to flee to tutiorism. But that system has been condemned. What then will you do? You shall see to it.

I answer 2. Directly. In the aforesaid rule there is question of practical doubt, not however of speculative doubt, in which conscience can be formed by the help of a solid motive; or even there is question of cases in which an end is necessarily to be obtained. Thus St. Lig., obj. IV [16].

[16] St. Alphonsus (*Moral System*, no. 79) answers that, from the almost common sense of the Doctors, the aforesaid rule of the canons, as to speculative doubts, is of counsel, not of precept. And St. Alphonsus teaches that this must be understood not only of the saying objected to, but also of other sayings of this sort which are usually drawn from the sacred Canons.

It is objected 3. from the Fathers. Many testimonies of the Fathers are brought forward which seem to favor probabiliorism, in Collet, Concina, Billuart, etc.

I answer 1. Let the same general answer be given as in the preceding objection. For the Fathers for the most part speak of particular cases of practical doubt, or where the end is necessarily to be obtained.

I answer 2. Other testimonies of the Fathers are not lacking which evidently favor probabilism. Let it suffice to report a few. - St. Augustine, epistle 54 (otherwise 118), ch. 2, says: What is not convicted to be contrary either to Faith or to morals is to be held indifferently. - St. Gregory Nazianzen, oration 39, says: But if the matter is doubtful, let humanity and frailty prevail.

71. ○ It is objected 4. A probable opinion does not remain probable in concurrence with a more probable one; for the lesser probability is annulled and destroyed by the greater. Therefore...

I answer. I deny. For if the lesser probability were annulled, the greater probability would now become certitude, or would exclude prudent doubt. But this is manifestly false [17]. Besides, reasons sought from disparate and non-subordinated principles cannot annul one another. For my reasons, notwithstanding the opposite probability, will stand in all their strength, until you have proved them to be false.

[17] ** To those objecting that greater probability annuls the lesser; whence it happens that, when the opinion for liberty is less probable, it becomes improbable with respect to the more probable opinion for the law, which then alone is able to draw the assent of the mind to itself, just as a greater weight alone inclines the scale to itself, although in the other scale there is another weight but less heavy, St. Alphonsus replies (Dissertation, edition of the year 1755, no. 13): But our authors rightly answer that it is false that greater probability annuls the lesser, except when that lesser probability is drawn from the same principle, or unless the more probable opinion has for itself so convincing an argument that the contrary seems truly improbable or no longer gravely and certainly probable. Yet one must say otherwise if the excess is not notable, and the opposite probability receives force from diverse principles, as almost always happens in the concurrence of opinions; for then the less probable opinion is by no means destitute of its grave probability.... This response certainly is right, and altogether proves that the greater probability of some opinion by no means renders the opposite one improbable.

It is objected 5. Probabilists do not act from moral certitude, not even from a reflex principle, since they cannot call the opinion opposite to their own improbable. Thus Billuart, art. 2, and Gerdil, ch. 6.

I answer 1. I retort from parity of reason. Behold then a difficulty to be solved by you first.

I answer 2. Directly. This is our reflex principle: An obligation is not to be imposed unless it is certain concerning it, or an uncertain law cannot impose a certain obligation. Moreover this principle is unshaken, since it cannot be denied without those denying it contradicting themselves. Indeed the adversaries can prudently rest on no other reflex principle [18].

[18] ** Genuine probabiliorists, namely those who follow the proper principles of that theory, do not admit and cannot admit any use of reflex principles; otherwise they would necessarily be compelled to surrender their conquered hands to the adversaries. See above, note to § 66.

72. ○ It is objected 6. The probabilist acts imprudently by not following the more verisimilar opinion, and acts against conscience by doing that which is probably, or even more probably, a sin [19].

[19] ** Concerning an objection of this sort St. Alphonsus thus says (Dissertation, edition of the year 1755, no. 35): They object that known truth must without doubt be followed. Therefore just as when certain truth appears for the law, we are held to follow it, so also when the matter appears more verisimilar. And he answers: But the parity is denied: when truth appears for the law, certainly we are held to follow it, because then the law manifestly appears, whence no one can form for himself a right conscience (namely concerning the non-existence or doubtfulness of the law). It is otherwise if the matter only appears more verisimilar; for then, since truth verisimilarly stands also for the other part, the law is doubtful; and therefore in that case either the law is not present, or it does not oblige. And again (ibid., no. 54): And thus response is made to the objection of those saying that, since there is an obligation of pursuing truth, we are held to follow what appears more verisimilar to us. For, as we said above, two truths must be altogether distinguished, the truth of the opinion, and the truth of honesty as to the use of the opinion. Certainly we are held to pursue what appears more verisimilar concerning the truth of the honesty of the use, but not always what appears more verisimilar concerning the truth of the opinion: whence there can well be fear concerning the truth of the thing, and certitude concerning the honesty of the action; because more often, even if the law may seem more probably to be present, nevertheless it will be more probable that it does not oblige; and from this we form a practical judgment morally certain concerning the licit: wherefore to act against conscience and to act against that which appears more probable are not the same.

And again (ibid., no. 31): Nor is it valid to say that when some more probable opinion appears for the law, then that greater probability declares the law, and now exhibits knowledge of the law. For knowledge, as is clear, imports certain notice of the

existence of the law; but opinion, even the more probable, since it does not remove the opposite prudent fear, is DIVERSE FROM KNOWLEDGE BY THE WHOLE HEAVEN, which, every prudent fear having been excluded, carries certitude before itself. Therefore when in some question there is no knowledge of the law, then the law either is not present, or does not oblige.

And again (ibid., no. 34): If the adversaries understand by the more probable opinion that which appears more verisimilar, although the contrary also retains its own foundation; then I say that if we can follow this more probable opinion for liberty, we can also follow the less probable. The reason is that, once it is conceded that it is licit to operate with the more probable, it must be conceded that the law does not possess in doubt.

And again (ibid., no. 17): A more probable opinion cannot be called a true opinion: otherwise a more probable opinion would be manifest truth, which is repugnant, since manifest truth is properly knowledge, not opinion; but it must always be called probably or fallibly true. For since it has its origin from a fallible motive, and does not exceed the limits of probability, it is inferred that the contrary opinion is also probably true. From this it happens that great Authors, although they judge some sentence to be more probable, nevertheless do not hesitate to call the contrary sufficiently or very probable, as de Lugo, On Penance, disp. 17, no. 107.

And again (ibid.): When there are two opinions, one more, the other less probable, then a comparison is not made between truth and falsity; and therefore if the less probable is chosen, falsity is not on that account preferred to truth; but a comparison is made between two appearances of truth, of which, although one seems greater than the other, nevertheless each seems great, so that each probably is true; wherefore at the same time at which the more probable opinion appears more verisimilarly true, it also appears verisimilarly false, and the opposite opinion appears verisimilarly true.

And again (ibid., no. 17) he asks: To what purpose, therefore, does that lesser probability serve, when, speaking per se, we cannot follow it (because, namely, per se it does not produce a certain judgment concerning the honesty of the act)? And he answers:

It will serve to show that truth can verisimilarly stand for it, and consequently that the law in that case, since it is doubtful, does not oblige. Whence then the less probable opinion indeed will not be said to be true; but by reasonably believing that it is verisimilar, it will be judged true that a man is not held to abstain from the use of it, notwithstanding that the opinion for the law appears more verisimilar. For such appearance cannot constitute a certain rule of acting, since it can deceive in many ways.

And again (ibid., no. 32): When, they say (the adversaries), the more probable opinion or reason stands for the law, it elucidates the law enough, and binds to the law. And he answers: But first it is denied altogether that a declaration of the law of this sort, doubtful as it is since it has arisen from a fallible opinion, although a more probable one, can oblige to the law. For in doubtful things the declaration of law holds itself as a new law; and therefore just as a law, in order to oblige, must be certain, so also the declaration.... The reason is that when doubt turns on whether a law comprehends some case or not, the law itself becomes doubtful as to whether it is present with respect to that case or not. Therefore the declaration that then the law has place must likewise, as law, be certain and infallible, so that it can oblige; for otherwise we would be bound to a doubtful law. Response is made secondly, and it is asked: who made this declaration of the law apt of itself to oblige? God did not; the Pontiff did not; indeed that greater probability appearing for the law did not. For some opinion which is more probable to me will often be less probable to others.

And again (ibid., no. 38): Therefore it is clear from the aforesaid text of St. Thomas that the law cannot be said to have been sufficiently intimated by the sole more probable opinion; for since opinion necessarily includes fear toward the opposite, as we showed above, it can never be called knowledge. Therefore even if to someone it appears more probable that a prohibiting law is present, nevertheless it cannot be said that he knows the law, when he still probably thinks that it does not exist, and perhaps in reality it will not exist.

I answer 2. Directly. What is this to the matter? A notable cavil! Who does not

I answer 1. I retort. Do you not likewise, by doing that which is probably against the law, conduct yourself imprudently?

I answer 2. Directly. He does not act imprudently who sees no obligation to the opposite, nor therefore does he act against conscience, since he detects no deformity or transgression of any law in

his action. It is objected 7. The probabilist wills an object which he knows more probably to be materially evil: therefore he also wills formal evil, which cannot be separated from the material evil known.

I answer 1. I retort. But do you not labor under a similar inconvenience? For even by following the more probable opinion against the law, do you not will a material deformity at least probable, and consequently a formal one? Can the probability which appears a little greater to you take away the danger of violating the law materially?

I answer 2. Directly. I deny the antecedent. The probabilist does not will any deformity, not even a material one. For since the objective deformity is doubtful, the act can be good. Therefore if it can be good, it can fail to be intended and in reality is not intended as evil: since it is simply unknown as evil; and an unknown deformity cannot be the object of the will.

73. ○ It is objected 8. Greater care must be applied to the soul than to the body. But what sick person chooses a less efficacious remedy and leaves behind a more probably efficacious one, unless he is insane? Thus Collet with not a few others.

I answer 1. I retort. What sick person of sound mind takes a remedy probably harmful, with a certain remedy left aside? Is not the safer to be preferred? see, unless he is altogether blind, that the use of probability in this matter is entirely illicit? Can greater or lesser probability in physical causes avert the danger of the harmful effect which is feared? Therefore the supposition with the parity must be denied.

74. ○ It is objected 9. A judge in rendering sentence must follow the more probable opinion, as is clear from the following proposition condemned by Innocent XI: I probably think that a judge can judge according to an opinion even less probable. Therefore it is not licit to follow a less probable opinion.

I answer. The example does nothing to the matter, and I deny the consequence. The reason for the condemnation of this proposition is that a judge is constituted by authority so that he may give to each one his own right; moreover he has the greater right for whom the greater probability, or the stronger reason, favors. - St. Lig., book 4, no. 210. In order for the example to be to the matter, a case would have to be brought forward where there is question only of the licit or illicit.

Article III. On the Use of Probability, and on the Special Rules for Forming Conscience in Doubts

75. ○ Besides the general principles by which the theory of probabilism was established in the preceding article, namely: An obligation is not to be imposed unless it is certain concerning it, or a doubtful law does not oblige, certain special rules also are enumerated, by which those principles are confirmed, or applied in particular cases. They are the following:

I. In doubt one must stand for that for which the presumption stands. The reason is that presumption for the most part effects moral certitude, at least broad. Hence if you are accustomed at such a time diligently to recite the Breviary, and you doubt whether you have recited some part, the

presumption favors you, and exempts you from the obligation of reciting or repeating. Likewise if you doubt whether the Superior rightly commands or dispenses, the presumption stands for him; because he can be led by reasons unknown to you, or is considered to judge prudently concerning known reasons. Besides, right order and the common good require that in such a case deference be given to him. - Thus commonly theologians.

II. In doubt judgment must be made from things ordinarily happening. An axiom commonly received. - St. Lig. everywhere. This rule falls back almost into the preceding one, since in each presumption is the reason for judging thus. But the prior rule extends more broadly; since presumption can be drawn not only from things ordinarily happening, but also from particular circumstances. - St. Lig. ibid.

III. In doubt one must stand for the value of the act. It is a rule of civil law, commonly applied also to theological matters. This must be understood if the principal fact is certain, and there is doubt concerning some necessary circumstance or condition, or concerning the due manner: for example, if you doubt whether you confessed a sin with sufficient sorrow, you are not held to confess again. - St. Lig., book 1, no. 26, etc. This principle seems also to be understood 1. in favor of liberty, provided that a contrary presumption, or the common good of the Republic or of Religion, does not stand in the way; 2. against liberty in the external forum, or even in the internal forum, when there is question of the public good, for example of contracts, especially of matrimony. But the reason why that principle is not to be applied in every case against liberty is sought from another principle mentioned above, namely: An obligation is not to be imposed unless it is certain concerning it. Moreover the obligation is not certain, unless some evident reason of justice, of Religion, of the public good, or of another end necessarily to be obtained, urges. - St. Lig., book 1, no. 26, book 6, no. 505. - Voit, no. 38.

76. ◦ IV. In doubt favors are to be enlarged, and odious things restricted (Rule of Canon Law 15 in VI); that is, in doubt the more benign things are to be preferred. Hence according to this principle, and the more common interpretation, these things seem to be established: 1. As often as odious things and favors can be separated, odious things are to be restricted, and favors enlarged, as much as can be done without violence being inflicted on the sense of the words. 2. If odious things and favors are indivisible, then judgment must be made concerning the intention of the legislator from his words, from the subject matter, or from the adjoining circumstances. 3. If the intention of the legislator cannot be clearly determined, attention must be given more to favor than to odium. - St. Lig., book 1, no. 99.

But by odious is here understood whatever tends to punishment, or harms the right of a third party, or is opposed to common right. But favor, or favorable, whatever indulges liberty, or grants grace, without detriment to private persons, or to the community, or to the right itself.

V. In obscure matters, what is least must be held (Rule of Canon Law 30 in VI). This rule is to be understood thus: Where the true sense of a law or statute is not clear, and after inquiry has been made it cannot be determined either from the nature of the thing, or from the context of the words, or from the custom of the place, or from another circumstance, the less burdensome interpretation or the one more benign to liberty is to be admitted. The reason is that the legislator is not considered to wish to oblige beyond that which is clearly expressed in the law. Hence in doubt concerning the

quantity of penalty to be inflicted, the least is to be chosen. Likewise, if the delict is not certainly clear, the accused must be absolved.

VI. In doubt of fact the following axioms, or rules of civil law received among all, are valid, namely 1. In doubt, a fact is not presumed, but must be demonstrated. But this must be understood of doubt concerning a principal act, for example if there is doubt whether someone struck another, this fact must not be presumed, but he who affirms must positively prove it. - 2. In doubt, a fact is presumed, or that which by law had to be done is presumed to have been rightly done. This must be understood of doubt concerning an accessory act, the certitude of the principal act being supposed; for if something had to be done by law, or if it is ordinarily accustomed to be done, or is favorable to the one acting, it is presumed to have been done. - 3. In doubt no one is presumed evil, unless he is proved so. This is valid whenever there is question of doubt concerning some delict. For that must not be imputed unless it is certainly clear concerning it. The reason is that delicts are not presumed; nor is anyone presumed evil, but he must be proved so.

VII. In doubt the safer part must be followed (a rule of canon law). This rule must be restricted to cases of practical doubt, or to those in which the end is necessarily to be obtained, namely where probability would not remove the danger which the law commands altogether to be avoided, as for example in confecting the Sacraments, according to what was said above, no. 56, and is known from all the things thus far set forth [1].

[1] Above (in the note to no. 70), with St. Alphonsus it was observed that, from the common sentence of the Doctors, this rule, or others of this kind, as to speculative doubts, is of counsel, not however of precept.

77. Resolves. - 1. It is not licit to follow an opinion only probably probable against the law, because that opinion is not properly and solidly probable [2], and therefore cannot be had as a sufficient reason for rendering the law uncertain.

[2] If you apply the words probably probable for a merely nominal and arbitrary definition, so that you wish to signify an opinion for whose probability there militates no grave and solid reason which could move to prudent assent, let what the Author has stand. But if you use the words, as is proper, according to their proper sense, the matter stands otherwise. For to affirm something probably, by the consent of all, is the same as to assert something because of a grave, solid, and prudent reason. Therefore if you say something to be probably probable, with the proper sense of the words considered, it is necessary that you be led to affirm it by a prudent, grave, and solid reason. Therefore it is beside the matter that what you say is probable, being moved probably, that is, by a grave, prudent, and solid reason, you would deny this same thing to be properly and solidly probable. On this matter, to remove ambiguities, it is indeed useful to recall to memory what Suarez, after St. Thomas and very many Doctors of the Scholastics, admonishes (On Penance, disp. 22, sect. IX, no. 5), that in moral matters solid and prudent probability is equivalent to a certain moral certitude; precisely because in matters of this sort greater certitude cannot be had. And this indeed common practice also suggests. For is not someone believed, by common consent, to act prudently enough if he holds as probable that which he finds handed down as probable, for example, by St. Antoninus after St. Thomas, or by St. Alphonsus after Suarez, etc.? Yet what certitude at last do we have in this beyond that prudent probability which, as we have said, ought to seem sufficient in matters of this kind to each wise man?

2. It is not licit for you to follow a sentence probable to others, but actually altogether false to you [3]. The reason is that if you actually judge something to be illicit, and you do it, in the present act you have a conscience of sin, and therefore you act against your conscience. Therefore that you may licitly follow the sentence of another, you must first make it your own, that is, judge it to be probably true [4], or its object to be probably licit. - Reuter, no. 105.

[3] Thus if there is question, for example, of the sentence handed down as probable by St. Alphonsus, that there is no obligation of denouncing a Confessor who has merely consented to solicitation. For it will be altogether false to you, if you know that it was condemned by the Congregation of the Holy Office, as we shall see in its own place, and indeed that that decree of the Sacred Inquisition was confirmed by Benedict XIV (in the constitution *Sacramentum Poenitentiae*) by Apostolic authority.

[4] That you may make the opinion of another your own, it is not necessary that his intrinsic reasons move you to assent; but it will suffice that the authority of another induce you into a prudent doubt concerning your own sentence.

3. It is not always licit to follow any opinion whatever that is speculatively probable; because sometimes a speculatively probable opinion is not practically probable; namely, there can be an action indeed licit in itself, which nevertheless in practice becomes illicit because of danger of scandal, irreverence, injustice, etc. [5].

[5] Then especially the Doctors called an opinion only speculatively probable, not practically, when the licit use of the same opinion requires those conditions which in practice can scarcely, or not even scarcely, be hoped for.

4. It is not licit to follow a probable opinion when the opposite appears most probable; because a grave motive does not seem able to stand in conflict with a most grave motive; whence such an opinion must be held as doubtfully or slightly probable [6].

[6] Perhaps it will never happen that, with intrinsic reasons considered, someone judges probable an opinion whose opposite he holds as most probable; but it is otherwise if only the judgments of Authors concerning the same matter are considered. For you will certainly find that some hand down as probable, indeed hold as more probable, an opinion whose opposite others defend as most probable, and even morally certain. See St. Alph., book 6, no. 443. But then the matter itself admonishes the prudent reader that inquiry must be made more diligently into the matter; and thence it will easily appear either that the one opinion is called most probable without cause, or certainly that some probability is vainly attributed to the other, as we shall see in its own place in the cited place of St. Alphonsus.

78. Questions. - QUESTION 1. Whether it is licit to use probability not only in the matter of positive law, but also of divine and natural law?

I answer affirmatively, because in any matter it can happen that the existence of the law is not certain, namely whenever a true and solid probability militates against it; and therefore concerning such a law there is truly invincible ignorance. Moreover God, the author of law and the principle of the natural order, is not considered to wish to oblige us when we invincibly are ignorant of the existence of the law. - Lacroix, etc.

QUESTION 2. Whether a Confessor can, or ought to, absolve a penitent who wishes to follow an opinion indeed probable, but opposite to the sentence which he himself holds?

I answer affirmatively, if the penitent adheres to a truly probable opinion with formed conscience. The reason is that the penitent has a right of following a truly probable opinion, nor does the Confessor have a right of imposing his own opinions on him, even if they seem more probable to him. For the Confessor is not the judge of opinions which the penitent is held to follow, but is only the judge of the disposition of his penitent, as is clear from Trent, session 14, ch. 5. - Thus St. Lig., book 6, no. 604, and others commonly [7].

[7] Concerning this matter St. Alphonsus says (book 6, no. 604): But the Confessor, whenever his opinion is not evidently certain, cannot oblige the penitent to follow it; whence then he not only can, but even is held to absolve him.

QUESTION 3. Whether extrinsic probability constitutes an opinion truly probable?

I answer affirmatively, at least speaking generally; indeed in questions whose solution depends very greatly on the estimation of prudent men, greater authority constitutes greater probability. For it is difficult for something to be extrinsically probable without a truly grave reason being for it. But it must reasonably be presumed that such a reason is present when many and grave Authors hold some opinion to be probable, since they are rightly considered to have looked thoroughly into the truth of the matter, and to rest on solid motives. - Hence St. Thomas: Someone of little knowledge is made more certain about that which he hears from some scientific man than about that which seems to him according to his own reason, 2. 2, q. 4, art. 8.

There is also added the authority of the Sacred Penitentiary. For when the Sacred Congregation was asked whether a Confessor who follows the doctrine of St. Ligorius, without weighing his reasons, but only because of his authority, is to be disturbed, it responded negatively; and this response was approved by the Supreme Pontiff Gregory XVI. Therefore extrinsic probability supposes intrinsic. Therefore...

79. ◦ QUESTION 4. What must be thought concerning that principle most familiar to not a few probabilists: HE WHO ACTS PROBABLY, ACTS PRUDENTLY?

I answer. That principle, enunciated thus, is false [8], if it is had as a primary principle and one having force per se. The reason is that an action cannot be prudent by the force of probability alone, but has this from certitude alone. But it is true if it is had only as a consequence of another primary principle, which is per se the ultimate rule of acting, such as this one can be: There is no obligation unless it is certain concerning it.

[8] To a question of this kind perhaps it would have been better to respond that that principle certainly could have seemed false to probabiliorists. For since according to their own system they contended that the certitude necessary for acting honestly must be sought only from the direct and innermost reasons of the subject matter, and in no way from reflex principles, they rightly and deservedly concluded that he would by no means act prudently who would put after the less verisimilar that which also appeared to him more verisimilar, as though, namely, he preferred as truer that which he himself judged less true. But now he would plainly rave who attributed these so absurd and rotten things to those innumerable and most grave Doctors to whom it was most familiar to use the principle concerning which the discussion is had. Namely, they used that saying by the same reason by which even now in many schools it is most familiar to use as a certain principle that sentence which is proposed in the present thesis, namely that he acts prudently and honestly who follows a probable opinion, even with the more probable left aside. But the principles which gave the reason of the same saying the Doctors sometimes expressed, and sometimes, as obvious and very well known, passed over in silence. Cf. Suarez (On 1.2, tr. 3, disp. 12, sect. 3, no. 3, and sect. 6, no. 8), Laymann (On Conscience, ch. 5, § 2, nos. 7 and 8), Vasquez (On 1.2, q. 62, ch. 5, no. 27, and ch. 9, no. 44), Sylvester (under Opinion, no. 1), Bartholomaeus Medina (On 1.2, q. 19, art. 6, concl. 3), Sanchez (On the Decalogue, book 1, ch. 9, nos. 14 and 16), etc.

QUESTION 5. How must the axiom be understood: IN DOUBT THE CONDITION OF THE POSSESSOR IS BETTER, and what is its use in forming conscience?

I answer 1. This rule, as it has been accustomed to be handed down and admitted by the Doctors in the schools, was never understood and received concerning the state of opinion, but only concerning the state of doubt taken strictly [9]. But between doubt and opinion this difference always exists, that the former imports every kind of suspension of assent between two contradictories, while the latter imports assent to one or the other part, although not without fear of the opposite. For this reason all those things manifestly fall which Vincentius Bolgeni (*Del Possesso*, ch. XV), and some others after him, undertook to draw from that axiom for attacking the use of probable opinions as it was received

in the schools; since the arguments applied by them rest only on this preposterous understanding of the axiom, as though, namely, the phrase in doubt also comprehended those cases in which a probable opinion gives its vote.

[9] Thus Lugo (On Justice and Right, disp. 23, no. 110): The Doctors well observe that this proceeds when there is mere negative doubt; for if it were positive doubt, and probable reasons on each side, then the rules would have to be observed which are commonly given concerning probable conscience, and regularly the debtor can embrace the probable judgment.

** As to positive doubt, you manifestly see in this text of Lugo that probable reasons on each side are supposed. The Author himself also says the same thing clearly enough when he names assent to one or the other part not without fear concerning the opposite. Nevertheless VV. (page 37) write that the Author signifies that opinion is solitary, to which no other contradicts. Thence, certain words of St. Alphonsus having been brought forward (*Moral System*, book 1, no. 71), they contend that suspension of assent is present even when equally probable reasons militate on this side and on that. Response can be made: Suspension of assent concerning the force and weight of reasons which persuade that each sentence is probable is present, I deny; suspension of assent concerning the doubt whether the law then obliges is present, I deny; suspension of assent as to which opinion is truer in itself is present, let it pass. For in the present matter it is of interest to know this one thing, whether force of obliging belongs to the law when a probable opinion militates against it. But this objection of VV. is so much less to the matter, since St. Alphonsus, precisely because opinions equally probable militate on each side, concludes against Patuzzi that the law does not oblige; which likewise is altogether the conclusion which the Author with the Doctors and Cardinal de Lugo here deduces. As to the mind of St. Alphonsus, see also the note to the following no. 80.

I answer 2. Some judged, but the probabiliorists especially contended, that this axiom is valid only in the matter of justice, not however generally in the matter of other virtues, lest, namely, from this principle, which they saw was received by all, force should accrue to the other principle which they attacked, namely, that a doubtful law does not oblige, or that from an uncertain law a certain obligation cannot be induced. Thus Billuart, On Human Acts, dissertation 6, article 2.

Yet that this axiom is valid also in the matter of other virtues is the more common [10] and altogether to be held sentence; and Suarez deservedly called the opposite opinion (On Censures, disp. 40, sect. 5, no. 15) false and resting on no foundation.

[10] Cf. Lugo, On Justice and Right, disp. 25, no. 110.

And indeed, as the same Suarez observes (On Vow, book 4, ch. 5, no. 7), the laws from which that rule is taken speak generally and without restriction, as in chapter *In pari*, 65, On the Rules of Law in VI, it is said absolutely that in any cause whatever the right of the possessor is to be preferred [11].

[11] Thus Rule of Law 65 in VI: In an equal... cause the condition of the possessor is stronger. So also Law *In pari*, 128, ff., On the Diverse Rules of Law: In an equal cause the possessor ought to be had as stronger.

Then, Suarez continues (ibid., no. 8), no reason of difference is assigned, nor does it seem able to be assigned. For in the matter of justice that principle is founded either on this, that when there is doubt concerning the foundation of obligation..., there is a certain equality between the obligation of restoring and the power of retaining, and otherwise possession of the thing confers some right, and therefore the right of the possessor prevails [12]; or it is founded on this, that because of mere doubt things are not to be changed from the ancient state in which they were existing in good faith, because since in doubt there is equality of both, there is no reason why it should oblige to one part rather than to the other; or it is founded on this, that when invincible ignorance intervenes, an excuse from obligation arises, but when doubt intervenes, ignorance of the thing concerning which there is doubt intervenes, and diligence having been applied to expelling the doubt, and the doubt nevertheless persevering, that ignorance becomes inculpable, because it was not in the power of man to drive it

away, and therefore it impedes obligation; or it is founded on this, that obligation is burdensome and in its way odious, and therefore must be restricted so that it does not arise unless its foundation is morally certain, especially where other things are not equal. But all these reasons have place outside the matter of justice... Therefore.

[12] To this pertain the things which are had in § *Retinendae*, 4, Institutes, On Interdicts: But the advantage of possessing is in this, that even if the thing is not his who possesses, if only the plaintiff has not been able to prove that it is his, possession remains in its place: for which reason, when the rights of both are obscure, judgment is usually made against the petitioner.

All these things are declared and at the same time confirmed from the doctrine of St. Thomas, where he treats of the virtues joined to justice. For, as the holy Doctor (2. 2, q. 80, art. 1) and all the Doctors with him observe, virtues of this kind, which are also accustomed to be called potential parts of justice, have this proper to themselves, that partly they agree with justice, partly they fall short of the notion of justice. Moreover, since the notion of justice consists in this, that it renders to another what is owed to him according to equality, other virtues fall short of the notion of justice in this, that either they cannot preserve equality, as religion toward God, or that they render not a legal debt indeed, but only a moral one, without which, namely, honesty cannot be preserved; but they agree with justice in this, that they render to another what is owed to him, of which sort will be obedience toward God or toward the laws, which embraces all necessary virtues. But if there is any force to the axiom concerning which we are treating in the matter of justice, this whole force is exercised in that which is common to justice with other virtues, and which is contained by the general notion of debt, namely by defining whether, in the case of a doubtful debt, something ought to be rendered. Therefore it is manifest that this rule is equally valid in the matter of justice and in the matter of other virtues, insofar as, comprehended under obedience due to God or to the laws, they are reduced to the virtue of justice as its potential parts [13].

[13] You have the use of this principle in Suarez (On 1.2, tr. 3, disp. 12, sect. 5, no. 7): If there is simply doubt about the whole law... that is, whether it has been enacted or not; ... the general rule is that it does not oblige. The reason can be sought from that principle, that in doubt the condition of the possessor is better; but man holds (namely, possesses) his liberty.... But if the law and its sense are clear, there can be doubt whether it obliges in this case; and then the general rule is that if there is no sufficient and probable reason for excusing, then one must obey the law, because it itself or the superior holds his right.

80. ∘ QUESTION 6. If you doubt whether you have already satisfied some obligation, are you still held to satisfy it?

I answer 1. Altogether affirmatively, whenever there is question of doubt properly so called, or of negative doubt, or of practical doubt; the reason is that in such doubt it is never licit to act against the law, as follows from the principles placed above, nos. 39, 41, and 70 [14].

[14] This also follows from the principle: In doubts the condition of the possessor is better. Hence Lugo (On Penance, disp. 16, no. 59): All agree in this, that he who knows that he has sinned mortally, but doubts whether he has confessed that sin, ought to confess it: for then possession is against the penitent; for the sin and the obligation of confessing are clear, but the confession is not clear. But observe here that the discussion is about negative doubt; for in the same place Lugo denies that there is an obligation of confessing when it is thought even only probably that that sin was said in confession.

I answer 2. But if there is question of positive doubt, or of true and solid probability, it was controverted.

Concina, Collet, and Antoine affirm with certain others; and they take the reason from this principle: A certain obligation is not satisfied by a doubtful fulfillment. For, they say, a law once existing and commanding has the right of exacting rigorous obedience, or an undoubted fulfillment of the obligation. But when only probably, or even more probably, you judge that you have fulfilled the law, you have by no means rigorously satisfied it. Therefore it still urges and presses you, until you have certainly satisfied.

Yet the very common [15], and altogether reasonable, sentence is that he who probably satisfied some obligation is held to nothing further.

[15] Lugo (On Penance, disp. 16, no. 58): All commonly teach that someone is not held to confess that sin which he probably judges that he has... already confessed; because he now follows a probable judgment, which as in other matters, so also in this one, suffices for fulfilling the precept. And below, no. 59: Nothing is more frequent among Theologians than to excuse from repeating confession one who has confessed... according to some probable sentence concerning its value. See Suarez (On Penance, disp. 22, sect. 9, no. 6), Bonacina (On Penance, disp. 5, q. 5, sect. 2, § 3, diff. 4, nos. 3, 4), the Salmanticenses (On Vow, ch. 1, no. 45), Roncaglia (tr. 8, On the Second Precept, ch. 2, q. 4, resp. 2), etc.

It is proved 1. Since probability is supported by grave and prudent judgment, therefore whoever probably satisfies an obligation does that which by prudent judgment suffices for fulfilling the precept. But equity neither allows that more be exacted than what prudently is believed sufficient for fulfilling the precept, nor is a prudent and equitable legislator rightly considered to will anything more. Therefore.

It is proved 2. Any exaction beyond that which probably suffices for fulfilling the precept has against itself the probability of this prudent judgment. But an exaction having a probable judgment against itself becomes, as to this, an uncertain obligation or law, which, as is clear from the things said above, cannot have force of obliging. Therefore.

It is proved 3. From absurdity. For if you demand likewise certain satisfaction for a certain obligation, not only through a probable or more probable satisfaction, but not even through a most probable satisfaction, will the precept be able to be said to have been fulfilled; for there always remains room for replying that the obligation is certain, but the satisfaction uncertain or less certain. But this leads by a straight way to condemned tutiorism. Hence even Billuart (On the Sacrament of Penance, dissertation 7, article 2, § 4) and others, although they held probabiliorism, nevertheless judged it sufficient if you more probably satisfy the law. Therefore [16].

[16] Some think that St. Alphonsus at last came to the opposite opinion with Antoine and Concina, because in book 1, no. 28, with them he judges that he who probably judges that he has already satisfied a vow is still held to fulfill the vow, although he himself had previously called the denying sentence probable.

But in reality it is false that St. Alphonsus withdrew from the common doctrine. This is evident from these things which he has in the same book 1, no. 99, at the end: What in doubt whether you have fulfilled the law? In negative doubt you are held to fulfill; otherwise in positive. And again, book 3, no. 290: In doubt concerning custom (namely derogating from laws) the precept possesses, whence dispensation must be sought; otherwise if it is probable that the custom is present. And again, book 3, no. 112, q. III, § Second sentence, he writes: Here we are not occupied with doubt, but with probable opinion.... But when it is probable that... a law has been abolished, then presumption for the law ceases, and liberty possesses.

Therefore St. Alphonsus certainly changed his opinion as to the special question, On Vow, but not as to the general principle. And indeed that resolution as to a vow seems to be taken concerning him who is uncertain whether he has furnished anything for fulfilling the vow or not; not however concerning him who did something, and is uncertain only whether it suffices for fulfilling the promise. For otherwise St. Alphonsus inculcates hundreds and indeed thousands of

times that he is safest in conscience who, as to obligations, follows probable judgment, since his whole moral work rests on this principle.

As to the axiom which is objected: A certain obligation is not satisfied by a doubtful fulfillment [17], response is made that it is true whenever the discussion is about practical or negative doubt, but not if true and solid probability favors liberty.

[17] Others object in other words: A certain debt is not satisfied by an uncertain payment; and if you owe one hundred from a contract, you are not freed from the whole obligation except by certain payment. But Cardinal Lugo responds: First, if that one hundred is owed from a liberal promise, it seems to be satisfied by a probable payment; just as one who owes fasting from a vow, if he fasts by observing the fast according to a probable opinion.... But if they are owed from an onerous contract, as from purchase, exchange, etc., then perhaps it is not satisfied; because equality is not preserved by giving, in exchange for a certain thing, another uncertain thing which by that very fact is worth less; and because the intention of those contracting seems to be that certain money be given to oneself for certain goods: which reasons... do not proceed in all other precepts, in which the obligation is certain of hearing Mass, for example, of fasting, of reciting the Office, etc., and nevertheless a man satisfies if, according to a probable sentence, he fasts, hears Mass, or recites the Office, etc. Thus Lugo (On Penance, disp. 16, nos. 59, 60), who also skillfully says doubtfully about an onerous contract: perhaps he does not satisfy; for if the matter is about contracts which are called of good faith, in which, namely, the judge is given the faculty of arbitrating many things among litigants from equity and the good, now even the equality itself, which must be preserved in an onerous contract, is accustomed to be determined by a prudent, that is, probable judgment.

QUESTION 7. Whether among several probable opinions it is licit to follow now this one, now the opposite?

I answer affirmatively [18]. The reason is that among probable opinions none is given formally safer and more secure than another. For all are equally secure [19]. Besides, if you were held to follow the opinion which appears more probable to you, and could not operate from the probable sentence of others, you would have to be agitated by a thousand scruples, and to vary your work at each hour, since now you adhere to one opinion as more probable, now to the contrary, etc. - Pal. On Conscience, disp. 2, point 2, nos. 2, 3. But see Cases, vol. 1, no. 75.

[18] It is not licit, nevertheless, for the Confessor to use a probable opinion for imposing an obligation, when the opposite also is probable, since from what was said above, no. 78, q. 2, the penitent has the right of following this, and the Confessor is held to absolve him. Nor does it matter whether the penitent knows this. For it would be most unjust so to abuse the ignorance of the penitent, that an obligation be imposed on him which is not imposed by God the legislator, and which besides could fall to the penitent as a snare of perdition.

[19] Beware, nevertheless, lest you so lead the matter to an absurd contradiction, that while you gain some advantage from some opinion, you refuse the inconveniences attached to it under the pretext of the opposite opinion. Thus you would act absurdly if, having used a probable opinion, you entered upon an inheritance coming from a testament which lacks the legal forms; and then, under pretext of the sentence which denies that this testament has force, you refused to pay legacies. For he who assumes the inheritance assumes also the burdens necessarily joined to it.

End of the Treatise on Conscience.

Treatise On Laws

Law is the external and remote rule of human acts, just as conscience, or the practical dictate of reason, is the internal and proximate rule of the same acts.

One must treat 1. of laws in general; 2. of the principal species of laws.

Part One. On Laws in General

We shall speak of the nature of law, - its author, - object and subject, - promulgation and acceptance, - obligation, - interpretation, - dispensation and cessation.

Chapter I. On the Nature and Properties of Law

81. ○ DEFINITION. Law is an ordination of reason unto the common good, promulgated by him who has care of the community (St. Thomas, 1.2, q. 90, no. 4). Hence it differs from a precept. For law is essentially made for a community by a public person and for the common good, while a precept properly so called can also emanate from a private person, and can regard private subjects unto their private good. Such is the command of a father over a son, or of a Prince over some subject. Yet often laws also are called precepts. Thus the divine laws handed down to Moses on the mountain are called the precepts of the Decalogue.

There is a manifold distinction between law and precept, namely 1. by reason of the one commanding, because the legislator is a public person, but the one giving a precept can be a private person. 2. By reason of the subject, because law is made for a community, but a precept even for a private person. 3. By reason of the end, because the end of law is the common good, but the end of a precept is private good [1]. 4. By reason of place, because law affects the territory, but a precept affects the person, and, as they say, clings to the bones. 5. By reason of duration, because a precept ceases by the death of the one commanding, but law is not extinguished together with the legislator.

[1] Understand the direct and immediate end; for mediately and indirectly law tends to the private good of each one, but a precept tends to the common good: namely insofar as the common good of all redounds to the good of individuals, and vice versa.

DIVISION. Law is distinguished in a manifold way:

1. Divine, or human, according as it has God or man as its immediate author.

2. Natural, or positive, according as it is intimated by rational nature itself, or by a positive act of the legislator.

3. Ecclesiastical, or civil, according as it is made by ecclesiastical or civil power.

4. Moral, or penal, or mixed, according as it obliges under fault alone, or under penalty alone, or under both at once.

5. Affirmative, or negative, according as it commands the placing of an act, or prohibits it. Hence it is also called preceptive, or prohibitive.

6. Simply prohibiting, or invalidating, or permitting, according as it only renders an act illicit, or invalid, or prohibits the agent from being disturbed.

7. Favorable, or odious, according as it restricts or enlarges liberty [2].

[2] Law per se is always considered something odious. Yet there are laws which look to enlarging favor, or rather to lessening bonds. A law of this sort is one which declares valid marriages contracted by children under paternal power without the consent of parents, or even against their will.

8. Written, or preserved by use, according as it is made by written mandate, or is introduced and preserved by custom alone.

82. ◦ QUESTION. What are the properties or conditions of human law?

I answer. They are the following, which are included in the very definition of law, namely, it must be possible, honest, useful, just, permanent or stable, and promulgated. - Thus from the first part of the Decretum, dist. 4, can. 2.

1. Possible, that is, accommodated to the morals and circumstances of persons, etc.

2. Honest, that is, establishing nothing that is dishonorable, and repugnant to good morals or right reason or positive divine law; for law cannot bind to evil acts and those opposed to the ultimate end of man.

3. Useful for the common good, 1. because the good of the community is the essential and primary end of law; 2. because law is an act of public power, which has been instituted for the common good alone.

4. Just, that is, according to the norm of distributive justice, so that some are not burdened more than the rest, but it is imposed on subjects with equality of proportion, considering their strength and faculties: otherwise it does not oblige in conscience.

5. Permanent, or stable, that is, established without a definite time, so that once made, unless it is abrogated, or becomes harmful or useless, it lasts as long as the community on which it is imposed stands, or as long as the circumstances for which it was made persevere.

6. Promulgated, because law is a general and public rule of actions, directing and obliging the community. But a rule cannot direct and oblige the community which it rules, unless it has been applied to it through promulgation.

Chapter II. On the Author of Law or on the Legislator

83. ○ A legislator is called a Superior in whom there is either independent and supreme, or subordinated, power of making laws for a community over which he has jurisdiction.

Principles. - I. God alone is the supreme and universal legislator, from whom necessarily the other legislators, whoever they may be, receive all their power, whether immediately or mediately. For God is the supreme and essential rule of any order whatever, and he alone enjoys supreme dominion over rational creatures, of whom he is the principle and ultimate end. - It is also clear from Scripture: By me kings reign, and lawgivers decree just things; by me princes rule, and the powerful decree justice. Prov. 8. 15, 16. - There is no power except from God. Rom. 13. 4.

II. The Church has the power of establishing laws which conduce to obtaining the end proposed to her [1].

[1] It will happen to be most useful to have read on this argument the excellent little work whose title is *Institutions of Ecclesiastical Law*, by Camillus Tarquini of the Society of Jesus, professor of Canon Law in the Roman College, Rome 1862, and again 1868.

It is clear 1. from Sacred Scripture. For thus Christ says to Peter, Matt. 16. 19: Whatever thou shalt bind upon earth shall be bound also in heaven, etc. - And Luke 10. 16: He who hears you, hears me; and he who despises you, despises me; but he who despises me, despises him who sent me. - Likewise Acts 15. 28: It has seemed good to the Holy Spirit and to us to impose no further burden upon you than these necessary things, that you abstain from things sacrificed to idols, and from blood, and from what is strangled. Moreover the words: Whatever thou shalt bind... he who hears you, hears me... to impose upon you... signify the power conferred on the Church of binding or of establishing laws.

It is clear 2. from reason. For the Church is a perfect society in her own kind. Therefore she must enjoy the power readily available and necessary for her proper governance. But the Church could not provide for her own governance unless she had the faculty of establishing laws; for there are many abuses to be repressed among the faithful, and many things to be established for promoting or preserving the worship of God, and for procuring the salvation of souls. Therefore...

It is clear 3. from tradition and the constant practice of the Church, or from various apostolic Constitutions and Councils, by which disciplinary statutes were established.

84. ○ III. Secular Princes can establish laws which conduce to the end of temporal happiness.

It is clear 1. from Sacred Scripture, Prov. 8. 15: By me kings reign, and lawgivers decree just things... as above in the first principle. And 1 Pet. 2. 13: Be subject, whether to the king as excelling, or to governors as sent by him.

It is clear 2. from reason: for Princes have from God the power of ruling subjects, as was said above; but they could not exercise this power unless they enjoyed the faculty of establishing laws. Therefore, etc.

IV. Legitimate Superiors commanding something by a just law must always be obeyed, whether you think they received authority immediately from God, or through the people. - The reason is that in each sentence they are equally set over society to be governed by God, and therefore they possess

authority received from him. Hence in practice the controversy whether secular Princes have power from God mediately or immediately is of no moment.

But the law must be considered just whenever its injustice is not commonly clear among learned and upright men; because right order requires that in doubt the presumption favor the Superior.

85. Questions. - QUESTION 1. Who in the Church have the faculty of establishing laws?

I answer. The Pope, a general Council, Bishops, and particular Councils.

1. The Pope, or Roman Pontiff, for the whole Church. For to him it was said in the person of Peter: Feed my lambs, feed my sheep. John 21. 15 and 16. But the word to feed signifies the same as to govern and rule. - Add the words of Matt. 16. 19 reported above: Whatever thou shalt bind, etc. For the Pope is the true successor of Peter in the Roman chair; he is therefore the Supreme Pontiff, the Supreme Key-bearer, Pastor of Pastors, the Vicar of Christ on earth.

2. A general Council likewise for the whole Church. For a general Council juridically represents [2] the whole teaching and ruling Church; therefore it can establish laws for the whole Church. Nevertheless a general Council can do nothing unless the Supreme Pontiff, either through himself or through Legates, presides over it and confirms its decrees. For the Church, when the head or Pope is absent, cannot be represented.

[2] To represent here is to set present, not however to act in some way in the place of another by an office committed; which heretical sense was proper to the Jansenists.

3. Bishops for the diocese. For this is necessary for the right administration of the diocese. It is also clear from that text, Acts 20. 28: The Holy Spirit has placed you Bishops to rule the Church of God. But the Bishop receives this right in his canonical institution. Moreover a Bishop can do nothing concerning the law of the Supreme Pontiff, since an inferior does not have jurisdiction over a superior. Nor therefore can he establish anything that is opposed to the common law or weakens it. - The statutes of a Bishop, even those made and promulgated outside a Synod (with the counsel of the Chapter nevertheless having been heard), according to the truer sentence have the same perpetuity as synodal Constitutions. - Thus Benedict XIV, On the Diocesan Synod, book XIII, ch. 5, no. 1 [3]. - But Archbishops and Patriarchs cannot make laws for the dioceses of suffragans, because they are not Superiors properly so called, although they can settle their lawsuits brought before them.

[3] On this matter perhaps Scavini says it better thus (Moral Theology, tr. 2, ch. 1, q. 2, in note): By common usage it has been introduced that ordinances of Bishops given outside a Synod, unless the Bishops themselves expressly declare otherwise, are then only to be had as true laws when they bind all diocesan persons, both clerics and laics; otherwise they are reputed only as precepts. I said outside a Synod; for ordinances which have been established in a Synod are had as true laws by themselves going to endure perpetually, even if they regard only one group of subjects, since they are contained in the legislative code. I said unless the Bishops expressly declare otherwise; for it is always free to them even outside a Synod to establish laws for each group only. But if this is not clearly established, they are held not as laws, but as precepts from common custom. But against these things those things which Lambertini discusses in the place cited by the Author do not have much strength.

4. Particular Councils for the province. For if Bishops taken separately are able to establish laws for dioceses, similarly also in a Council, whether national or provincial, they can constitute laws for a nation or province. Nevertheless the decrees of these Councils must be sent to the Sacred Congregation of the Council of Trent so that they may be recognized. Thus from the ancient law confirmed by Sixtus V in the Bull *Immensa aeterni*, where it is said of the Sacred Congregation of the Council: But of provincial Councils, wherever on earth they may be celebrated, it will command that the decrees be sent to it, and it will examine and recognize each one. It is also clear from Benedict XIV, On the Diocesan Synod, book XIII, ch. 3, where he has these things: Sixtus V commanded that these decrees, before they are promulgated, be transmitted to the sacred Congregation of the Council, not indeed so that afterward they may receive confirmation from the Apostolic See, but so that they may be corrected, if perhaps anything either too rigid or less congruent with reason is detected in them. Yet it has happened more than once that provincial Councils are not only recognized by the sacred Congregation of the Council and, if there is need, amended, but also confirmed by the Supreme Pontiff, when the Metropolitans by whom they were celebrated request it, through apostolic letters. But the confirmation of Synods by the Apostolic See can be made in two ways, to be carefully distinguished: in common form, or in specific form. - See Benedict XIV, On the Diocesan Synod, book XIII, ch. 5, no. 11 [4]; and book XII, ch. 5, no. 13. Yet neither transmission to the Sacred Congregation of the Council, and much less confirmation by the Apostolic See, are necessary for the statutes of a diocesan Synod. - Benedict XIV, ibid., book XII, ch. 3, no. 6.

[4] Statutes are said to be confirmed in common form when they are not examined one by one, nor approved by the Pontiff *motu proprio* and from certain knowledge... and such a confirmation gives them nothing of new right or efficacy.

A confirmation is said to be made in specific form when cognition of the cause is premised, and the individual statutes are diligently weighed, and then, with no condition added, by Apostolic authority with the clause *motu proprio* and from certain knowledge, they are confirmed.... A statute confirmed in specific form, since it has put on the nature of pontifical law, no one of inferiors is permitted to derogate from it; indeed from this confirmation it receives such strength that it prevails over common law, to which otherwise it may be contrary. Thus Benedict XIV, On the Synod, books and chapters cited by the Author.

86. ○ QUESTION 2. Whether the Cathedral Chapter, while the See is vacant, Prelates of Regulars, and Abbesses, or Superioresses of Nuns, can establish laws?

I answer 1. The Chapter, while the See is vacant, can innovate or abrogate nothing; but it must govern the diocese according to existing laws. Nevertheless it could make statutes which were necessary for circumstances. - St. Lig., no. 104. - Gousset, no. 129.

I answer 2. Prelates of Regulars are able to establish true laws, whether in the general congregation of the Order, or in another way within the limits of their jurisdiction according to the proper constitutions of the Order [5]. For they have statutes approved by the Supreme Pontiff which grant them this faculty.

[5] Namely, one must inspect to whom this power has been given in the proper Constitutions of each Order. Certainly in a Chapter or Congregation, not the Prelate but the Congregation establishes laws. But if this power belongs to the General Superior, then he will not need the help of the Congregation.

I answer 3. Abbesses or Superioresses of Nuns cannot make laws properly so called, since they are not capable of ecclesiastical jurisdiction. Yet they can exact obedience in conscience concerning things

commanded, or concerning those things which conduce to the progress of the Nuns according to the rules. For they have the right of commanding both from the vow of obedience emitted by subjects, and from the necessity of discipline which must be preserved in the community.

87. ○ QUESTION 3. What secular Princes have the power of establishing laws?

I answer. All those who enjoy supreme authority, and are not delegates of another, so that they act in his name; of this sort are Emperors, Kings, the Magistrates of a legitimately constituted Republic, etc.; but not military commanders, nor Prefects of provinces, who cannot act in their own name. - See Cases, no. 79 and following.

But if there are any who, although they act in their own name, nevertheless are subject to a Superior, the laws of these persons can be invalidated or reformed by the Superior; for example, the laws of a feudatory Prince in the civil order by the primary Prince, just as also in the ecclesiastical order the laws of a Bishop or of a provincial Council, or of a Prelate of Regulars, can be corrected or abolished by the Roman Pontiff [6].

[6] This is valid also as to the decrees of an ecumenical Council; since they have no force of obliging unless the confirmation of the Roman Pontiff accedes, he can reform or reject them. Thus St. Leo I did not admit certain disciplinary canons made in the Synod of Chalcedon.

Chapter III. On the Object and Subject of Law

Article I. On the Object of Law

88. ○ The object of law generally is whatever law can command or prohibit.

Principles. - I. The object of law is all and only those acts whose placing or omission can confer toward the common good. From what has been said it follows:

II. All indifferent acts taken distributively can be the object of law; for since acts of this kind can confer toward the common good, by that very fact they can be commanded or forbidden [1].

[1] Very well known is the distinction between those things which are prohibited because they are evil, and those things which are evil because they are prohibited. Moreover these latter are contained within the ambit of acts indifferent per se.

89. Questions. - QUESTION 1. Whether heroic acts fall under law?

I answer. Generally they do not seem to fall under law [2], because they are considered morally to exceed human strength, and therefore a law of this kind would lack that quality by which it could be called possible. Nevertheless sometimes, when the common good requires it, they can be commanded. Thus guards who are soldiers cannot desert their station, even when danger of life is imminent, if the Republic would suffer detriment from it.

[2] This question, as is clear, is made concerning human laws. For divine law, both natural and positive, can oblige even with danger of life. Thus the holy Martyrs underwent death, and a most bitter one, not from a certain supererogation, but from obligation.

QUESTION 2. Whether human law can command merely internal acts?

I answer 1. Civil law certainly cannot, because without these acts the legislator obtains his end. - Besides, he cannot judge concerning internal acts.

2. Nor, according to many, can ecclesiastical law do this; because, they say, the legislative power of the Church pertains only to the external governance of the faithful. - St. Lig., book 1, no. 100; St. Thomas, Suarez, Benedict XIV, etc., against others who also probably affirm, because the Church received unlimited power from Christ [3].

[3] The prior opinion, which denies to the Church the power of commanding merely internal acts, seems to rest more on a certain appearance of extrinsic authority than on reason. For the stronger reason which is brought forward, that the power of the Church looks to mere external governance, seems scarcely, or not even scarcely, tolerable; for does it pertain to mere external governance that she directly command attention in praying, or that she prescribe for Regulars a certain time for holy meditations?

What they add, that the Church has never commanded acts of this kind, and that this is false can be shown by not a few examples brought forward, and would conclude nothing per se; for wrongly from the negation of act is an argument made to the negation of power.

Finally they add that the Church cannot judge concerning these acts. But 1. the inference can be denied: for can she judge more concerning the interior exercise of meditation, which nevertheless she commands to Regulars? 2. But the antecedent too can be denied. For although this is true of judgment which is pronounced by man through sentence, yet it is false of judgment which, as Suarez says (On Laws, book 4, ch. 12, no. 4), is made by a legislator through law, when namely the law punishes a delict through itself, for example through a censure to be incurred by the fact itself.

**VV. (page 909) object 1. that the reasons brought here prove nothing against the sentence of the holy Doctor, who called the denying opinion more probable. I answer. They prove that which had to be proved, namely that the reasons which are customarily brought forward for the denying opinion are not suitable.

They object 2. from St. Alphonsus that the Church can indirectly command attention in praying, and meditation for Regulars. I answer 1. Those two examples are brought forward here merely to show the weakness of the reason which is customarily brought forward as principal against it, not however as examples of a merely internal act. 2. St. Alphonsus discusses the power of commanding indirectly; but in this note it had been written DIRECTLY. 3. Besides, the observation of VV. could have had force as to the first example, but by no means as to the other.

90. ○ QUESTION 3. Whether human law can command mixed acts, or acts partly internal and partly external?

I answer affirmatively. The reason is that mixed acts constitute at the same time one moral indivisible. Thus the Church commands devout attention in the celebration of Mass. - Thus all.

QUESTION 4. Whether human law can command external occult acts?

I answer affirmatively. Because it has the power of directing whatever is external. For occult acts by their nature do not differ from others; but that they cannot be punished happens per accidens. - St. Lig. ibid.

QUESTION 5. Whether a Confessor can enjoin merely internal acts?

I answer affirmatively. Because the office of directing penitents in the way of salvation requires this faculty. Hence he can enjoin pious meditations on penitents. - Voit, no. 163.

Article II. On the Subject of Law

91. Principles. - I. Every man is born and remains subject to natural law. For since natural law is the divine will itself prescribing things consonant with right reason, it is imprinted on the mind of every man with an indelible character. Therefore it happens per accidens [1] that, reason being enveloped, it is not immediately recognized, or sometimes ceases to be known.

[1] These things must be said thus, because man is never considered exempt from natural law, but is only excused from guilt when, in violating it, the perfection of the act is lacking. Hence it also follows that he whose use of reason is impeded cannot be impelled to acts opposed to natural law; which happens otherwise if the discussion is of merely human laws.

II. All and only subjects habitually possessed of reason are subject to human law. - The reason for the first is that law cannot be made except for subjects. The reason for the second is that men habitually lacking the use of reason cannot be directed by laws.

III. Only men actually using reason can morally violate law; because, cognition being lacking, no one can sin, according to the things said in the Treatise on Human Acts, no. 4. - Hence those who lack reason for a brief time are said to be excused from fulfillment of the law, although they are subject to it.

92. Resolves. - 1. It is not licit to provoke infants and the insane to a thing intrinsically evil, for example to blasphemies, indecencies, etc.; because they, as having a rational nature, are obligated by the natural law in first act, or radically; and therefore they sin formally who provoke them to acts intrinsically evil. - Reuter, no. 167.

2. Infants and the perpetually insane are not subject to human law, as is clear from principle II. Therefore it is licit to give them flesh meat to be eaten on days on which it is prohibited by the Church, etc. [2].

[2] Nevertheless this is not expedient with little children who before the seventh year begin to have some use of reason, although very imperfect. For it is of the greatest interest that from their little nails they become accustomed to bear the yoke of the Lord.

3. Yet the insane for a brief time, or those who have many lucid intervals, the drunk and the sleeping, are subject to law, because they are in a habitual state of the use of reason; nevertheless per accidens they are excused from it, if they are not actually possessed of reason. Hence it is not licit to give them flesh meat on prohibited days. - St. Lig., book 1, no. 155, etc.

4. Unbelievers, namely whoever have not been cleansed by Baptism, are not obligated by ecclesiastical laws; because they are not yet subject to the jurisdiction of the Church, although they are held to enter the Church [3].

[3] Therefore marriages among them are valid, although they are contracted with some impediment of merely ecclesiastical law.

5. Heretics, schismatics, and any other baptized persons, even if not Catholics, are held per se by ecclesiastical laws; because although they are rebels, they do not cease to be subjects of the Church: nevertheless per accidens in practice they do not seem to sin; because they scarcely know that from their condition they are held to observe these laws, even if perhaps they already know the necessity and obligation of entering the Catholic Church.

6. For the same reason, excommunicates are bound by the laws of the Church, although they have been cast out of the Church; otherwise they would obtain a benefit from their own malice [4].

[4] Except unless the excommunication itself forbids the exercise of those acts which otherwise are commanded, for example, to be present at Mass.

93. Questions. - QUESTION 1. Whether Clerics are held by civil laws?

I answer 1. Certainly they are not obligated by laws which are repugnant to ecclesiastical immunity still in force, or to their state, or to the sacred Canons. Thus commonly. - 2. Certainly they are obligated to all laws which immediately regard the common good. - 3. As to other laws, they seem to be held just like the rest, because they are part of the community, and the Church requires and commands this. - Thus more commonly. - Suarez. - Reuter, no. 168.

QUESTION 2. Whether children are held to ecclesiastical laws as soon as they have attained the use of reason, although they have not yet completed the seventh year?

I answer affirmatively as more probable. Because every man using reason is by that very fact subject to law, as is clear from principle II. - St. Lig., no. 155 (as more probable). - Nevertheless not a few probably deny, because, as they say, the Church is considered to attend to those things which happen commonly. - Thus Lacroix, no. 676 (as probable). - Reuter, no. 167. - St. Lig. (as probable), book 3, no. 270. - Elbel, no. 369.

94. ○ QUESTION 3. Whether travelers are held by the laws of their own territory?

I answer 1. Generally no, because law, which regards a community, is territorial, and does not affect persons except through territory. - Thus all.

I answer 2. If they depart with the intention of withdrawing themselves from the obligation of the law, it is disputed.

Concina, Collet, Antoine, and certain others affirm; because, as they say, one's own fraud ought to patronize no one.

But the Doctors more commonly and more probably deny; because one departing from the territory does not act in fraud of the law, but uses his own right. - St. Alph., book 1, no. 156. - Elbel, no. 370. - Lacroix, no. 683, etc. [5].

[5] What is said of the laws of one's proper territory is valid also of the law of common right, when the traveler is staying where this is not in force. St. Ligorius, book 1, no. 156. Yet what is added, that it does no harm if someone leaves his territory with that intention, has no place if he leaves his territory in order to be absolved from reserved sins, or in order to celebrate matrimony clandestinely in a place where the decree of Trent concerning the necessary presence of the parish priest and two witnesses for the validity of matrimony is not in force.

QUESTION 4. Whether travelers are held by the laws of the place in which they are staying?

I answer 1. Affirmatively, if they have a quasi-domicile there [6], which is acquired by habitation and the intention of living somewhere for the greater part of the year. The reason is that through quasi-domicile they become truly subjects of that place. - Thus nearly all. - St. Lig., book 1, no. 156.

[6] But now if they have a quasi-domicile there, they are no longer travelers. For a traveler is called whoever is staying somewhere, having neither domicile nor quasi-domicile.

I answer 2. All travelers and vagrants are held to the special laws of the place in which they are staying, 1. as to contracts, 2. as to things necessary for the common good. - Thus all.

I answer 3. As to other laws, there is a threefold probable sentence.

The first sentence, more probable, excuses them, scandal being excluded, because law does not oblige except subjects. - Thus St. Lig., book 1, no. 156, etc.

The second sentence obliges them to all laws, because he who feels the advantage [7] ought also to feel the burden. - Collet. - Antoine.

[7] The traveler feels the advantage insofar as he is both exempted from observing the proper laws of his own territory, and enjoys the privileges of the place in which he travels.

The third sentence distinguishes thus: They are held to all laws if they have arrived at the end of the journey; but if they have not arrived, only they are held to negative laws. - Thus Suarez with certain others [8], who nevertheless concedes that the first sentence also is probable.

[8] Suarez (On Religion, tr. 2, book 2, ch. 14, nos. 18 and 23) in reality contends that travelers, even those passing through, for the time in which they rest in some place, are held by its laws, and indeed not only negative, but also positive, unless they bring some harm or inconvenience; and therefore he judges that a traveler who remains there for the whole morning time of a feast day is obligated to hear Mass. Nevertheless, from the general canon the mere probability of this sentence is not sufficient to induce an obligation. Wherefore also void and of no value is that conclusion which Suarez deduces from this sentence of his, that a traveler is subject to the reservations of sins proper to the territory in which he travels.

95. From the things said concerning travelers you will resolve. - 1. If in your territory or parish there is a fast, and on the same day you go to a place where there is no fast, you can dine in the evening. - Thus commonly.

2. Probably you can also breakfast, if you are about to depart in the morning, as Busembaum, Lessius, Sanchez, etc., teach against others, and the Salmanticenses with Suarez judge probable, according to St. Lig., no. 157 [9]. The reason is that fasting is something individual.

[9] ** St. Alphonsus merely writes: The Salmanticenses, On Law, ch. 3, no. 70, judge it probable with Suarez. Yet in reality the Salmanticenses (On Law, ch. 3, no. 68), and after them St. Alphonsus, here gratuitously allege Suarez, who in the place alleged by the Salmanticenses (On Law, book 3, ch. 32, no. 3) has nothing concerning this question. Besides, the Salmanticenses (ibid., no. 70) preferred to proceed by another way, namely establishing that account must be had of the territory in which someone stays for the greater part of the day. And indeed this opinion also pleased Laymann, who nevertheless (book 4, tr. 4, ch. 11, no. 7), no otherwise than the Salmanticenses, judges the Author's sentence probable.

3. Being in the morning in a place where there is no fast, you can eat flesh meat, even if around midday you are going to return home, where there is a fast. At home, however, you are certainly held to abstain from flesh meat. - St. Lig., no. 158.

4. If in your territory or parish there is a special feast, and you are about to set out to another place where there is no feast, you are not held to hear Mass before departure, provided you are going to arrive outside the place where the precept is in force before the time of obligation ceases. The reason is that the precept does not oblige you to wait. - St. Lig., book 1, no. 157. - Salmanticenses, no. 66, against Antoine, etc.

5. Travelers are held to all common laws in force in that place, even if in their own territory they were abrogated, or through dispensation did not oblige here and now. The reason is that they are subject to the common legislator, and while absent they do not enjoy the privilege of their own territory. Thus a Frenchman outside his homeland is held to Mass on the day of Epiphany, etc.; a Spaniard to abstinence on Saturday, etc. - St. Lig., Apostolic Man, no. 39.

6. Probably travelers are not held to observe the particular law of some place, even if the same particular law is in force in their own territory: the reason is that they are neither held by the laws of their homeland, because they are absent; nor by the laws of the place in which they are staying, because as travelers they are not subject to them. - Reuter, no. 479. - Lacroix, no. 686, against St. Lig., book 1, no. 156.

7. If someone has already satisfied a common law in his homeland or his territory, more probably he is not held to satisfy it again when he arrives in a place where it urges later. Thus an Italian or Spaniard, who fasted in his homeland on the vigil of St. Peter, is not held to fast again in France, where this fast is transferred to the following Saturday. The reason is that there is no obligation of fulfilling the same precept again, since it has already been fulfilled in its own time: for where a determinate debt has already been paid, it is not to be paid again. - See Cases, no. 79 and following.

Chapter IV. On the Promulgation and Acceptance of Law

Article I. On the Promulgation of Law

Promulgation is the publication of a law, made by legitimate authority for inducing obligation upon subjects.

96. Principles. - I. Public promulgation of a law is necessary so that it may oblige, nor does private knowledge of it suffice, because thus the precept has not been sufficiently proposed and manifested to the community. - St. Lig., no. 95.

II. Promulgation suffices without knowledge of the law for obliging in the external forum, because knowledge of a duly promulgated law is generally presumed. But in the internal forum, knowledge of the law is required besides, because no one can sin without cognition of the obligation, according to what was said in the Treatise on Human Acts, no. 4 and following.

III. From the nature of the thing it suffices that the law be promulgated in some principal city, or in such a place whence it can come to the knowledge of the community, and it obliges immediately when it has been promulgated. Attend nevertheless to received custom, or to the particular statutes of various places.

97. Questions. - QUESTION 1. Whether a doubtfully promulgated law obliges?

I answer. No, because it is not sufficiently manifested and intimated, and therefore is doubtful; but a doubtful law does not oblige. - St. Lig., no. 97.

QUESTION 2. Whether pontifical laws oblige as soon as they are promulgated?

I answer affirmatively. For a promulgated law by that very fact immediately has force, and obliges even, as they say, in second act, all those who know it.

QUESTION 3. Whether it suffices that episcopal laws be promulgated in the episcopal city, and papal laws at Rome?

I answer affirmatively, because this suffices so that they can be manifested to the Christian people. Besides, the mode of promulgation is in the power of the legislator. - Moreover in practice Bishops wish to oblige through promulgation made in the episcopal city, and Pontiffs through that which is made at Rome [1].

[1] The opinion which for pontifical laws requires promulgation in the individual provinces and the lapse of two months before they have force of obliging rests only on a certain confused heap of false allegations, which can be seen heaped up in Reiffenstuel (book 1, title 2, § 5, no. 125) and Suarez (On Laws, book 4, ch. 15, no. 1), and which others then borrowed and attributed some extrinsic probability to this opinion. And indeed very many, almost all, who are usually alleged, both the old Canonists and later Theologians, attributed force of obliging to pontifical Constitutions in such a way that immediately from the promulgation made in the Roman curia, all who knew it were held to observe it; but the dispute concerning promulgation, or better, concerning publication in the provinces, and also concerning the lapse of a certain time, looked only to this, that it might be defined when violators of the law could allege probable ignorance of the law in judgments in order to avoid punishment.

** Against the last little part of this note, which is referred to the preceding Question 2, VV. object the text brought by St. Alphonsus from ch. 1, On the Concession of Prebends, in VI: Law or Constitution and mandate bind no one, unless after they have come to the knowledge of the same persons, or unless after the time within which they ought by no means to have been ignorant. And hence they wish to conclude that laws do not oblige even in conscience except after two months from promulgation.

But the text brought forward, just as it refutes the conclusion of VV., so it confirms the doctrine of the Author. For a twofold limitation or exception is seen in it. The first is generally of those to whose knowledge the law has come. But this would badly be affirmed if the law obligated only after two months, since it can easily come to the knowledge of many before two months have elapsed. The other exception is of those who violate the law after those two months, and therefore are not excused. Moreover this also would be falsely affirmed generally concerning guilt in conscience; since even after two months some can inculpably be ignorant of the law.

As to the Council of Trent, it is certain that its decrees pertaining to faith and morals oblige even in those places where they have not been specially promulgated; likewise that the decree concerning clandestine marriages does not oblige except in parishes where promulgation preceded. As to the other decrees which regard reform, the sentence asserting that they oblige everywhere is to be preferred, since they have been duly promulgated at Rome. - Scavini and *Analecta Iuris Pontificii*, series II, col. 2308. - And Cases, no. 89 and following.

Article II. On the Acceptance of Law

98. ○ Acceptance of law is the submission by which subjects, at least as to the greater and sounder part, formally or virtually accept a law.

Principles. - I. Per se, law as to force of obliging in no way depends on the acceptance of the people; otherwise, together with the power of the Superior, all authority of laws would collapse, and therefore the subversion of the whole social order would follow. It is also clear from proposition 28 condemned by Alexander VII, which lies thus: The people do not sin, even if without any cause they do not receive a law promulgated by the Prince [1]. - Thus all.

[1] Yet the condemnation in reality strikes only those who say that there is no sin even when without any cause the law is not received.

And indeed the Salmanticenses (On Law, ch. 1, nos. 98 and 101) less considerately accuse very many theologians and canonists, as though they had taught that laws, not only civil but also ecclesiastical and indeed even Pontifical, borrow force of obliging from the acceptance of the people. But now the Doctors alleged there in reality intend hardly anything other than what the Author proposes here in the second principle.

II. Per accidens, sometimes a law not accepted does not oblige, by reason of the tacit or express consent of the Superior, or by reason of a privilege or tolerated custom. It is clear from practice in various cases, and from the common consent of theologians. - St. Lig., no. 138.

99. Questions. - QUESTION 1. Whether a law obliges if the greater and sounder part of the people has not accepted it?

I answer. No, if the Prince does not urge it; for although the first ones not accepting the law sinned [2], nevertheless the others are free from fault on account of the presumed consent of the Superior. - St. Lig., nos. 137-139.

[2] Since the Doctors unanimously agree, generally speaking, that those sin who are the first not to receive a law promulgated by the Prince, yet they establish otherwise when the greater and sounder part of the people, which is the Author's hypothesis, has not accepted the law. But the reason is clear, because the sounder part of the people consists of learned, upright, and prudent men. Moreover these, and very many almost all who adhere to these, would not resist a law unless some grave inconvenience, or scandal, or disturbance were rightly feared from it: which certainly effect that by the help of epikeia the will of the Prince can be benignly conjectured, and therefore the obligation of the law can be considered suspended until, either through appeal, if the law came from an inferior magistrate, or through a supplication offered to the Prince, matters may be fittingly arranged. And thus indeed the Doctors commonly. Therefore the Salmanticenses (On Law, ch. 1, no. 107), from whom St. Alphonsus (book 1, no. 139), and from St. Alphonsus the Author borrowed these things, did not well join to the present hypothesis a response which agrees with a very different hypothesis.

QUESTION 2. Whether a law obliges in doubt whether it has been accepted?

I answer affirmatively, because it must be presumed accepted, unless the contrary is clear: for the fact is presumed which by law had to be done, according to the rule reported above, no. 76. - St. Lig., no. 97.

QUESTION 3. Whether a law of the Church obliges which, some civil government prohibiting it, was not accepted?

I answer affirmatively per se, because the Church received her power from Christ, not however from the civil power; and therefore she is altogether independent of it. For to her it was said by Christ: Whatever thou shalt bind..., shall be bound, etc. Matt. 16. 19. - St. Lig., no. 137.

QUESTION 4. Whether Bishops can refuse to admit pontifical laws?

It must be denied. For Bishops, although they are Princes in their own Churches, are nevertheless subject to the Roman Pontiff, the immediate Vicar of Christ on earth, and the head and governor of the whole Church. Therefore they must obey him, and thus provide an example of obedience to their own subjects, by promulgating the pontifical law and procuring its observance in their diocese. Except, however, if grave reasons stand in the way; for then Bishops not only can, but ought to explain these reasons to the Holy See, but afterward they will be held to acquiesce in its definition. - See Benedict XIV, On the Synod, book 9, ch. 8.

Chapter V. On the Obligation of Law

One must treat 1. of the force of obligation; 2. of the mode of satisfying the obligation; 3. of the causes excusing from it.

Article I. On the Force of Obligation

100. Principles. I. Any law whatever induces true obligation, at least to penalty; for in this law differs from counsel, that the subject cannot put it aside with impunity according to his own pleasure. - Thus all.

II. Any human law whatever can of itself oblige in conscience before God [1]. The reason is that Superiors are constituted by God with the power of commanding. Hence the Apostle, Rom. 13. 12: He who resists the power resists the ordination of God. But they who resist acquire damnation for themselves. - Thus all.

[1] It is said, can oblige, not however, obliges; the reason is that law does not oblige beyond the mind of the legislator; therefore if he intends to oblige under penalty alone, the law per se will not oblige to fault. And indeed the Doctors commonly hand down that this is valid both concerning civil laws and concerning canonical laws. See Reiffenstuel, Canon Law, book I, title 2, no. 199 and following; Laymann, book I, tr. 4, ch. 15, no. 1, etc.

** But whether some law must be considered merely penal, or whether violation of it also brings guilt of conscience, this the Doctors commonly establish must be defined from the mind of the legislator, which is argued both from the matter and words of the law, and from other adjuncts. But what the Salmanticenses (On Laws, ch. 2, no. 45), and after them St. Alphonsus (book 1, no. 147), have as to be held in place of a norm, whether a precept is joined beyond the penalty, must be taken, as Suarez adds with others (On Laws, book 3, ch. 3, no. 6), unless the mind of the legislator is clear from elsewhere, which, as the same Suarez adds (ibid., ch. 4, no. 8), can also be gathered from custom, which is the best interpreter of laws. Much less can it be admitted as a certain rule that laws are merely penal if they display no commanding words; concerning which see Suarez, cited ch. 4, no. 10.

III. Law obliges under grave or under light fault according to the gravity of the matter or circumstances, or of the end specially intended by the Superior. But an affirmative law obliges always, but not for always: a negative law, however, obliges both always and for always, that is, for each individual moment. - All consent.

IV. Positive divine law, and human law, do not generally oblige with very grave inconvenience, or with grave harm which is per accidens joined to the observation of the law. It is clear from natural and canon law, from the practice of the Church, and from the consent of all.

101. Questions. - QUESTION 1. Whether a legislator can command under light fault in grave matter, and vice versa?

I answer to the first affirmatively, at least more probably, because obligation depends on his will, just as the law itself does. - Thus commonly. - St. Lig., no. 143.

I answer to the second negatively, because proportion is lacking between grave obligation and light matter. Except if the matter is not light in every respect, but grave from the end, etc. - St. Lig. ibid. and others commonly [2].

[2] ** St. Alphonsus (book 1, no. 141), after he reported the most common doctrine, namely: when the matter is light, the one transgressing does not sin mortally, even if the superior commanded under mortal sin, adds as an exception from the Salmanticenses (tr. 15, ch. 6, from no. 86), that a regular prelate can command under grave obligation that which is

commanded by the rule only under light obligation, if it is feared that the rule otherwise will not be observed. But that these things may be rightly understood, it must be observed that the Salmanticenses and the Authors alleged by them dispute concerning rules which indeed by force of the Constitutions of that Order oblige only under light fault, or only under penalty, but at the same time have that matter which is capable of grave obligation, for example, abstinence from flesh meat.

QUESTION 2. What matter of law must be considered grave or light?

I answer. This must be gathered 1. from the words of the law itself; 2. from its object, end, and circumstances; 3. from the gravity of the penalty inflicted; 4. from the interpretation of custom. - But in general matter is grave when the end of the law is altogether of great moment, and the law conduces much to this end, or if it greatly harms it, even if of itself it is something light; otherwise, the matter will be considered light. Thus it is grave for one celebrating Mass if he omits to pour a few little drops of water into the Chalice. But it will not be grave if on a fast day you eat an ounce of bread outside the meal. - St. Lig., no. 144. - Lacroix, no. 663, and others commonly.

QUESTION 3. Whether human law can sometimes impede an obligation, otherwise valid, from being contracted?

I answer affirmatively. The reason is that sometimes the common good requires this; nor does natural law prohibit that, when the common good requires it, conditions be added by which acts otherwise valid are invalidated [3].

[3] Thus the Tridentine Synod invalidates clandestine marriages, otherwise valid from merely natural law: so also civil laws invalidate testaments destitute of the prescribed solemnities.

QUESTION 4. Whether a violation of law in a light matter from contempt is grave?

I answer 1. Affirmatively, if the contempt directly affects the legislator formally as such, because the authority itself from which laws obtain force is contemned.

I answer 2. No, if the contempt regards only the matter as light in itself, or if the one sinning transgresses the law from carelessness, anger, or another cause of this kind. The reason is that then the authority itself does not seem to be contemned. - St. Lig., no. 142.

102. ○ QUESTION 5. Whether the application of law or a sentence which is founded on a false presumption of fact obliges in conscience?

I answer 1. No, if the application of the law is founded only on the presumption of a particular fact, of fault, of fraud, or of damage; the reason is that if the fact is lacking, by that very fact the whole foundation of the obligation is lacking. Hence if you are condemned to pay money for damages which are falsely thought to have been inflicted by your donkey, you are not obligated to pay, except per accidens, for example by reason of scandal; but then you can compensate yourself even after the sentence has been passed. - St. Lig., nos. 100, 150. - Suarez, Roncaglia, and others commonly.

I answer 2. If the law is founded on the presumption of universal danger, fault, frauds, etc., its application always obliges in conscience, even every fault being excluded; because the common good requires that all be stably obligated; otherwise evils would not be impeded effectively; and the law otherwise intends to prevent the danger of hallucination, and to render men more cautious. Hence you are held to pay the fine to which you are condemned for damage truly inflicted by your animal,

even if that damage happened without theological fault on your part. - St. Lig., no. 100. - See the things to be said in the Treatise on Restitution, where it treats of the unjust damager.

Article II. On the Mode of Satisfying the Obligation of Law

103. Principles. - I. For satisfying any obligation whatever, an intention of doing that which is prescribed is required, if the law is affirmative, for example, the law prescribing hearing Mass on a feast day. The reason is that otherwise the act is not placed in a human mode. - By no means, however, if it is negative, as the law prohibiting servile works on feast days. The reason is that a negative law intends no more than omission of the work. - Thus all.

II. Yet there is not required an intention of fulfilling the precept, or of acting from the motive of formal obedience; because the legislator commands only the placing or omission of the work. - St. Lig., no. 163. - Sanchez, and others commonly.

III. It is not required that the law be fulfilled from a motive of charity, nor in the state of grace, unless the act itself of charity, or the state of grace, is prescribed, as in reception of the Eucharist. The reason is that the work is prescribed, not the motive, unless perhaps this too is expressed. It is also clear from proposition 16 of Baius condemned by Pius V, which has itself thus: That is not true obedience to the law which is done without charity.

IV. An intention of fulfilling the end of the precept is not required, unless that end is precisely commanded per se; because ordinarily the legislator does not command the end, nor intend to command it, but only the placing of the act. Hence the axiom: The end of the precept does not fall under the precept. - St. Thomas, 1.2, q. 100, art. 9, etc., and others.

104. Resolves. - 1. He satisfies who hears Mass, being ignorant that it is prescribed on this day, or who indeed knows the obligation, but intends only here and now to satisfy devotion, with the proposal of hearing another Mass. - St. Lig., no. 163.

2. But he does not satisfy who places the work of a vow or oath while expressly intending not to satisfy; the reason is that it depends on the will of the one promising that such an obligation remains. - St. Lig. ibid.

3. He who is altogether coerced to be present at Mass does not satisfy; for such an act, because of a defect of will, is not human [1]. It is otherwise if someone is induced by fear only, as for example a servant by fear of the master, a boy by fear of the teacher, etc.

[1] Say rather that this man, unless perhaps the attention otherwise required is lacking, which the Author seems to suppose, satisfies the precept as to the substance of the work, but sins because of the evil contrary will. The same could be said also of him who is present at Mass from fear, when he has been disposed in soul in such a way that, unless he were compelled by fear, he would not wish to be present.

105. Questions. - QUESTION 1. Whether he who sins in fulfilling the obligation of a law satisfies it?

I answer affirmatively, provided that the act is honest in itself, and evil only from an extrinsic circumstance, so that the substance of the thing prescribed is placed. The reason is that the precept

commands only the substance of the act, not however the mode. Hence he satisfies who, while hearing Mass, is occupied with thoughts of vainglory or lust, or who while hearing Mass has the intention of stealing. Yet the precept of confession or communion is not satisfied by sacrilegious confession or communion, because then the very substance of the act is infected by sin. It is also clear from proposition 14 condemned by Alexander VII. - St. Lig., no. 162, and others commonly against a few.

QUESTION 2. Whether diverse precepts can be fulfilled by one act?

I answer affirmatively, if these diverse precepts fall on the same matter and on account of the same motive, as the fast of a vigil falling in the Ember Days; but otherwise, if they fall on diverse matter, or indeed on the same matter but on account of a diverse motive, as a fast owed from penance and from ecclesiastical law. - St. Lig., no. 166.

106. ○ QUESTION 3. Whether diverse precepts can be fulfilled at the same time by diverse acts?

I answer affirmatively, if those acts are able to be joined, that is, if one does not impede the other; because then the whole is placed which is required. Thus while hearing Mass you can recite the canonical Hours, or discharge an enjoined penance, etc. - St. Lig., no. 166, and others commonly.

QUESTION 4. What must be done in the concurrence of two precepts unable to be joined?

I answer. The greater must be observed before the lesser, which then ceases to oblige. But a natural precept prevails over a merely positive precept, a divine precept prevails over a human one, an ecclesiastical over a civil one, etc.

QUESTION 5. Whether an obligation ceases when it has not been satisfied at a determinate time?

I answer 1. Affirmatively, if the determination of time was made for ending the obligation. Thus for example, if you did not fast on the day of the vigil, you sinned, but you are freed from the law; because the burden is affixed to the day itself.

I answer 2. No, if the time was not determined except for soliciting or urging the obligation. Thus he who did not satisfy the law in paschal time is not freed from the obligation of communicating. - St. Lig., book 3, no. 220.

107. Resolves. - 1. If you owe 100 coins to Titius, and you vow to restore, by one act you satisfy two obligations, namely of justice and of vow. Likewise a beneficed Priest vowing faithfully to recite the Hours satisfies a threefold obligation by one recitation.

2. On the contrary, if you owe Caius 100 francs from a loan, 100 from a census, you do not satisfy by paying 100 once, because the obligations fall on diverse matter. Similarly, if from a vow and from penance imposed by the Confessor you are held to hear Mass, you do not satisfy each obligation if you are present at one Mass on Sunday [2]. - Voit, no. 202. - St. Lig., no. 166.

[2] Except unless the Confessor enjoins a work otherwise prescribed; which indeed can be done for a twofold reason: either 1. namely because scarcely another mode is available by which the penitent can offer some congruous satisfaction; whence the Confessor, that he may supply however he can, imposes even the Mass to be heard on a feast day from precept, and the

paschal Communion itself, as part of sacramental satisfaction; or 2. because the penitent desires that this means also be available to him for satisfying more abundantly.

3. Nor can you hear several Masses imposed on you by the Confessor at the same time, while they are being celebrated at the same time on several altars; because such an intention of the Confessor is not to be presumed, unless the Confessor had regard to the fruit of the Sacrifice. - St. Lig., *Apostolic Man*, on Penance, no. 57.

4. He who is held to hear Mass on individual days from penance for one month satisfies by hearing one on Sunday [3]; because it is reasonably presumed that the Confessor was unwilling to obligate the penitent to hearing two Masses on the same day, unless he expressed this. - Thus commonly. - St. Lig., *Apostolic Man*, no. 34. - See Cases, no. 99 and following.

[3] Say the same of him who has bound himself by vow to hearing Mass daily, or to observing a fast on certain fixed days, unless he has expressly obligated himself either to hearing two Masses on feast days, or to transferring the fast to another day if perhaps another precept of fasting falls on the predetermined day.

Article III. On the Causes Excusing from Law

1. On the nature of those things which de-obligate. - 2. On the voluntary placing of de-obligating causes.

§ I. On the Nature of Those Things Which De-Obligate

108. ○ De-obligating causes are either exempting or impeding. The former are those which totally withdraw one from the dominion of the law, for example, if someone betakes himself outside the place which the law affects. The latter are those which impede, or excuse, a subject remaining under the law from the fulfillment of it. But these impeding causes are reduced to ignorance and impotence.

Principles. - I. Exempting causes totally free from the obligation of law; for no one can impose a precept on a man not subject to himself. Moreover where some exempting cause is present, he who was subject to the law ceases to be subject to the same law either by reason of territory from which he is absent, or by reason of privilege. - Recall what was said above concerning travelers, no. 94.

II. Invincible ignorance excuses from observing the law, because no one can be obligated to something altogether unknown to him. - But vincible ignorance does not excuse from fault, since it could have been or can be put away by serious diligence. - St. Lig., *Apostolic Man*, no. 43. - Recall what was said On Human Acts, no. 13, and On Conscience, no. 36.

III. Physical impotence always excuses from observing the law, as the common axiom has it: No one is held to the impossible. Moral impotence likewise excuses; because the legislator is not considered to urge an obligation with an inconvenience which, according to the common interpretation of Doctors, can be had as grave. - See what was said above on the obligation of law, no. 100.

Hence grave fear, damage to society or Religion being excluded, excuses from human law; because human law does not oblige with grave harm, as was said above, no. 100. It also sometimes excuses, although with more difficulty, from a positive divine precept, for example, from the integrity of confession; indeed also from an affirmative natural precept, for example, of preserving a deposit with

danger of life. Yet it never excuses from a negative natural precept, because the object of this is intrinsically evil. Nor say that it is licit to steal in extreme necessity; for then it ceases to be theft. - St. Lig., no. 175; *Apostolic Man*, no. 44.

109. ○ QUESTION. Whether one who is unable for the whole is held to the part?

I answer affirmatively, when the matter of the law is divisible, and in the individual parts the reason of the precept remains. It is clear besides from prop. the following proposition condemned by Innocent XI: He who cannot recite Matins and Lauds, but can recite the remaining Hours, is held to nothing, because the greater part draws the lesser to itself. Except if the possible part is so slight that it conduces in no way to the end of the precept. - Thus commonly.

Hence 1. He who cannot fast in Lent ought to abstain from flesh meat, if he can. Likewise he who cannot fast on all days is held on the days on which he can without grave inconvenience.

2. If someone lacking a Breviary knows a few things from the Hours by memory, he is not held to recite them; otherwise, if he holds by memory a notable part, for example, Vespers or Compline. - St. Lig., book 4, no. 134, rightly says that an infirm Priest who is not able to read the whole Office, and doubts whether he can read a part, is not held even to a part, lest he undergo danger of anxiety, or notable detriment of health.

3. He who vowed a pious pilgrimage, and is not strong enough to complete the whole journey, is not held to begin it, because neither the end nor the reason of the vow can be obtained. - St. Lig., *Apostolic Man*, no. 45.

§ II. On the Voluntary Placing of De-Obligating Causes

110. ○ De-obligating causes from observing the law can be placed either directly or indirectly, according as the agent is moved either by the end of withdrawing himself from the obligation of the law, or by another cause, nevertheless with the impediment of observing the law foreseen.

Besides, causes of this sort can be either proximate or remote, according as the law urges either shortly, or only after a notable interval of time.

Principles. - I. It is always licit to place exempting causes, and more probably even directly and proximately. The reason is that it is licit for each one to withdraw himself from the dominion of the law, for example, by seeking a place where the law is not in force [1]. - St. Lig., no. 156.

[1] ** Namely, the law obliges you to observe it as long as you remain a subject: but it does not oblige you to remain a subject. The same must be said if someone fortifies himself by a privilege, lest he be held by some law, for example, of abstinence from flesh meat, to evade which he devotes himself to the service of some hospital, or receives the Bull of the Crusade.

II. But it is not licit directly to place impeding causes, whether proximate, or even remote: the reason is that as long as someone is subject to the law, he cannot will to infringe it without such a will being a violation of the law itself [2]. - Reuter, no. 198.

[2] ** Generally this does not seem true. And indeed who will condemn him who, lest he fast, devotes himself through Lent to the service of the sick laboring under plague?

III. Indeed it will not be licit even indirectly to place proximately impeding causes, unless a proportionate necessity is present from elsewhere. The reason is that a law proximately urging proximately binds the will, and binds it to applying the necessary means lest the law be violated, and therefore to not throwing in impediments.

IV. But more probably it is licit, even without reason, to place remote and indirectly impeding causes. The reason is that the legislator is not considered to wish to confine liberty so greatly [3]. For it would be too grave a burden if each one, long before the obligation of the law, were bound to abandon all works unable to be joined with that obligation, and to wait for the time of the obligation. - Lacroix.

[3] Concerning the obligation of avoiding causes which impede, for example, fasting, hearing Mass, and things of this sort, Suarez excellently has these things (On Sins, disp. 3, sect. 4, no. 10): In order that these omissions be indirectly voluntary, and therefore imputable to fault, it is necessary that they not only be foreseen, but be such that the precept obliges to avoiding, for example, sickness, lest they follow: but positive precepts do not oblige to this except when the omissions follow proximately and, morally speaking, as though at the same time. From this it is also effected that when those omissions are not directly willed... they are rarely imputed to fault; because those positive precepts do not oblige with so much rigor that on account of this someone is held with so much rigor to guard beforehand against all those things which can impede their execution.

But when a cause must be considered proximately impeding, and when only remotely, can scarcely, or not even scarcely, be established by some general norm. And indeed that which precedes the time of fulfilling the precept by a space of several days is customarily held as remotely impeding; but the mind of the legislator and the gravity of the thing prescribed, and also the judgment of prudent men and the practice of the upright, must always be kept before the eyes. - See Sanchez, On the Decalogue, book 1, ch. 15, no. 4.

111. Resolves. - 1. He sins who on a fast day without just cause undertakes some labor by which he becomes unable to fast; the reason is that a law proximately urging demands that without just cause an obstacle not be placed to fulfilling it. - St. Lig., *Apostolic Man*, no. 20.

2. But it is certain that excommunicates are held to seek absolution from censure, so that they can satisfy the divine precept of paschal Communion. The reason is that divine precepts urge more strictly than human ones, and undergo human interpretation less. - St. Lig., *Apostolic Man*, no. 21. For the same reason, with paschal time already begun, you cannot go away to a place where you will not be able to communicate, without first having satisfied the precept itself. - Lacroix, no. 791.

3. He does not sin against the precept of hearing Mass who begins a journey foreseeing that on the following Sunday he will not be able to hear Mass. Yet he is not excused who does this when the precept is already urging at least morally, namely either on the same feast day or one or another hour before. Except unless some necessity or just cause intervenes.

4. Tailors and shoemakers sin who on the day before a feast day do not prepare necessary garments and shoes, if they can do this without grave inconvenience. - Reuter, no. 199. - See Cases, no. 103 and following.

Chapter VI. On the Interpretation of Law and Epikeia

§ I. On the Interpretation of Law

112. ○ DEFINITION. Interpretation of law is its genuine explanation according to the mind of the legislator.

Division. It is 1. authentic, doctrinal, and usual, according as it is made by the Superior himself, or by learned men, or from custom.

2. Strict, or broad, according as it is made strictly according to the natural property of the words, or broadly according to the more benign sense.

3. Simple, or extensive, when the words are accepted either as they sound, or beyond their natural sense [1].

[1] Declarations which the Author calls simple, the Doctors are accustomed to call comprehensive, when namely the sense declared does not recede from the proper and received-by-use signification of the words; but extensive when they concede, prohibit, dispense, etc., something beyond that which the words, accepted properly and according to the common sense, denote.

But between these there also intervenes this distinction: if they are authentic, comprehensive ones indeed do not need promulgation; but extensive ones have no force unless they are legitimately promulgated; since by the very fact that they are not contained in the words of the law, they are already certain new laws, and therefore must be promulgated in the manner of laws.

Rules of interpretation:

I. The words of the law are to be accepted according to their proper and received-by-use signification, unless something absurd or unjust would follow from it.

II. In doubt concerning the true sense, attention must be given to the mind of the legislator, to the end of the law, and to the circumstances either antecedent or consequent.

III. Penal and odious law in doubt is to be interpreted strictly; but favorable law demands an ample interpretation. Hence the axiom: Favors are to be enlarged, and odious things restricted. - St. Lig., no. 200, and all others.

QUESTION. Whether a law ought to be extended from case to case because of identity of reason?

I answer affirmatively, whenever otherwise the legislator could be accused of injustice or imprudence. But this is had in the following: 1. in correlatives, for example, between bridegroom and bride; hence if a bride is freed from the obligation of betrothal because of the long absence of the bridegroom, the bridegroom likewise is freed because of the absence of the bride; 2. in equivalent things, such as election and presentation to a benefice; likewise eggs and milk foods as to the law of abstinence; 3. in connected things, such as Deacon and Subdeacon. Likewise in things contained: wherefore he who can make a testament can also make legacies. - St. Lig., no. 200.

§ II. On Epikeia (Epieikeia)

113. ○ Epikeia is a benign, but equitable, interpretation of law, by which the law is not considered to extend itself to some case, although not excepted in the words of the law,

since it is prudently believed that the legislator either did not foresee it or did not wish to comprehend it. Thus, for example, if a law prohibits carrying arms at night, I can carry them if I must go out and I am going to meet my enemy seeking me unto death.

QUESTION. Whether Epikeia has place if the Superior can easily be questioned?

I answer affirmatively, if observance of the law would bring detriment; otherwise in other cases. - St. Thomas, 2.2, q. 120, art. 1.

Chapter VII. On the Dispensation of Law

114. ○ DEFINITION. Dispensation is the relaxation of a law in a particular case.

DIVISION. Dispensation can be

1. Licit, or illicit, according as it is made for a just cause, or not.

2. Valid, or invalid, according as it either exempts from the observation of the law, or does not exempt.

3. Absolute, or conditioned, according as it is conceded simply, or with some condition added.

4. Subreptitious, or obreptitious, according as something that must be manifested is kept silent in the petition, or on the contrary something false is asserted [1].

[1] Thus indeed many define subreption and obreption. But others use each word promiscuously in either sense, or even inversely apply each in the opposite sense. See Reiffenstuel (On book 1, title 3, no. 154).

One must treat 1. of the power of dispensing; 2. of the causes required for dispensing; 3. of the cessation of dispensation.

Article I. On the Power of Dispensing

Principles. - I. A legislator can dispense 1. in his own laws, because he has as much power for loosing as he has for binding; 2. in the laws of his predecessors, because he enjoys equal power with them; 3. in the laws of his inferiors, because they have power from him, or certainly power subordinated to him.

II. An inferior cannot dispense in the laws of his Superior, except from delegated power, and insofar as it has been delegated to him either by the Superior himself, or by law, or by custom. The reason is that an inferior does not have jurisdiction over the law of his Superior. - Thus all.

115. Questions. - QUESTION 1. Whether the Pope can dispense in divine law?

I answer. He can dispense from a just cause in those things in which divine right arises from a human will, as in vows and oaths. In other things, whether from a most grave cause he can truly dispense, or only declare that divine right then ceases, is controverted [1]. In practice it matters little. - St. Lig., *Apostolic Man*, no. 56.

[1] This controversy and disagreement of the Doctors is merely speculative, and pertains rather to the manner of speaking, namely whether or not the word dispensation must be used in the case. For that by the intervention of pontifical authority a

bond which is called of divine right can be removed, each dissenting side equally agrees.

And indeed those who contend that the Pontiff can dispense in divine law chiefly use these arguments, that 1. he dispenses in the solemn profession of Religious, which, although from the more common sentence is of merely ecclesiastical right, nevertheless by some is thought to be of divine right; 2. sometimes he dispenses that a simple priest be the minister of the sacrament of Confirmation; 3. sometimes he dispensed, as some wish, that in the sacrifice of the Mass only the species of bread alone be consecrated; 4. he dispenses in vows and oaths; 5. he dispenses in ratified marriage; 6. he dispenses in the residence of Bishops, etc. Moreover those who deny to the Pontiff the faculty of dispensing in divine law do not deny that all the aforesaid things can be done from the authority of the Pontiff; but they deny that in these a true and properly so-called dispensation of divine law intervenes.

QUESTION 2. In what laws can a Bishop dispense?

I answer 1. By ordinary right, in all episcopal and synodal statutes, and in common laws with individuals as to cases which often occur, as in most vows, fasts, abstinence, observance of feasts, the divine Office in particular cases, etc. - St. Lig., no. 190 [2].

[2] One must carefully examine whether the Bishop dispenses as legislator in his own laws, or as delegate in common laws. For in the former hypothesis he dispenses validly even without cause; but in the latter, since he plays the mere part of a steward, the cause being lacking, he would dispense invalidly.

I answer 2. By extraordinary right, in the other pontifical laws by reason of necessity, privilege, or legitimate custom, if any is in force anywhere.

QUESTION 3. Whether a Bishop can dispense with travelers in vows, oaths, and common precepts of the Church?

I answer 1. Affirmatively, if they have the intention of staying in the diocese for the greater part of the year; because since they contract a quasi-domicile, by that very fact they become subjects. Thus most commonly, says St. Lig., no. 158, and Lacroix, no. 799.

I answer 2. But if they only pass through, it is controverted. - It seems that one must probably affirm, because the consent of their Ordinaries is prudently presumed. St. Lig. (ibid.) says this sentence is deservedly held probable. - Nevertheless not a few contradict, because they are not truly subjects [3]. - Finally others distinguish: they affirm indeed for laws of the Church; but they deny for vows and oaths.

[3] This reason, as is clear, concludes nothing against those who derive the power of dispensing from the consent of the Ordinary of the travelers, or from his tacit ratification in the present.

116. ○ QUESTION 4. Whether Pastors are able to dispense in some things?

I answer. By ordinary right, by reason of custom, they can dispense with subjects for particular cases in fasts, in abstinence, in works prohibited on a feast day, and in other things of this kind, which frequently occur and need prompt dispensation. - Thus commonly. - St. Lig., *Apostolic Man*, no. 59.

QUESTION 5. Whether a Superior can dispense with himself?

I answer affirmatively, if he is primary; indeed also a secondary Superior can, if he has a general faculty of dispensing with others. - St. Lig., *Apostolic Man*, no. 64.

QUESTION 6. Whether a delegate can subdelegate?

I answer. No, generally speaking, because this faculty per se is not included in the concession of the Superior, unless it has been expressed. Except, however, if someone has been delegated to dispense

in a universe of causes by way of office; because then from common interpretation there is present a tacit faculty of the Superior for subdelegating. - Thus St. Lig., no. 193, book 6, no. 366.

Article II. On the Causes Required for Dispensing

117. Principles. - I. For the liceity of a dispensation some cause is always required. The reason is that otherwise the Superior will not be a faithful dispenser, or will be imprudent. - St. Thomas, 1.2, q. 97, art. 4.

Therefore he also sins who in such a case seeks a dispensation; for he induces the dispenser to an illicit thing, and therefore sins in seeking by the same kind of sin as the legislator in conceding.

II. But for validity no cause is required on the part of the one conceding, if he dispenses in his own law or in the law of an inferior. The reason is that he who can bind can also loose; but it is otherwise if he dispenses in the law of his Superior, because he is not presumed to have received the power of dispensing rashly. - Thus commonly.

III. For validity on the part of the petitioner it is required that there be no essential obreption or subreption in the petition, or one which falls upon the motive cause, because the Superior does not dispense except under a tacit condition, namely, If the prayers rest on truth. - St. Lig., no. 185.

118. Questions. - QUESTION 1. Whether a Superior dispensing without cause in a grave matter sins gravely?

I answer 1. No, probably per se, as to the legislator; because, scandal or damage to others being set aside, so great a disorder does not appear in this. - Thus commonly with St. Lig., no. 178, against others.

I answer 2. Affirmatively as to the inferior, because he is not considered delegated to dispense except from a just cause: and therefore if he does otherwise, he gravely abuses the power conceded to him [1]. - St. Lig., no. 180.

[1] Understand abuse and thence grave fault from its kind; for abuse of this sort, if it happens in a matter of light moment, or in a law which does not oblige under grave fault, will not exceed venial fault. But not only does an inferior dispensing rashly in the law of the Superior sin, but also he who uses such a dispensation. The reason is that such a dispensation is invalid, and therefore does not remove the obligation of the law.

QUESTION 2. Whether it is licit to use a tacit or presumed dispensation?

I answer to the first affirmatively, provided it can be prudently gathered from some sign. - Thus commonly.

I answer to the second no, because the Superior ought to know that concerning which the matter is being treated; nevertheless permission can easily be presumed when there is question of matters of lesser moment, and it is beside the law, not however against the law. - St. Lig., no. 187.

QUESTION 3. Whether it is licit to seek, or concede, a dispensation in doubt whether the cause suffices?

I answer to the first affirmatively, because it does not belong to subjects to judge concerning the sufficiency of the cause, but only to expose the matter sincerely to the Superior. - St. Lig., no. 178.

To the second likewise affirmatively. The reason is that otherwise the burden imposed on Superiors would become intolerable, and would be liable to innumerable scruples both as to the one dispensing and as to those seeking. - St. Lig. ibid. [2].

[2] ** In this place St. Alphonsus (book 1, no. 178) affirms that the Superior can dispense if he doubts whether the cause is just.... It would be otherwise, he adds, if he doubted whether the cause is present. These things indeed, if the reason of the whole context is had, would seem to have been said of the legislator, or of one having equal power.

But elsewhere (book 1, no. 192), treating of an inferior prelate, he teaches that he can dispense in doubt whether a sufficient cause for dispensing is present. Which words do not sufficiently explain whether they are referred to a doubt whether the cause is present, or rather to a doubt whether the cause which is present is sufficient. And indeed they would seem to have to be taken in the latter sense, lest this sentence disagree with those things which have been brought from no. 178, especially since otherwise it would seem to attribute greater power to an inferior prelate than to the legislator. But those things which he has in book 3, no. 251 seem to stand in the way; there he says the dispensation has force if it is doubtful whether a cause was present, or whether it was sufficient: since these things are said of dispensation from a vow, they cannot be understood of the legislator. It remains therefore that a reason be sought for fittingly composing all these things with one another.

Meanwhile (book 1, no. 180) St. Alphonsus weighs the doctrine which he attributes to Soto, Laymann, Sanchez, Azor, and the Salmanticenses, namely that a dispensation is valid if the Superior by error judges the cause just: which words in the obvious sense are referred to an error by which a cause is thought just which is not just. Yet the holy Doctor seems (ibid., no. 181) to have understood them of a Superior who dispenses without cause, and he denies against the aforesaid Authors that the dispensation is valid, just as previously against the same authors (no. 180) he had said that the opposite must be held. But it is displeasing that after the Salmanticenses (On Law, ch. 5, no. 71) he exhibits the aforesaid Authors as though they taught that a dispensation is valid even without any cause, although conceded in good faith. For they, and indeed in those places which are indicated by the Salmanticenses, do not speak of the absence of any cause whatsoever, but of a cause which by error was judged just, when it was not such. Besides, the holy Doctor in the place to which he sends readers in both places, namely book 3, no. 251, comprehends each hypothesis; and he pronounces that the dispensation is invalid if afterward it is certainly found that no cause was present, or not a sufficient one. Concerning this sentence it will be useful to intimate that Palaus, whom the holy Doctor professes to follow (cited no. 251), certainly alleges several writers for the defense of his opinion; nevertheless they discuss by no means the hypothesis of a cause which is afterward detected as less sufficient, but only the hypothesis of no cause. And in reality, if this is extended also to a cause which afterward is found less sufficient, perhaps there will be someone to whom that which the holy Doctor has (book 1, no. 192) will appear difficult, namely that the one dispensing is not obligated to an examination concerning the full sufficiency of the cause when he doubts about this; and again (book 3, no. 251) that men after obtaining a dispensation are not held to inquire about its value. For how can solicitude of examining and inquiring concerning the sufficiency of the cause be absent, when there must be no dispensation if perhaps that is lacking?

QUESTION 4. What in doubt whether the case needs dispensation?

I answer 1. Dispensation is not required in positive doubt, or when it is probable that the case is not comprehended by the law, as is clear from the things said about probabilism; for the extension of the law to that case remains uncertain.

2. But in doubt whether the cause is sufficient for excusing from the law without dispensation, it is controverted. For some contend that dispensation is required. Yet others better deny. - Thus St. Lig., no. 192 [3].

[3] This question seems to fall back into the preceding one, namely, What in doubt whether the case needs dispensation? But St. Alphonsus briefly responds (book 1, no. 192): Whether the doubt is positive or negative, the subject can use his liberty.

** Against this little note VV. (page 910) oppose these words of the same St. Alphonsus (book 1, no. 97): In doubt whether the cause is sufficient for excusing you from the law..., it is truer that you are held to the law.

I answer. Since the Author makes the question concerning positive doubt, the little note also must be understood thus, namely concerning a cause which is probably sufficient for excusing from the law. This being posited, VV. must either show that the second question does not fall back into the first; or they must inquire how those two sentences of St. Alphonsus cohere with each other. Indeed Sanchez, whom St. Alphonsus alleges for himself after the Salmanticenses, establishes the contrary if the doubt is positive (Decalogue, book 1, ch. 10, no. 35).

QUESTION 5. Whether a dispensation extorted by fear is valid?

I answer affirmatively, provided a cause for dispensing exists, and it is not clear that in the Superior the mind of dispensing was altogether lacking, and otherwise any other cause of nullity is absent. - St. Lig., no. 184.

119. Resolves. - 1. A dispensation is invalid whenever in the request an error has crept in concerning the motive cause, or concerning the very object of the dispensation, whether by fault of the petitioner or of another, or even if this happened from mere inadvertence; for example, if in the petition you put an impediment of affinity for an impediment of consanguinity, or the third degree for the second; but otherwise if you put the second for the third, because the lesser grace is contained in the greater of the same genus.

2. A dispensation has force if an error has crept into the rescript of the Superior, for example, by carelessness of the secretary, because it supervenes upon the concession already made, and the Superior concedes thus: Let it be done as is sought.

3. A dispensation conceded from a just cause to some wicked man whom the Superior reputed upright has force, even if, the wickedness being known, he would not have dispensed; the reason is that uprightness is not reputed a motive cause, but merely an impulsive one. - It also has force if a false cause at the time of the petition becomes true at the time of concession; but not vice versa. Except unless someone was moved on account of uprightness.

4. A dispensation has force, although several false causes, even motive ones per se, were set forth with true and sufficient causes; because where some true motive cause is present, a sufficient foundation of dispensation is supplied.

5. A dispensation granted by a Superior has force, although it had already been denied by an inferior and no mention is made of this denial. - Indeed it probably has force even if, denied by a Superior, it is granted by an inferior; because the power of the inferior is not restricted by the denial of the Superior, unless he expressly restricts it. - Suarez, On Laws, book 6, ch. 22. - Lacroix, no. 811.

6. A dispensation obtained for someone who is ignorant of it or even unwilling has force, when necessity requires this. - St. Lig., no. 186.

Article III. On the Cessation of Dispensation

Dispensation can cease for a manifold reason, namely 1. by cessation of the cause; 2. by revocation; 3. by renunciation.

120. Hence resolves. - 1. A dispensation ceases when the total motive cause ceases before its execution; for then the prayers do not rest on truth. It is otherwise if the motive cause ceases

only in part, because the cause of the dispensation still remains. Hence a dispensation from fasting conceded because of infirmity ceases if beforehand you have already fully recovered; otherwise, if the infirmity remains in part. - St. Lig., no. 196, and others commonly.

2. A dispensation ceases, even if the motive cause ceases after its execution, but before the effect or use of the grace has begun [1], unless the Superior is judged to have granted the grace absolutely. - Thus commonly. - St. Lig., ibid.

[1] There can be a question not only of a cause ceasing before the use of the dispensation has begun, for example if before contracting matrimony the cause on account of which dispensation had been given from an impediment ceases, but also when the use of the grace has already begun, if the effect is divisible, for example if after the minor Orders or subdiaconate have been received, the poverty of him who for this cause had been dispensed from irregularity for the effect of receiving sacred Orders ceases; or if one dispensed absolutely from recitation of the Breviary because of an infirmity of the eyes judged incurable by physicians afterward recovers. And indeed that the solution of these questions is by no means easy is openly shown by the dissenting opinions of Authors on these things (see St. Alph., book 1, no. 196); wherefore Suarez wrote (On Laws, book 8, ch. 30, no. 11): I confess that the matter is intricate and perplexed, as these moral matters are accustomed to be when general rules must be handed down, which can scarcely be regular, much less infallible.

And indeed St. Alphonsus (l.c.) very well commended the rule which Father Gury here intimates, namely that one should inspect whether the dispensation is given absolutely, or under the condition, if the cause endures. But, as he himself adds, the difficulty presses further: when must a dispensation be considered granted absolutely, and when under a tacit condition? And indeed what will you determine if someone is dispensed from a vow of Religion because of infirm health, or from a vow of chastity for marrying because of grave temptations, and then soon recovers, or those temptations altogether vanish before matrimony, indeed even before any betrothals?

St. Alphonsus (l.c.) seeks help from another rule, namely that a dispensation must be considered given absolutely if the cause could be judged perpetual, although perhaps afterward it ceases per accidens. But soon he himself rejects certain consequences which others were deducing from that norm concerning one dispensed from fasting or from recitation of the Breviary.

Suarez supplies a more apt support (On Laws, book 6, ch. 20, no. 18), when he distinguishes dispensations which have an indivisible effect, by removing an inability, impediment, or vow, and dispensations from laws having a successive course by reason of matter which is divisible and has succession, as in the law of the Lenten fast. For in the former, the whole dispensation is granted at once and absolutely. But in the latter, the dispensation is virtually multiple, so that, for the successive obligation, individual dispensations are in a certain way given for individual days; and therefore each one requires its proper cause for its own time: if this cause is ever lacking, by that very fact the reason for the dispensation will cease, unless the Superior is considered to have granted the grace absolutely. - Thus commonly. - St. Lig. ibid.

3. Dispensation altogether ceases when the express revocation of the Superior accedes, because obligation or de-obligation depends on the will of the Superior. Yet revocation without a just cause would be illicit. - But it does not cease because of revocation by an inferior without a just cause, because the faculty of revoking is not in his arbitrary power. - St. Lig., no. 197. - Salmanticenses. - Roncaglia, etc.

4. For the validity of renunciation the acceptance of the Superior is required, because only the Superior can bind the will, just as also loose it from the bond of law. - St. Lig. ibid. and others commonly.

Chapter VIII. On the Cessation of Law

121. ○ Law can cease in various ways.

1. Through abrogation, or derogation, according as it is abolished altogether or only in part: for just as a Superior can make a law, so he can remove or restrict the same law.

2. Through cessation of the adequate motive cause, or the total end, on account of which it was made with respect to the whole community; for when the cause of the law ceases, the legislator cannot reasonably urge it.

3. Through desuetude, or through a contrary custom clothed with the due conditions; for then at least the legal consent of the Superior accedes. - Thus most commonly.

QUESTION 1. Whether a law ceases when the final cause ceases only in a particular case, that is, with respect to some persons?

I answer. No, unless it cannot be observed without grave inconvenience; the reason is that the adequate end of the law regards those things which happen commonly, not however particular cases; therefore these do not prevent the end of the law, and therefore the law itself, from persevering. Hence spouses are not exempted from the proclamation of banns, even if they know with certainty that no impediment underlies the marriage. - Suarez, Laymann, and St. Lig., no. 199.

QUESTION 2. Whether someone can read prohibited books, if he fears no danger to himself from them?

I answer: No, for the reason just given; add besides the danger of error. - Thus commonly. - St. Lig., no. 199. - See Cases, no. 109 and following.

Part Two. On the Principal Species of Laws

We must treat 1. of natural and divine law; 2. of ecclesiastical and civil law; 3. of penal and invalidating law; 4. of unwritten law, or custom; 5. of favorable law.

Chapter I. On Natural and Divine Law

Article I. On Natural Law

122. ○ Natural law is the divine will, manifested by the natural light, commanding those things which are necessary for preserving right order.

Hence natural law is nothing other than the eternal law intimated to rational nature through the natural light, whether habitually through right reason, or actually through its dictate.

The object of natural law is everything which so agrees with, or disagrees with, rational nature, that it is necessary that it be commanded or forbidden by the Author of that nature; that is, it embraces all those things which are conformable to the eternal law [1]. - Hence the law of nature is concerned

[1] A twofold object of the natural law can be distinguished, material and formal. The material object includes all principles of honesty, whether primary or secondary, which are deduced from the primary principles proximately or remotely; yet these, as to a supreme principle, are reduced to this: Good is to be done, evil is to be fled. Yet good and evil are not the object of natural law in the same way. For whatever is evil of itself and independently of positive law is prohibited by natural law;

but, conversely, not whatever is good is commanded, but only those good acts are commanded which the condition of man necessarily demands according to the threefold relation which he has, namely to God, to himself, and to his neighbor.

But the formal object of natural law must not be placed in agreement with rational nature, nor in a perfection due to that same nature, which therefore is to be sought, nor in some necessity or agreement with the happy state of human nature, whether in individuals or in society; but in the nature of a precept imposed by God upon men; so that the dictate of reason must be held as the promulgation of the divine ordinance, or as a sign of the divine will either commanding or forbidding. Whence that saying of St. Anselm: Whoever goes against the natural law does not keep the will of God. Wherefore natural law could neatly and properly be defined: A judgment of the intellect concerning the will of God as supreme governor of nature, forbidding evils and commanding goods.

1. with the first principles of morals, for example: good is to be done; evil is to be avoided; do not do to another what you do not wish to be done to you; 2. with the secondary principles of morals, or immediate conclusions from the first principles, such as most precepts of the Decalogue are; 3. with mediate conclusions, or those more remote.

123. Questions. - QUESTION 1. Whether the object of the law of nature can sometimes be unknown?

I answer: 1. The primary principles of morals can be unknown to no one. - 2. Likewise the proximate conclusions, so that in these invincible ignorance cannot be given, except either rarely, or for a short time in the rude and in children. Thus commonly. - 3. But remote conclusions can be unknown and often are unknown. Hence so many controversies concerning them are still agitated among Doctors. - St. Lig., no. 170 and following; On Conscience, no. 8.

QUESTION 2. Whether invincible ignorance can be given concerning the malice of depraved desires in one who knows the malice of the act?

I answer: No, at least as regards efficacious desires. The reason is that to will what is formally evil, and indeed known as such, is to will what is known to displease God, and consequently is to will to displease Him. But it is difficult for the malice of an act to be unknown by which one knows that he displeases God. - St. Lig., On Conscience, no. 9, etc. [2].

[2] ** St. Alphonsus (l. c.) attributes the opposite doctrine to Sanchez and Cardenas, indeed also to Granado and Croix, as the editions of 1748 and 1757 have it. - But in reality the question which St. Alphonsus discusses is one thing, and that which the cited authors treat is another.

The question is put by the Holy Doctor (book 1, no. 9): Whether an invincibly erroneous conscience can be given in one who desires to perpetrate some evil, for example fornication, judging through error that the mere desire of fornicating is not mortal if fornication does not in fact follow. And he adds: Sanchez and Cardenas affirm this as more probable, (in other editions) Granad. and Croix.

But those authors put only the hypothetical question, whether he would sin who invincibly was ignorant that his desire was illicit, etc. Thus Sanchez (On the Decalogue, book 1, ch. 16, nos. 16, 17) asks, Whether one invincibly ignorant that an internal act is a sin, yet knowing that the external act is a sin, is excused from fault, admitting only the internal act; as if a rustic had heard from a man esteemed learned and pious that fornication and theft externally are sins, but that the desire of fornicating or stealing is licit.

And Croix (book 1, no. 34): Question 6, Whether he sins mortally who invincibly thinks an internal act is not evil, and yet knows that the object of such an act is evil?

Therefore Sanchez and the others do not ask whether invincible error is given concerning the malice of that depraved desire (which is the question proposed by St. Alphonsus), but whether, supposing such ignorance, the rustic sins materially or formally. Indeed La Croix (ibid. no. 35) had expressly warned that the dispute is only hypothetical, and that the hypothesis

is scarcely about a possible thing. Thus he: I speak from the supposition, if such a case were given; for perhaps it is impossible.

But what will seem somewhat strange: St. Alphonsus in the editions of the year 1748 and 1757 had proposed the question in nearly the same way as Sanchez and Croix, thus: It is asked whether he sins formally who desires to commit some evil, namely fornication, thinking through error that the mere desire of fornicating without effect is not a sin. Nevertheless, 1. in proposing the question he omits that word invincibly, which the authors whom he attacks have; 2. even here, omitting the hypothetical question about which those authors were treating, he fights against them as though they were disputing absolutely about the possibility of the hypothesis.

QUESTION 3. Whether natural law is mutable?

I answer: No. For since it commands or prohibits that which by its nature is good or evil, it plainly follows that natural law cannot be changed not only by creatures, but not even by the Author of nature Himself [3].

[3] Since the object of natural law can become neither harmful nor useless, either in whole or in part, which are the two causes why a law must either be entirely abrogated or derogated from in part; hence no change properly so called can be found in natural law, since it is concerned with those things which are intrinsically good or evil.

Nor should you say, 1. that God has several times changed the natural law, for example, by permitting polygamy to the Patriarchs, theft and divorce to the Hebrews, etc. For in the aforesaid examples the natural law was not changed, but only the circumstance of the matter; whence it happened that that which of itself was opposed to right order, on account of new circumstances was now no longer opposed to it.

Nor should you say, 2. that there are certain matters which undergo change, for example carnal intercourse, which is opposed to natural right among the unmarried, but not among those joined by lawful matrimony; for natural right prohibits intercourse outside matrimony for the reason that its lawful end is then lacking.

Yet some distinguish strict natural law, or law wholly immutable, as, for example, that which prohibits blasphemy, and another broad law, which can be changed when circumstances are changed, as, for example, that which prohibits killing one's neighbor. Thus Voit, no. 534. But others reject this distinction. Whatever be the case, it is certain that that distinction falls at least upon the matter of natural law, which is subject to the dominion of God, and which consequently can be changed according to various circumstances [4].

[4] A twofold order of things must be distinguished. One of them is founded in the very natures of things in such a way that not even God can change it, unless He could be said to be able to deny Himself. Of this sort, for example, is the subjection of the creature to the Creator, and therefore the debt of servitude; consequently blasphemy, perjury, etc., cannot fail to be evil, and God would deny Himself if He inverted this order. But the other order is one which, by reason of the dominion which belongs to God over all creatures, is subject to divine power; and therefore, since it is not absolutely necessary, God can change it. Hence, since God is Lord both of the life and rights of man and of all creatures which He has granted to men to use, therefore God can dispose of the life, rights, and goods of men by taking away, transferring, etc., as it pleases Him; therefore any malice will cease in taking away the life or goods of someone, if God has made this right and power to another. And this indeed is what some say, that by the will of God it happens that matter is withdrawn from the natural law.

Article II. On Divine Positive Law

124. ○ Divine positive law is twofold, namely old and new.

I. The old law, or law of the Old Testament, contained precepts of a threefold kind.

1. Moral precepts, which regarded moral rectitude, and established that which had already been prescribed by natural law. Such are the precepts of the Decalogue.

2. Ceremonial precepts, which were referred to the worship of God, and established ceremonies and sacrifices.

3. Judicial precepts, which pertained to political and economic administration, or to the right governance of the people.

The old law was abrogated by Christ, as having been set until the seed should come to whom He had promised, as the Apostle says, Galat. 3.19. Therefore only the part of the old law which regarded morals has been preserved and confirmed in the new law.

II. The new or evangelical law, which is called the law of grace, or of liberty, or the New Testament, contains documents of a threefold kind, namely 1. moral precepts concerning the virtues, especially the theological virtues; 2. ceremonial precepts concerning the Sacraments and the sacrifice of the Mass; 3. mere counsels, but worthy of great reward.

The new law differs from the old law especially in the following things: 1. The old was a shadow and figure; the new is light and truth. - 2. The old was a law of fear; but the new is a law of grace and love.

The old law is called imperfect, not indeed in itself, but relatively to a more perfect law. For it was perfect in itself, since it had God as author, and God through it attained the end which He had established for Himself.

The new law was made for all, and therefore it obliges all to whom it is known. For thus Christ, Matth. 28.19, 20: Going therefore teach all nations, baptizing them in the name of the Father, etc..., teaching them to observe all things whatsoever I have commanded you.

Chapter II. On Ecclesiastical and Civil Law

Article I. On Ecclesiastical Law

125. ○ That is called ecclesiastical law which is made by ecclesiastical power for the right governance of the Church and the eternal salvation of souls.

The collection of various ecclesiastical laws constitutes Canon Law.

The Corpus of Canon Law consists of six parts, constituting three volumes. They are: the Decree of Gratian, the Decretals, the Sixth, the Clementines, the Extravagants of John XXII, and the Common Extravagants.

The first volume contains the Decree collected by Gratian, a Benedictine monk, and published in the year 1151 under the title: Concordance of Discordant Canons. The work is distributed into three parts, of which the first treats of ecclesiastical persons, the second of actions or of the matter and form of judgments, and the third of sacred things.

The first part is divided into one hundred and one distinctions, which are subdivided into chapters or canons. It is usually indicated thus: ch. Ieiunium 7, dist. 76; or also dist. 76, ch. 7.

The second part is divided into thirty-six causes; but the causes are divided into questions, and the questions into chapters. It is cited in the following manner: ch. Qui viderit 13, quest. 5, cause 32; or cause 32, qu. 5, c. 13. The Treatise on Penance, having seven distinctions, is cited thus, for example, ch. Mensuram 86, dist. 1, on Penance; or on Penance, dist. 1, c. 86.

The third part consists of five distinctions, which are divided into various chapters. They are cited: ch. Est unitas 49, dist. 4, on Consecration; or on Consecration, dist. 4, c. 49. For this part treats of the consecration of Churches, altars, etc.

The second volume contains the Decretals omitted by Gratian, or published after him, collected by St. Raymond of Pennafort, of the Order of Preachers, by command of Gregory IX, and published in the year 1230. It is divided into five books, which have titles and chapters; and they are cited in this manner: ch. Pervenit 28, on Appeals; or Decretals, book 2, tit. 28, c. 28. A chapter indicated in this latter way is found much more easily.

The third volume contains the Sixth Book, the Clementines, and the Extravagants both of John XXII and the Common ones.

The Sixth, or sixth book of the Decretals, is so called because it is added to the five books of the Decretals of Gregory IX, and has the Decretals published from Gregory IX up to Boniface VIII. It appeared in the year 1298 by the authority of Boniface VIII; it is divided into five books, which also have titles and chapters. It is cited in the same way, but there is added, in the Sixth, or under Boniface.

The Clementines, so called from Clement V, who ordered them to be collected after the Council of Vienne, over which he presided in the year 1311, are Constitutions published either by Clement himself or by the Council of Vienne. John XXII promulgated them in the year 1317 in five books, which, no less than the Decretals and the Sixth, consist of titles and chapters. They are likewise cited in the same way, but there is added in the Clementines.

The Extravagants of John XXII are the Constitutions which he himself published in the prior years of his pontificate. They are so called because they wander outside the corpus of law collected thus far. They are usually indicated thus: Extrav. of John XXII, tit. 4, c. 1.

The Common Extravagants, so called because they were published by John XXII and by several other Pontiffs, are themselves divided into five books, which have chapters with titles, but not numbered. They are ordinarily cited thus: ch. Vas electionis, on Heretics; Common Extravag., or Extrav. comm., book 5, on Heretics, c. 2.

Other Constitutions of the Councils of Constance and Trent, and of the Roman Pontiffs, were published afterward, but have not yet been collected into the corpus of Law.

126. Questions. - QUESTION 1. What are the Roman Congregations, and what are their various offices?

I answer: The following are enumerated: the Congregation of the Council, the Congregation of Bishops and Regulars, the Congregation de Propaganda Fide, the Congregation of Sacred Rites, the

Congregation of the Index, the Congregation of the Holy Office, the Congregation of Indulgences and Relics, the Congregation of Immunity.

1. The Congregation of the Council (of Trent), or of Cardinals. It consists wholly of Cardinals, who are called the interpreting Fathers of the Sacred Council of Trent, and one of whom is distinguished by the title Prefect of the Congregation. Pius IV had first instituted this for the observance of the Council of Trent; afterward, moved by the requirements of affairs, Sixtus V endowed it also with the power of interpreting the decrees of the Council in those matters which pertain to the reform of morals or discipline and seem doubtful.

2. The Congregation of Bishops and Regulars. It also wholly coalesces from Cardinals. As its name indicates, it undertakes two matters to be treated: namely, those things which regard the good administration of the dioceses of the whole Catholic world, and those things which pertain to knowing and settling, according to the sacred Canons, the controversies and disputes of Regulars of both sexes.

3. The Congregation de Propaganda Fide. It is composed of Cardinals alone. It is wholly occupied in procuring the propagation of the Faith throughout the world. The College called de Propaganda Fide, for forming Missionaries, founded at Rome by Urban VIII, pertains to its cares.

4. The Congregation of Sacred Rites. Besides Cardinals, it also consists of Consultors, Prelates or Regulars. It defines and orders the sacred liturgy, and the things which pertain to it. The examination also of the causes of Beatification and Canonization of the Saints is numbered among its offices.

5. The Congregation of the Index, instituted by St. Pius V. In it Cardinals and several other learned men have a place. It exercises one sole office, but one of great moment for the good both of ecclesiastical and of civil society: namely, it has the care of books which are published, lest anything through them be able to be propagated among Christians against Religion and good morals; those which it judges harmful to the faithful, it accurately notes, forbids, and reports in the Index, which therefore is called the Index of prohibited books, so that the faithful may abstain from reading them as from poisoned pastures. Yet sometimes books are prohibited both by the Congregation of the Holy Office and by the Pontiff himself through particular Briefs and dogmatic Constitutions, especially if they savor of heresy.

6. The Congregation of the Holy Office, or of the sacred universal Inquisition. It is called Supreme, and consists both of Cardinals and of Prelates and Theologians.

It belongs to it to take cognizance of heresy, and also of suspicion of heresy, or of other irreligiosities. It was instituted by Paul III and confirmed by Sixtus V.

7. The Congregation of Indulgences and Relics. It has the faculty and office of settling all difficulties and doubts concerning Sacred Relics and Indulgences. It consists of a number of Cardinals to be determined by the Supreme Pontiff, and of other Prelates and Theologians.

8. The Congregation of Immunity, which coalesces from Cardinals and a few others. It inspects and takes cognizance of causes concerning ecclesiastical immunity, whether real, personal, or local.

127. ○ QUESTION 2. What is to be said concerning the sacred tribunals, gracious and contentious?

I answer: 1. Three gracious tribunals are numbered, namely: the Sacred Penitentiary, the Dataria, and the Roman Chancery.

1. The Penitentiary is a tribunal instituted for granting certain favors in the internal forum. Its office is to grant faculties of absolving from sins and censures reserved to the Pope, dispensations in vows and irregularities, and also generally in occult impediments of matrimony, as will be said more fully in its place. It also pertains to it to solve practical doubts, or to settle difficulties which are proposed to it.

The Sacred Penitentiary consists of one Major Penitentiary from the College of Cardinals, and of minor Penitentiaries taken from different religious orders. Pius IV reformed this Sacred Congregation in the year 1562, and St. Pius V completed the reform.

2. The Dataria has been so called from the style customary in Chanceries, because it notes the date, or epoch, of the favor conceded. It is a very ample tribunal by reason of the business referred to it, and of the favors which proceed from it. For from there proceed the erections, unions, divisions, and suppressions of Cathedral Churches, creations of new canonries or dignities, collations of reserved benefices, and public dispensations of impediments of matrimony.

The Dataria is constituted from a Datary, who is called Prodatary if he is a Cardinal, as almost always happens, a Subdatary, and several subordinate officials.

3. The Chancery wholly excels among the gracious tribunals. It is the tribunal of the Pontiff, through which Apostolic letters are drawn up, written, and expedited. The origin of that office is not certain. That office is of primary dignity, and its Chancellor precedes the other ministers of the Roman court. He has several officials under him, of whom some are major Prelates.

I answer: 2. Among contentious tribunals the Roman Rota holds the first place, about which we shall report very few things. Concerning its origin and the reason for its name there is not sufficient certainty. But the Roman Rota is a pontifical tribunal, instituted for taking cognizance of and deciding contentious causes brought from the whole Catholic world to the court of the Pontiff. The judges from whom this tribunal is constituted are twelve, taken from different parts of the Church. Among these, eight are Italians, two Spaniards, one Frenchman, and another German. Thus from the Constitution of Sixtus IV. All these are called auditors of the Roman Rota, because, as they say, formerly they were mere auditors and reporters of causes, but not judges properly so called.

128. ○ QUESTION 3. What is to be said concerning pontifical Bulls, Briefs, and Rescripts?

I answer: 1. Bulls are certain Constitutions of the Roman Pontiffs which for the most part regard weightier business, and are expedited in the Apostolic Chancery, inscribed on somewhat dark and thicker parchments, in Lombardic or Teutonic character. They are called Bulls from the seal, either leaden or golden, displaying on this side the images of the Holy Apostles Peter and Paul, but on that side the name of the Pontiff, which adheres to a cord of silk or hemp.

They obtain various names from various objects. Some are gracious, which contain the conferring of a favor. - Others are of justice, which regard the administration of justice. - Others are consistorial, which are expedited in the Consistory. - Others are half-bulls, which are made by a Pontiff not yet consecrated, and in the seal do not display the name of the same. Bulls are cited by the words with which they begin. Bullaria are called collections of Bulls.

2. Briefs are called certain Constitutions of the Roman Pontiffs for business for the most part lighter. Through the Secretary of Briefs, written on white and thin parchments, in Latin and in an elegant character, they are expedited. They have a seal of red wax, on which the image of St. Peter engaged in fishing is impressed, and therefore they are said to be expedited under the Ring of the Fisherman.

3. Rescripts are called responses of the Pontiffs to requests. There is a twofold kind of them. Some are issued after the manner of familiar letters, which the Supreme Pontiffs are accustomed to give either when they are petitioned by those with whom they have a special relation of friendship, or when they are asked for counsel as learned and pious men; nor is any force of obliging inherent in these, since they proceed more from courtesy of mind than from true authority. - Others are issued after the manner of Decrees by the Pontiffs, as successors of St. Peter and Pastors and Teachers of the universal Church; and consequently the greatest force is inherent in these, since through them pontifical right and supreme jurisdiction are exercised.

129. ○ QUESTION 4. Whether pontifical Epistles, and responses not inserted in the corpus of Law, have the force of law?

I answer: Yes, if their authenticity is established, and they have been sufficiently promulgated; namely, if they are published in that manner in which laws are usually published, or if from the usage and sense of the universal Church already for several centuries they are held as authentic and sufficiently promulgated. - St. Lig., no. 106. - *Apostolic Man*, no. 34.

130. ○ QUESTION 5. Whether the Declarations and Decrees of the Sacred Congregations have the force of law?

I answer: 1. The Decrees and Declarations of the Sacred Congregation of Rites are to be held as oracles of the Pontiff himself: thus from the Bull *Immensa* of Sixtus V, and from the decision of that same Sacred Congregation on 23 May 1846, which Pius IX approved and confirmed. The very common opinion holds that Declarations and Decrees of this kind oblige even in similar cases, and the jurisprudence of the Sacred Congregation and of the Tribunals of the City favors it.

I answer: 2. But the Declarations and Decrees of the other Congregations oblige as laws in the particular cases for which they are made. Whether in similar cases? It is controverted. Some with

Benedict XIV affirm that they strictly oblige in every case, provided they have been fortified with the seal and subscription of the Cardinal Prefect, and the Pontiff has been consulted. And this is the more common and more probable opinion. - But others deny this, and say that they do not oblige unless they have been published by mandate of the Pontiff and promulgated for the whole Church in such a way that the Pope declares that he wishes them to be observed by all the faithful; yet they attribute so great an authority to them that they prefer them to the opinions of any private persons whatsoever, and think they are not to be abandoned except for gravest reasons. - Bouvier [1].

[1] St. Alphonsus (book 1, no. 106) holds both opinions as equally probable, and indeed he alleges not fewer doctors for the second than for the first. But he also shrewdly adds with Laymann that in doubt whether they themselves have the force of obliging, a certain obligation cannot be urged, although great weight must certainly be attributed to them.

There is added also a stronger reason for the second opinion, namely that it is not easy, and therefore not always safe, to transfer the opinion of a Sacred Congregation to similar cases. For it is not clearly established what reason moved the Sacred Congregation to this opinion rather than to that one, especially because concerning the same matter plainly opposite opinions, namely according to the diversity of circumstances, have proceeded from a Sacred Congregation. Therefore, since it is difficult to know what circumstances impelled the opinion, for that very reason the transfer of the opinion to other cases can very easily be fallacious. Thus, for example, certain persons with labor wholly vain gathered together opinions of the Sacred Congregation in order to prove that the marriages of heretics, which are celebrated clandestinely in places where the Tridentine decree concerning that matter had been promulgated, are generally invalid; to which opinion Pius VII, in letters given to the Archbishop of Mainz on 8 Oct. 1803, concedes scarcely any degree of probability. Benedict XIV indeed discloses the cause of the error (*In Declarat*. year 1741 concerning Dutch marriages, § 2), that those persons did not advert that those decisions or decrees had been issued in certain particular cases and with attention to the circumstances then set forth: which decrees indeed (as he himself warns, *On the Synod*, book 6, ch. 6, no. 4) had not always been conformable even among themselves because of the variety of circumstances which now were present in one species of fact, now were lacking in another.

Yet others distinguish more aptly in this question merely comprehensive Declarations from extensive ones. They call them comprehensive when the declared sense does not depart from the proper and usage-received signification, so that it is according to the tenor and property of the words of the law, and only interprets it. But they call them extensive if they depart from that proper signification of the words, and beyond that which the words, accepted properly and according to the common sense, denote, they decree, prohibit, dispense, etc.

Now if 1. they are merely comprehensive, as Pius V and Gregory XIII wished, and 2. they have been given after the Pontiff has first been consulted, and in his name expressed in the letters, and 3. they are produced in authentic form, namely with the seal of the Sacred Congregation, and with the subscription of the Cardinal Prefect and Secretary, as Urban VIII wished; then they are to be held authentic, and therefore have the force of law not only with regard to those to whom the responses are given, but also with regard to others. Nor is it an obstacle that declarations of this kind are not solemnly promulgated. For a merely comprehensive declaration does not require a special and solemn promulgation, since it does not establish new law, but merely explains law already established and promulgated. But if the declaration itself does not come to the knowledge of all, only this will follow from that: that one who acts against the explained sense of the law is excused both from fault and from penalty on account of ignorance, until the declaration becomes known to him either from the authentic letters of the Sacred Congregation, or from an authentic copy of them, or from a relation worthy of faith, just as happens concerning other laws.

But if the Declarations are extensive, of which sort, for example, are many decrees concerning the celebration of Masses or concerning the Reform of Regulars, these do not have the force and authority of law unless they are made by special mandate of the Pontiff and are legitimately promulgated. The reason is plain, because by the very fact that they are not contained in the words of the laws accepted in their proper sense, they are already new laws, which require legislative power in the one declaring. But the Sacred Congregation from its institution indeed has the power of interpreting, but not of establishing laws. Therefore. Confer Pichler (*Prolegom.*, no. 46), Schmalzgrueber (*Introductory Dissertation*, nos. 373-377), and Reiffenstuel (*Prooemium in Ius Canonicum*, nos. 130-134).

St. Ligorius observes that the promulgation of Declarations of this kind can be made in multiple ways: namely, either by special mandate of the Pontiff, or by use of several years, or by the report of authors commonly referring them [2]. - St. Lig., *List of Retractions*, 2nd series, p. 2. - Scavini, On Laws, ch. 4.

[2] When, according to what has been said, Declarations of this kind are such that they need legitimate promulgation, but this has never been had, even if they are commonly referred to by authors, this nevertheless will not suffice for the force of obliging to accrue to them.

Article II. On Civil Law

131. ○ Law or civil right is the collection of laws or decrees of temporal Princes, by which society is directed to the common good.

Individual nations, or political communities, have their own laws by which they are governed. But we especially distinguish a twofold law, namely: Roman or common law, and the new French law, which also is common in great part to some other governments.

I. Roman Law. - Roman Law is called common, because it had force almost everywhere up to our own times. Moreover it was always held in great honor, as refined, and as though written reason.

It is contained in the very celebrated Code, or corpus of Civil Law, published by the command of Justinian. This volume is distributed into four parts.

In the first part are the Institutes of Justinian, which, as rudiments and elements for beginners in Civil Law, are contained in four books.

In the second part are the Digest or Pandects, which are distributed into 50 books.

In the third part is the code called *Repetitae praelectionis*, divided into 12 books.

In the fourth part are contained 68 Authentics or Novels, which are designated in numerical order.

132. ○ II. French Law. - The new French Law has existed for only a few years; for before the times of Napoleon, France was governed in very great part by common law. The new law is contained in the code commonly called the Code Napoleon.

There are five parts of it, or particular codes: 1. the civil code; 2. the code of civil process (*de procedure civile*); 3. the code of commerce; 4. the code of criminal instruction; 5. the penal code. To these several other minor codes, and of lesser moment, have been added: namely the code of forests (*code forestier*), - the code of fields (*code rural*), - the municipal code (*code municipal*), etc. The individual matters contained in the individual codes are distributed into brief and clear articles, and are indicated by Arabic numbers, and therefore are found most easily. Moreover there are many laws which are inscribed and preserved in the tablets commonly called *Bulletin des lois*.

Chapter III. On Penal and Invalidating Law

Article I. On Penal Law

133. ○ Penal law is that which does not oblige to an act or to an omission except under temporal penalty, that is, to accepting the penalty as just.

Principles. - I. A purely penal law cannot be given, so that it would oblige in no way in conscience, because every precept of a Superior must oblige in some way; otherwise it would not be a true precept. - Thus all.

II. But a merely penal law can be given, obliging in conscience to one or the other, namely either to fulfilling the law, or to undergoing the penalty, if the law has been violated. The reason is, 1. because for the essence of law it suffices that it impose some obligation in conscience, nor is it necessary that the obligation determinately regard an act or omission; 2. because law has force only from the will of the legislator: but the legislator can oblige to the penalty alone, if this suffices for procuring the common good. - Thus very commonly the Theologians with St. Lig., no. 143. - Suarez, - Salmant., etc.

But the question whether any merely penal laws are given can by no means be resolved speculatively, since they can be given somewhere, and not elsewhere. Therefore only the learned and skilled in their own region or nation can judge about this. Generally, a few can be admitted, and in matters of lesser moment. But not a few Theologians contend that laws are merely penal which regard certain taxes imposed on merchandise which is carried across, and which are called Vectigalia. We shall speak of these toward the end in the Treatise on Restitution.

134. Questions. - QUESTION 1. How can merely penal laws be discerned?

I answer: Chiefly from the common sense of the Doctors, and from the persuasion and practice of subjects, especially the God-fearing.

QUESTION 2. Whether ignorance excuses from a penalty established by law?

I answer: 1. Yes, for the internal forum, if ignorance excuses from fault; but in the external forum it does not excuse, insofar as it is never licit to resist public authority.

I answer: 2. No, if ignorance does not excuse from fault [1], or is concerned with the penalty alone [2]. - St. Lig., no. 169.

[1] Understand grave fault; for when ignorance does not exceed light fault, the Doctors commonly teach that it excuses from the penalty.

[2] Understand with St. Alphonsus (book 1, no. 169) the ordinary penalty, not an extraordinary and exorbitant one. Concerning this matter the same St. Alphonsus says (book 7, no. 351): Although knowledge of the penalty is not required in order that it be incurred, when the penalty is ordinary, and such that from the nature of the crime itself it can in some way be foreseen, since the natural light itself dictates that evil is to be punished according to its nature; nevertheless knowledge of the penalty is required when it is extraordinary and exorbitant, so that according to the nature of the thing it cannot be foreseen even confusedly: and of this kind indeed is the penalty of irregularity. The same St. Alphonsus (book 6, no. 1074) calls this opinion most probable.

QUESTION 3. Whether any laws of the Church are merely penal?

I answer: No, if the rules of many religious Orders are excepted. For all penalties inflicted by Canon Law suppose fault, and most often grave fault. The reason is that penal laws must at least be obligatory disjunctively, or at least to undergoing the penalty; but since the Church lacks the means for coercing by which Princes enjoy [3], it is necessary that it always oblige in conscience. Nor should you say that the Church has censures for inflicting punishment on Christians; for from the usage of the Church, censures are brought only against the guilty of grave fault [4] and against the

contumacious, because censures are extraordinary penalties which the Church, a pious mother, inflicts only when compelled by necessity. - Reuter, no. 126. - See Cases, no. 125.

[3] This is not to be accepted as if the Church either lacked coercive power, or could not use temporal or corporal penalties for coercing her subjects. See *Institutions of Ecclesiastical Public Law*, by Fr. Camillus Tarquini, S.J., book I, sect. 2, art. 1. Moreover this argument of the Author does not seem very firm; and hence some of the Doctors judge that merely penal laws have a place even in ecclesiastical decrees.

[4] Understand this especially of excommunication. For certain lighter censures can and usually are inflicted even for venial fault. See St. Alphonsus, book 7, no. 30.

Article II. On Invalidating Law

135. ○ Invalidating law is that which establishes that some act is invalid from the beginning, or is to be invalidated by the sentence of a judge. Hence there are laws invalidating by the fact itself, while others invalidate only after sentence. Some invalidate absolutely, and others conditionally, namely if the required conditions are lacking. Moreover some immediately invalidate the act itself, as the impediment of matrimony because of clandestinity; and others mediately, by rendering the persons themselves incapable, as the impediment of consanguinity.

Principles. - I. Every legislator can establish invalidating laws; the reason is that this is required for the common good; otherwise frauds and dangers of human society could not sufficiently be driven away. - Suarez.

II. Laws which establish that acts can be rescinded do not invalidate them before the sentence of a judge, as is clear from the terms, and consequently before that sentence they do not obtain force.

III. But one must stand by the sentence of a judge invalidating in all those things which intrinsically arise from the invalidation, because obedience must be given to the authority commanding. - Suarez.

136. Questions. - QUESTION 1. Whether an invalidating law obliges in conscience to avoiding the act?

I answer: Yes, if it is at the same time invalidating and prohibiting, as are laws establishing impediments of matrimony; otherwise, if it is only invalidating, because then the end of the law is sufficiently obtained by the invalidation alone of the act, as in several civil contracts. - Reuter, no. 232.

QUESTION 2. Whether invincible ignorance impedes the effect of invalidation?

I answer: No, of itself, because ignorance does not supply the defect of a thing essentially required, nor does it remove the grave inconveniences which would follow if the law did not invalidate in every case. Thus a woman violated by an unknown man invalidly marries the brother of that same man, notwithstanding invincible ignorance of the impediment of affinity.

Yet make exception if the law invalidates only as penalty for and hatred of a delict; because then it intends to punish malice alone, and consequently, when the cause ceases, the effect also ought to cease. - Suarez, - Lacroix, etc.

QUESTION 3. Whether an invalidating law invalidates, notwithstanding a very grave inconvenience?

I answer: Yes, unless the matter is one of common harm; the reason is that an invalidating law affects the act rather than the person, nor is it a matter of an obligation of conscience, but of the common good; otherwise men would more easily feign inconveniences for themselves, and the law would lose its whole strength. Hence a marriage contracted with a blood relative, even from fear of death, without dispensation, would not be valid. - Lacroix.

Chapter IV. On Unwritten Law, or Custom

137. ○ Custom, insofar as it is considered causally, is a mode of acting induced from frequent acts of the whole community, or of the greater part of the same; but formally it is a certain right constituted by morals, which is accepted as law, even if law is lacking.

Principles. - I. Custom, clothed with due conditions, can introduce a new law, abrogate an old one either wholly or in part, for example as to the penalty while the obligation remains, or conversely, and likewise modify or interpret a law. This is established from various places of both Canon and Roman Law, from which it is indubitably drawn that custom is to be held as law. It is likewise established from the common opinion of theologians and legal experts. Hence the axiom: Custom is the best interpreter of laws.

II. The conditions for introducing or abrogating a law are 1. That the custom be reasonable. For this it is required that it not break the nerve of ecclesiastical discipline; furthermore, that it not be a tinder and occasion of sins, nor pernicious to the common good. Bouix. - 2. That it be introduced by a community (and indeed by the greater part of the same, capable of establishing a law, Bouix), through repeated acts (and not interrupted up to the completed custom, Reiffenstuel), voluntary acts (that is, not introduced by force or fear [1], Bouix), public acts, with at least an implicit intention of obliging themselves (if it is a matter of custom beyond the law). - 3. That it endure for the required time.

[1] Add that the acts ought not proceed from error or ignorance. For otherwise, since nothing is more contrary to consent than error, the acts would be judged involuntary.

For attributing the force of law to custom, the express consent of the Prince is not required, but legal or juridical consent suffices, which is had through the laws and canons approving custom introduced by the morals of the people, and attributing to it the force of unwritten right.

138. Questions. - QUESTION 1. What time is required for prescribing against a law?

I answer: It is controverted; nor do Theologians or legal experts agree among themselves, because the laws establish nothing clearly concerning this matter.

Most say that ten years suffice and are required for prescribing against a civil law [2]. Many affirm the same also for ecclesiastical law, although certain others, with Billuart, require 40 years. - Thus St. Lig., no. 107; *Apostolic Man*, no. 11. - But this seems to depend not so much on length of time as on the other circumstances considered by moral estimation, having regard especially to the common sense, namely whether the greater and sounder part of the community holds the law as abrogated [3].

[2] Namely, for this a long time is required and suffices. But the laws hold ten years as a long time. Institutes, On usucaption, beginning, and Law 12, Code, On prescription of long time.

[3] In this case the law can cease before ten years, not indeed by force of custom, which by hypothesis has not yet prescribed; but from the consent of the Prince conniving, and thus tacitly taking it away.

139. ○ QUESTION 2. When is custom judged to have been introduced with the intention of obliging oneself?

I answer: 1. If the Doctors agree in this; 2. if the custom is about a grave and difficult matter, and nevertheless can be said to have been observed constantly and commonly; 3. if Superiors gravely rebuke violators of customs. - St. Lig., no. 107.

QUESTION 3. What is to be held in doubt whether a custom has the force of law?

I answer: In doubt, after inquiry has been made, the principle holds: A doubtful law does not oblige. But this inquiry consists in investigating the sense of upright men.

140. ○ QUESTION 4. What is to be held concerning the various ecclesiastical customs proper to France?

I answer: Concerning this matter Bouvier speaks thus in his own words (edition amended according to observations proposed by some Roman theologians), ch. 2, art. 5:

> "It is certain that, as regards France, the Supreme Pontiffs do not admit all customs contrary to common law... For although the Supreme Pontiffs have not always been able to protest against these customs, on account of grave inconveniences, whether public or personal, rightly to be feared for themselves or for others, nevertheless it must be believed that by this silence they have not ratified those same customs. Already the Holy See has opened its mind both in particular concerning the obligation of the Bull of St. Pius V concerning the Roman liturgy, and in general concerning pontifical Constitutions regarding general discipline, which it ordered to be admitted by the Council of the Province of Paris of the year 1849, as can be seen in the acts of that same Council.
>
> "It is certain, however, that the mind of the Holy See was not to destroy completely all customs proper to the dioceses of France.
>
> "But which Decrees of common law, or of general Councils, which Apostolic Constitutions have the force of law, and which customs are to be held ratified in the dioceses by consent of the supreme legislator, in doubt recourse must be had to the Holy See. - See case no. 132.
>
> "Many things which regarded benefices, privileges of the external forum, and forms of judgments, are now without object in France. Whence the greatest part of the difficulties of ecclesiastical Law has vanished.
>
> "All Priests can with a safe conscience use customs certainly and without injury to the authority of the Church received among us; indeed in practice they cannot recede from them, because order would be disturbed, for example, if they judged the jurisdiction received from the Bishop insufficient, if they esteemed dispensations conceded as null, etc. It belongs to Bishops, and not to simple Priests, to judge concerning rules of discipline." - Bouvier (edition amended according to observations proposed by Roman theologians), ch. 3, art. 1, § 2.

Chapter V. On Favorable Law, or Privilege

141. ○ A privilege is a constant and permanent favor granted by a Superior to certain persons, or to certain dignities, against or beyond common law.

A privilege is distinguished:

1. Personal, local, or real, according as it is granted to a certain person, or to the inhabitants of a certain place, or to some thing, for example to a certain Church.

2. Against the law, or beyond the law, according as through it derogation is made from some law, or not.

3. Favorable, or odious, according as it profits the privileged person with the burden of others excluded; or burdens others while it favors one.

Principles. - I. A privilege against the law can be granted only by those who can validly dispense from the law, and indeed only to subjects, just as if it were a matter of dispensation, because it is a certain kind of dispensation.

II. But a privilege beyond the law, or a privilege improperly so called, can be granted even to non-subjects, because it is not an act of jurisdiction, but an act of mere faculty and as though a donation. Thus a Prince can grant to a foreigner the privilege of hunting in his territory.

III. A favorable privilege is to be interpreted broadly. On the contrary, an odious privilege ought to be of strict interpretation. This is evinced from law, and the common consensus of the Doctors is consonant. - St. Ligorius, Appendix on privileges at the end of the Treatise on Laws, no. 7.

IV. No one is held of himself to use a privilege, because each one can renounce his own right [1]; sometimes, however, by accident the privileged person is obliged to the use of the privilege, for example by reason of charity. Hence he would sin who, having the faculty of absolving from reserved cases, would refuse to hear a sinner having reserved sins and placed in grave necessity..., etc. - St. Lig., ibid., no. 3.

[1] This does not hold with regard to privileges which are granted not so much to the person as to the condition or state. Thus a cleric cannot renounce the privilege of canon or of forum, nor a religious the privilege of exemption.

END OF THE TREATISE ON LAWS

142. Questions. - QUESTION 1. How does a privilege cease?

I answer: 1. By the death of the person, or the destruction of the thing, according as it is personal or real; 2. by lapse of the prescribed time, or by revocation; 3. by cessation of the final cause; 4. by renunciation accepted by him who can accept it.

QUESTION 2. Whether travelers can enjoy the privileges of places through which they pass, even if these are against common law?

I answer: Yes. It is established from general custom. Thus Frenchmen passing through Spain can eat flesh meats on the Sabbath day. Thus also Italians existing in France are exempted from the

obligation of hearing Mass on the feast of the Epiphany of the Lord and certain other feasts, which are not observed there.

But concerning privileges in particular, it will be said in its own place, and especially concerning the privileges of Clerics, Regulars, and Bishops, in the Treatise on Particular States, at the beginning of vol. II.

Treatise On Sins

We must treat 1. of sins in general; 2. in species.

Part One. On Sins in General, or on the Nature, Gravity, and Distinction of Sins

Chapter I. On the Nature of Sin

143. ◦ DEFINITION. Sin is commonly defined: A free transgression of divine law, that is, of any law obliging in conscience. - St. Lig., book 5, no. 1. - Or "it is a voluntary departure from the law of God." - Thus St. Thomas, 1.2, qu. 72, art. 1. - Or "it is a word, deed, or desire contrary to the eternal law of God." - St. Aug., book 22, Against Faustus, ch. 27.

DIVISION. Sin is distinguished in manifold ways, namely:

1. Actual, or habitual, according as it is either an act or omission disconformed to law, or a state of sin not yet destroyed.

2. Mortal, or venial, according as it either dissolves divine friendship, or is only a light offense of God, which can easily obtain pardon.

3. Sin of commission, or omission, according as it is done by placing a prohibited act, or by omitting a commanded act.

4. Sins against God, neighbor, and oneself, according as they specially and immediately are opposed to God, or are adverse to justice and charity due to the neighbor, or especially regard temperance and moderation of the passions [1].

[1] ** Perhaps you would say better: according as they violate duties due either to God, or to neighbor, or to oneself. For otherwise there are certain sins against the neighbor which are opposed properly neither to justice nor to charity, for example disobedience.

5. Sins of malice, or ignorance, or infirmity, according as they are committed either from mere malice, or from vincible ignorance, or from mere frailty.

Sin is called formal when the law is violated freely and knowingly. But it is called material when the transgression of the law is wholly involuntary.

We shall say nothing about original sin, the treatment of which pertains to speculative theology.

144. Principles. - I. For formal sin, besides the objective malice of the act, advertence of mind and consent of will are required. And 1. advertence of mind to the malice is indeed required, because the malice of sin cannot be the object of the will unless it is known in some way by the

help of the intellect: for there is no desire of a thing unknown; 2. consent on the part of the will is required; for sin is completed by the will, according to that saying, Matth. 18.19: For from the heart come forth evil thoughts, adulteries, etc. - Recall what was said On Human Acts, no. 3 and following.

II. For actual sin actual advertence is necessarily required. For it is repugnant that a man should sin unless in some way, either here and now, or in the cause, at least confusedly, he adverts to the sin. For nothing is willed unless it has been known beforehand. - Thus commonly with St. Lig., book 5, no. 4. - Suarez, etc. [2].

[2] ** Even in this question the VV. (page 910) wished to find a discrepancy between the opinions of the Holy Doctor and Gury; and for this end they bring forward the words of St. Alphonsus (book 5, no. 4), saying that many evils, although actually and expressly they are not adverted to, ... nevertheless are imputed to fault to those perpetrating them, if their ignorance is in some way voluntary either because of negligence, or because of passion, or a depraved habit, or because of voluntary inconsideration in acting.

I answer: In bringing forward Gury's text the VV. (l. c.) ought not to have cut off those words: For it is repugnant that a man should sin, unless in some way either here and now, or in the cause, at least confusedly, he adverts to the sin. These words indeed contain that some advertence which even the Holy Doctor admits both to be present and to be necessary, so that those many sins which proceed from voluntary inconsideration and ignorance may be imputed. And advertence of this kind the Holy Doctor explicitly mentions not only when he explains that fourfold origin, but sufficiently and more than sufficiently asserts it when he calls that ignorance voluntary. For nothing can be voluntary without any advertence.

But, what is more to be wondered at, see the text of the Holy Doctor, which you would say was transcribed almost to the letter by Gury. It must be concluded, he says (l. c.), that the opinion of those, if perhaps there are any, who say that all errors which he commits are to be imputed to one acting against the law, even if no actual advertence ever intervened, neither direct nor indirect, in itself or in the cause, at least confusedly, but only interpretative advertence was present, consisting in this alone, that he ought and could, by physical and remote power alone, advert to the malice: this opinion can in no way be sustained.

Some indeed contradict this, asserting that virtual or interpretative advertence suffices for sin, which consists in this, that a man ought and is able to advert, although he does not actually advert. - Thus Collet, Concina, etc. - But this opinion must be entirely rejected. For nothing can be willed except in the manner and at the time in which it is known; for the effects of a voluntary cause are not determinately voluntary unless they are determinately known. Therefore sin committed without any actual cognition is merely material. Nor should they say that it is perhaps voluntary in cause: for if it was truly voluntary in the cause, then some cognition was necessarily present, and therefore then the sin was perpetrated [3].

[3] ** The VV. (page 911, no. 15) exhibit the last period of this paragraph, and likewise the last of the sixth resolution, as discrepant from the doctrine of St. Alphonsus.

I answer: 1. A priori every sensible man will not believe this. For here are contained the first principles of ethics, from which no one will believe St. Alphonsus to have departed.

2. In the first text which the VV. bring forward, St. Alphonsus (book 5, no. 4) says that to one acting according to his passion, which he deliberately follows, every depraved effect connected with such a passion is imputed, even if it is not known in particular. But then the VV. cut off these following words: Which (effects), although they are not foreseen in particular, are foreseen at least confusedly... Whence the effects proceeding, although they are not voluntary in themselves, are nevertheless voluntary in their cause. Where then is the disagreement of opinions?

3. The VV. then bring forward as a text of St. Alphonsus a text which is not St. Alphonsus's, but Collet's, the very unhappy continuer of Tournely (vol. 2, On Sins, ch. 4, art. 1). Truly strange! For do the VV. not know that Collet defends the doctrine which St. Alphonsus there attacks, concerning the sufficiency of interpretative advertence, so that he does not hesitate to

accuse as guilty from erroneous conscience even those who, nourished in heresy by condition of birth, have drunk in, as it were with milk, this persuasion: that the religion which they hold is the one which is true; and concerning this they never suffer any remorse? Let it be then that the Holy Doctor reported certain words of this many-colored writer, as though arguing ad hominem; for the rest, whatever finally this man wished for himself, it is of no concern.

But what the VV. add (page 911, note 1), that from the doctrine of St. Alphonsus those things which are noted at § 300, resolution 3, vol. 1 of Gury are not to be admitted, will be weighed in its place.

145. Resolves. - 1. Vincible ignorance concerning some precept is a sin, and in a grave matter can be grave, if the negligence was notable; the reason is that every law obliges first to knowledge of itself, and consequently the precept is violated not only through an act opposed to it, but also through voluntary ignorance of it.

2. Evil acts have that malice which is apprehended. Hence if cognition falls upon such malice, or malice specific in such a way, this is truly contracted by the act of the will. - Thus commonly.

3. If some sin has been foreseen in the cause, and then is placed with advertence, there will be a twofold sin, namely 1. in the voluntary cause, 2. in itself [4].

[4] Namely, by two acts, as we suppose, formally distinct, and he consents into the same sin. See below, On the numerical distinction of sins.

3. If ignorance, culpable in the beginning, becomes invincible, the evil act is not a sin in itself, but the reason of sin must be sought from the cause alone. Now it will become invincible if no thought any longer arises concerning the past negligence or the actual ignorance, because then proximate and ready power for driving away the ignorance is lacking. Ignorance also becomes invincible if a doubt arising concerning it cannot be driven away.

5. Those blinded and habitual sinners, although because of the defect of clearer cognition at that time they perhaps sometimes sin less gravely in act than others, nevertheless are not excused, because a state of this kind, where there is no care for amendment, is voluntary and culpable for them [5].

[5] State the opposite if, as is fitting, they apply themselves to amendment.

6. Moreover perfect inadvertence is scarcely to be admitted in habitual sinners, because at least confusedly they advert to the malice of sin. Yet if at any time they perpetrate evil acts wholly inadvertently from custom, these acts indeed cannot be called actual sins [6], because here and now they are not voluntary; nevertheless they are voluntary in the cause, and therefore are always imputed to them, because the strict obligation of correcting a depraved custom always urges. The very same must be said of other sins which are voluntary merely in the cause; namely, then guilt is contracted when the cause is placed voluntarily; and since the whole guilt resides in the cause, it will be present here in the same way, whether acts of this kind follow or not, and whether these same acts are repeated in a smaller or greater number [7].

[6] It is said less exactly and against the opinion of all the Doctors that sins of this kind cannot be called actual. For that division is common to all, according to which actual sin is distinguished from original, and therefore whatever of sin is not original must be called actual. But the Author, as is clear, here uses the word actual in a less usual sense to signify sin which is voluntary in itself, and is distinguished from that which is voluntary only in the cause.

[7] But all guilt will cease if, the cause having been retracted through penance, one applies care for amendment equal to the necessity.

Chapter II. On the Gravity of Sin, Especially on Mortal and Venial Sin

146. ○ DEFINITIONS. The gravity of sin is the quantity or measure of malice by which sin is more or less offensive to God, and consequently worthy of greater or lesser penalty.

Mortal sin is the transgression of a law gravely obliging, or a grave offense of God, depriving one of divine friendship and sanctifying grace, and rendering the sinner worthy of eternal punishment.

Venial sin is the transgression of a law lightly obliging [1], or a light offense of God, which neither deprives one of divine friendship, nor of sanctifying grace, nor consequently excludes one from eternal beatitude.

[1] Here the definition of venial sin is handed down from its object; for otherwise from the imperfection of the act a fault can be light, although in itself the law obliges gravely.

Certain sins are mortal from their whole genus, when their object or matter, whatever it finally may be, always contains a grave disorder, as happens in luxury, blasphemy, perjury, heresy, etc. They are called mortal from their genus (not whole), when their matter, remaining in the same species, can be grave, although it can also be light, of which sort are sins against justice. - But venial from their genus are called sins which, with the matter or nature of the object considered, do not admit grave guilt, and therefore, so long as they remain within their own species, that is, another species mortal from its own genus does not accede, cannot be mortal. - St. Lig., no. 41 [2].

[2] ** See below, note to no. 153.

With these things posited, let the following propositions stand:

Proposition I — Not all sins are equal, but some are graver than others

147. ○ It is proved 1. from Sacred Scripture. Jeremiah, ch. 7, says of the Israelites: They have acted worse than their fathers. - Thus Christ to Pilate, John 19: He who handed Me over to you has the greater sin.

It is proved 2. from reason. With proportion given, that must be said about the injuries of men against God which is said about the injuries of children against parents, or of subjects against Princes; but these indeed differ among themselves by reason of gravity: therefore those also. - Moreover sins are opposition to virtues and precepts; but some virtues are more excellent than others, and some precepts are graver than others: therefore opposition to these will be graver, or less grave. From another source also, the depraved intention of the delinquent can admit various degrees of malice, as is clear. Therefore....

QUESTION. Whence is the greater or lesser gravity of sins to be sought?

I answer: It is generally to be sought 1. from the object, end, and circumstances, according as they are more or less opposed to rational nature or to law; 2. from the duration of the evil act, or from its intensity; 3. from greater or lesser advertence to the malice of the act, or from the different degree of

consent furnished to the depraved act; 4. from the excellence of the virtues or precepts to which the sins are opposed; 5. from the various modes by which virtues or laws are violated.

Proposition II — Mortal sins are given

148. ◦ It is proved 1. from Sacred Scripture. 1 Cor. 6 and following says: Do not err: neither fornicators, nor those serving idols, nor adulterers, nor the effeminate, nor those who lie with males, nor thieves, nor the avaricious, nor drunkards, nor evil-speakers, nor the rapacious shall possess the kingdom of God. - And Rom. 1.32: Those who do such things are worthy of death. - And 1 John 3.14: He who does not love remains in death. - Add innumerable other testimonies of Sacred Scripture, from which it is most clearly established that many men on account of their sins will be rejected by God and tormented with eternal penalties.

It is proved 2. from the authority of the Church. For the Church teaches that mortal sins are given. Thus Trent, sess. 6, can. 27: If anyone shall have said that there is no mortal sin except that of infidelity, or that by no other sin, however grave and enormous, except the sin of infidelity, is grace once received lost, let him be anathema. - Likewise, sess. 14, ch. 5, it says: It is necessary that all mortal sins be recounted by penitents in confession. Therefore mortal sins are given.

Proposition III — Merely venial sins are given

149. ◦ It is proved 1. from Sacred Scripture. Prov. 24.16 says: The just man shall fall seven times, and shall rise again. Therefore he who falls or sins while he is just does not sin mortally, since he is not deprived of justice; therefore only venially. Therefore, etc. - Likewise, James 3.2: In many things we all offend; but we do not all sin mortally, since many are just before God, as is established from many places of the Old and New Testament, for example, as is said of Zachariah and Elizabeth, Luke 1.6, of St. Joseph, Matth. 1.19, etc. Therefore there are just persons not immune from sin; therefore venial sins are given.

It is proved 2. from the definition of the Church. In Trent, in the place cited above, it is said: Venial sins, by which we are not excluded from the grace of God, and into which we fall more frequently, can be expiated by many other remedies (besides the sacrament of Penance). It is also established from proposition 20 of Baius, condemned by Pius V and other Supreme Pontiffs, which sounds thus: There is no sin venial by its nature, but every sin merits eternal punishment.

It is proved 3. from reason. For among friends light offenses are given, which do not dissolve friendship; therefore similarly they ought to be given toward God. Therefore....

150. Questions. - QUESTION 1. In what does the formal difference between mortal sin and venial sin consist?

I answer: The difference between mortal and venial sin is situated in this, that he who sins mortally withdraws from God his ultimate end, so that he turns himself to a creature and rests in it as in his end; but, on the contrary, he who sins venially does not withdraw from God, but places acts so

disordered that they can in no way tend to God. - Thus commonly with St. Thomas, 1.2, qu. 72, art. 5.

QUESTION 2. What things are required for mortal sin?

I answer: Three things are necessarily required, namely 1. grave matter either in the object or in the circumstances; - 2. full advertence to the grave malice of the act; - 3. full consent of the will in the prevarication.

Therefore 1. grave matter is required; otherwise mortal sin would not be distinguished from venial by reason of the matter, since light matter of itself cannot dissolve man from divine friendship [3].

[3] For light matter of itself does not induce grave obligation; but where there is not grave obligation, neither can the transgression be grave.

2. Full advertence and full consent are also required, because since through mortal sin man totally withdraws from God so that he adheres to creatures, this cannot happen unless the sinner deliberately prefers the object of sin to God, and thus constitutes his ultimate end in the creature. Moreover it is wholly foreign to divine goodness to consign a man to eternal damnation either because of a light transgression or because of an act not perfectly free and voluntary. - Thus all. - St. Lig., nos. 5, 6, 53.

Now advertence is judged full and sufficient if an express thought, or at least grave doubt about mortal malice, precedes the consent or sinful act. And this indeed can happen even in a single instant through a simple judgment about the malice, without the mind by discourse reflecting several times upon itself by a special act; nevertheless true and full deliberation of mind and full adhesion to the depraved object are always required.

QUESTION 3. What things are required for venial sin?

I answer: For venial sin there are required and suffice some advertence, however slight, to the malice of the act, and some consent of the will, however imperfect: these indeed are required, because when these are removed there can be no cognition and volition of evil, and consequently no sin; but they suffice, because when they are posited, the cognition and volition of evil which are necessary for constituting sin are had in some way.

151. ○ QUESTION 4. How can sins be known as mortal by reason of matter?

I answer: A threefold rule is assigned.

Rule I. Recourse must be had to Sacred Scripture. For what things are grave, or what are light, must be weighed not by human but by divine judgment, says St. Aug., *Enchiridion*, ch. 77. Now those things are to be judged mortal which in Sacred Scripture are declared worthy of death, or to exclude from the kingdom of heaven; or which are pronounced with the particle woe, which indeed denotes truly grave deformity. Thus the Apostle concerning the works of the flesh, Galat. 5.19, says: Which are fornication, uncleanness, immodesty, luxury... I foretell to you, as I have foretold, that those who do such things shall not possess the kingdom of God. - Recall also the long series of mortal sins which the Apostle enumerates, 1 Cor. 6 and following, as above in Proposition II.

Rule II. Recourse must be had to the Church, or to the definitions of the Supreme Pontiffs, to the Decrees of general Councils, etc., in which many things are declared mortal, or only venial. For the Church is the pillar of truth, and therefore the rule and measure of morals must be sought from its doctrine.

Rule III. Recourse must be had to the Holy Fathers, to the Doctors of the Church, and also to the common doctrine of Theologians. For the Holy Fathers and Doctors were placed by God in the midst of the Church as burning lamps for driving away the darkness of error and for enlightening the faithful in the way of truth. But Theologians know better than the rest how to interpret the testimonies of Scripture and of the Fathers and the Decrees of the Church, and to compare cases not defined with defined ones, those not declared with declared ones, and from parity or likeness to deduce suitable conclusions. Therefore those things which are unanimously held by them as mortal are to be judged as such; for the consensus of the Doctors is an indication of truth.

152. ○ When the preceding rules are lacking, it is very difficult to determine when a sin is grave or light. But generally the following are judged grave:

1. All sins which are directly against God, or some perfection of His. Likewise all sins which turn to grave prejudice of the human race, as are the various species of luxury.

2. All sins which are gravely opposed to the end of great moment intended by the law, such as the omission of fasting, of Mass, of annual confession, of Paschal Communion, etc.

3. All sins by which the neighbor is gravely harmed in the goods of life, fortune, reputation, etc., such as homicide, detraction very harmful to the neighbor, notable theft, etc.

Moreover the limits between mortal and venial sin very often can in no way be determined, as is established from innumerable controversies of the Doctors concerning this matter. But mortal sin is not to be asserted unless it is certainly established concerning it, as St. Lig. rightly notes, *Moral System*, at the end, and book 6, nos. 604, 605 [4].

[4] It is useful here to append those things which St. Alphonsus has in the former place. It is a thing worthy of admiration, he says, to see some persons think there is no safer mode of saving souls than to lead them through harsher paths; but they err no less than others who lead consciences along the more lax way. For we are held to render an account to God not only for excessive indulgence, but also for excessive rigidity, by which consciences are ensnared, which properly, according to St. Antoninus, is to build for Gehenna. Cabassutius explains this very aptly from the doctrine of St. Bonaventure; for after he detests immoderate benignity, he reproves immoderate rigor, which, as he says, while it compels men to things too arduous, closes off the way of eternal salvation; it condemns those to be saved, as Blessed Bonaventure says, and drives those conscious of their own infirmity to desperation. For it happens that wretched men, having heard this more rigid doctrine, believe or doubt that mortal fault is present where there is none; but nevertheless, overcome by the difficulty of the thing, from an erroneous conscience they sin mortally and are damned. - Thus St. Alphonsus, who then appends several opinions of the Doctors. We select these for our matter.

Theological Doctors ought not be easy in asserting that some things are mortal sins where they are not most certain of the matter; for through assertions of this kind, rigid and too strict, men are by no means raised from the mire of sins, but are plunged into it more deeply, because more desperately. Gerson.

Do not be prone to judge sins mortal, where it is not established to you by certain Scripture. St. Raymond.

Nothing ought to be condemned as mortal sin concerning which evident reason or manifest authority of Scripture is not had. Gabriel Biel.

A question in which it is treated whether something is mortal sin is determined most dangerously, unless for this express authority of Scripture or of a canon of the Church, or evident reason, is had. St. Antoninus.

But if the Confessor cannot clearly perceive whether it is mortal, then the sentence does not seem to be hastened, as William says, so that on account of this he denies absolution, or makes for him a conscience concerning mortal sin. And since laws are readier for loosing than for binding..., he seems rather to be absolved. St. Antoninus.

153. ○ QUESTION 5. How does sin mortal from its genus become venial, and vice versa?

I answer: 1. Sin mortal from its genus can become venial in four ways, namely by reason 1. of smallness of matter; - 2. of imperfect advertence; - 3. of imperfect consent; - 4. of erroneous conscience. - Thus St. Thomas, 1.2, qu. 88, art. 1 and 2. - St. Lig., no. 54.

I answer: 2. But sin venial from its genus can become mortal 1. by reason of erroneous conscience; - 2. by reason of scandal; - 3. by reason of a depraved end gravely evil; - 4. by reason of formal contempt of the law, or of the authority commanding; - 5. by reason of a depraved affection for a thing otherwise lightly evil, so that one is prepared even to transgress a precept gravely obliging; - 6. by reason of danger or proximate occasion of falling into mortal sin. - Thus all [5].

[5] Here the doctrine of St. Thomas must not be passed over, that sin venial from its genus cannot become mortal unless a circumstance accedes changing the species, and therefore this never happens because of a merely aggravating circumstance. Thus the Holy Doctor (1.2, q. 88, art. 5): It is manifest that a circumstance cannot make mortal sin from venial sin, while the circumstance remains; but only then, when it transfers into another species, and becomes in some way a specific difference of the moral act. Confer also *De malo*, q. 2, art. 8.

154. ○ QUESTION 6. Whether he would sin gravely who wished to avoid only mortal sins, and cared not at all about omitting venial ones?

I answer: No, more probably, speaking of itself and speculatively. The reason is that an intention so constituted does not induce a proximate danger of sinning gravely [6]. - But in practice the matter is difficult and very arduous, since facility in sinning venially is the cause why the soul is gradually weakened, and finally is more easily conquered by grave temptations, according to that saying of Eccli. 19.1: He who despises small things shall fall little by little.

[6] This response is taken from St. Alphonsus (book 4, no. 12); but St. Alphonsus makes the question not about mere negligence in avoiding venial sins, but about the proposal of committing all venial sins, nor does he merely say that opinion is speculatively more probable, as though in practice a grave obligation were present of avoiding a remote danger of this kind.

Card. De Lugo well says (*On Penance*, disp. 15, no. 49): No one will say that from this head there is an obligation under mortal sin to avoid venial sins.

And Suarez (*On Religion*, treat. 8, book 1, ch. 4, no. 18): It is necessary to advert that rarely or never is there mortal sin because of danger of this kind...; because otherwise it is not a proximate occasion, but a remote one.

QUESTION 7. Whether it is a grave sin, without cause to expose oneself probably to the danger of falling into mortal sin?

I answer: Yes, if it is a matter of a proximate occasion of sin, as the matter is clear of itself; but not in other cases. - Sanchez, On the Decalogue, book 4, ch. 8, no. 1.

155. ○ QUESTION 8. Whether he sins gravely who without sufficient cause places an action from which he is going to suffer base movements?

I answer: He does not sin gravely if the action is not of itself gravely influencing toward depraved effects, provided he does not intend them, and the proximate danger of consenting to depraved delight is absent. Otherwise, if the action of itself gravely influences the movements, as are grave faults in the genus of luxury. - St. Lig., book 3, nos. 482 to 484 [7].

[7] The more common and more probable opinion teaches that pollution is not mortal unless it proceeds from a cause of itself mortal in the genus of luxury... The reason why the cause must be of itself mortal is that since pollution (by hypothesis) is not willed in itself, but only in the cause, and therefore outside the intention, it will be evil in that degree in which the cause itself is evil. But the reason why it must also be mortal in the same genus of luxury is that, if the cause concurs lightly toward pollution, there is not a grave obligation to avoid that cause on account of pollution, which happens outside the intention. Hence it is inferred that pollution is only venial which arises... from a light look or a curious reading venially base. St. Lig. (book 4, no. 484). And hence you have the corollary that no guilt is contracted from effects of this kind where some just reason is present for placing the cause, for example by studying, healing, hearing confessions, etc.

QUESTION 9. Whether he sins gravely who deliberates about giving consent to a gravely illicit thing, if finally he does not consent?

I answer: The solution of the question depends on the quality of the deliberation. For if this is imperfect, namely if it is nothing but a certain hesitation, or omission of resistance from torpor, laziness, or negligence, the sin will not exceed venial. - Lacroix, no. 226. - But if the deliberation is full, it will be mortal sin, because the will shows itself prepared to postpone God to sin. - Lacroix, book 5, no. 229. - Sanchez, Decalogue, book 1, ch. 8, no. 16.

QUESTION 10. Whether venial sins multiplied can effect mortal sin?

I answer: Venial sins, however much multiplied, speaking of themselves and by reason of multiplication, can never coalesce into mortal sin, because the individual sins remain in an inferior species. Yet sometimes by reason of coalescing matter they come to mortal sin, as, for example, happens in the matter of justice.

156. Resolves. - 1. In practice, for distinguishing venial sin from mortal, one must diligently attend 1. to the nature of the act; 2. to its gravity on the part of the object, end, and circumstances; 3. to the degree of deliberation, malice, infirmity, and ignorance.

2. Where it is not clear that some sin is mortal, the Confessor ought not be hasty in judging that it is in reality grave both objectively and subjectively; because in doubt one must stand for the lesser part, or at least the matter must be left to divine judgment. - St. Lig., no. 52. - St. Thomas. - St. Antoninus, etc.

3. In doubt concerning perfect consent, you will judge in favor of the penitent, 1. if he is of a God-fearing conscience and is habitually prepared to die rather than offend God; 2. if, adverting more fully to the temptation, he was frightened and immediately repelled it; 3. if he does not know whether, waking or sleeping, whether entirely in possession of himself, he did or willed something evil. - Elbel, no. 578. - St. Lig., book 6, no. 476.

4. A Confessor does not satisfy his office if he applies no care by which he removes the penitent from the frequency of venial sins, especially those which are committed with full advertence. For he who makes no effort at all to avoid venial sins is usually little by little finally to slip into some mortal sin. - See Cases, no. 144 and following. - Roncaglia, ch. 1.

Chapter III. On the Distinction of Sins

We must treat 1. of specific distinction; 2. of numerical distinction.

Article I. On Specific Distinction

The specific distinction of sin arises from special malice, or from diverse deformity, by which one sin differs essentially from another. For the malice of sins is various according to the diversity of objects to which the sinner turns himself. Thus homicide, theft, and luxury differ in species.

157. Rules. - Rule I. The specific distinction of sins is taken from opposition to diverse virtues, and also from morally diverse deformity against the same virtue.

The first reason is clear, because individual virtues have their own special and wholly distinct goodness; therefore also the sins opposed to them necessarily contract a special baseness. Thus denial of revealed truth, despair, and hatred of God differ among themselves in species. Why? Because they are opposed to three virtues diverse in species, namely Faith, Hope, and Charity.

The second reason is that where there is morally diverse malice against some virtue, it is opposed to the same in a special mode, and constitutes a new class of deformity. But this malice is morally diverse when it is opposed to various duties of the same virtue, or harms this virtue in a mode wholly disparate and opposed. Thus homicide, theft, and detraction differ among themselves in species, although they are adverse to the same virtue, namely justice. Why? Because they are opposed to diverse duties of that virtue, which commands that no one be harmed either in the goods of life, or in the goods of fortune, or in the goods of reputation. - St. Lig., no. 31.

158. ○ Rule II. The specific distinction of sins is also taken from the violation of precepts morally diverse. For sin is a transgression of law, or of a precept; therefore where precepts differ among themselves in moral species, the sins opposed to them also ought to differ in species. Thus the omission of Mass on a feast day, the omission of a commanded fast, the omission of annual confession or Paschal Communion, differ among themselves in species. Precepts are called morally diverse whenever they have a diverse object, such as fasting, hearing Mass, abstinence from flesh meats; or whenever the motive of the precept is diverse, even though the object is the same. Thus he perpetrates a twofold sin diverse in species who in Lent omits the fast to which from another source he is held by reason of sacramental penance. On the contrary, theft is one sin, although it is prohibited by divine and human law, because the reason of the prohibition is the same. - St. Lig., book 5, no. 33.

Some add a third rule, repeated from objects [1]; hence the following little verses:

[1] The more weighty Theologians propose this rule not as a third one separated from the others, but rather as the primary one, to which the others are reduced as to root or foundation. Confer Suarez (On 1.2, treat. 3, disp. 7, sect. 7, nos. 4 and 6), and Laymann, who (book 1, treat. 3, ch. 2, no. 2) writes: The specific unity or diversity of sins... is taken proximately and formally from the rectitude or honesty of the virtue to which they are opposed: but remotely and fundamentally from the object. And Tanner (disp. 2, On Human Acts, q. 5, dub. 2, no. 49): And this, namely that sins are distinguished according to opposite virtues, in reality is not diverse from that which is to be distinguished in species according to objects, since the virtues themselves are distinguished in species according to objects. But St. Thomas had gone before (1.2, q. 72, art. 1, ad 2): Sins are distinguished in species more according to objects than according to opposites; although even if they are

distinguished according to opposite virtues, it would return to the same thing: for virtues are distinguished in species according to objects. And again (2, dist. 42, q. 2, art. 2, q. 1, ad 1): The division of sin into its essential species is through the opposite of virtue, because it must be according to the object from which sin and virtue are specified.

Virtue, precept, diverse objects, and mode Give species to sins, and diverse guilt.

159. Resolves. - 1. He commits four diverse sins who, bound by a vow of chastity, sins with a married blood relative, because he violates four diverse virtues, namely chastity, religion, piety, and justice.

2. He sins triply who kills a Priest or Religious in a Church; because he violates justice by killing, and Religion in a twofold mode specifically diverse, namely by violating a sacred person and a sacred place.

3. He does not commit sins diverse in species [2] who omits Mass on a Sunday on which another feast of precept falls, for example the Assumption of the Blessed Mary, nor he who violates the fast of a vigil or of the Ember Days falling in Lent, because those precepts are not formally diverse.

[2] Indeed he does not even commit two sins of the same species, but only one. total object, because each act of the will has its own total object.

4. On the contrary, by a single act he perpetrates three sins diverse in species who omits the fast to which on the same day he is obliged from a precept of the Church, from a vow, and from sacramental penance; therefore in confession the violation of this threefold obligation must be disclosed.

5. Heresy and the omission of an act of Faith which ought to be made by precept differ in species; likewise despair and the omission of an act of Hope; or hatred of God and the omission of an act of due Love; and so also most sins of commission and omission, of which one is opposed to an affirmative precept, the other to a negative one.

6. Detraction, rash judgment, and contumely differ in species, because they harm justice in a diverse mode. But thefts do not differ in species because of the diverse goods of fortune carried off, because these, since they are referred to the same commerce and the same use of men, are morally reckoned one thing.

7. Violation of a fast by eating flesh meat and by multiple refection differs in species, because a virtually twofold precept is violated, insofar namely as it prescribes the quality and quantity of food.

Article II. On Numerical Distinction

160. Rules. - Rule I. The numerical distinction of sins is taken from diversity of total objects, or morally diverse objects. - Thus commonly with St. Lig., no. 45.

The reason for the assertion is evident. For where there are objects formally and morally total, and distinct from others, there also are several distinct acts of the will, terminated and complete in

themselves, and therefore several distinct malices, and consequently several sins.

Now that is called a total object which is wholly distinguished from other objects, and is completed in itself, so that by itself alone it effects a moral whole, and consequently is not part of another, nor by its nature referred to another. Thus in homicide one total object is had, although the homicide has sent ahead various previous acts, for example by seeking arms, laying snares, or striking several times; because all those previous acts are to be held as parts of the principal act, and are ordered to this. But if the homicide first intended only a striking, and afterward, with will changed, killed, there will be a twofold

161. ◦ Rule II. The numerical distinction of sins is also taken from the multiplicity of acts morally interrupted. - St. Lig., no. 36, and others very commonly.

For when acts of the will are morally interrupted, the individual acts become complete in themselves, nor can the following act be called the continuation of the preceding one. Thus he who at several morally interrupted times strikes another, or steals, commits as many sins as there are blows or thefts, because these constitute so many diverse acts.

But acts of the will are interrupted in a threefold mode, namely 1. By retraction, or express revocation of the will, because this impedes the later act from being joined with the prior one, for example if someone retracts a depraved will of acting badly, and afterward resumes it. - 2. By voluntary cessation from the act, or by application of the mind to a diverse object, for example if someone freely ceases from an evil proposal, and then returns to it. - 3. By a delay sufficiently notable, with regard had to the nature of the act, so that by the judgment of prudent men the act of the will is judged to cease [1].

[1] ** The Author suggests an interruption which happens involuntarily. For even then, when the act is resumed, there is present a new act of consenting will, because, as St. Alph. says (book 5, no. 37), with regard to such acts, one does not depend on another. But what the Holy Doctor adds (ibid.): Thus commonly... against Lugo, can be admitted with difficulty; because Lugo (On Penance, disp. 16, no. 565) concedes that there is indeed no interruption when the later wills have dependence on the first, and by force of the first will the second is placed, just as by force of the intention the choice toward the end is placed. But otherwise, he says, when the wills are so disposed that one will does not depend on another. Which is the very doctrine itself of St. Alphonsus.

162. ◦ But what delay is judged sufficient for the multiplicity of acts? The following rules are commonly handed down:

1. Merely internal acts, which have no order among themselves, are completed as soon as they are interrupted, and therefore they are multiplied as often as they are interrupted. The reason is that in reality there are as many complete and distinct acts of the will. And indeed such acts are not morally continued, since one does not depend on another; nor do they coalesce into one, since they have nothing in themselves by which they may be united to one another. Hence the penitent ought in confession to express, if he can, how many times he adhered to an internal temptation; but if he cannot, let him say approximately; or at least whether very frequently, in the course of the day, he gave consent.

2. Internal acts with the proposal of placing an external action are multiplied as often as the depraved proposal is formally renewed, namely in such a way that the later proposal cannot morally be judged a continuation of the prior one. The reason is that then a new act of the will,

formally distinct, intervenes. But if the proposal is not renewed, no new sin is made, because then the prior act of the will is judged to persevere in the effect itself, or in the work external, if this has been begun. But the same proposal endures for a greater or lesser time according to the various intensity and also according to the various circumstances of persons, age, sex, disposition, etc. - St. Lig., no. 39 [2].

[2] ** St. Alphonsus (book 5, no. 39), to the question whether an evil proposal is interrupted by common interruptions, such as by sleep, distraction, eating, etc., answers: Lugo denies it, and adheres to Tamburini, even if a great delay intervenes; but this opinion is against the common opinion, and deservedly is rejected, as Croix says, book 5, no. 178.

But in reality Lugo is in no way mentioned there by Croix. How then did the name of De Lugo creep into the text of St. Alphonsus? Moreover St. Alphonsus (ibid.) praises as more probable the opinion of the Salmanticenses, treat. 20, ch. 12, no. 38. But the Salmanticenses in this place have these things: Therefore an intention of stealing or fornicating remains virtually in moral estimation, even if it is discontinued by sleep, eating... and similar interruptions; whence, although after these things you again repeat this depraved proposal, you commit one sin: because since the first will remains virtually, it is united and continued with the second. Now you would say these things were transcribed from Lugo, who in the same place which St. Alphonsus indicates (On Penance, disp. 16, no. 567) observes that a proposal is not interrupted by sleep or similar common and ordinary interruptions; and otherwise he has not even a word concerning that great delay of which St. Alphonsus speaks; indeed in the same place he proves what Salas excepts, unless much time intervenes between the acts of the will, because then a moral interruption is judged; and, what the Salmanticenses omitted, he adds: Yet perhaps merely internal wills are more easily interrupted morally, when the work has not begun to be placed externally; because that external placing or beginning, since it is sensible, more easily joins the parts in order to making one human and moral thing. Finally also that which the Salmanticenses (ibid.) add concerning moral interruption, when after a month the prior proposal is resumed, is taken from Lugo, who (l. c., no. 545) writes: I have said that these brief and common interruptions, through sleep and similar things, do not take away the unity of sin: for another thing must be said about an extraordinary interruption, which indeed takes away the moral unity of a human action. For if from an intention of killing Peter you seek him, and know that he has gone elsewhere and will return after a month, and you determine to kill him when he returns: then certainly, although you do not revoke the intention, still the killing after a month will not make one sin with the past will: just as neither will a dinner be one, however much you do not revoke the intention, but rather have the intention of returning after two hours to the table, because the unity of these actions asks not only an intention not revoked, but also lack of interruption, not of any interruption whatsoever, but of a human and moral one.

Let us come to Tamburini. And 1. observe that Tamburini, in the places cited by St. Alphonsus (*Method of Confession*, book 2, ch. 1, nos. 35, 36), does not treat of a merely internal proposal, but of a proposal led forth into work. Now concerning this case even St. Alph. (book 5, no. 40) writes: Acts of the will, if they proceed from the first will and morally remain in some effect which conduces to consummating the external sin, for whatever time the depraved will endures, constitute only one sin. Indeed Tamburini (no. 36) adds that which is not read there in St. Alphonsus, namely he explicitly excepts the interruption about which above the Salmanticenses with Lugo speak: and for that reason he refers the reader to the preceding no. 34.

2. But when Tamburini treats of an internal proposal, he has it thus (ibid. no. 32): Although the opinion asserting that by any interruption whatsoever the aforesaid acts are multiplied in number is speculatively more probable, whence also they ought, if they are held in memory, to be disclosed; nevertheless the contrary opinion, which teaches that they by no means ought to be disclosed, is also probable... Therefore it is enough if the time is explained, when it is notable... and thus it is enough if it is said: I, for example, for one day gravely hating Peter, imprecated grave evils upon him. But take care to attend well to those things which he immediately appends: For it is understood in the human manner, that is, that such acts were interrupted by various human actions.

3. What of the fact that Tamburini proposes absolutely the same doctrine which St. Alphonsus calls more probable? For St. Alphonsus (book 5, no. 39) writes: But it seems more probable that it must be said that if a brief time intervenes, the act is not discontinued; otherwise, if a long time intervenes. But Tamburini (l. c., no. 47): The universal rule is of this kind: If much time intervenes between acts..., it will be judged a distinct act, and a sin distinct in number; but if a brief time is interposed, it will be judged to make one with the prior act.

4. But what of the fact that St. Alphonsus can seem more liberal than Tamburini himself? Namely the Holy Doctor appends (ibid.) the question: What time is to be judged long, namely which intervenes between one act and another, so that two acts are to be held as discontinued between themselves? Now let it be passed over for the present that the response of the Holy Doctor perhaps can seem partly to the point, partly away from the matter. For the opinions of Viva (*On Penance*, q. V, art. 6, no. 6, at the end) and Concina (*On Sin*, diss. 1, ch. 6, q. 4, no. 16) seem there to be brought away from the matter, since they do not treat of length of time which runs between one and another act, but of the time in which one act can be judged morally to persevere. But the opinions of the Salmanticenses (treat. 20, ch. 12, no. 38) and Roncaglia (treat. 2, q. 1, ch. 2, q. 2, resp. 1), which are brought there, are to the matter; they certainly speak of the distance of time running between one act and another. Let this also be passed over, that the proper response of the Holy Doctor is less to the matter, because it responds not to the question proposed concerning the time which runs between act and act, but to the question concerning the duration of one moral act. As regards the present point, the Holy Doctor (l. c.) replies: But I think that the impulse of one act can with difficulty be prolonged (speaking ordinarily) beyond two, or three days at most. Hence he who perseveres in an evil will beyond two or three days ought to explain the time, so that thus the number of internal acts concerning external sins may be understood morally. Thus St. Alphonsus. But Tamburini is much more moderate, and almost, I would say, more severe. For where St. Alphonsus does not impose the obligation of expressing the time unless where the act is prolonged to two or three days, six or ten hours suffice for Tamburini for this. For thus he (l. c., no. 49), to the question whether you ought to explain that you lasted so many hours in one act of concupiscence, for example, or of a desire of gravely harming an enemy, answers: I say: when in some one of these acts, by one heat of concupiscence and one impulse, you persist in the same thought, you sin once morally; and therefore the time will not have to be explained. But because when acts of this kind persevere, for example, through six or ten hours, it is morally impossible that this happen by one and the same impulse, therefore then it will be necessary and sufficient to say: Through six hours, or through ten, I desired, etc. For thus also the interruptions which in the human manner are accustomed to intervene, etc., will be explained.

These things will be able to serve the excellent VV., who are preparing a most accurate edition of the Theology of St. Alphonsus, so that notes of this kind, branded undeservedly upon writers, may be removed from the eminent work of the Holy Doctor.

3. External acts, or acts consummated externally, are multiplied as often as the object is disparate, or terminated in itself; but they are not multiplied, even with a notable interval of time interposed, when they are as it were parts of a more principal act, or when they tend to a single end. The reason is that then they effect one moral thing, which is not completed unless the act principally intended has been consummated. Thus he who has determined to perpetrate a theft commits one sin, although through several days he has thought about it, has rather often renewed the depraved proposal, has undertaken a journey for this, has sought the opportune time, etc.; for the prior act of the will is judged virtually to persevere in that very effect or external work [3].

[3] ** Thus St. Alphonsus (book 5, no. 40): If someone proposes to kill a man, and for this reason prepares arms, takes the road, and kills the enemy, he commits one sin, although through several days he has sought him, and has repeated the will several times. Thus commonly St. Bonaventure... and St. Thomas, etc.

It will be useful here to observe that St. Alphonsus, for this thesis, also alleged Vasquez after the Salmanticenses (treat. 20, ch. 12, no. 36); but the opinion of Vasquez is far different. For (On 1.2, disp. 75, ch. 2, no. 7, and On Penance, to q. 91, art. 1, dub. 5, no. 12, and elsewhere) he admits that it is one sin only insofar as the usurpation of the means, for example preparing arms, participates in one and the same malice which is proper to the end. For the rest, he contends that sin is multiplied not only by the interruption of sleep happening on the journey while he seeks the enemy (disp. 75, ch. 3, no. 11), but even by natural inconsideration, when a man considers neither expressly nor confusedly the end to which he tends in the very work which he does: as when someone makes a journey in order to kill an enemy, and meanwhile the mind is so distracted that he remembers neither the homicide, nor the place to which he tends, nor the journey itself (ibid. no. 12). Indeed he is carried so far that he says sin is multiplied by interruption if, meanwhile, when one is thinking about the work, consideration of the malice is lacking. Thus he (ibid. no. 13): When we say that sin is interrupted by inconsideration, this

ought not be understood by inconsideration of the work itself or of the end, but also by inconsideration of the malice, when it is such that although a man adverts that he is going, for example, to Toledo, whither in the beginning he determined to betake himself with the mind of killing an enemy, but on the journey itself he entirely forgets the malice of the end not only specifically, but also confusedly, then sin is no longer said to be continued. These things indeed, wholly singular, deviate too much from the sense and premise of St. Alphonsus, as also from the common doctrine of others.

163. Resolves from what has been said. - 1. He commits one sin who, intending fornication, basely touches a woman, kisses her, entices her with base conversations, and finally fornicates; the reason is that all those previous acts by their nature are ordered to the consummated act. But if from the beginning he had wished only to touch the woman, and afterward, induced by lust, completed intercourse, there will be a twofold sin, and therefore it will not be enough if he confesses the intercourse. - St. Lig., no. 43.

2. A Priest who wills to omit the entire Office on one day makes one sin, because the individual Hours are ordered to completing one Office. But he would make two sins who first wished only to omit Matins, and afterward refused to recite the remaining Hours, because there would be a twofold act of evil will plainly distinct.

3. He perpetrates one sin who from the same impulse of passion repeats an evil act many times, for example several times basely touches himself or another, even with some interruption; strikes an enemy several times, or imprecates very many evils upon him, etc.; the reason is that there is one depraved affection of the will, and those various actions are morally united. - Thus commonly. - St. Lig., no. 50.

4. He makes one sin who by one act denies several articles of Faith at once, because the motive of Faith is one; consequently he is equally an infidel who denies one article, and he who denies all. - Thus commonly. - Likewise he probably makes one sin who by the same act blasphemes the twelve Apostles; because all blasphemies against the Saints take their malice from one relation to God. - St. Lig., no. 47.

5. He makes one sin who, intending to steal some determinate sum of money, carries it off at several times lest he be detected, because there is one depraved act of the will, which is consummated in the last theft [4]. On the contrary, he perpetrates several sins who steals at several times from the same mass of money, without having resolved from the beginning to take away the whole, because the individual thefts effect an object total in itself.

[4] ** The VV. oppose to this resolution that St. Alph. (book 5, no. 44) judges that then one hundred sins are committed, because the individual (one hundred) acts have consummated malice in themselves.

I answer: St. Alphonsus discusses him who carries them off a hundred times with moral interruptions; but Gury does not discuss morally interrupted acts.

Croix (book 5, no. 170), whom Mazzotta then copied (vol. 1, disp. 1, ch. 2, final prop.), contends that the acts are morally interrupted, because the individual acts of themselves are not ordered to one another, and because, as Mazzotta says, the individual acts are not ordered to the consummation of one work.

I answer: I deny that there is need for the acts to be ordered of themselves to one another; for as St. Alphonsus says (l. c., no. 41), external acts are morally united if they are directed to the consummation of the same sin. And in reality what ordering to one another is there between buying arms and taking the road for killing? What ordering to one another, to use examples brought by St. Alphonsus, is there between conversations and kisses and touches? Therefore it is not the ordering

of these among themselves to one another, but their ordering from the intention of the agent to the consummation of one work, which constitutes one moral work; so that when that ordering intention has been taken away, all those acts which, no less than the little thefts in the case, have in themselves consummated malice, must be explained as distinct sins, as the Holy Doctor says (ibid. no. 43). But that Mazzotta did not see that the individual takings are ordered to the consummation of the whole theft will seem strange; yet nothing ought to seem strange if sometimes one writer merely transcribes from another.

6. He makes several sins who fornicates successively several times with the same woman; for each fornication is terminated in itself, or constitutes a total object. - St. Lig., no. 46.

7. He commits several sins who determines to omit the prescribed fast through several days; for although those omissions arise from one and the same will, still they are several sins to be confessed as distinct, because they have no unity among themselves. - Lugo, On Penance, disp. 16, no. 539. - St. Lig., no. 46.

8. But whether one or several sins are to be said to exist when objects materially and physically distinct in number are referred to one act, and therefore whether it is necessary to express the number of these objects in confession, is controverted [5]. Some with Suarez, Filiucc., Lugo, say that it is one sin; but others with St. Alphonsus wish that there are several sins. Probability favors each opinion. Hence he probably makes one sin who by one act desires several women, intends to kill several men, or snatches a purse belonging to several associates [6].

[5] There are those who propose this question thus: Whether sins are multiplied from the diversity or multiplicity of total objects. But not sufficiently aptly. For neither do those who deny that sins are multiplied suppose several total objects, but they say that objects materially several are conceived by mode of one adequate object.

Then, since those several objects conceived by mode of one must have a relation to one act of the one operating, the same authors distinguish whether it is an efficacious act of the will, as a proposal, or rather inefficacious, as, for example, a simple affection or complacency. For in the latter case, since the will does not regard those several things as an effect to be achieved, but merely as the object of complacency, they hold that one malice and therefore one sin is had; even several of those who otherwise follow the opinion of St. Alphonsus hold this. See Dicastillus, On Penance, disp. IX, dub. 4, no. 256.

But if the discourse is about an efficacious act of the will, they do not wish the unity or multiplicity of sin to be taken from the single interior act of the will, but also from the nature of the exterior act, namely whether those several objects are reached by one or by several external acts. See De Lugo, On Penance, disp. 16, no. 539. Hence they indeed find one sin in one detraction, which otherwise harms the reputation of several persons, for example of one family or College (Lugo, ibid., no. 135), or in an act which turns to the scandal of several; but they do not so define concerning a proposal by which someone determines, for example, to approach several women, or several times the same woman, or to omit fasting or canonical hours for three days (Lugo, ibid., no. 546).

Moreover, if someone, wishing to judge this question from the weight of authority, should undertake himself to inquire with his own eyes into the genuine opinions of the Doctors rather than with blind faith to trust others alleging them, he will find that far more, and indeed from the weightier ones, stood for that opinion which exempts the penitent from the obligation of expressing the number of objects, and moreover that most of the older authors who held that this number had to be expressed were led to this, not because they recognized several sins according to the number of objects, but because they thought that aggravating circumstances, of which sort they thought the multiplicity of objects, had to be expressed in confession.

** The VV. note (page 912) that here those far more numerous Authors are not seen indicated, who exempt from the obligation of expressing the number of objects.

I answer: 1. The work seemed superfluous. For did not St. Alphonsus (book 5, no. 45) report twelve, and indeed not of the lowest note? Do not the Salmanticenses (treat. 20, ch. 12, no. 59) add five others? Does not Diana (vol. 1, treat. 7, res. 24 and 26) add three others? Does not Mendo (Balance of Opinions, disp. 2, nos. 2-4) add fifteen others to these? Do not four

others appear in that charming Dialogue of Caramuel with Diana (Fundamental Theology XXIX, year 729)? Could there not be added Stoz (apud Croix, book 5, no. 150), and Struggl (treat. 2, q. 1, art. 4, nos. 42, 43), and the cited Mendo (l. c.), and Catalani (On Sin, q. 12, ch. 10, no. 12), and Roncaglia (treat. 2, q. 1, ch. 2, q. 2, resp. 2), and Wagemann (Synopsis of Moral Theology, part I, no. 45), and apud him Antonius Mayr, and (apud Lugo, On Penance, disp. 16, no. 135) Emmanuel Rodriguez, and Illsung (apud Reuter, vol. 1, treat. 5, no. 352), etc.?

2. To render the reason for the remaining part of that note it would then have had to be shown that most of the older authors affirmed for another reason that the number of objects must be confessed. Moreover it would have had to be indicated who on this side and on that are not alleged with full right. For as Croix excellently observes (book 5, no. 156), Authors very often propose resolutions which do not seem to cohere with the principles laid down, whence it happens that they are alleged for each diverse theory. Now work of this sort does not fit the brevity of a Compendium.

3. Nor only does the work not fit the brevity of a Compendium, but it scarcely carries any utility besides some knowledge of light moment for the Author's purpose. For can it be denied that probability belongs to each opinion, which even the adversaries concede? But this already suffices for defining the question. For in the controversy whether there is an obligation of expressing in confession the number of objects, on the one side probability does not suffice for imposing an obligation, but on the other side it suffices for denying it. Why then a further vain labor with useless expenditure of time?

4. But what happens now and then in alleging Authors, see an example apud the VV. They cite (l. c.) also Zacharia, book 5, no. 149. But do they think the Theology of Claudius La Croix was written by Zacharia, because the front of the book in certain editions, for example Venice, year 1755, carries the name of Zacharia in the more noble place, and below the name of Croix? But if, as is more likely, they thought that Zacharia approved all the opinions of Claudius La Croix, did he therefore approve also the opposite opinion of Laymann, whose work Zacharia likewise published illustrated with his notes?

[6] Take the first of these cases as concerning inefficacious complacency; but the second as concerning several to be killed by one blow. As to the third example, De Lugo completes the matter thus by an argument from parity (On Penance, disp. 16, no. 139): Our doctrine of inference can be proved from another example, which Vasquez himself admits..., namely that some sin against two precepts of two superiors does not have two malices, nor must that circumstance be explained in confession, if the precepts are of the same nature; for each is a malice of disobedience, and therefore a sin against a divine and human precept does not have a double malice of disobedience... From which one can argue to our case. For that sin is also committed against the right of each superior, and harms the right which each has that he be obeyed; which rights are diverse, and therefore the harm inflicted seems to be diverse, as when the double right of two persons to reputation or to life is harmed; and nevertheless that double harming of jurisdiction must not be explained in confession; therefore neither in our case.

164. Questions. - QUESTION 1. Whether the means employed for sinning must be explained in confession, if the sin afterward was not consummated?

I answer: Some affirm this, even if those means were not evil in themselves, such as to undertake a journey, to carry a ladder for theft, etc. The reason is that the sin then does not remain merely internal, but becomes external by those means. For those actions, although indifferent in themselves, nevertheless become evil from the evil end. But others probably deny this [7], unless those means are evil in themselves, and then they must be indicated, and indeed all of them, if they are diverse in species, such as touches or obscene words employed for soliciting.

[7] ** Here the VV. warn (page 912) that Viva apud St. Alphonsus (book 5, no. 42) said that these means must very probably be explained, even if they are indifferent.

I answer: The probability of the negative opinion suffices so that the obligation of explaining means of this kind is denied. But the probability of the affirmative opinion so much does not suffice for asserting the obligation that it would be wrong for a Confessor to impose it. See the Authors apud Diana (vol. 1, treat. 7, res. 59).

165. ○ QUESTION 2. Whether he makes several sins who by one act detracts from several, or before several?

I answer to the first: It is controverted, and a twofold probable opinion is given, as was said above in resolution 8.

I answer to the second: It is controverted. Probably he makes only one sin; because to detract before several persons is only an aggravating circumstance: for the right to reputation is one among all, not multiple. Consequently there is probably no obligation of explaining in confession the number of persons before whom someone has detracted, but it suffices to say: I detracted before several persons. - St. Lig. (as probable), no. 49 [8]. - Lugo. - Azor, etc., against Lacroix and others.

[8] ** Thus St. Alph. (book 5, no. 49): It is probable that there is not an obligation of explaining the number of persons before whom the detraction was made.

Yet the VV. object (page 913, no. 19) that according to St. Alphonsus (*Practice of Confessors*, no. 43) it is the office of the Confessor to question the penitent about this.

I answer: I deny the consequence. For the Confessor can question about several things also so that he may aid the penitent merely by counsels, for example in a case how there can be place for restoring reputation. But as to what the VV. add concerning the obligation of explaining the number, let them show where St. Alphonsus taught that detraction has a necessary connection with scandal.

QUESTION 3. Whether he commits several sins who wishes several diverse evils to an enemy?

I answer: 1. Yes, of itself, if the intention of the one imprecating is determinately carried to evils of diverse species, for example disgrace and death; because desire takes its species from the object desired, as will be said below, no. 167. - St. Lig., no. 50, and more clearly, *Apostolic Man*, no. 65, and others commonly against some.

I answer: 2. No, by accident, because namely these diverse evils are almost apprehended under the general aspect of evil, as means to ruin; which is accustomed to happen when imprecations proceed from the impulse of anger. - St. Lig., ibid.

166. ○ QUESTION 4. Whether he makes several sins who long defers restitution?

I answer: No, if he perseveres habitually in the will of retaining another's thing, because the evil will perseveres by mode of a continuum with the thing unjustly retained. Yet if the unjust possessor has forgotten for a notable time about making restitution, and afterward has renewed the depraved proposal, he will commit a new sin, because his evil will is judged morally interrupted. - St. Lig., no. 40, and others commonly, against others, who say that the unjust possessor of another's thing sins as often as he attends to the obligation of restoring [9]. - See Cases, no. 150 and following.

[9] Since the doctrine of St. Alphonsus (book 5, no. 40) can be safely held, namely that if someone resolved not to restore another's thing, and remains always in the same will, even for a year, he commits one sin; which doctrine he himself (book 3, no. 683) judges more probable; it follows that there is no need to express in confession whether the thing of another was retained for a short or long time. And indeed there is no need for this by reason of length of time, because length of time is a merely aggravating circumstance; concerning which matter Diana aptly says (vol. 1, treat. 7, res. 157): Aggravating circumstances are not necessarily to be confessed; but said length of time is only an aggravating circumstance. Therefore. But neither is it necessary by reason of multiple sin. Whence Diana (l. c., no. 4): Let the Confessor note this, and he will be free from many scruples: for the penitent satisfies in confession by accusing himself only of not having restored another's thing; nor is he to be questioned about the time and the length of retention, or about the number of sins which some think

are committed in such length of time; provided he had not proposed to restore, and afterward, with mind changed, determined no longer to make restitution.

Part Two. On Sins in Species

We must treat 1. of internal sins; 2. of capital sins.

Chapter I. On Internal Sins

167. ○ A threefold class of them is distinguished, namely:

1. Morose delectation, or free complacency in an evil thing exhibited by the imagination as present, without desire.

2. Joy, or deliberate complacency concerning a past evil thing, or an evil work performed either by oneself or by another [1].

[1] Complacency here does not mean pleasure or delight drawn from consideration of the evil object, but rather a certain approval by which the will has the evil perpetrated as pleasing and accepted: which approval indeed can be called joy in this sense, that someone concerning the evil deed not only is not sorry, as he ought to be, but rather rejoices.

Moreover joy is properly said also of a present good; indeed it is customarily defined as enjoyment of a good possessed and loved (Suarez, On 1.2, treat. 2, disp. 7, sect. 1, nos. 3-5). Concerning which matter St. Thomas says thus (1.2, q. 31, art. 3): Joy is a certain species of delectation... For we are delighted also in those things which we desire, when we obtain them.... But the name of joy does not have place except in delectation which follows reason; whence we do not attribute joy to brute animals, but only the name of delectation.

3. Desire, or an act of the will wishing for an evil thing. It is called efficacious if an intention or absolute proposal of executing it is present; otherwise it is called inefficacious [2]. - St. Lig., no. 15.

[2] It is necessary that some efficacy be present even in inefficacious desires; otherwise they would not even deserve the name of desire. Namely there is present a conditionally efficacious will, which would pass into work unless something else obstructed. Hence St. Alphonsus well says (book 5, no. 15): A desire is called inefficacious if it does not propose absolutely to execute, but consents that it would execute, if it could, when, for example, it says: If I could steal the treasure of the Church, I would steal it.

But what the malice of these is, and what the species, hold in these few words:

I. Desire, even inefficacious, is truly a sin, and takes on the species both of the object and of the circumstances.

And 1. it is truly a sin. For this is established from the precept, Thou shalt not covet, which must generally and indefinitely be understood of the prohibition of any depraved affection. Moreover every desire of a prohibited thing is opposed to right reason: for it is base and dishonest to desire, namely to propose to oneself either absolutely or conditionally to execute, that which it is not licit to execute.

2. It takes on the species of its object. For any desire, even inefficacious, tends to its object, and consequently is a volition of the special malice of that object, and therefore contracts its specific malice [3]. This is also established from the words of Christ, Matth. 5.28: He who shall

have looked at a woman to lust after her has already committed adultery with her in his heart. But to commit adultery in Scripture is everywhere understood as adultery. Therefore...

[3] The internal act about which this treats here regards the external act as to be entrusted to execution, either absolutely or at least hypothetically; therefore it is necessarily carried to it according to all the conditions and circumstances which affect it, whether they are necessarily prerequired for it, or inseparably accompany it, or of their own accord follow from it.

3. It also takes on the species of the circumstances of the object. For desire, since it tends to an object, touches that object as it is in itself with its circumstances. Therefore it contracts the whole malice also of the circumstances. Hence in confession, for example of the desire of fornicating, the circumstances of consanguinity, affinity, matrimonial bond, or vow of chastity which affect the person desired must be declared. - St. Lig., no. 12.

168. ○ II. Joy likewise is a sin and indeed of the same species as the evil action about which it is concerned, and it likewise takes on the species of the circumstances joined to it, no otherwise than desire itself. The reason is that joy, as we said above, is approval of a past evil; therefore this embraces the sinful act as it existed in itself, namely clothed with its circumstances. Therefore it also takes on the whole malice of these.

Hence he who in the recollection of past sins is complacent in them and approves them, ought in confession to explain the object of this complacency, and the circumstances changing the species, just as if he had sinned anew by deed.

Boasting about a committed sin, displeasure concerning an evil not perpetrated, and also sadness concerning a good performed [4], must be recalled to joy.

[4] Understand this especially of a work which had to be performed by strict obligation; and thus sadness of this sort will be such a sin as a refusal to fulfill the obligation would have been. But if the discourse is about a good act to which one was not held, to repent without just cause of a good of this kind will certainly not lack some venial fault; since this is against reason, because the proper object of repentance is an evil thing; but there will be no fault if a cause is present which makes the repentance honorable. Confer what Sanchez has concerning one who repents of a vow emitted (On the Decalogue, book 4, ch. 12, no. 2).

169. ○ III. Morose delectation 1. is certainly a sin; 2. it also certainly varies in gravity and species according to the variety of objects exhibited to the mind.

The reason for the first is that it is opposed to rational nature and divine law for the will to have as pleasing that which is discordant with right reason and displeases God. Moreover deliberate delectation concerning an evil object argues affection toward it: but affection toward an evil object is an evil affection, as is clear [5]. Therefore... Hence Osee 9.10: They became abominable like those things which they loved. And Prov. 15.26: Evil thoughts are an abomination to the Lord. Therefore...

[5] The guilt of morose delectation appears easily, since in reality it is nothing other than consent to delectation concerning an evil work. Thus St. Thomas, where he excellently distinguishes delectation about the thought of an evil work, which does not pertain here, and delectation about the evil work thought of (1.2, q. 74, art. 8): Someone thinking about fornication can be delighted about two things. In one way, about the thought itself; in another way, about the fornication itself thought of... But the thought itself, according to itself, is not mortal sin; indeed sometimes it is only venial, for example when someone thinks about it uselessly; but sometimes it is without any sin at all, for example when someone thinks usefully about it, as when he wishes to preach or dispute about it. And therefore consequently the affection and delectation which is thus about the thought of fornication is not of the genus of mortal sin, but sometimes is venial sin,

sometimes none. Whence neither is consent to such delectation mortal sin... But that someone thinking about fornication is delighted ABOUT THE ACT ITSELF thought of, this happens from this, that his affection is inclined toward this act. Whence that someone consents to such delectation is nothing other than that he consents in this, that his affection be inclined toward fornication: for no one is delighted except concerning that which is conformable to his appetite. But that someone chooses that his affection be conformed to those things which according to themselves are mortal sins is mortal sin. Whence such consent to the delectation of mortal sin is mortal sin.

More briefly Laymann (book 1, treat. 3, ch. 6, no. 2): It is one thing to be delighted about the thing thought of, for example fornication, in such a way that the formal reason of delighting is from the thing itself, but thought is only the condition proposing and applying the thing thought of; but another thing is to be delighted about the thought, for example of fornication, in such a way that the formal reason of delighting is from the thought itself... We are speaking here about delectation WHICH IS TAKEN FROM THE THING ITSELF. For since the thought of an evil thing is not evil of itself, but sometimes good, as if you think about base things for the sake of teaching or admonishing, but sometimes venially evil, as if you think about the same things from curiosity; it follows that delectation also concerning such thought as object is not evil of itself, but sometimes good, sometimes venially evil.

The reason for the second is that whoever is delighted concerning an object evil in itself approves it and adheres to it by his affection. Therefore in what degree and species the object is evil, in the same plainly will its delectation be evil. Therefore... - St. Thomas, 1.2, qu. 74, art. 8. - St. Lig., no. 15.

170. Questions. - QUESTION 1. Whether morose delectation also takes on the specific malice of circumstances, as desire and joy do?

I answer: It is controverted. Probably no. The reason is that simple delectation does not tend to the object as to be placed, but rests in it as represented by the intellect. Now the intellect abstracts from the other properties of the object besides that which moves the delectation [6]. Lugo, Laymann, Reuter, Bonacina, etc., against others who contend that simple delectation takes on all the species of the object, just as desire itself does. St. Lig. says that each opinion is probable, book 5, no. 15 [7].

[6] This opinion does not deny that specific malice is taken also from circumstances, if these also are the object of delectation; but if the delectation, as Sanchez says (On the Decalogue, book 1, ch. 2, no. 11), whom therefore the Salmanticenses wrongly allege for the opposite opinion, no differently than several others there reported by Sanchez (treat. 20, ch. 13, no. 31), is not carried to the object according to its whole malice apprehended, but according to a part, as to a woman apprehended indeed as not his own, yet not as married to another or a nun; it will not have the whole malice of the external work, but only the malice apprehended, and that alone will have to be confessed, and it will be reduced to the species of simple fornication.

This hypothesis indeed is founded in the nature of the thing. For it happens that the will is carried to that which is indeed delectable, the circumstances of which, far from alluring, rather blunt the appetite, for example that the woman is already married to another, that she is a nun, or a blood relative, etc., which the Salmanticenses also suggest (treat. 20, ch. 13, no. 30), where they well advert that the things said above hold indeed concerning the circumstances of the object, but not concerning the circumstances of the person sinning, for example if he is married or bound by a vow of chastity, although these circumstances contribute nothing to the delectation.

[7] ** Although St. Alphonsus says that the opinion of the Author is very probable, nevertheless he adds (ibid.) that he greatly likes what Holzmann says (On the Precepts of the Decalogue, treat. 2, no. 698), that, for example, the circumstance of adultery must be explained by reason of the proximate danger of desiring at least inefficaciously, etc. And the VV. (page 913, no. 20) recall here those things which the Holy Doctor has elsewhere (*Apostolic Man*, treat. 3, no. 48), where after alleging some from the indicated false allegations of the Salmanticenses, he adds that in practice... without doubt all the circumstances of the object must be explained in delectation.

I answer: The opinion of Holzmann will be able to have place when he who is morosely delighted concerning an evil object at the same time has known that he is then violating the obligation of guarding against the grave and proximate danger of

falling into depraved desire for that same object. But otherwise in the other hypothesis. The reason is clear from the first principles of ethics; for no sin is ever committed if some notion of obligation does not shine beforehand.

171. ○ QUESTION 2. Whether it is licit to desire evil under the condition, if it were licit?

I answer with a distinction: Yes, of itself, if the condition applied takes away the whole malice of the thing; the reason is that such an affection involves no disorder either in itself or in the object, from which by the condition malice is wholly excluded. But no in the other hypothesis; the reason is that such an affection tends to an evil object, and indeed absolutely, since the condition does not take away malice from the object even as represented, and consequently the whole malice of the object is poured back into the act of the will. And indeed there are certain objects concerning which a condition however applied cannot take away malice. For those things which are intrinsically evil cannot be changed, and consequently a condition would be applied uselessly, since to wish for such things of itself would be to desire that the law and order of nature be changed. - St. Lig., no. 27; *Apostolic Man*, no. 50.

Yet he is probably to be excused from grave sin who by such a desire certainly would not wish that that which was intrinsically evil should become licit, but only would show his propensity toward that object. - St. Lig., *Apostolic Man*, ibid., with others. Moreover everyone sees how dangerous desires of this kind are, even if the condition applied were to take away the whole malice, especially in things prohibited by natural law, but licit in some case or state, for example: I would kill an enemy, if God commanded; I would take a wife, if I were not a priest or bound by a vow; I would gladly marry Caia, if I did not have a wife. Such desires Cajetan (*Sins of Thought*) deservedly calls foolish and diabolical temptations; because although a desire of this kind is licit, nevertheless the present delectation concerning that object is illicit, which in a venereal matter will easily be found joined with desire. Indeed other conditioned desires concerning things prohibited only by positive law are also to be dissuaded, because for the most part they are idle, and sometimes can labor under some disordered affection [8].

[8] Sometimes desires of this kind can be neither idle nor disordered, namely if they are concerning a good object, for example if, with a suitable condition applied, a married man were to foster desires about undertaking sacred ministries and enjoying Communion of the chalice, or a Religious bound by vow of poverty about distributing alms, building hospitals, adorning churches, etc., or a cleric about destroying the enemies of the Church in a just battle, etc.

172. ○ QUESTION 3. Whether it is licit to be delighted concerning the inculpable omission of some precept left undone from forgetfulness?

I answer: No, if the joy is referred to the omission insofar as it is objectively evil. But yes, if it is referred only to the pleasure or advantage honest in itself. - Suarez, On Sins, disp. 5, sect. 7, no. 15. - Lugo, On Penance, disp. 16, no. 389, etc., against others who deny it without distinction [9].

[9] Suarez and Lugo, alleged here by the Author, and also others commonly, hand this down not only concerning the omission of a commanded work, but generally concerning any act whatsoever evil according to itself, which nevertheless someone performed without fault, namely from inadvertence or ignorance, or in madness, sleep, drunkenness: namely, that it is not licit to rejoice concerning the past act according to itself and on account of its pleasure; nevertheless it is licit to rejoice concerning the good effect thence following, and therefore concerning that act only insofar as it was the cause of such an effect, as Suarez says.

Here carefully observe those words: According to itself and on account of its pleasure; for by these is excluded the reason because of which St. Alphonsus (book 5, no. 20) seems with Sanchez and certain others to depart from this doctrine. For

Sanchez shrewdly observes (On the Decalogue, book 1, ch. 2, no. 16) that the aforesaid causes, which are reduced to defect of free consent, indeed excuse the exterior work from fault, but do not likewise make licit the delectation inherent in an evil work which is later freely taken. And hence comes the solution of the question whether it is licit to rejoice concerning pollution in sleep, or even to desire it. For as St. Thomas teaches (on 4, dist. 9, q. 1, art. 4, q. 1, ad 5), it will be a sin if pollution pleases on account of the delectation; but not if it pleases as an unloading or alleviation of nature. Concerning this matter see the same St. Thomas (2.2, q. 154, art. 5), where, contrary to what St. Alph. has, l. c., he recalls to the natural cause of pollution a base dream, to which also the touches or movements following that same dream can be reduced. For when, he says, seminal humor abounds in the body, or when a resolution of humor has occurred... the sleeper dreams those things which pertain to the emission of such abundant or resolved humors; as also happens when nature is burdened by some other superfluity; so that sometimes phantasms pertaining to the emission of such superfluities are formed in the imagination.

** The VV. (page 140) move a twofold complaint: 1. that you will seek in vain in the text of Sanchez the words brought above; 2. that the Author twists Sanchez into his own sense.

I answer to 1. There the opinion of Sanchez is reported, not the words. If the VV. desire that opinion expressed in the words of Sanchez, behold it (l. c.): As often as the cause excusing the exterior deed from mortal fault, namely defect of consent, does not concur in the delectation itself, although the deed is free from fault, nevertheless the delectation will not be free from sin.... The reason is that that deed was OF ITSELF mortal, and free from fault solely by ignorance or defect of reason. Since therefore that delectation lacks a similar excusing cause, and is wholly voluntary, and is concerned with an object OF ITSELF mortal, it will be mortal. Was not this opinion expressed in the preceding, even though in other words?

I answer to 2. There is no twisting there, nor could there have been any necessity of twisting. The Author was suggesting there that the hypothesis or question about which Suarez, Lugo, etc., who affirm that joy is licit, is one thing, but the hypothesis about which Sanchez, who denies it, is another. It was a deed worthy of its authors that the Salmanticenses (treat. 20, ch. 13, no. 48) in some way set up the question according to the hypothesis of Suarez, Lessius, etc., and then in a manner often customary to them opposed (ibid., no. 49) to these Sanchez, Azor, etc., who discuss the question according to another hypothesis. The great confidence of St. Alphonsus toward the Salmanticenses caused that here, as also often elsewhere, he transcribed these things from them, and moreover added Collet, Roncaglia, and also Croix; although the last, since he sets up each hypothesis, therefore, as the matter demanded, in the one (book 5, no. 89) agrees with Sanchez, etc., but in the other (ibid., no. 91) with Suarez. But you would say that the Salmanticenses are less worthy of excuse in this, because since apud Suarez, Vasquez, Lessius, etc., they could see each hypothesis most clearly proposed, and aptly solved according to the diverse merits of the cause, they opposed to them authors who did not even mention a word concerning the other hypothesis. But as to the fact that the VV., with no one preceding, undertook (l. c.) to refute the resolution of Suarez, etc., for the diverse hypothesis, it will have been enough to observe that the question is brought to this: whether the same fact, under a diverse aspect or consideration, can or cannot stir up a diverse and indeed right affection; and whoever understands this question will be able by himself to decide concerning the merit of the refutation.

The VV. add (page 142) that the authority of St. Thomas is invoked by the Author. But from what has been related in the Note, that appears false. For by the Author only two things are suggested. 1. Under a diverse consideration it is licit or not licit to have delectation concerning nocturnal illusion. 2. That St. Thomas stands against the doctrine of St. Alphonsus (book 5, no. 20), that pollution in sleep is objectively evil if it comes from touch and a base dream; St. Thomas recalls even that which proceeds from a base dream to a natural cause. And these things suffice for the seventeen columns with which the VV. detain the reader. For concerning condemned propositions it will be said in its own place.

Concerning the general question proposed in the text, it will be useful to have indicated that several Doctors distinguish between things prohibited by the law of nature and things prohibited only by human law; and they affirm delectation illicit concerning the first genus, but not likewise as to the other, provided it is not done under the aspect of prohibition. Thus Sanchez (book 1, ch. 2, no. 10), Azor (part 1, book 4, ch. 6, q. 1), and others, whom St. Alphonsus follows (book 5, no. 27), saying, thus it must be held... whatever Croix says (book 1, no. 81). Yet immediately the Holy Doctor (l. c.) adds: Nevertheless it is not licit to be delighted concerning Mass left aside because of forgetfulness, and similar things; because the omission is objectively evil, as Roncaglia (treat. 2, ch. 3, q. 5) with Azor and Sanchez.

And in reality Roncaglia wrote thus, distinguishing with the Salmanticenses (whom he transcribes with their name passed over in silence) whether an impediment of fulfilling a precept withdraws from the obligation of the precept, or only excuses. Hence he deduces that it is licit for a youth to be delighted concerning the omission of a fast to which he is not yet held,

and for the sick to be delighted concerning the omission of Mass; but otherwise if this happens from forgetfulness, because the omission then remains objectively evil; then he alleges Azor and Sanchez. But Sanchez in the very place cited by Roncaglia (book 1, ch. 2, no. 16) teaches the opposite and adds this exception to the general rule: Understand, unless concerning things prohibited only by human law... there is delectation about the material act, and as to its substance, with the prohibition set aside; in which case we said, no. 10, that it is not mortal to be delighted, even when breaking the precept is mortal, much less when it is freed from sin by ignorance. - But Azor (q. 1, book 4, ch. 6, q. 1): If he who is delighted thinking about eating flesh meats absolutely and in itself, but not as it is forbidden at certain times, does not sin, therefore it is because he does not take delectation from an evil thing insofar as evil; for the eating of flesh meats is not evil of itself. Tamburini (Decalogue, 1.3, ch. 5, sect. 1, no. 2) applies this doctrine to the omission of the Breviary, since the object of delectation can be the lack of labor and watching; and say the same of the omission of Mass, when someone can be delighted merely concerning the avoided inconvenience of a journey, rain, etc. The defect of coherence in this question is owed to the Salmanticenses, whom Roncaglia also copied; since they (treat. 20, ch. 13, no. 37) say that in things prohibited by positive law the substance of the work can be set aside from its prohibition; and then they forget this very thing.

173. Resolves. - 1. If a penitent accuses himself of some depraved thought, he must be asked whether he knew it was a sin; and if he answers that he detested it as soon as he knew it was base, he must be judged wholly immune from sin. - If he answers that for some time he had some confused cognition of the malice, and adhered to it, but without fully adverting to its gravity, then indeed he is easily to be excused from grave sin, but not from venial. But if he does not know how to extricate himself from these questions, ordinarily it must be presumed that he did not consent, or at least that full consent or perfect advertence was lacking in him, especially if he is of a God-fearing conscience. - Saettler.

2. Although it is one thing to be delighted concerning an evil thing, but another to be delighted concerning the, for example, clever mode by which the evil thing was performed (which indeed of itself can lack fault); nevertheless the Confessor ought easily to suspect morose delectation in those who willingly hear base things, although these do not seem to be narrated except to make manifest the ingenious mode by which they were performed; and certainly if the discourse were about honest actions, however ingeniously performed, they would generally perceive much less delectation. Say the same about those who eagerly read books less honest [10].

[10] In these things it must chiefly be attended whether at other times the penitent is accustomed to consent to depraved delectation. For otherwise, that someone is more inclined and eager to be engaged in reading or hearing a base subject is not an indication of deliberate delectation from base things, but of human infirmity; and although the delectation by which the lower appetite is solicited is rejected, this does not impede weak nature from inclining toward matters of this kind more than toward other matters to be handled; especially because sometimes there also accedes a certain curiosity, which is accustomed to be sharpened toward new and unusual things the more a man would not dare without just cause to undertake that work. Hence the anxiety by which some are sometimes troubled must be calmed, because in handling these matters rather than others, or in hearing confessions of women rather than of men, they seem to themselves to be willingly engaged.

3. It is not mortal to be saddened concerning an obligation not essentially commanded, insofar as it is burdensome only, or in the divided sense of the law, for example concerning the burden of fasting. - St. Lig.

4. It is not licit to be delighted concerning the evil thing itself considered in itself, because the object of delectation is always evil. Nevertheless it is licit to be delighted concerning the good effect which proceeds from it, provided the order of charity is not violated [11]. Hence the

following proposition under no. 15 was condemned by Innoc. IX: It is licit for a son to rejoice concerning the parricide of his father perpetrated by himself in drunkenness, on account of the great riches thence obtained from the inheritance.

[11] The Salmanticenses (treat. 20, ch. 13, no. 47), whom St. Alphonsus followed (book 5, no. 20), fabricate a disagreement here among doctors, and accuse Vasquez, Lessius, Palau, etc., as if they taught that, on account of a good effect, it is licit to be delighted concerning a formally such sin, and consequently that affection can licitly be terminated, on account of a good end, in a thing intrinsically evil. But these things are wrongly fabricated, since no disagreement is had in these authors except perhaps in words. Let Lessius, with whom the others also agree, be heard (*On Justice and Right*, book 4, ch. 3, no. 105): When someone is said to rejoice concerning an evil work, insofar as it is the cause of good, it can be understood in two ways. First, that on account of the good effect he rejoices that that work is or was, or was done by himself; and this is wholly illicit, if that work was intrinsically sin: because this is to approve sin, and to have complacency in it on account of a good end.... For just as that effect, or relation to that effect, cannot effect that that work, which is intrinsically sin, be licit or good, so neither that it be worthy of joy and complacency.... Secondly it can be understood that he rejoices that that depraved work had or has such a good effect; and thus it is licit to rejoice concerning an evil work. For we do not rejoice that that work is evil; but supposing that it has been done, we rejoice that it gave cause for a good effect. For it is truly worthy of joy that by divine goodness the greatest goods proceed even from the worst works. But this is rather to rejoice concerning the effect than concerning the work, although we also rejoice concerning the causation of the good which belongs to the work.

** The VV. (page 145), having set forth the opinions, as they understood them, of Vasquez, Bonacina, Lessius, and Palau, conclude (page 144): Rightly therefore St. Alphonsus attributed to Palau and Lessius the opinion that it is licit to be delighted concerning an evil work not as sin, but as cause of the effect following. They add that Vasquez and Bonacina, whom they falsely say was added by St. Alphonsus, had progressed further; and therefore that a disagreement of doctors concerning this question exists.

I answer: 1. The mark of false accusation was attributed to the Salmanticenses, not because the accused Authors do not have that thesis, but because this is explained by the Salmanticenses as if the affection, as is said in the Note, were terminated to a thing intrinsically evil. But this is false; because the aspect of causality in the case is not evil.

2. It was said that there is no disagreement among the Doctors except in words. This is clear from the words of Lessius brought forward, and also from the fact that none of the Doctors whom the Salmanticenses and St. Alphonsus oppose as contrary has anything against the thesis thus proposed.

3. Finally, what the VV. add, that Vasquez and Bonacina progressed further, is an indication that they did not grasp even the least bit the opinion of Vasquez, and therefore of Bonacina; whence we think it happened that they wrote: Vasquez, S.J., teaches that it is not mortal sin to desire a formally evil work with efficacious will; which words indeed, having regard not to the mind of the VV. but to the words, carry open calumny. Vasquez and Sayrus, says Sanchez (book 1, ch. 2, no. 9), say that although in general an efficacious will (which they call desire) of any mortal thing is mortal, yet not every delectation concerning any work whatsoever, even by natural right prohibited under mortal sin, is mortal, provided it is not concerning the work under the aspect under which it is sin, or contrary to a precept. He then indicates their singular doctrine, which he says is proved most widely and learnedly by Vasquez, and concludes: And thus, although Vasquez admits that morose delectation of a mortal thing is mortal, nevertheless he recedes from the foundations by which the most common opinion proves this. These things prove that Vasquez, as to substance, did not recede from the common doctrine. Lugo himself also testifies to the same thing (On Penance, disp. 16, no. 363), saying: This opinion of Vasquez is embraced by not a few others, Reginald, Sayrus, and others, whom Diana reports and follows..., and Azor, Salas, Filliuccius, Bonacina, and Lessius apud the same Diana call it probable, and Castrus Palao follows the same. And he indeed adds (no. 364): This opinion is difficult perhaps more in the mode of explaining than in the thing itself; which he pursues up to no. 370. Yet that Vasquez declined to these absurdities which the VV. saw, neither Lugo, nor anyone else, saw through or suspected.

5. The Confessor ought to act cautiously with those who rejoice about an advantage coming to them from their own or another's sin, or from the harm or death of another; for sometimes delectations of this kind arise not from the advantage alone, but from joy concerning the sin itself or the evil of the neighbor [12]. The same is to be feared about him who says that he

rejoices concerning the spiritual good of the neighbor, but which proceeds from his misfortune, for example from grave infirmity, loss of temporal things, etc. For joy concerning the neighbor's evil can sometimes creep in rather than concerning the good effect thence proceeding, especially if he previously had enmity with him. Therefore the Confessor, if the matter seems to require it, should not neglect prudently to look into the mind of the penitent. - St. Lig., no. 20. - See Cases, no. 150 and following.

[12] The vigilance of the Confessor is opportune because of two things, namely 1. lest the desire or joy of a good effect (for those things which are said here about joy, from the common opinion of the Doctors, are almost valid concerning desire, or even concerning delectation) pass over into joy, or desire, or approval of sin considered in itself, from which that effect is caused; especially if someone has obtained profit of great moment from his sin; in which case joy and delectation concerning the great happiness acquired will indeed scarcely be abstracted from delectation in the evil cause. 2. Lest ever, namely even if any fault whatsoever of anyone is absent, or at least delectation concerning fault is absent, the order of charity be violated, which certainly demands that the good which we intend be reasonably preferable to the good of which we either wish another to be deprived or rejoice that he is deprived. Hence the condemnation of the proposition mentioned in the preceding number; for the order of charity does not permit that a son prefer the hope of inheritance to the death of his father. But concerning these things better where charity is treated.

Chapter II. On Capital Sins

Capital sins are so called because they are, as it were, heads or sources of other sins. Whence they are to be called vices rather than properly sins, if they are considered in genus.

Seven are numbered, namely 1. Pride; - 2. Avarice; -

3. Luxury; - 4. Envy; - 5. Anger; - 6. Sloth; - 7. Gluttony. - A few things concerning each [1].

[1] An accurate notion of this matter must be sought from theologians, and especially from St. Thomas, rather than from ascetical booklets, which not rarely treat things of this kind less exactly.

I. On Pride

174. ○ Pride is the disordered love of one's own excellence.

Pride is distinguished as perfect, or complete and consummated in its own genus, and imperfect pride. - It is indeed called perfect when a man so stands in himself and is complacent in himself that he is in a disposition of gravely transgressing the law rather than obeying the commands of a Superior. But this by that very fact always includes mortal sin in itself. - But in the other cases it is called imperfect, and then of itself it usually induces only venial sin, unless grave injury to the neighbor accedes, for example if he is gravely contemned, etc. - St. Lig., no. 66.

The daughters of pride are ambition, vainglory, presumption, boasting, ostentation, and hypocrisy.

The remedies are consideration of one's own infirmity, of the vanity of human glory, and of the humility of Christ.

II. On Avarice

175. ○ Avarice is the disordered appetite of temporal goods. It is opposed to justice or liberality. If the former, it will easily break forth into mortal sin, namely as often as it impels to grave injustice toward the neighbor. - If the latter, of itself it will beget only venial sins.

Moreover excessive affection toward earthly things can, and indeed usually does, propel one into other sins, even grave ones.

The daughters of avarice are: hardness of heart toward the miserable, disquiet of mind, or disordered solicitude about earthly things, perfidy, deceit, etc...

Remedies: consideration of the vanity of earthly things, of the baseness, unhappiness, and dangers of this vice. - St. Lig., no. 69.

III. On Luxury

176. ○ Luxury is the disordered appetite of a venereal thing. Luxury is grave from its whole genus; but this must be understood if the venereal delectation is deliberate in itself and directly sought; but if indirectly [2], it can from some circumstance become light, as in some touches, readings, and similar things less dangerous.

[2] Venereal delectation, whether sought directly or indirectly, when it is intended or voluntarily admitted, always brings the guilt of grave fault. But the Author speaks here of another matter: namely he treats of acts by which carnal movements can be caused, and the venereal delectation connected with these. Now when effects of this kind are not intended, and a delectation perhaps arisen is not admitted, and moreover the proximate danger of consenting to it is absent, the general principle is that, according to the common opinion of the Doctors, St. Alphonsus also defends (book 3, no. 484), there is as much guilt in these effects, as voluntary only in the cause, as there is in the cause itself. Consequently those effects are judged only lightly culpable if the cause, for example a curious reading or look, is venially evil; and every fault also will be absent if a just cause of placing those acts is present.

The daughters: blindness of mind, inconsideration, inconstancy, hatred of God, languor of faith, indeed also loss of it, etc.

Remedies: frequent and humble prayer, custody of the senses, flight from occasions and idleness, mortification of the flesh, temperance, frequenting of the Sacraments. - See St. Lig., no. 71.

IV. On Envy

177. ○ Envy is sadness concerning another's good, insofar as it is esteemed as one's own evil, or at least as a lesser good. Joy concerning another's evil, which is judged an increase of one's own good, is recalled to it. But it is directly against charity, and grave from its genus.

The daughters: detraction, calumny, whispering, contumely, etc.

Remedies: consideration of the evils proceeding from envy, offices of charity toward the neighbor, frequent prayer, exercise of humility. - See St. Lig., no. 72.

V. On Anger

178. ○ Anger is an inflaming of the mind, and a disordered movement against someone or something; or it is a disordered appetite of vengeance. Irascibility is a habit of anger. Anger is mortal from its genus, if it is an appetite of vengeance; but venial if it is only a disordered movement of the mind [3].

[3] St. Thomas must by all means be read concerning this matter (2.2, q. 158 throughout), who accurately distinguishes the vice of anger from the passion of anger, which, if it is ruled and tempered by reason, can be not only laudable but also commanded. Nor are those things to be neglected which the same Holy Doctor writes (l. c., q. 157) concerning meekness, which can be excellently composed with the virtue of that severity, whose proper office is to be inflexible concerning the infliction of penalties when right reason demands it. And indeed accurate knowledge of all these things is especially necessary to the Confessor, so that he may know how to teach penitents the difficult boundaries of vice and virtue in this matter; and, to say it once, that Part of the Summa of the Angelic Doctor which is called the Second of the Second, where the reasons of all the virtues and of the opposed vices, and, I might almost say, all their fibers are investigated, is the book which ought never to fall from the hands of the Confessor.

The daughters: indignation, rancor, clamor, insults, blasphemies, etc.

Remedies: consideration of the evils of anger, and of the meekness of Christ. - See St. Lig., no. 80 and following.

VI. On Sloth

179. ○ Sloth in general sounds the same as laziness; but more strictly it is torpor of mind and weakness of will, from which flows disgust for spiritual things on account of the labor and inconvenience joined to them. If it is so great that grave obligations are omitted from it, it must be held grave; if otherwise, it is to be judged light. - Thus commonly.

The daughters: torpor, wandering of the mind, nausea in prayer, etc.

Remedies: consideration of the labors of Christ, of eternal reward, and of the dangers of sloth; pious reading, frequent confession, etc.

VII. On Gluttony

180. ○ Gluttony is the disordered appetite of food or drink.

The vice is committed chiefly in five ways: 1. if you eat before the time; 2. if things too exquisite; 3. if more than is fair; 4. if voraciously; 5. if things prepared with greater industry. These are contained in the following verse:

Too soon, richly, too much, ardently, studiously.

It is venial sin from its genus. But it becomes grave if it gravely harms health, or if it renders someone inept for duties. He sins who eats or drinks to satiety on account of pleasure alone [4], as is established from the 8th proposition condemned by Innocent XI; yet of itself it does not exceed venial. - Thus commonly.

[4] He eats or drinks on account of pleasure alone who positively excludes the further ends of the operation. For otherwise, from St. Thomas (*Contra Gentiles*, book 3, ch. 26, nos. 6, 7), delectation which follows a good operation is good and licitly desired; but from the general principle, an operation is good if its intrinsic ends, whether immediate or mediate, are not positively excluded, although there is no need at all expressly to intend them or to think about them while acting.

The daughters of gluttony are drunkenness, concerning which more fully soon, dullness of mind, buffoonery, much-speaking, and uncleanness of any genus.

Remedies: to consider the worst effects of gluttony as to body and soul; - to mortify the flesh, especially in bodily refection; - frequently to remember death, or the soon future corruption of the

body. - See St. Lig., no. 74.

Appendix. On Drunkenness

181. ○ Drunkenness is voluntary excess in drink up to the deprivation of reason. - Thus commonly. - St. Lig., no. 75.

Perfect drunkenness, namely reaching to the deprivation of reason, is grave sin of itself. This is established 1. from reason; for voluntarily to deprive oneself of the use of reason, disturbing it in a violent and unnatural mode, at least without grave cause and for pleasure [1], is gravely opposed to rational nature. For thus man casts himself down to the state of brutes, and disfigures the image of God in himself. - St. Lig., no. 75, and others very commonly.

[1] Indeed St. Thomas expressly writes: from the pleasure of wine alone. Thus the Holy Doctor (1.2, q. 88, art. 5, ad 1): But concerning drunkenness it must be said... that it is mortal sin. For that a man without necessity renders himself impotent for using reason, by which man is ordered to God and avoids many occurring sins, from the pleasure of wine alone, is expressly contrary to virtue.

It is established 2. from Sacred Scripture, 1 Cor. 6.10: Nor drunkards... shall possess the kingdom of God. - And Isaiah 5.11: Woe to you who rise in the morning to follow drunkenness... Now the particle woe in Sacred Scripture denotes a most grave evil.

But more probably it is of itself only venial sin if the drunkenness is imperfect. Thus commonly. - St. Lig., ibid. [2].

[2] Thus St. Alphonsus: It is certain among all that for drunkenness to be mortal sin, it is required that it be perfect, namely that which wholly deprives of the use of reason.

182. Questions. - QUESTION 1. What are the signs of perfect drunkenness?

I answer: The following are reported, namely 1. not to know how to distinguish good from evil; 2. not to remember things said or done in drunkenness; 3. to do wholly unusual things, which namely at other times are never usually done with a sound mind..., etc. - But hesitation of the tongue, staggering of the feet, sight of double objects, or of objects turning themselves in a circle, are not certain signs. - St. Lig., no. 78.

QUESTION 2. Whether it is licit to intoxicate oneself for driving away illness?

I answer: Yes, more probably, if drunkenness follows only as an effect of a means licit of itself, for example if a notable quantity of generous wine is required for warding off illness. This is established from what was said On Human Acts, no. 9. - St. Lig., no. 76, and others commonly [3].

[3] St. Thomas (2.2, q. 150, art. 2, ad 3): When someone drinks much... according to the counsel of medicine..., the drink is not to be reputed superfluous.

QUESTION 3. Whether drunkenness is licit for undergoing a surgical operation?

I answer: It is controverted. St. Lig. with others denies it, because drunkenness would be directly intended, and the good effect would follow from evil. But Busemb. with others affirms it, because the deprivation of the use of reason for a brief time from a grave cause does not seem something intrinsically evil. St. Thomas agrees, 2.2, qu. 150, art. 2 [4]. And in reality just as in such a case opium

and ether are employed, so also wine could be employed. Moreover, a question of this kind scarcely pertains to practice now, since other easier means are available for that end.

[4] St. Thomas places the vice of drunkenness in superfluous drink without necessity and from the pleasure of wine alone. See the text related above from 1.2, q. 88, art. 1, ad 1.

** The VV. (page 913, no. 22) bring forward these words of St. Alphonsus (book 5, no. 76): The first opinion seems sufficiently probable, indeed more probable to me, in the case in which a draught of wine is furnished for expelling or correcting depraved humors; for then the deprivation of reason happens by accident and indirectly, and therefore can licitly be permitted.... It must be said otherwise if the draught were given directly for drunkenness, or for causing deprivation of reason; for this would always be intrinsically evil. Hence, as Croix well observes (book 5, no. 331)... it is never licit to intoxicate oneself for stupefying the senses.

I answer: 1. Croix discusses one condemned to death, and rightly disposed, and says that there is grave sin 1. because this is not the end of drink, 2. nor is there sufficient reason for taking away reason when it is then maximally necessary. Let the first reason, truly futile, be omitted; for neither is the end, for example, of the feet to kill flies; nor nevertheless does he sin gravely who destroys a fly by treading on it. But the other reason concerning necessity then urging militates for that special case, not however for others. Therefore that allegation seems less to the point.

I answer: 2. To the reason of St. Alphonsus there will be one who replies that even in our case the draught is not given directly for causing deprivation of reason, but for stupefaction of the senses; and therefore drunkenness follows indirectly and by accident: for stupefaction of the senses does not come from deprivation of reason, but from relaxation and dullness of the nerves.

183. ○ QUESTION 4. Whether it is licit to induce someone to drunkenness, so that he may be turned away from a greater evil?

I answer: 1. Yes, if drunkenness is only material for him; because a material evil can be permitted for a grave cause. - Thus commonly against Collet, Concina, etc.

I answer: 2. More commonly they deny it, if drunkenness is formal; because evils are not to be done so that goods may come. - Yet St. Lig., no. 77, admits the opposite opinion as probable with several others [5]. An opinion of this kind can be admitted in this sense, insofar as formal drunkenness is only permitted, for example, by supplying wine..., etc.

[5] St. Alphonsus (book 5, no. 77): The first opinion seems sufficiently probable to me and to other learned men consulted by me, whether the drunkenness is material or formal, on account of the reason already brought, because it is licit to induce another to a lesser evil so that he may be impeded from a greater one, according to those things which we have said about scandal. Therefore from St. Alphonsus this opinion can be led into practice, when that necessity urges.

QUESTION 5. Whether all evils done in drunkenness are imputable?

I answer: 1. No, if they were not foreseen, not even confusedly, because whatever things were not foreseen must be held wholly involuntary.

I answer: 2. Yes, for the opposite reason, if they were foreseen, at least as to evils of deed, whether of commission or of omission.

I have said, at least as to evils of deed; for as to evils of mouth, or words or even deeds merely contumelious, they are probably not imputable if they are uttered against men; since by common estimation they are judged to infer no contumely. Otherwise, however, if they are uttered against God, such as blasphemies, etc..., because these are intrinsically evil, and consequently turn to the contumely of divine honor; otherwise, as foreseen, they are voluntary in the cause itself. - St. Lig., no. 78, who nevertheless does not dare to call the contrary opinion improbable [6].

[6] Namely the opinion of the Salmanticenses was (treat. 25, ch. 2, nos. 30, 31) that blasphemies or perjuries, however much foreseen, are not imputed to a drunk man, because, as they say, a concept of the mind does not correspond to the words; which opinion moreover they wrongly ascribe both to Sanchez and to Dominic Soto. But the Salmanticenses seem to have confused two things which are plainly disparate, namely having no concept of the mind, and lacking dominion over oneself or one's faculties. This latter is easily conceded concerning drunk persons; but as to the fact that they have no concept of the mind, while, for example, already drunk they ask for wine, while they are angry at those denying wine, while they curse, imprecate, and threaten, I do not know whether anyone will consent. Therefore the foundation of that opinion collapses.

END OF THE TREATISE ON SINS

184. Resolves. - 1. They sin gravely who, drinking by day and night, knowingly expose themselves to the danger of drunkenness. Likewise those who by command or counsel induce others to drunkenness; or who provoke to equal draughts with foreseen danger of drunkenness.

2. They sin gravely who, knowing by experience that they become drunk in these or those companies, nevertheless are engaged in the same. Likewise those who, while drinking, adverting to the danger of drunkenness, still continue to drink.

3. They also sin gravely who drink so much that drunkenness must follow, although they commit themselves to sleep before they are deprived of senses and reason, because in sleep they do not have proximate power for the use of reason.

4. Nor are they excused from grave sin who, under pretext of native custom, or good affection, or urbanity, urge and as though necessitate guests to drinking up to the danger of drunkenness; but it is otherwise if only more liberal drink is offered and proposed rather often, yet in moderate quantity.

5. They do not sin gravely of themselves who are so strong, and accustomed to wine, that they are never made drunk, even if they drink more largely than others, unless they so exceed temperance that grave detriment of health can deservedly be feared. - See Cases, no. 176 and following.

Treatise On Virtues

185. ○ Virtue is a habit of acting honorably, or according to right order.

Virtues are distinguished into various species, namely:

1º Natural or supernatural, according as they are acquired and preserved by natural powers, or by the aid of supernatural grace.

2º Infused or acquired, according as they are poured into the heart by God himself, or acquired by repeated acts of the agent.

3º Theological or moral, according as they immediately regard God, or have for their immediate object the natural uprightness of an action. Hence it is easily deduced that the theological virtues are more perfect than the moral virtues.

There are four cardinal moral virtues, to which the rest are reduced, namely prudence, justice, fortitude, and temperance. Since discourse concerning the moral virtues occurs in almost the whole of moral theology, here we shall treat specifically of the theological virtues, namely of Faith, Hope, and Charity.

Chapter I. On Faith

186. ◦ Faith in general is assent on account of the authority of one speaking. More precisely for our matter, Faith, insofar as it is a virtue, is defined: A supernatural, infused habit inclining the intellect to assent firmly to truths revealed by God and proposed by the Church, on account of the authority of God revealing. But insofar as it is an act, it is called the firmest assent given to things revealed by God on account of the authority of God revealing. - St. Lig. n. 2.

Faith is 1° habitual or actual, according as it is a habit or an act.

2° Explicit or implicit by reason of the object, according as this is expressed and unfolded in itself, or only contained in another. Thus, for example, if you say: I believe in the Most Holy Trinity, you elicit an act of Faith explicit in that mystery. But if you say: I believe all things which the Church teaches are to be believed, you elicit an act of Faith implicit in the several revealed dogmas.

3° Formal or virtual, according as faith either is actually elicited, or, persevering in the mind without advertence, by its force influences actions.

4° Formed, or living, or unformed, or dead, according as it is joined, or not, with the works of Charity.

Sins opposed to Faith are 1° infidelity, or the lack of Faith in unbaptized men; 2° heresy, or a pertinacious error in one baptized against a truth of Faith proposed by the Church.

Infidelity, or heresy, is called negative or material in him who labors under invincible ignorance, or to whom the true Faith has not been sufficiently proposed.

The treatment must be chiefly 1° concerning the necessity, 2° concerning the object of Faith.

Article I. On the Necessity of Faith

I. With Regard to the Internal Act

187. ◦ I. The internal act of Faith is necessary for all adults for justification by necessity of means. This is clear from the Epistle to the Hebrews 11.6, where the Apostle says: Without Faith it is impossible to please God. For he who approaches God must believe that he is, and that he is a rewarder to those who seek him. - And from the Council of Trent, sess. 6. c. 6.

II. It is also necessary by necessity of precept at some time in life. This is clear from Sacred Scripture. For it is said in Epist. 1. John 3.23: This is his commandment, that we believe in the name of his Son Jesus Christ. Likewise from various propositions condemned by Alexander VIII and Innocent XI.

188. Questions. - Q. 1° When does the precept of eliciting Faith bind?

Resp. 1º It binds per se 1º after the complete use of reason, for beginning the Christian life; 2º likewise when the truth of our Faith has been sufficiently proposed to an adult infidel; 3º in the article of death, according to some, for tending more proximately to God; 4º more often in life, according to many at least once a year, and according to some each month. Moreover this precept is sufficiently fulfilled by exercising other acts of Religion. - St. Lig. n. 7, Hom. apost. n. 13.

Resp. 2º It binds per accidens 1º when a grave temptation presses, which cannot otherwise be conquered; 2º when a precept is to be fulfilled which requires Faith, for example, that of confession [1]; 3º after a fall into heresy, or after Faith has been denied. - Thus all.

[1] Faith concerning the article which directs the fulfillment of the precept is understood, for example, concerning the presence of Christ in the Eucharist, if you approach Communion, etc.; and indeed a formal act is not required, but an implicit one suffices. Hence some are wholly beside the point when they require from those approaching the Sacrament of Penance acts of the theological virtues, and indeed the customary formula of faith, in which moreover there is nothing that pertains to that sacrament.

Q. 2º Are explicit acts required for fulfilling the precept of Faith?

Resp. In those who have already learned and believed the truths to be held by faith, generally implicit acts suffice. Hence he satisfies the precept who devoutly hears Mass, adores the Crucified, prays, makes the sign of the cross, receives the Sacraments, etc. Thus commonly. - St. Lig. ibid.

II. With Regard to the External Act

189. ○ I. There is a negative precept prohibiting the denial of the true Faith, or the profession of a false one. For to deny the Faith is to deny God himself. Hence Christ says, Matt. 10.33: He who shall deny me before men, I also will deny him before my Father, who is in heaven.

II. There is also an affirmative precept, obliging at times to confess the Faith even with danger of life. For the honor of Christ sometimes requires that the faithful, in order to confess him, should despise even life. This is clear from the words of Christ himself, Matt. 10.32: Everyone who shall confess me before men, I also will confess him before my Father who is in heaven. And Luke 9.26: He who shall be ashamed of me and of my words, of him the Son of man will be ashamed when he shall come in his majesty. Likewise the Apostle, Rom. 10.10: With the heart one believes unto justice; but with the mouth confession is made unto salvation.

III. But the external precept of confessing the Faith by natural right binds then, when otherwise the honor due to God, or the spiritual utility of the neighbor, would be withdrawn in a notable way: for instance, if God would be affected with great injury, and the neighbor with great spiritual evil; or if from the omission of confession there would follow contempt of Religion, scandal, the perversion of others; or even if a great honor toward God, or great utility toward the neighbor, would cease. The reason is that charity, which we owe to God or to the neighbor, requires this. - St. Thom. 2. 2. qu. 3. art. 1. - St. Lig. n. 11.

190. Questions. - Q. 1º Is it ever lawful to dissemble Faith?

Resp. 1º It is never lawful to simulate a false one, because this would be the same as denying the true one externally, which is intrinsically evil. And this is openly clear from the words of Christ just

related.

Resp. 2º It is lawful for a grave cause to dissemble or conceal the true Faith, when danger of scandal has been excluded. The reason is that the precept of confessing the Faith does not always bind. - St. Lig. n. 10. 12. - Others commonly.

Q. 2º Can one questioned about Faith use ambiguous words?

Resp. 1º Neg., when evasion or silence is equivalent to denial, or to shame or fear, which in those circumstances necessarily detract from the honor of God, or the utility of the neighbor. For then the conditions explained in Principle III have place. This is confirmed from the constant practice of the Church and the common doctrine of the Fathers. - Moreover, with regard to public power questioning, it is clear from the proposition condemned by Innocent XI, under n. 18, which is of this sort: If anyone is questioned by public power, to confess the Faith frankly, as glorious to God and to the Faith, I counsel; to be silent, as sinful per se, I do not condemn. - St. Lig. n. 13.

Resp. 2º Affirm., when no scandal is created for those present, and no denial of Faith, or fear, or shame appears; because then no obligation to confess the Faith is present. - St. Lig. ibid.

191. ○ Q. 3º Is it lawful to use the signs or garments of infidels?

Resp. 1º Affirm., if they are garments or signs proper to some region, although that whole region may be infidel; because these of themselves are not referred to Religion.

Resp. 2º But if they are garments and signs of Religion, one must subdistinguish: I still more probably affirm, if it is done for a grave cause, and the garments are not solely distinctive of sect from sect, because then their primary use is for covering the body, and only secondarily for distinguishing a sect. - But otherwise, if the garments or signs have been instituted solely or primarily for professing a sect, as are the garments and ornaments which priests use in the exercise of their functions. - Salm., Tract. 21. c. 2. n. 1. 10.

192. Resolves. - 1º Someone sins gravely against Faith, even if only externally he bends the knees before an idol, or exhibits other signs of a false Religion, for example, by frequenting the heretical Supper, etc.

2º He does not sin against Faith who visits the temples of heretics or infidels out of mere curiosity, provided nevertheless scandal, danger of perversion, or a law forbidding these things is excluded. - Likewise he who is present at a wedding banquet or burial of heretics; because these do not properly pertain to Faith, and are regarded as merely civil assemblies. - St. Lig. n. 16.

But one must say otherwise if you assist at the Baptism and Supper of non-Catholics; because these pertain to a religious ceremony. This is also clear from the Letters of Pius VI, in which it is declared that to assist at baptism conferred by intruded ministers is illicit on account of cooperation.

3º He does not sin against Faith who, passing through places of heretics, from fear of grave danger, eats meats on a day of abstinence, lest he be recognized as a Catholic; because this of itself is not a sign of heresy; but otherwise, if he were to eat meats, even from fear of death, impelled to this in hatred of the Faith.

4º Nor does he sin against Faith who flees in time of persecution; indeed flight is generally in some way commanded, as is plain from the words of Christ, Matt. 10.23: But when they shall persecute you in this city, flee into another. But this especially holds if the safety of someone is necessary for the utility of the faithful, or someone fears a fall. - See Cases, n. 192 and following.

Article II. On the Object of Faith

193. ○ The formal object of Faith, or the reason on account of which one believes, is the authority of God speaking, as being endowed with infinite wisdom as well as truthfulness. - Thus more commonly.

But the material object, concerning which alone the treatment here is made, consists of the things to be known and believed. Hence one must treat of things to be known and believed both by necessity of means and by necessity of precept.

§ I. On Things Necessarily to Be Known and Believed by Necessity of Means

194. ○ It is certain that two things are to be known and believed by necessity of means: 1º that God is: He who approaches God must believe that he is. Hebr. 11. - 2º That he is a rewarder: He must... believe that he is, and that he is a rewarder to those who seek him. Ibid. - But whether other things must be believed explicitly by necessity of means for salvation is controverted: hence concerning them:

195. Questions. - Q. 1º Is explicit Faith in the mystery of the Most Holy Trinity and of the Incarnation required by necessity of means?

Resp. A twofold probable opinion is given.

I. The OPINION altogether affirms. The reason is:

1º With regard to the Incarnation, because salvation is not given except through Christ; therefore that means must necessarily be explicitly known and believed.

2º With regard to the Most Holy Trinity, because Faith in this mystery is the foundation of our salvation; for Baptism, which is the Sacrament of Faith, must be conferred in the name of the Father, etc. Now that which is the foundation of salvation must be the primary object of Faith, and therefore believed according to itself and explicitly. - Thus Collet, Decal. c. 1. art. 1. - Antoine, c. 1. - St. Lig. says this opinion is more probable, n. 2. [1].

[1] ** St. Alphonsus does not call this opinion absolutely more probable, but says that it seems more probable.

II. The OPINION which seems more probable denies. The reason is that before Christ implicit Faith in these mysteries sufficed; therefore even after his advent it ought to suffice. For Christ did not change the means. - Thus Suarez, disp. 12. sect. 4. - Lugo, De Fid. disp. 12. n. 91. [2]. Nor is there an obstacle in the proposition condemned by Innocent XI, under n. 64, which has itself thus: A man is capable of absolution however much he labors under ignorance of the mysteries of the Most Holy Trinity and the Incarnation of Our Lord Jesus Christ; it is not an obstacle, I say; for it could deservedly be condemned by reason of the first part, in which it is asserted that a man is capable of absolution, however much he generally labors under ignorance of the mysteries of Faith.

[2] Cardinal De Lugo (l. c.) calls this opinion the more probable, the common one of the more recent doctors, and, as it seems, also of St. Thomas, P. 3. q. 69. art. 4. ad 2.

** VV. (Pag. 914. n. 23.) produce the response of the Congregation of the Holy Office, 28 Febr. 1703, in which it is said that a Missionary is bound, even to a dying adult who is wholly incapable, to explain the mysteries of faith which are necessary by necessity of means, as are ESPECIALLY the mysteries of the Trinity and Incarnation.

Resp. Let that word Especially be noted: for it is inferred that there are therefore other mysteries of faith necessary by necessity of means, which nevertheless it is not necessary to propose to that dying person. Therefore in a certain broader sense mysteries of faith are here called necessary by necessity of means.

Q. 2º Can he be absolved who is ignorant of those things which are certainly of necessity of means?

Resp. Neg. Neither licitly nor validly. Thus all. The reason is that he, on account of the defect of a simply necessary means, is incapable of justification; therefore also incapable of absolution. Besides, no one can have hope of salvation unless he believes God to be a rewarder.

196. ○ Q. 3º Can one who is ignorant of the mysteries of the Trinity and Incarnation be absolved?

Resp. 1º He cannot licitly, outside a case of necessity, for example, danger of death; the reason is that a Confessor absolving such a one exposes the Sacrament to the danger of nullity, as is plain from the preceding Question 1. - Hence the Confessor must either first instruct the penitent [3], or dismiss him until he has been sufficiently instructed. - St. Lig. n. 3.

[3] Before absolving a penitent, it would be enough that this one, while the Confessor proposes those mysteries, elicit an act of faith, although he cannot learn them here and now. St. Alphonsus (In Prax. Confess.) reports these words of Bl. Leonard: It is not good counsel to dismiss such ignorant persons, that these things may be taught by others, because no other fruit will be hoped for, except that in this way the ignorant remain ignorant; and therefore it is expedient briefly to teach them the aforesaid principal mysteries, likewise bringing it about that they elicit with him acts of faith, hope, charity, and contrition, yet obliging them that hereafter they have themselves instructed perfectly concerning the other mysteries necessary to be known by necessity of precept.

Resp. 2º More probably he can be absolved validly, if he is in invincible ignorance. The reason is drawn from what was said in the II Opinion of the first Question [4].

[4] St. Alphonsus observes (Lib. 2. n. 2.) after Tanner, that even if you hold that explicit faith in these mysteries is now necessary by necessity of means, nevertheless if there are any of such rude intellect that they can in no way conceive those mysteries under some proper notion, these with regard to this are to be compared with infants and the foolish. And indeed if they have already been baptized, and are not instructed, shall we say that sanctifying grace flies away from them because they do not do what they cannot do?

Moreover, if it is more probable that those ignorant of these mysteries are validly absolved, therefore previous confessions made in that state of ignorance are not necessarily to be repeated. It must be carefully noted (says St. Alphonsus Lib. 6. n. 505.) that penitents are not to be compelled to repeat confessions, unless it is morally certain that they were invalid. Now confessions which more probably are valid cannot be said to be morally certainly invalid.

§ II. On Things Necessarily to Be Known and Believed by Necessity of Precept

These are the Apostles' Creed, the Decalogue, the Precepts of the Church, the Sacraments, the Lord's Prayer. - The Creed is required for believing rightly; the rest for acting rightly.

Point I. On Things to Be Known for Believing Rightly, or on the Apostles' Creed

197. ○ The dogma contained in the Creed is threefold and must be believed, namely... 1º concerning God; 2º concerning Christ; 3º concerning the Church.

I. Concerning God, four things must be known and believed by you, namely that he is 1º One or unique in essence. - 2º Triune in persons equal and really distinct among themselves. - 3º The first cause of all things, or Creator of all creatures. - 4º Rewarder and avenger of our actions at least in another life.

II. Concerning Christ, know and believe explicitly six things, namely that he is 1º The natural Son of God, and therefore true God. - 2º Conceived and born of the Holy Spirit from the Virgin Mary. - 3º Suffered and died for us. - 4º Having returned to life from the dead by his own power. - 5º Ascending into heaven, and to be king of glory forever. - 6º To return to judge men at the end of the ages.

III. Concerning the Church, you ought to know and believe these three things, namely that she is 1º Unique on earth under one visible head. - 2º Governed and preserved by the assistance of the Holy Spirit. - 3º Infallible in matters of Faith and morals, and to be heard by all. Yet this last, although certain and of Faith, is not contained explicitly in the Creed.

Brief Explanation of Each Article of the Creed

198. ○ I. Art. - "I believe in God the Father almighty, Creator of heaven and earth." 1º I believe in God, that is, I believe God existing, one in essence and triune in persons... God the ultimate end... I believe God speaking. - 2º Father; the first person of the Most Holy Trinity and the principle of all things. - 3º Almighty; his principal attribute, also included in the following words. - 4º Creator of heaven and earth, that is, of all things which exist outside God.

II. Art. - "And in Jesus Christ, his only Son, our Lord." - 1º In Jesus Christ; in the same way and in the same sense as I believe in the Father. - 2º His only Son; it is believed explicitly that Christ is the natural Son of God... the second person of the Most Holy Trinity... and therefore God. - 3º Our Lord; it must be believed that Christ is Lord of all.

III. Art. - "Who was conceived of the Holy Spirit, born of the Virgin Mary." - 1º Was conceived of the Holy Spirit; it must be believed explicitly that Christ, as man, was conceived beyond the order of nature by the operation of the Holy Spirit. - 2º Born of the Virgin Mary; the birth from Mary, a Virgin before birth-giving and in birth-giving, must be believed explicitly.

199. ○ IV. Art. - "Suffered under Pontius Pilate, was crucified, died, and was buried." - 1º Suffered; the passion of Christ must be believed explicitly under grave obligation. - 2º Under Pontius Pilate; this circumstance does not pertain to Faith as to be held explicitly. - Thus all. - 3º Was crucified; more probably the crucifixion, expressing the kind of death, must be believed explicitly; for thus the Apostle, 1. Cor. 1.23: We preach Christ crucified. - 4º Died; the death of Christ must be believed explicitly. 1. Cor. 15.3: I delivered to you first of all... that Christ died for our sins. - 5º Was buried; the burial of Christ must be believed explicitly; but more probably only under light obligation, because it is a light circumstance. - Thus concerning all these things Lugo, disp. 12. n. 21.

V. Art. - "He descended into hell, on the third day he rose again from the dead." - 1° He descended into hell; more probably this is not to be believed explicitly under grave obligation, indeed not even under light obligation, according to Suarez; because it is not easily understood by the faithful. But Lugo, ibid., contradicts. - 2° He rose again from the dead; explicitly to be believed under grave obligation, because it is the foundation of Religion. - 3° On the third day; that circumstance of time is not to be believed explicitly. - Thus commonly.

VI. Art. - "He ascended into heaven, sits at the right hand of the Father almighty." - 1° He ascended into heaven; according to the humanity, to be believed explicitly and under grave obligation. - 2° Sits at the right hand of the Father; probably, according to many, this is not to be believed explicitly, because it is understood with difficulty by the faithful; but others affirm that it is to be believed explicitly with regard to honor, power, and supreme dominion. - Thus Suarez. - 3° Almighty; the same as in art. I. - Also signified indirectly is the power of Christ, who sits at the right hand of almighty God.

200. ○ VII. Art. - "Thence he will come to judge the living and the dead." - 1° Thence he will come to judge; it is to be believed explicitly, again, that Christ will come to judge men. - 2° The living and the dead, that is, all men, the dead from the origin of the world, and the living who will die in the final conflagration. - Thus more commonly. But these words the living and the dead, according to Lugo, are not to be believed explicitly, because of the variety of explanations.

VIII. Art. - "I believe in the Holy Spirit." - 1° I believe, in the same way as in the Father and the Son, as above. - 2° In the Holy Spirit; it must be believed explicitly that he is the third person of the Most Holy Trinity, equal to the Father and the Son, and therefore God. - 3° The procession from the Father and the Son is not to be believed explicitly by necessity of precept by individual faithful, although it is of Faith. For many things of Faith ought not to be known by all. - Lugo, Suarez, and others commonly.

IX. Art. - "The Holy Catholic Church, the Communion of Saints." - 1° The Church; it must be believed explicitly that she is the one true Church, etc., as above. - 2° Holy; it suffices to know and believe that she is holy because of her head, doctrine, her Sacraments, and canonized Saints, because concerning the rest different persons think differently. - 3° Catholic; it suffices to profess obedience to her in the person of her visible head. - 4° The Communion of Saints; whether it is to be believed explicitly, and only with regard to some communication of prayers?... Or only implicitly in the unity of the Church?... Whether under grave or under light obligation?... The Doctors do not agree. Whatever be the case, in practice all seem to know it sufficiently, since they often say Pray for me, and frequently invoke the Saints.

X. Art. - "The remission of sins." - 1° It must be believed explicitly that God remits sins for all who are rightly disposed. - 2° Likewise that the power of remitting sins is in the Church. - 3° It must likewise be believed explicitly that there is no remission of sins outside the Church [1].

[1] Namely, there is no remission of sins for those who knowingly wish to be outside the true Church of Christ. For otherwise we shall see in its own place that remission of sins can be conferred upon a man rightly disposed and approaching in good faith, whether through baptism, or even through sacramental absolution even by a heretical or schismatic minister.

XI. Art. - "The resurrection of the flesh." - 1º Resurrection; the resurrection of all the dead must be believed explicitly. - 2º Of the flesh; but not of the man, so that it may be shown that only the body is corrupted, while the soul remains incorruptible and immortal.

XII. Art. - "Life everlasting." - 1º The eternal beatitude of the just must be believed explicitly by necessity of means. - 2º The eternal punishment of the damned, which we indirectly profess by believing that eternal life is to be granted to the just.

Point II. On Things to Be Known for Acting Rightly

I. On the Precepts of the Decalogue and of the Church

201. ○ I. The Precepts of the Decalogue:

1º Certainly explicit knowledge of the Decalogue is necessary from precept for all the faithful. - Thus all.

2º The Decalogue also must be believed explicitly, because the precepts of the Decalogue have been revealed so that they may be observed by all; now what has been revealed must be believed by divine Faith; and what has been revealed for directing the acts of individuals must be explicitly known by all. Therefore. Yet many contradict, because precepts of this kind can be known in another way than by revelation.

3º The precepts are not necessarily to be known by memory and in the customary order, although the faithful are to be exhorted to this.

202. ○ II. The Precepts of the Church:

1º They are not to be believed by divine Faith, because they have not been revealed by God, at least insofar as they are precepts of the Church. This only must be believed, that the Church has the right of making laws and precepts from divine authority.

2º The principal precepts of the Church ought to be known by all, those whose observance pertains to all the faithful; namely, the precept of keeping Feasts and of hearing Mass on them, the precept of annual confession, of Paschal Communion, of fasting and abstinence, which will be explained in their own place.

To the obligation of knowing the precepts is also referred this, that individuals must necessarily know the duties of their own state or condition.

II. On the Sacraments

203. ○ All ought explicitly to know and believe:

1º Baptism, its efficacy and absolute necessity for attaining salvation.

2º Penance, and its efficacy for obtaining the remission of sins.

3º The Eucharist, and in it the real presence of Christ, true God and man. Likewise, according to the common opinion, it must be believed explicitly that Christ is whole in each species; and also more probably, that he is offered in sacrifice, since all ought to assist at the sacrifice of the Mass. But more

probably Transubstantiation is not to be believed explicitly. - Thus commonly, Lugo, De Fide, disp. 13. sect. 5. n. 121.

4º The other Sacraments, when they are proximately to be received. But according to the common opinion it is not necessary to know and understand those which are not to be received.

III. On the Lord's Prayer

204. ○ 1º Under grave obligation all are bound to know it as to substance, that is, to know that God is to be prayed to with hope and confidence, and that from him are to be sought all goods both of soul and of body, and also graces for escaping evils of the soul. - In it God is believed as provident, helping, forgiving, rewarding.

2º All are bound, at least under light obligation, to recite it sometime, as the common opinion holds with Lugo, disp. 13. sect. 5. n. 133. - Suarez, disp. 13. sect. 4. n. 12.

3º Probably the obligation of retaining it by memory does not bind under grave obligation. Thus Lugo, ibid. - Suarez, ibid. - Busemb. apud St. Lig. n. 3, against some who draw out a grave obligation from the words of Christ: Thus you shall pray. But those words can be understood concerning the substance of the same prayer. To the Lord's Prayer, from the usage of the Church and the practice of the faithful, the Angelic Salutation is almost joined; although this is not to be known and recited from obligation, nevertheless from becomingness it is to be known and recited on account of the patronage of the Blessed Virgin and the worship due to her.

Article III. On the Vices Opposed to Faith

A twofold vice adverse to faith is distinguished, namely 1º infidelity, 2º heresy, to which apostasy is joined.

§ I. On Infidelity

205. ○ DEFINITION. Infidelity, taken generally, is the lack of Faith in a non-baptized man. For those are called infidels who have not received the habit of Faith through Baptism.

DIVISION. A threefold infidelity is distinguished, namely positive, negative, and privative.

1º Positive, or formal, infidelity is the lack of Faith in him to whom it has been sufficiently proposed, and who positively rejects it.

2º Negative, or material, infidelity is the lack of Faith in him who has never heard anything about the true Religion [1].

[1] Add, also in him to whom revelation has been proposed in some way, but not yet sufficiently, so that he is now bound to believe, although perhaps he can be bound to inquire. Recall the 21st proposition from those condemned by Innocent XI, which has itself thus: The assent of supernatural faith, useful for salvation, stands with only probable knowledge of revelation, indeed with fear, by which one fears lest God has not spoken.

3º Privative infidelity is the lack of Faith in him who neglects to obtain for himself knowledge of the Faith, when occasion is given.

The principal species of infidelity are: Paganism, Judaism, Mohammedanism, and other sects, to which Deism, Atheism, Pantheism, and Rationalism can be joined, which in our times ravages so widely.

206. Principles. - I. Infidelity, both positive, or formal, and privative, is a most grave sin. The reason is that the former explicitly, the latter virtually, contains grave injury to and contempt of the first truth, or the authority of God revealing [2].

[2] The guilt of privative infidelity must be measured by the lesser or greater negligence in inquiring; but the obligation of inquiring supposes prudent reasons or at least suspicions concerning the necessity of this inquiry; for if a reason or suspicion of this sort is slight, not even in the gravest affairs shall we find a grave fault of negligence.

II. But negative, or purely material, infidelity in itself is not sin, but only a punishment of sin. The reason is that there cannot be sin where there is invincible ignorance. - Moreover it is clear from the condemnation of the 68th proposition of Baius, proscribed by Pius V and Gregory XIII, which lies thus: Purely negative infidelity in those to whom Christ has not been preached is sin. - Nevertheless infidels, even negative ones, are most miserable, since they wander far from the way of salvation [3].

[3] Yet that the way which lies open through baptism of desire is not closed to them, St. Thomas excellently intimates, 1. 2. q. 89. art. 6.

III. The rites of infidels can never be approved or fostered by Christian Princes: nevertheless it is sometimes lawful to tolerate them, when by their prohibition greater evils would be brought in, or greater goods would be impeded [4]. - But Jews are more easily tolerated, because from their preservation a great good comes to the Church, namely the testimony of our Faith.

[4] ** It is one thing to tolerate on account of these most grave causes, but another to regard all sects and cults or all religions in the same place. This latter, in which recent impiety places liberty (as they say) of conscience or of worship, is true apostasy of Government, to which someone will perhaps think that prophetic word of Paul is to be referred (2. Thess. 2.3.): Unless the falling away (in the Greek text, ἀποστασία) comes first; seeing in it, namely, the πρόδρομον of the Antichrist.

207. ○ Q. Can infidels do good works in the state of infidelity?

Resp. 1° Affirm. with regard to works naturally honorable. This is clear 1° from Sacred Scripture, Rom. 2.14: The Gentiles, who do not have the law, naturally do the things that are of the law. - 2° From various condemned propositions, namely from the 25th prop. of Baius, condemned by Pius V: All the works of infidels are sins... - From the 8th prop. condemned by Alexander VIII: It is necessary for an infidel to sin in every work. The reason for the condemnation is that there is not sin where there is no violation of law, nor a vicious end; but many works of infidels can be of this kind: therefore, etc.

Resp. 2° Affirm. also with regard to works of the supernatural order, prior to formal Faith, which infidels perform aided by divine grace.

§ II. On Heresy

208. ○ DEFINITION. Heresy, properly taken, is a voluntary and pertinacious error against some truth of Faith proposed by the Church, in him who has received the Faith. In a broad sense it is even an involuntary error against some truth of Faith.

DIVISION. Heresy is distinguished:

1° Formal, which is heresy properly so called, or in the strict sense, or material, by which someone adheres to an error without pertinacity.

2° Internal, or external or manifested, or purely external, according as it is had internally, or only externally, or in both ways.

3° Occult, or notorious, according as it is known to no one or only to few, or to many.

To heresy is referred apostasy, which is a total defection from the Christian Faith. Therefore one must determine concerning it as concerning formal heresy.

209. Principles. - I. Formal heresy is always a most grave sin, just like infidelity itself. The reason is, 1° because the virtue of Faith, as theological, is one of the chief virtues, and therefore a sin directly opposed to it is one of the gravest. 2° Faith is the foundation of justice, without which it is impossible to please God; therefore heresy, by expelling Faith, deprives man of all justice. 3° Because heresy is contempt of the authority of God revealing; and thus it is directly and immediately against God.

II. Purely material heresy is free from all fault. The reason is plain from its definition: for someone here and now is supposed to err from invincible ignorance of the truth; but sin with such ignorance is impossible. Therefore, etc.

210. Questions. - Q. 1° What are the signs of material and formal heresy?

Resp. to the first. One is to be judged a material heretic only, 1° who is ready to submit himself to the judgment of the Church, when he has recognized the error. - 2° Who has known nothing about the true Faith and has never doubted about his Religion. - 3° Who, while doubting, has studied to know the truth as much as he could.

Resp. to the second. One is to be reputed a formal heretic: 1° who doubts and does not wish to inquire further. 2° Who maliciously turns the intellect away from motives of authority, so that he may adhere to his own sect [1]. - 3° Who, when the truth has been recognized, still contradicts the Church.

[1] For formal heresy, as is said below, q. 3, pertinacious assent against faith is required, that is, against a truth which is known as revealed. Now he who merely doubts whether something is revealed does not have that pertinacious assent, however much he neglects to inquire, indeed even if he culpably turns the intellect away from those things which could lead to the truth being recognized. Therefore the preceding words of A. must be taken in a certain broader sense; or certainly they must be understood of a man so disposed that even if the truth should shine upon his mind, nevertheless he bears an obstinate mind of persevering in his false sect.

Compare De Lugo (De Fid. Disp. 20. n. 197. seqq.), who excellently shows that even he who either affects ignorance concerning the dogmatic definitions of the Church, or even concerning the infallible authority of the Church in defining controversies, is indeed a heretic if he is of that mind that even if the authority as well as the definitions of the Church should be clear, he does not wish to be moved from his opinion, and meanwhile wishes to be ignorant of these things either so that he may avoid remorse, or so that he may have an excuse; but otherwise, if he affects ignorance for this reason, because otherwise he would not dare to oppose himself to the authority of the Church, and meanwhile wishes to be ignorant so that he may adhere to his own opinion without obstacle. The reason for the distinction is that in this latter case the man certainly sins, and indeed most gravely, against the precept of faith; yet that sin can be joined with the will of believing, if the revealed doctrine is sufficiently proposed to him; but otherwise in the preceding case, since the will is

supposed to be one of not believing revelation however sufficiently proposed. But pertinacity against faith is present only then, when the will is prepared to deny assent to revelation sufficiently proposed. Therefore we indeed have a formal heretic in the former case, but not likewise in the latter.

Q. 2º Is he a formal heretic who doubts concerning some article of Faith?

Resp. Affirm. The reason is that he who doubts deliberately suspends the assent of the intellect concerning a truth which he knows to have been revealed by God [2], or judges to be uncertain what God commands to be believed as certain; therefore he defects from Faith by denying the supreme truth of God and the infallibility of the Church.

[2] But one must speak otherwise concerning him who doubts whether something is revealed; since he could not even elicit an act of faith concerning it, as is also clear from the 21st proposition condemned by Innocent XI: The assent of supernatural faith, useful for salvation, stands with only probable knowledge of revelation, indeed with fear, by which one fears lest God has not spoken. Therefore this one will sin against the precept of faith, if, adverting to the necessity of inquiring, he does not inquire concerning the truth; for the precept of faith, just as it obliges to believing, so also obliges to learning, and therefore to inquiring: yet he is not a heretic, since there is no pertinacity against a seen revelation. Hence it can be inferred that many of those who are outside the Church can indeed be guilty of inquiry neglected concerning faith; but they are not so easily to be judged formal heretics.

And hence also the reason is plain for the condemnation of Proposition 4 by the same Innocent XI: An infidel not believing, led by a less probable opinion, will be excused from infidelity. For although an infidel is not bound to believe so long as revelation does not appear evidently credible to him; nevertheless he can by no means be exempt from fault, because he has contemned a prudent suspicion in so grave a matter, and therefore a grave obligation of inquiring.

Q. 3º Is he a formal heretic who denies the Faith only externally?

Resp. Neg. For in no way is he a heretic, because in him there is not pertinacious assent against Faith, and therefore in the forum of conscience he does not incur the penalties of heretics, although he sins gravely against the precept of Faith.

See more concerning heresy in the Treatise on Censures, where it will also be said concerning the prohibition of books, and also concerning the Index.

Chapter II. On Hope

211. ○ Hope is a supernatural virtue through which, with certain confidence from the promise of God, we expect future beatitude, and the means for attaining it.

The primary material object of Hope is God to be possessed, according to that saying, Gen. 15.1: I will be your reward exceedingly great. But the secondary object is all the means necessary for attaining beatitude, such as the remission of sins, the grace of God through the merits of Christ, etc... [1].

[1] ** Other benefits, even temporal ones, which we expect from the goodness of God, are not to be excluded from this; since these also were promised by the Lord (Luke 12.31): And all these things shall be added to you.

But the formal object of Hope is the goodness and fidelity of God joined with his omnipotence [2].

[2] Hope... rests upon... divine omnipotence and mercy, through which even he who does not have grace can obtain it, so that thus he may arrive at eternal life. But whoever has faith is certain of the omnipotence of God and of his mercy. St. Thom. (2. 2. q. 18. art. 4. ad 2.). And again the same Holy Doctor (De Virt. q. 4. art. 1.): The formal object of hope is the help of divine power and piety, on account of which the motion of hope tends toward hoped-for goods, which are the material object of hope.

But the acts included in Hope are the desire of eternal beatitude, firm confidence of arriving at it, and a raised-up spirit against occurring difficulties [3].

[3] Hope, as St. Thomas says (2. 2. q. 17. art. 5. ad 4.), according as it is a theological virtue, regards something arduous to be attained by the help of another. But (3. Dist. 26. q. 2. art. 1. ad 2.) this arduous thing, which is eternal life, exceeds the faculty of nature. Therefore (ibid. art. 2. o) it is necessary that from some gift superadded to nature there be made an inclination into that arduous thing; and that gift is the habit of hope. Therefore insofar as (2. 2. q. 17. art. 1. o) we hope for something as possible for us through divine help, our hope reaches to God himself, upon whose help it rests.

But the sins opposed to Hope are despair and presumption. The former is voluntary distrust of obtaining beatitude and the means necessary for attaining it. - But the latter is an inordinate confidence of obtaining beatitude without the means ordained by God.

212. Principles. - I. Hope in adults is required by necessity of means for justification. For man cannot arrive at attaining God, his ultimate end, unless by his own acts he tends toward him: but this cannot be done without hope. This is also clear from the Council of Trent, sess. 6. c. 6.

II. Hope is also necessary by necessity of precept; since there is a true precept of eliciting acts of Hope at some times in life. This is clear from the 1st proposition condemned by Alexander VII, which sounds thus: At no time whatever of his life is a man bound to elicit an act of Faith, Hope, and Charity, by force of the divine precepts pertaining to those virtues [4].

[4] Since the precept itself does not expressly determine a time, it seems one must recur to an article of necessity, which scarcely can be designated in the matter proposed. But it must be noted that this necessity can be either per se, or from an extrinsic reason: in this second way this precept will oblige when it shall be necessary to hope either for duly praying, or for overcoming a temptation, or for something similar: nevertheless in these occasions it will often not be necessary to elicit a formal act of hope, but it will be enough in the very effect duly to do that in which hope is virtually included, such as to petition efficaciously, or to grieve over sin, or something similar.... Concerning necessity per se..... I say, as concerning charity and penance, that this time cannot be designated positively and altogether determinately, but as it were negatively

and confusedly: for a man is bound sometime in life to exercise hope; but whether that is now, or later, is left to the man's judgment. Suarez, De Spe Disp. 2. Sect. 1. n. 2. 3.

Moreover the Doctors commonly warn that no place is to be given to anxieties concerning the sufficient execution of this precept. Since, to fulfill it, just as was said concerning faith, virtual hope suffices, and this is commonly exercised; hence there can scarcely be a suspicion that the faithful are lacking in this obligation. But if any are lacking in it, since they do this almost without advertence, the matter falls back to the same point.

213. Questions. - Q. 1° In how many ways is the sin of presumption committed?

Resp. Chiefly 1° if you presume to obtain eternal life by your own powers; 2° if you expect it without labor, from the mercy of God alone. - St. Lig. n. 24.

Q. 2° Can there be smallness of matter in sins against Hope?

Resp. 1° Affirm., with regard to presumption, although it is grave from its genus.

Resp. 2° Dist., with regard to despair: Neg., if it is perfect and properly so called; otherwise, if it is imperfect, as often happens in sadness and impatience.

214. ○ Q. 3° Is it a sin against Hope to desire to live perpetually in this world, or on the contrary from weariness to wish for death?

Resp. to the first: Affirm., because he who desires that stops in temporal life, as in the ultimate end. - Thus commonly. - St. Lig. n. 20.

Resp. to the second: 1° It is not against Hope per se, because it is not to withdraw from the ultimate end; 2° nor generally does it exceed venial sin, unless there is express rebellion against the order of divine Providence.

Q. 4° Is it presumption to commit the same sin several times, because when committed several times it is accused as easily as when committed once?

Resp. Neg., because the penitent sins more easily not from the facility of obtaining pardon, but from the lesser difficulty of confessing; although this is a depraved disposition, most injurious to God. But it would be a sin of presumption, if someone therefore sinned more easily because several sins are remitted as easily as a single one [5]. - St. Lig. n. 21.

[5] It must be noted here that an opinion not rarely sits in the mind of the faithful, that a sin becomes graver which is committed on account of the hope of pardon: whereas the doctors, on the contrary, think that by this circumstance a sin is sometimes rather diminished. Thus Suarez, rightly distinguishing this from the sin of presumption (de Spe Disp. 2. sect. 3. n. 2.): Although sometimes to offend from frailty on account of the hope of pardon can fail to be presumption, indeed can somewhat diminish sin; nevertheless to take thence an occasion of persevering in sin is a certain kind of presumption. Yet he adds (ibid. n. 3.) that a light fault can be found in presumption of this sort.

And this is the doctrine of St. Thomas (2. 2. q. 21. art. 2. ad 3.): It must be said that to sin with the purpose of persevering in sin under the hope of pardon pertains to presumption. And this does not diminish, but increases sin. But to sin under the hope of pardon to be received at some time, with the purpose of abstaining from sin and repenting of sin, this is not of presumption, but this diminishes the sin; because through this he seems to have a will less firmly fixed on sinning. Hence Marcus Struggl well says (Theol. Moral. Tr. IV. q. 3. n. 17.): Even while someone wishes to sin or actually sins, it is good to hope for pardon of sin and to propose afterward to repent. Moreover, that in the proposed case there is not a sin of presumption, Sanchez (In Dec. Lib. 2. Cap. 35. n. 7.), alleging Bannez and Medina, the Salmanticenses (Tr. 21. Cap. 5. n. 56.), Palaus (De Spe Tract. V. Disp. unic. punct. 6.), Bonacina (De I. Praecept. q. 3. punct. I. n. 6.), etc., commonly teach.

215. ○ Q. 5° What are the remedies of despair?

Resp. The principal ones are the following: 1° consideration of the infinite goodness and mercy of God; - 2° frequent remembrance of those men who after many and most grave sins obtained pardon; 3° meditation on the parables of the holy Gospel, especially of the lost sheep; - 4° special devotion toward the Blessed Virgin, refuge of sinners; - 5° confidence in Christ affixed to the cross for us, etc.

216. Practical Rules. - First. Let the Confessor examine from what root especially despair arises in the penitent, so that he can apply suitable remedies according to the different cause. - But it is usually accustomed to be born proximately from the apprehension of certain damnation. Remotely, however, 1° from sloth, by which someone thinks the means of salvation too burdensome, and therefore is deterred from employing them; 2° from lust or other inveterate sins, which turn the mind away from heavenly things, and on account of the difficulty of amendment lead to despair; 3° from melancholy, which inclines to sadness and turns away from confidence, which is accustomed to generate joy of soul; 4° from scruples, by which the soul is cast down and oppressed.

Second. Penitents given to despair are to be governed by the Confessor with great circumspection, prudence, and patience, according to the diversity of dispositions and the varied kind of despair. For those are to be directed in one way who have been driven into despair from malice, or from the weight of sins and a scandalous life; in another way those who are impelled to it from pusillanimity, or from diabolical temptation.

Third. Penitents who exhibit themselves as such, especially if they live in a Christian manner, are not immediately at first glance to be judged as carried away by despair. For souls are found, even devout ones, which are agitated by almost continual temptations of despair; nor is it easily to be believed that they have sinned, especially gravely, although they think that they have given consent to them; just as excessive fear concerning the danger of salvation is not to be confused with despair properly so called. - Elbel, etc.

Chapter III. On Charity

217. ○ Charity is a virtue by which we love God as the supreme good on account of himself [1], and the neighbor on account of God. - Charity is the most excellent of all the virtues, because it reaches God in the most perfect way. Hence, 1. Cor. 13.13: Now there remain Faith, Hope, Charity, these three; but the greater of these is Charity.

[1] What it means to love God gratuitously and on account of himself, St. Augustine explains in several places, namely that we should not serve God, nor love or seek him on account of another thing, that is, on account of a temporal reward, on account of a reward outside himself, on account of goods distinct or different from him, but that he himself should be our good, our beatitude, our reward. See De Catech. rud. Cap. 22. n. 39 and Cap. 27. n. 56. - De Gen. ad lit. Lib. 8. Cap. 11. n. 24. - Serm. 91. n. 3. Serm. 165. n. 4. and Serm. 334. n. 3. - In Psalm. 52. n. 10. in Psalm. 77. n. 21. and in Psalm. 85. n. 8. These and other things both of St. Augustine and of other Doctors you will find in Io. Bapt. Faure in the excellent Commentaries on the Enchiridion of St. Augustine, Cap. 7 and 8, and again at Cap. 121, 122.

The formal object of Charity is divine goodness [2]; but the primary material object is God, the secondary is the neighbor. - St. Lig. n. 22. et seq.

[2] Some move questions here (see St. Lig. Lib. 6. n. 436.) whether the formal object of charity is also goodness which shines forth in any divine attribute, for example, mercy, justice, wisdom, etc., or instead only goodness insofar as this comprises all the perfections of God; but they present the first opinion as less probable, and commonly rejected by the Doctors. But these things are owed only to a certain equivocation. For the opinion which is commonly rejected is not that which we have mentioned, but that which holds contrition elicited not from the motive of charity, but from the motive of obedience, religion, penance, etc., as perfect and therefore apt to justify a man before the reception of the sacrament. Concerning this matter see Cardinal De Lugo, De Poenit. Disp. 5. Sect. 1, and also the things which we shall say in the Treatise on Penance (Vol. 2. at n. 441.).

It is distinguished as 1º Love of God supremely intensive or appreciative; 2º Love of benevolence, which regards the proper good of the beloved; love of friendship, which is mutual love of benevolence; and love of concupiscence, which primarily intends the proper good of the lover [3].

[3] One must carefully beware lest love which carries us toward God as our good be traduced as foreign to charity. The reason is, 1º because man in reality is not drawn except by divine goodness, and while he seeks the object of beatitude in this rather than in any other good, that love already appears implanted, supremely appreciative, which is proper to perfect charity, and by which (as St. Bonaventure says, 3. Dist. 26. art. 2. q. 3.) he desires God above all things. 2º Because otherwise not even love of friendship would be possible. For as St. Thomas says (2. 2. q. 26. art. 13. ad 3.): To each one God will be the whole reason of loving, because God is man's whole good. For, if by impossibility it were granted that God were not man's good, there would not be a reason for loving him. Hence also St. Francis de Sales (Treatise of the Love of God, Part 2. Lib. 4. Cap. 10.) refers to chimeras and empty fantasies the love of any good which does not pertain to us and to the object of our beatitude. 3º Finally, because love of God excluding the affection of possessing God as the object of our beatitude, which perfectly satisfies our appetite for happiness, will easily lead to doctrines of pure charity without any admixture of a motive of proper interest, which Innocent XII condemned in several propositions, 12 March 1699, and of which especially the first, fifth, and sixth pertain to the present matter.

The treatment must be 1º concerning the love of God, 2º concerning the love of neighbor.

Article I. On the Love of God

1º A special precept of loving God above all things is given, both by internal affection through true love of the heart, and also by an external work. - This is clear from the words of Christ, Matt. 22.37:

You shall love the Lord your God with your whole heart... this is the greatest and first commandment.

2º This precept, as affirmative, obliges to loving God above all things appreciatively, as is plain from the natural law, but not necessarily intensively, because the essence of Charity does not consist in degrees [1]. - Thus commonly.

[1] Namely, the degree of intensity, or of fervor in loving, does not fall under the precept of charity; for it suffices that God in reality be preferred to all goods, as the common opinion of the Doctors holds. Nor should what some old authors seem to hold otherwise move anyone and drive him aside; for under the name of greater intensity, or more fervent love, or greater extension, Scotus, for example, and St. Thomas, in reality understand appreciation (see Koninck, De Virtut. Theol. disp. 25. n. 2.).

And indeed by this common doctrine is exploded both the opinion of those who were requiring a supremely intense act of love (who indeed fall into absurdity, because no act can be thought so intense that a more intense one could not be elicited with the help of God), and that of those who contend that God must be loved with a more intense affection than anything else; whence it would follow that the affection which yesterday sufficed for fulfilling the precept today no longer suffices, if perchance I am affected by a more intense zeal for some other thing, even an honorable one; and likewise that contrition which today suffices for the remission of sins tomorrow will not be sufficient, if perchance I grieve more intensely over the worst thing, for example, the death of a brother (compare Koninck l. c. n. 4. 5., and Suarez, de Charit. Disp. 6. Sect. 2. n. 2-5.).

218. Questions. - Q. 1º Are we bound always to act from the motive of Charity?

Resp. Neg., according to the things said concerning Human Acts, n. 31. Since even the acts of other virtues are good and meritorious [2]. This is also clear from the 8th proposition condemned by Alexander VIII.

[2] They are meritorious for him who is in the state of grace; otherwise they will be either salutary, if they are placed from grace, or at least naturally honorable.

Q. 2º When does the precept of Charity bind?

Resp. It obliges both per se and per accidens, just as the precept of Faith. Recall the things said above concerning the precept of Faith, n. 188. This is also clear from propositions 5 and 6 condemned by Innocent XI, of which the prior lies thus: Whether he sins mortally who would elicit an act of love of God only once in life, we do not dare to condemn. But the latter: It is probable that not even in each five-year period, rigorously speaking, does the precept of Charity toward God bind per se. The opinion of those who require an act of Charity once a month pleases St. Liguori. - Hom. apost. n. 12. But this opinion has no solid foundation [3].

[3] For this opinion Cardenas and Croix alone are alleged (see St. Alph. Lib. 2. n. 8.). But Croix (Lib. 2. n. 141.) merely has these things: Since in so great a variety of opinions we do not know when and how often God must be loved, let us seize the safer things. These certainly cannot be so understood, as if Croix, from a defect of reasons for asserting any obligation, should most absurdly and contrary to first principles infer the necessity of imposing stricter obligations without any reason.

But Cardenas (Cris. 2. Disp. 6. n. 18.) discourses thus: It is very hidden and uncertain to determine the time in which this precept presses; for we only say that the precept is violated when the love of God is deferred for a long time, in the judgment of a prudent man; and an entire month seems to me a long time on account of the supreme dignity of this precept. These things plainly have no strength. For I omit that no one before fixed this term: but the reason, as is plain, which he seeks from the supreme excellence of the precept, is wholly feeble. Assuredly, if the more excellent a precept is, the greater should be the frequency of the prescribed acts, since the precept of receiving the Eucharist is more excellent than that of abstaining from meats, it would have to be concluded that we are bound to receive the Eucharist more than twice each week!

** Against this brief note, VV. (Pag. 145-149.) heap up many things through ten columns. But to what end? Namely, that they may prove that he sins mortally who omits an act of charity for a month. But has it really escaped the memory of the Most Illustrious Men that St. Alphonsus reports (Lib. 5. n. 52.) from St. Antoninus, that one must not define concerning mortal sin unless there is express authority of Sacred Scripture, or of a Canon, or of a determination of the Church, or an evident reason? And that which the same St. Alph. (Lib. 1. n. 89. al. 73.) teaches, both with Gerson: Doctors of theology ought not to be easy in asserting that some sins are mortal, where they are not most certain about the matter; and with St. Raymond: Do not be prone to judge mortal sins, where it is not clear to you through certain Scripture; and with Gabriel Biel: Nothing ought to be condemned as mortal sin concerning which there is not evident reason, or manifest authority of Scripture? Where, moreover, do we have evident reasons here, or so great a strength of authority?

1º Suarez, say VV., and Reginald prove from the dignity of so great a precept that an act of charity must be elicited more often.

Resp. Suarez (De Charit. disp. 5. Sect. 3. n. 1.) from this only deduces that it is repugnant to the dignity of so great a precept to cast back the obligation (only) to that time (of death), and (ibid. n. 4.) that he sins against this precept who for many years does not exercise this love. - But Reginald (Tr. 17. n. 98.) says that no one is obligated to an act of love, except when the exercise of it is necessary for defending the honor of God, ... or for retaining divine friendship. Where, then, is the obligation pressing in each month?

2º VV. urge that certain old authors taught that this precept obliges on each feast day; and Amort also acceded to them, asserting this obligation at least under light obligation.

Resp. Does not St. Alphonsus, with the most common body of Theologians, reject this opinion?

3º VV. note that St. Alphonsus brought forward the argument, that otherwise someone will be able with difficulty to observe the divine law (Hom. Ap. n. 12.).

Resp. When it is the only means of avoiding some grave sin, C., as Reginald also taught above. Otherwise, N. For St. Alphonsus's opinion means nothing else.

Moreover, the matter has itself thus, that Cardenas and Croix alone hold that opinion, and they confirm it by no other reasons except those alleged. Whether either that authority or those reasons suffice for asserting a grave sin of omission is to be defined from the rules of the Doctors brought forward above by St. Alphonsus: for it ought deservedly to seem grave to detain the discerning reader longer with these things.

Q. 3º Is the precept of Charity satisfied through attrition in the reception of the sacrament of Penance?

Resp. Neg., because attrition does not occur principally from love of God, but of oneself, and therefore in it the principal motive of Charity is lacking.

219. Resolves. - 1º The faithful who live piously easily satisfy the precept of Charity, because they more often elicit acts of Charity rejoicing over the divine perfections, wishing that no one offend God, that all love and worship him, and observe his commandments, praying devoutly that his name be sanctified, that his will be done, avoiding sin because it displeases him, etc.

2º Therefore the faithful ought not to be anxious about this obligation, if they apply themselves to the Christian life and retain the will of avoiding grave sins. Nevertheless they are to be persuaded that they often elicit explicit acts of Charity in life, for a greater union with God, and so that the soul may be readier to elicit similar acts easily at death [4].

[4] The dying are most opportunely stirred up to eliciting and repeating acts of charity; indeed there are not lacking those who think that a grave obligation of eliciting this act then presses. But it seems one must distinguish. For if the discussion is about those for whom no other means of justification is at hand, this is most truly affirmed; but otherwise, if necessity of this kind is absent; for no solid reason appears, either intrinsic or extrinsic, why some have called the opinion concerning this obligation common or most probable (see St. Alph. Lib. 2. n. 23.).

** Here also VV. (Pag. 149-151.) contend that neither an extrinsic nor an intrinsic reason for this obligation is lacking. But it was necessary to remember what VV. often seem to forget, that probabilities do not suffice for asserting an obligation.

Therefore, as regards the extrinsic reason, first of all the Authors were not to be neglected, and indeed most grave ones, who deny this obligation either expressly or equivalently, while, in recounting either the time of the obligation or the opinions concerning it, they pass over the time of death. Of this sort are Lugo, Navarrus (the citations, which are easily found, are omitted for the sake of brevity), Sanchez, Azor, Escobar, Croix, Becanus, Fagundez, Tamburini, and with these Potestas and Voit. - Among those denying this obligation are also to be numbered those who admit it then only when charity or perfect contrition is the only present means of justification. Thus Laymann, Toletus, Henriquez, Candidus, Lessius, Turrianus, Gordonus, Fabri, Ferraris, and Elbel. - To these must be added those who say that the affirmative opinion is probable or even seems to them more probable. The reason is that he who calls an obligation probable equivalently denies that it can be imposed. But to the three Authors whom VV. report can be joined Palaus, Gobat, Catalani, Mazzotta.

Next let us inspect the foundations of that obligation. 1º Suarez, and with him Koninck, Widgant, Cardenas, and Catalani, require charity on account of doubt about the value of the Sacrament with attrition alone, or about attrition itself, whether it has been duly elicited. - Resp. This reason proves too much. For if any such doubt had force, on account of it no less would the danger of frustrating the Sacraments by sacrilegious injury have to be guarded against. Therefore an obligation of charity or of perfect contrition would have to be enjoined under grave sin upon one approaching Confession, of premising an act; a doctrine which no one will easily admit. Moreover, since you can doubt equally, indeed more, about the certainty of contrition or charity than about certain attrition, because the former is judged more difficult, you would have to repeat it not once only, but again and again, and yet the doubt and at the same time the obligation of repeating would not cease. Finally, you would be bound to contrition not from the precept of charity, but from the precept of penance.

2º Others, for example, Bonacina, Valentia, Reginald, Giribaldi, etc., require an act of charity by which a man may fortify himself against temptations. - Resp. The same thing can be said about the use of holy water, about the sign of the Cross, about the invocation of the Blessed Virgin, and about any other means suitable for this. Do we therefore bind under grave obligation to employ all these things? This alone, therefore, can be laid down: an act of charity, and any other means, must be employed under grave obligation when it is the only means of avoiding grave fault. But then the omission does not violate the precept of charity, but brings in one and the same guilt as the sin into which someone falls on account of that omission.

3º Others, such as Cardenas, Holzmann, Reuter, Babenstuber, Antoine (whom Charmes and Collet transcribe), Viva, etc., argue thence, that since a man is then in such a state that he ought to be joined to his ultimate end, then especially it is fitting, suitable, useful, more convenient, more opportune that he dispose himself to this by the exercise of the principal virtues and of charity. And to this certain authors with Marchant and Sporer refer that saying of the Gospel: Let your loins be girt, and burning lamps in your hands. - Resp. Many other things are fitting, suitable, convenient, useful, opportune; but not the reason of fittingness, nor of convenience, nor of utility, nor of opportunity, but the reason of necessity from which one cannot withdraw himself, can induce a grave obligation. But whoever, adorned with sanctifying grace, is a friend of God, indeed also a son, has his loins sufficiently girt and bears a lamp lit.

4º Finally some with Cardenas argue thus: the doctrine that it suffices to have elicited an act of charity once in life has been condemned: therefore it must be elicited at death. - Resp. Both that sophism and the preceding weakest arguments are those on account of which Sanchez wrote concerning this opinion of obligation (Dec. Lib. 2. C. 35. n. 9.): Azor rejects this by the best right. And Tamburini (Dec. Lib. 2. C. 3. n. 4.): To posit this obligation, which certainly does not rest on a solid foundation, is nothing else than to inject scruples. And concerning the same matter Lugo says (de Poenit. Disp. 7. n. 276.): Therefore the Confessor ought not to cast snares upon the penitent in an uncertain matter.

3º He satisfies the precept of Charity who, stained with grave sin and destitute of the supply of a Confessor, elicits an act of perfect contrition, even if this act would be necessary for another reason, for example, for celebrating Mass. The reason is that the precept of Charity can well be fulfilled at the same time with another precept, and in circumstances of this kind there has place what we said above, that the precept of Charity sometimes obliges per accidens. - Elbel, etc.

Article II. On the Love of Neighbor

The treatment must be 1º concerning the precept of love of neighbor in itself; 2º concerning the works of charity to be fulfilled from it; 3º concerning the vices opposed to Charity toward neighbor.

§ I. On the Precept of Love of Neighbor in Itself

1º Toward all in general; 2º toward enemies in particular.

Point I. On the Precept of Charity Toward All in General

220. Principles. - I. There is a precept of loving the neighbor with true and internal affection. This is clear 1º from the natural law, because also in the neighbor there flourishes the same formal motive of love, namely participated goodness of God; for all men are creatures of God, founded according to his image, and capable of the friendship of God and of eternal beatitude: therefore just as we ought to love God, so also we ought to love the neighbor on account of God. - 2º It is clear from Sacred Scripture, Matt. 22.39: You shall love your neighbor as yourself. - 3º It is also clear from the condemnation of the 10th proposition by Innocent XI, which lies thus: We are not bound to love the neighbor by an internal and formal act.

But he who lives in a Christian manner sufficiently satisfies this precept, with regard to the internal act, by praying for the neighbor, or by reciting the Lord's Prayer [1]. But with regard to external acts he satisfies by succoring the necessities of the neighbor, whether temporal or spiritual, according to the rules to be laid down below.

[1] For satisfying the precept, a general love suffices, which excludes no one and embraces all, as St. Thom. teaches (2. 2. q. 25. art. 8.). And therefore for this suffices a prayer which is made for all by reciting the Lord's Prayer, in which you have both an internal and an external act.

II. Some order of Charity is to be observed in love of neighbor. The reason is that both the persons to be loved are more or less perfect, or more or less joined to us, and the goods to be desired or procured for them are more or less necessary [2].

[2] Concerning the order of charity among neighbors, Laymann (Lib. 2. Tract. 5. Cap. 3. n. 5 and 6.), after St. Thomas, more clearly uses a threefold principle: I. With that love which is accompanied by complacency or joy in another's possessed good, and likewise which is accompanied by honor, reverence, those are to be loved more who are better, St. Thomas being the author (2. 2. q. 26. art. 7. 8. 9.): and for the same reason parents are to be loved more than children and wife, and benefactors more than those upon whom we have conferred benefits. The reason is that they have a greater likeness with God, the common parent and benefactor of all. - II. With that love by which we desire for another a good not yet possessed, and which is accompanied by mercy and beneficence, those are to be loved more who are more joined to us. - III. Those who are more joined to us ought to be preferred to others according to those goods in which conjunction or friendship is founded: because communication of goods is the foundation of friendship and charity. Hence St. Thomas (2. 2. q. 26. art. 8.): The love of diverse persons is to be measured according to the diverse reason of conjunction, so that each one may be loved more in that which pertains to that conjunction according to which he is loved... And therefore in those things which pertain to nature, we ought to love blood-relatives more; but in those things which pertain to civil association, we ought to love fellow citizens more; and in military matters, fellow soldiers more. And (3. Dist. 29. q. 1. art. 6. ad 3.) from the same principles he deduces that ecclesiastical benefices are not to be given more to blood-relatives, but to those who are more fit for the government of the Church.

Likewise the necessities in which the neighbor is to be succored are diverse. For necessity, whether temporal or spiritual, is distinguished as threefold, namely:

1º Extreme, when the danger of eternal damnation or death, or of another evil almost equal to death, so presses upon the neighbor that he, morally speaking, cannot escape it without the help of another.

2º Grave, when someone suffers great danger to the salvation of the soul, or to the life of the body, or of another grave evil [3], which he cannot escape without great difficulty.

[3] The Author in reality exhibits grave necessity with those colors by which other Doctors are accustomed to indicate quasi-extreme, or at least most grave, necessity.

3º Common or middling, in which someone can provide for himself without great difficulty. In the spiritual order vulgar sinners are in this, who, if they wished to employ some effort, would rise again from a depraved state; but in the temporal order beggar-poor generally suffer it, for whom life, according to their condition, is not too burdensome and miserable. - St. Lig. n. 27, Hom. apost. n. 18.

Special Rules of the Order of Charity

221. ○ First rule. Everyone is bound to love himself more, simply and absolutely, than the neighbor [4]. The reason is that each one is nearer to himself than any other. This is clear besides from the natural and invincible inclination to love oneself more than the neighbor; whence the common axiom: Well-ordered Charity begins from oneself.

[4] ** In order that this assertion be true, it must be understood concerning those goods which we are bound to obtain or preserve for ourselves. For if this obligation is absent, to prefer the neighbor to ourselves is not only lawful, but pertains to virtue.

Second rule. Nevertheless, we ought to succor the neighbor, even with our own advantages put after [5], in the following order:

[5] Namely, the first rule has force where goods are of the same order, and in the remaining things our condition and the neighbor's condition are equal. But the second has force when either in the order of goods or in the remaining things there is disparity, which can happen in three ways; whence a threefold rule, namely: 1º If the good necessary for the neighbor is of a higher order, we can and sometimes are bound to deprive ourselves of a good of a lower order for procuring that good for the neighbor. - 2º We can and sometimes are bound to help a neighbor constituted in greater necessity with damage to ourselves. - 3º The same thing must be said if indeed the necessity is equal, but the cause of each is not equal, for example, it is of greater importance that the life of the neighbor, as of a public person, be preserved.

But the order among goods is that spiritual and supernatural goods hold the first place; natural and intrinsic bodily goods, such as life, health, etc., the second; but natural extrinsic goods, such as reputation, honor, riches, the third. Yet reputation and honor with respect to goods of fortune are of a higher order, because reputation is something spiritual and moral.

1º In extreme spiritual necessity, per se [6], the neighbor must be succored even with danger of life; because the eternal life of the neighbor is a good more excellent than our temporal life. - St. Lig. n. 27.

[6] It is said per se; for one must except: 1º if there is not morally certain hope of saving the neighbor; whence a mother is not bound to undergo danger of life so that offspring may be baptized, since it is uncertain whether it will arrive at baptism. - 2º If there is another who can perform this; for then my work is not necessary (see Reginald, Prax. For. poenit. lib. 4. c. 25. n. 357.). - 3º If a graver evil threatens thence, for example, if by someone's dying for that cause, the salvation of many others would be endangered. Moreover, those things are to be seen which St. Alphonsus (Lib. 6. n. 624.) has concerning a dying person to be absolved even with danger of life.

2º In extreme temporal necessity the neighbor must ordinarily be succored with great [7] inconvenience indeed, but not with the greatest. The reason is that on the one hand the life of the

neighbor is a good more excellent than some good of ours; and on the other hand, since love of self precedes in order, no one is obliged to undergo so great an inconvenience for others. - St. Lig. n. 31.

[7] See below, n. 228. q. 3, where from St. Alphonsus with the common opinion of the Doctors it is established that someone is not bound to pay out a great sum of money in order to exempt another from danger of death.

3º In grave necessity of either order no one is bound to succor the neighbor with his own grave inconvenience, provided nevertheless the title of justice, piety, or office is excluded [8]. For from what has been said it follows that we are bound to furnish some help, but not with grave loss of one's own good. - St. Lig. ibid.

[8] From office, in grave necessity, for example, the pastor and physician are bound to care for another's safety; therefore it is not lawful for them to flee in time of plague, unless an equally suitable substitute has been appointed.

4º In common necessity of either order the neighbor is to be succored with some inconvenience indeed, because the love of neighbor requires this, but only with light inconvenience; for there can be only a light obligation of Charity when the neighbor can fairly easily remove himself from that necessity, or it is not too burdensome for him. But we are not bound to aid all who are placed in common necessity. For this is impossible, and if it could be done, it would already not be a light inconvenience [9]. - St. Lig. n. 32.

[9] With regard to relieving the common temporal necessities of the neighbor, see what is said below concerning alms; but with regard to spiritual necessities compare what St. Alphonsus has (Lib. 6. n. 625.) concerning the proper obligation of priests, that they render themselves fit for helping the faithful in spiritual matters, and also what is to be said below concerning fraternal correction.

Third rule. Among various persons to be loved, other things being equal, those are to be preferred who are more joined to us by blood, friendship, office, Religion, living together, etc., since God has bound them to us by stricter bonds.

Hence to be preferred are 1º parents to the rest; 2º a spouse to children, children to brothers, brothers to relatives; 3º friends, benefactors, Superiors, and persons more useful to the public good to the rest. Nevertheless in ordinary necessity, according to the common opinion, spouse and children ought to be preferred to parents [10]. - St. Lig. Hom. apost. n. 15.

[10] It belongs properly to the father that honor be bestowed on him by the children; but to the child, that utility be provided to him by the parents. Although in an article of necessity a son is obligated from benefits received to provide especially for his parents. St. Thom. (2. 2. q. 26. art. 9. ad 3.). And concerning a wife (ibid. art. 11.): A wife is loved more intensely; but greater reverence is to be shown to parents.

222. Resolves. - 1º In an equal order of goods, and equal necessity and cause, we are bound more to love ourselves than the neighbor. The reason is that love of self is the rule of love of neighbor according to that saying: You shall love your neighbor as yourself. But the rule is prior and more powerful than the thing ruled [11].

[11] Thus St. Thomas argues from that evangelical text (2. 2. q. 26. art. 4.): From which it seems that man's love toward himself is as the exemplar of the love which is had toward another. But the exemplar is prior to the thing exemplified. Therefore man ought from charity to love himself more than the neighbor. For this reason the words of Christ, as theologians commonly note, denote likeness, but not equality.

2º He sins against Charity toward himself, gravely or lightly according to the gravity of the matter, who neglects due care of soul or body [12]. - Nevertheless it is lawful to deprive oneself of non-

necessary spiritual goods for the temporal or spiritual good of the neighbor, for example, to omit hearing Mass on a weekday [13], etc. Indeed someone can desire and procure for the neighbor greater non-necessary spiritual goods than for himself, provided contempt of them is excluded.

[12] Sins of this kind, however, are scarcely accustomed to be accused in confession. For either it is a matter of damage to the soul brought upon oneself through faults; and it must not be expressed any more than in the sin, for example, of theft, the violation of charity or obedience toward God must be expressed. Or it is a matter of omission of means by which faults may be guarded against; and since this obligation is not distinguished from the obligation of observing the precepts, such negligence is sufficiently expressed through confession of the other sins (see Lugo de Poenit. Disp. 7. n. 242 and Disp. 15. n. 56.). But if it is a matter of damages inflicted upon life or body, although the obligation of charity toward oneself seems to be distinguished from the obligation which the fifth precept of the Decalogue imposes by reason of the divine dominion over our life and body; nevertheless, since the causes of illnesses for the most part are not proximate and immediate, they almost do not infer grave guilt.

[13] Thus someone leaves the goods of contemplation, fasting, choir, etc., in order to instruct the neighbor, or defers entrance into religion, lest there be lacking someone who may devote labor either to a parish, or to a seminary, or to a mission. Nor indeed then in reality is there a ceasing spiritual gain; since the lesser good is compensated by the greater. Indeed someone can even choose the delay of eternal beatitude in order to help the neighbor; whence that saying of St. Martin: Lord, if I am necessary to your people, I do not refuse labor. The words of the Apostle, Phil. 1.23, also pertain here.

3º No one is bound with danger of life or goods to extract others from sins from which they can free themselves through the Sacrament of Penance or perfect contrition, even if they are in danger of life; but otherwise, per se, if it is judged that with difficulty they can elicit an act of contrition [14]. - St. Lig. and others commonly.

[14] The necessity of succoring certain persons near death, whether from sickness or from a grave wound, does not flow chiefly from the difficulty of eliciting an act of contrition; for the faithful, however rude and sunk in sins, sufficiently know that they must turn themselves to God with their whole heart, nor is the opportune help of divine grace lacking to them: rather there underlies the danger lest in those straits, with the mind distracted to other things, lethal sleep and death may snatch them away before they think anything concerning the salvation of the soul.

A greater and easily even extreme necessity will be able to press when danger threatens from deception, which does not depend on the will alone of those who are deceived; for example, if a teacher of heresy somewhere diffuses his errors, etc. Hence if there are any who in these our days use, as they say, the prudent economy of silence, lest they incur the hatred of the wicked, these surely seem to have entirely forgotten this obligation.

4º It is not lawful for you to undergo the proximate danger of sinning in order that you may prevent another's sin, when your fall appears somehow certain; otherwise, if that danger can be made remote, so that you rightly trust that you will not fall [15]. - St. Lig. Hom. apost. n. 14.

[15] Therefore dangerous matters are lawfully read and handled either by those who must care for souls, such as priests, or by those who must heal bodies, such as physicians. Likewise these latter lawfully undergo danger in treating women, and the former in hearing confessions. See St. Alphonsus (Lib. 2. n. 26 and Lib. 5. n. 63.), who indeed from the common opinion teaches (Lib. 6. n. 453.) that sometimes someone can even be obligated to a work of charity, although otherwise a fall is very probable, if the neighbor is in extreme spiritual necessity. For the help of God, who then commands that the neighbor be succored, is prudently still hoped for.

5º More probably, in those things which are necessary for life, it is lawful to prefer to oneself an equal or inferior, indeed it is a heroic act of charity, provided it is done on account of God. Except if he who exposes himself is necessary to the Republic or to his family. - Thus Suarez. - Laymann, etc., against others.

223. Questions. - Q. 1º Is it against Charity to wish death for oneself on account of the misfortunes of life?

Resp. 1º Neg., if it is done from desire of a better life, or of eternal happiness, as is evident.

Resp. 2º Affirm., if it is done from weariness of life, or from dejection of soul. Yet they do not sin who desire death when life becomes so burdensome that it is considered harder than death itself. - St. Lig. n. 30. - Otherwise, if it is done from any light cause whatever, although not gravely, unless someone should wish to oppose the order of divine Providence [16].

[16] Here the question concerns only an inefficacious desire of death, insofar as someone wishes or even asks that death be sent upon him by God. The Salmanticenses (Tr. 20. Cap. 13. n. 46.) condemn this as a grave fault, because (they say) it is a vice of timidity and pusillanimity to wish to lack life for the sake of avoiding evils of lesser moment. But where, then, is grave fault in pusillanimity, unless someone is thence impelled to break a grave precept? But where will you find a grave precept, that I may not ask God to rescue me from the miseries of the world? Therefore if I am impelled by a light cause, it will at last be an act of impatience, which from its genus is light. And since to wish to exchange the present life for the future life is not per se against the order of charity, here indeed we shall have some fault of impatience and pusillanimity, but not of violated charity.

Q. 2º Is it against Charity to desire a temporal evil for the neighbor, or to rejoice over it, on account of a good end?

Resp. 1º Neg., if the due order of Charity is observed, that is, if it is done on account of a greater good, or on account of a lesser evil [17]. Hence this is lawful, 1º on account of the spiritual good of the neighbor himself; 2º on account of the common good, either spiritual or temporal; 3º on account of the good even of many, of much greater moment, for example, of a family, community, etc. - St. Lig. n. 30. - Moreover such desires can easily and usefully be changed into more perfect ones [18].

[17] ** Hence the true and only cause is to be sought why Propositions XIII, XIV, and XV were condemned by Innocent XI; for now it will be enough to allege the authority of Viva, Cardenas, and Duarte, who treated expressly of the condemned theses. Thus those propositions have themselves: XIII. If you do it with due moderation, you can without mortal sin be sad over the life of someone, and rejoice over his natural death, and ask and desire it with inefficacious affection, not indeed from displeasure with the person, but on account of some temporal emolument. - XIV. It is lawful by an absolute desire to desire the death of a father, not indeed as an evil of the father, but as a good of the one desiring; because, namely, a rich inheritance will come to him. - XV. It is lawful for a son to rejoice over the parricide of a parent perpetrated by himself in drunkenness on account of the immense riches thence obtained from the inheritance.

Concerning these Viva says (n. 12.): The falsity is shown: because the order of charity demands that the life of the neighbor be preferred to one's own temporal emolument... Therefore the order of charity is perverted if we seek the death of the neighbor, or rejoice over it, on account of our temporal emolument; because by these affections our emolument is preferred to the life of the neighbor, which is in an order far superior; so that the perversion of order cannot be called light, nor can affections of this kind be free from grave fault. And n. 20: If a daughter were delighted concerning a parricide inculpably committed, lest she be further harassed by a father who wished to prostitute her and was impelling her to sin, such delight could be excused from the end and from the spiritual good, which far excels the life of the father. But a rich inheritance does not excel the life of the father; and therefore a son cannot without mortal sin be delighted over a parricide inculpably perpetrated on account of immense riches obtained from the inheritance.

But Duarte (Brev. Expos. Propp. damn. n. 207. 208.): The reason is that the order of charity demands that the life of the neighbor be preferred to one's own temporal emolument, indeed it requires that for preserving that life we succor a poor man even from things necessary to our state; therefore etc... From which it follows that if a son should wish death for his father, or rejoice over it, or if he should rejoice over parricide committed by himself in drunkenness for the sake of taking possession of an inheritance, he will sin mortally not only against charity, but also against piety, etc.

Finally Cardenas (Part. 4. Diss. 10. n. 20.): It is not lawful to wish death for the neighbor on account of a good of lesser moment. But he who wishes death for the neighbor... on account of any temporal emolument whatever, or on account of entering upon a rich inheritance, desires evil for him on account of a good of lesser moment. Therefore it is mortally illicit. Which doctrine he then (ibid. n. 27.) applies also to Prop. XV with regard to a son who rejoices over parricide perpetrated by himself in drunkenness, etc.

And indeed it will have been useful to note these things, so that it may be clear that VV. have in vain objected the condemnation of these theses against the doctrine of Suarez and others, concerning which we spoke in the Note at n. 172. Since for an entirely different reason than they contend, those theses (as is plain from what has been said) were condemned.

[18] That it can seem more perfect to desire that the impious be converted does not cause those to be reprehended who, for the good of the Church and of society, desire and earnestly ask that by the powerful hand of God they be humbled or even exterminated; since also in this the virtue of true charity toward the Church and neighbors is exercised in a most ordered way. Therefore the Church also in her prayers asks from God now their conversion, now their perdition, now both at the same time disjunctively.

Resp. 2° Affirmatively, when the order of charity is perverted. Hence a wife cannot desire the death of her husband because she is unjustly treated badly by him, nor of her daughter, because on account of deformity or poverty she cannot marry [19]. This is clear from the condemnation of propositions 13 and 14 by Innocent XI. - St. Lig. n. 30.

[19] St. Alphonsus explains his mind better with regard to this last case in Lib. 5. n. 22, namely that the question is about a mother who, merely to avoid her own annoyance, wishes the death of her daughter; and therefore he gives the reason, because the evil of the mother does not outweigh the evil wished for the daughter. Therefore he does not contradict the other Doctors affirming that, in those circumstances in which death is better than bitter life (as is said Eccli. 30.), both the daughter for herself, and the mother for the daughter, can lawfully wish death and ask it from God. Moreover, also for avoiding her own grave troubles, it will certainly be lawful for a mother, if not to wish the death of either husband or daughter, at least to desire and ask from God that in whatever way it pleases Him, He rescue her from those straits.

Point II. On the Precept of Charity Toward Enemies in Particular

There is a precept also of loving enemies [2]. This is clear from the words of Christ, Matt. 5.44: But I say to you: love your enemies. And ibid. 6.15: If you will not forgive men, neither will your Father forgive you your sins.

[1] *On the title above.* An enemy is understood as one who has injured undeservedly, or pursues with hatred. But injury sometimes imports mere offense, when, namely, through an annoyance inflicted on the will of another, yet without violation of any right, his soul is irritated and deservedly provoked to displeasure, indignation, and anger: sometimes it also imports injustice, namely when something is done not only against the will, but also against the right of another. Through mere offense charity is violated; through injustice, justice.

Moreover, injustice either infers no damage, as, for example, if with no one else present you speak insult to someone, or it brings detriment in goods either of the person or of fortune. In the first case satisfaction is owed at least from vindictive justice, and in the external forum an action for injuries is given to him; in the other, restitution is also owed to the injured party, so that in the external forum both a civil action is given to him for recovering his own, and a criminal action for avenging the crime.

And indeed these things must be carefully and accurately distinguished, lest the Confessor indiscreetly demand from the penitent, as necessary, something more than the precept of charity toward enemies in reality requires.

[2] This precept does not say some special obligation toward enemies. Indeed, that enemies be loved insofar as they are enemies, this is perverse and repugnant to charity, because this is to love another's evil, as St. Thomas says (2. 2. q. 25. art. 1.), who adds (ibid. ad 2.): Insofar as they are enemies, ... this we ought to hate in them; for it ought to displease us that they are enemies to us. Therefore this precept imports only that someone loving God and the neighbor not exclude his enemies from that generality of love of neighbor, as the same St. Thomas says (ibid. o).

224. Rules. - First. Per se, the same signs of love are owed to enemies which are accustomed to be furnished to others of the same state [3]; because their denial would be an act of revenge and a manifestation of hatred, which is opposed to Charity.

[3] These are accustomed to be called common signs of love, which nevertheless are diverse, according as by a diverse reason of conjunction certain persons are bound among themselves. Hence some signs are common, for example, among brothers, or among students of the same monastery or college; others among fellow servants or fellow students; others among fellow citizens or fellow soldiers; finally others which a man owes from charity to any man. I have said from charity; for the other loves, which are owed by reason of other conjunctions, do not pertain to the virtue of theological charity, except insofar as their acts, no otherwise than the acts of other moral virtues, can be commanded by charity. See St. Thom. de Virt. q. 2. art. 9. 10.

But special signs are to be carefully distinguished from common signs of love, which by St. Thomas (3. Dist. 30. q. 1. art. 2. ad 1.) are called friendly benefits, and are exhibited particularly to some persons by reason of a certain conjunction or friendship or familiarity, which is not toward all otherwise of the same condition (St. Thom. l. c. in corp.). Thus not only among men otherwise bound by no other bond, but even among members of any community or group or college, it almost happens that someone is more friendly or familiar to one than to another.

But the difference which lies between common and special signs of love must be carefully noted. For since a conjunction of special friendship is undertaken by spontaneous and free will, thence friendly benefits proceed not from debt, but from liberality, as St. Thomas says (l. c. ad 1.): but on the contrary common signs of love proceed from debt, which is a necessary consequence of condition or state.

I said per se, because sometimes a reasonable cause is present for denying them for a time, for example, by reason of due correction, a good effect on children or inferiors, or on account of prudent fear of quarrels from the sight or conversation of an enemy, etc.; likewise on account of the expression of just sorrow conceived from injury, etc.

Second. Per se, special signs of love are not owed to enemies, for example, to visit them sick, to console them when sad, to receive them in hospitality or at a banquet, provided the reason of scandal is excluded, etc. [4].

[4] Appositely St. Thomas (De virt. q. 2. art. 8. o): Since toward an enemy no other union remains to us except only the union of charity, from the necessity of precept we are bound to love them IN COMMON. And this he presently explains thus: We are bound by the affection and effect of charity, by which we love all neighbors and pray for all, not to exclude even those who are joined to us by no special bond, as, for example, those who are in India or Ethiopia.

From these things it is plain that only love in common is owed to an enemy; but this requires that he not be excluded from the common effects of love. Now by reason of state or condition and office it can happen that someone indiscriminately must visit the sick and serve them, or receive travelers with table and lodging, etc. Therefore in this hypothesis these would already be common signs of love, from which it would not be lawful to exclude an enemy. Otherwise one must say when these offices of charity are undertaken freely toward some. For then to furnish these to an enemy (unless perhaps he is in necessity) pertains not to the precept, but to the perfection of charity. For since (says St. Thom. 2. 2. q. 25. art. 8.) the neighbor is loved from charity on account of God, the more someone loves God, the more also he shows love toward the neighbor with no enmity impeding: just as if someone greatly loved some man, out of love for him he would love his children, even enemies to himself.

Third. Not only must the offense be forgiven the enemy in such a way that the desire of unjust revenge is cast away and the common signs of love are not denied; but to one asking pardon and exhibiting suitable satisfaction for the injury, if any occurred, certain particular signs also of special love, if any were previously accustomed to be given, generally speaking, are not to be altogether refused [5]. - St. Thomas, 3. dist. 30. q. 1. art. 2. ad 5, and St. Antoninus, Part. 2. tit. 8. cap. 2. §. 6.

[5] To deny to a man signs of familiarity, when necessity would require them, it would be revenge; or also when he would ask pardon, or when he who is regarded as an enemy thrusts himself into familiarity...; because then he loves, and is to be numbered among friends. St. Thomas (3. Dist. 30. q. 1. art. 2. ad 5.). Nevertheless, since it is a matter of special friendship or familiarity, which, just as it is freely admitted, so also is freely retained, Peter de Lorca is to the point (In 2. 2. q. 25. n. 27.): If the title (namely of furnishing signs of love) is only special friendship and familiarity, which some voluntarily contract among themselves, it is not owed to an enemy; for this is special love, and can be dissolved, not only if a friend

becomes an enemy, but even if he does not become one: therefore no one is bound to preserve that friendship. Therefore the restoration of such former friendship and familiarity is not always necessarily to be exacted, nor must one deal harshly with him who wishes either to lessen or even to retain no special familiarity with him whom he has found to have failed in the office of friendship.

** And thus St. Alphonsus seems to be understood, who (Lib. 2. n. 28.) says that special signs of love are to be furnished if previously you were accustomed to exhibit peculiar signs to the enemy; as Tournely with Suarez, Bonacina, etc. And in reality Collet attributes this doctrine to Suarez, Bonacina, and Koninck: but less to the point, because those Doctors have nothing of the sort.

225. Questions. - Q. 1º Is it lawful to wish public punishment for an enemy, indeed also to seek it?

Resp. Affirm. per se, if every affection of revenge is absent [6]; but in practice this is dangerous, and easily liable to deception, as St. Lig. notes, n. 29.

[6] Thus St. Thomas (2. 2. q. 108. art. 1.): If his intention is borne principally toward the evil of him concerning whom he takes revenge, and rests there, it is altogether illicit.... But if the intention... is borne principally toward some good, at which one arrives through the punishment of the sinner, for instance toward the amendment of the sinner, or at least toward his restraint and the quiet of others, and toward the preservation of justice and the honor of God, vindication can be lawful, etc. Concerning this argument St. Alphonsus (Lib. 2. n. 29.) writes: Hence I adhere to Antoine, that practically speaking it is never lawful to seek the punishment of an enemy, even if just and to be done by legitimate authority. But Antoine himself does not speak so rigidly in reality, although otherwise most rigid. The words of Antoine are these (De Char. C. 2. q. 3.): It is never lawful to seek the punishment of an enemy, even if just and done by legitimate authority, insofar as it is his evil: for this is an act of hatred, never lawful. But on the contrary he had premised these things (ibid. q. 2.): Against him (an enemy) it is lawful to institute both a civil and a criminal action, provided this is not done from hatred, revenge, or another depraved end: the civil action indeed, so that he may compensate the damage inflicted, or make satisfaction for injury; the criminal, however, from love of public justice, lest he harm others, or lest crimes remain unpunished with damage to the republic.

Q. 2º What order ought to be observed in making reconciliation?

Resp. 1º He who has offended another ought first, per se, to employ means for reconciliation, as natural equity dictates.

2º If the offense is mutual and equal, let him who first offended first promote reconciliation; but if it is unequal, let him who offended more gravely go before. Moreover, absolute rules cannot be assigned, but the circumstances are to be considered. - Thus commonly.

Q. 3º Is there an obligation of greeting an enemy who is encountered?

Resp. Neg. per se, because greeting and conversation are not common signs owed to the neighbor [7]. Yet one must say otherwise if circumstances of state, condition, or similar things require that all greet each other indiscriminately, or if it is a matter of a subject toward his Superior. - St. Lig. n. 28. - Sporer, etc.

[7] St. Alphonsus (lib. 2. n. 28.) confesses according to the common opinion that you are not bound to greet an enemy. Nevertheless with others he admits some obligation, both of greeting and of exhibiting certain other special signs of love to an enemy even outside the case of either spiritual or bodily necessity, when this seems necessary 1º for avoiding scandal, lest namely the enemy be more provoked to anger and hatred; 2º for gaining the brother, namely for reconciling his soul to you and to God. Yet he adds that this obligation is not grave, which therefore would bind with grave inconvenience. And since acts of this kind in the offended person almost bring with them no small difficulty, this obligation does not seem to be very much urged. St. Alphonsus (l. c.) adds another exception, namely if the enemy is a Superior. But perhaps this does not pertain here; because greeting, when it is a matter of a Superior, is not a special sign.

Q. 4º Must an offender ask pardon from the offended person?

Resp. Affirm., per se, unless another means or manner of reconciliation more fitting is at hand, for example, by furnishing various offices or benefits, or unless the asking of pardon seems to profit nothing for placating the offended person. They also except if the offender is far superior to the offended, or if the offended is prudently judged to condone it. But other means of placating the offended are not lacking. - Thus commonly. - Lacroix, lib. 2. n. 189. - Tambur., etc.

Q. 5º Do you owe any signs of love to an offender not asking pardon?

Resp. Some affirm with St. Lig.; but others deny with St. Antoninus, Summa, part. 2. tit. 8. c. 2. §. 6. [8].

[8] Thus St. Antoninus (Part. 2. Tit. 8. Cap. 2. §. 6.): Either the injurer exhibits fitting satisfaction, or he does not. If he exhibits it according to the quantity of the fault and his possibility, thus he is bound to receive him back into friendship and to speak to him.... But if he does not exhibit it, he is not bound to speak to him, namely when he either is wholly unwilling to satisfy, or satisfies by halves. And St. Thomas (3. Dist. 30. q. 1. art. 2. ad 5.): That someone of his own accord thrust himself into familiarity with an enemy, this belongs to perfection.

226. Resolves. - 1º It is not lawful to exclude enemies from prayers, for example, from the Lord's Prayer; indeed one would have to pray specifically for them, if this were the only means available to the offended person for extinguishing hatred [9].

[9] Since it can scarcely happen that for restraining hatred no other means is at hand besides special prayer for the enemy, therefore it will scarcely ever be necessary that the Confessor prescribe this. For fulfilling the precept of praying for enemies, it is enough that they not be positively excluded, just as we do not exclude Indians or Ethiopians, as St. Thomas says, who also has these things (3. Dist. 30. q. 1. art. 2.): A man is bound (to cooperate) even with an enemy, at least by praying in common, so that he does not exclude him from his prayers, although perhaps he does not make special mention of him; just as it is not necessary that he make special prayer concerning all toward whom he has charity, but common prayer.

2º It is not lawful to exclude enemies from common alms, re-greeting [10], response, sale of exposed merchandise, because these are common signs of love. - Thus commonly. Understand this with the matter considered per se, according to the things said above, n. 224.

[10] Concerning greeting note the following from Peter de Lorca (2. 2. Disp. 25. n. 28.): 1º Greeting and address are owed to enemies in the same way as to others.... nor are they among the general signs of love which we owe to all men, but among special ones: yet they are among general signs among those very much joined, and therefore they are not owed except to those joined. 2º Anticipated greeting is owed to no one, except to certain persons excelling in dignity, for the sake of honor. 3º Re-greeting and response are owed to all men by virtue of affability, especially to fellow citizens. 3º The omission of address and greeting, even when it is owed, is not regularly a mortal sin: for it is opposed to affability, which is not of so great obligation, unless perhaps from the circumstance of the person and from other things it would yield to a great injury, or on account of scandal, which rarely occurs and must be decided by the judgment of a prudent man.

3º They sin who avoid an enemy wishing to be reconciled, especially when he notices and feels it gravely, or who, when invited, refuse to go with him, unless nevertheless they are excused by fear of quarrels, or of new rancor, or by another just cause. Likewise those who refuse pardon, or do not accept suitable satisfaction, or exact more than is fair, or who bring the matter into court from hatred and revenge; likewise those who do not aid an enemy in necessity [11], or do not prevent a grave damage of the same, when they easily can, and a fortiori those who rejoice over his evil.

[11] In necessity even enemies must be aided. But this is more an effect of justice than of friendship. St. Thom. 3. Dist. 30. q. 1. art. 2. ad 1.

4º They are not to be absolved, at least ordinarily [12], who, although they say that they condone, nevertheless refuse to address an enemy, unless this can be pardoned to the recollection and horror of the injury. A fortiori those who assert that they will never say even a word to him; for these deservedly cast suspicion of a depravedly disposed soul.

[12] Certainly he who adheres to mortal sin cannot be absolved. Therefore also A., while he tempers his opinion thus, supposes that grave fault can sometimes be absent in the case. And indeed 1º Besides the horror from the memory of a recent injury, and the other causes enumerated above at n. 224, which excuse from furnishing common signs for some time, we have already noted that no one is bound to preserve familiarity or friendship which could be admitted or not admitted at pleasure; indeed it happens daily that friendships of this sort cease, now gradually, now abruptly, and often without blame. 2º Even if a disordered spirit and some appetite of unjust revenge are not entirely absent, this person is not therefore at once to be condemned of grave fault. For just as the inflicting of evil, so also the desire of another's evil admits smallness of matter; and if this has force with those who have harmed us in nothing, a fortiori it ought to have force with an enemy, who by injuring unjustly has provoked just indignation. Therefore the question returns to this, whether the offended person (whether he says he forgives or not), while he refuses certain offices to the offender, inflicts or wishes some grave evil upon him. For if this is absent, and no other grave inconveniences can be feared from those offices denied to the offender, the Confessor is indeed bound to the office of exhorting according to his powers, but by no necessity of denying absolution.

** And with this tempering those words of St. Alphonsus (Lib. 2. n. 28.) seem to be understood: But a religious who had refused for a notable time, say after a week, to speak with an enemy, Sporer rightly says n. 34. is not to be absolved. For thus Sporer (l. c.): In a monastery of nuns, two of them after a quarrel professed..., for many years not to wish to speak with one another, and in fact they were not speaking for a long time. The Confessor doubted whether they were in a state of mortal sin, and therefore whether sacramental absolution... was to be denied to those obstinately persevering thus, or not? Resp. Altogether that it is so: at least when the cause of the quarrel, or the quarrel itself, was grave. Because in that case the cessation of speaking for so long a time or so many years is rightly presumed to proceed from grave hatred. But if the cause of the quarrel was itself light, as much as concerns this head of the signification of hatred and scandal, the omission of speaking could be excused from mortal sin and be reputed venial. Because then, especially in women, and those otherwise fearful of conscience, it is not presumed to arise from grave hatred, but from natural feminine passion. Although again from another head, namely that of scandal, it could be mortal. And so, I would not absolve one still refusing to speak after one and another week.

5º Penitents who accuse themselves of hatred are not immediately to be charged with sin, especially grave sin; for often they confuse hatred properly so called, or of enmity, with hatred of abomination, or of a quality or defect, or they even labor under only some natural and invincible aversion of soul. Yet one must beware lest abomination of quality, disposition, etc., gradually extend itself to hatred of the person. - St. Lig. n. 50. - Voit, n. 703.

§ II. On the Works of Mercy

Some works of mercy are corporal, such as to furnish food to the poor, to clothe the naked, etc.; and others spiritual, such as to correct sinners, to teach the ignorant, to console the sad, etc. We shall speak specifically about only two: 1º about alms; 2º about fraternal correction, insofar as they are referred to the precept of Charity.

Point I. On Alms

227. ○ I say: There is truly a precept of bestowing alms upon the needy. This is clear 1º from the natural law, namely from the general law of Charity, by which we are obliged to love the neighbor, and consequently to bring help to him in necessity. Recall above concerning Charity, n. 221. - It is clear 2º from Sacred Scripture. For thus Eccli. 4.1: Do not defraud the poor man of alms; and Matt. 25.42: Depart from me, accursed, into

eternal fire... for I was hungry and you did not give me to eat; I was thirsty, and you did not give me drink.

Rules [1]. - In extreme necessity, the neighbor must be succored even from goods necessary to one's state [2]; for thus the right order of Charity requires, since the life of the neighbor ought to prevail over our good, far inferior.

[1] St. Thomas hands down the general rule (2. 2. q. 32. art. 5.), that something be considered on the part of the giver, and something on the part of the recipient of alms. On the part of the giver (he says) it must be considered that what is to be spent on alms be superfluous to him.... But on the part of the recipient it is required that he have necessity; otherwise there would be no reason why alms should be given to him.

[2] Things necessary to one's state or becomingness are to be distinguished from those things which are necessary to life. Thus St. Thomas (4. Dist. 15. q. 2. art. 4. q. 1.): Something is called necessary to us in two ways. In one way, that without which someone cannot be or live. In another way something is called necessary to us which we need for living honorably or decently according to our state, for example, in the manner of nobles.

And this distinction has place both with regard to oneself and with regard to those whose care is incumbent upon someone. Thus St. Thom. (l. c.): But in each of the said ways something can be necessary to someone in two ways, either by reason of himself..., or by reason of those whose care he ought to bear. Therefore some are beside the point when they refer to the necessity of mere becomingness those things which are necessary for feeding and educating children; indeed also the support of a maidservant who either guards infants or watches over the sick would wrongly be referred to mere becomingness.

Now since superfluous is said of what is not necessary, therefore superfluous also is said in two ways: in one way, what is superfluous to one's state, namely that by the removal of which nothing is lost to the becomingness of one's state; in another way, what is not necessary to life, although it seems necessary to the becomingness of one's state. And from this superfluous there presses the obligation of succoring the neighbor in extreme necessity, but not from things necessary to life. For as St. Thomas has (l. c.): That without which someone, either he himself or those whose care he has, cannot be or live, ought not to be spent in alms.

II. In grave necessity, according to some, on account of the same reason, the neighbor must be succored from goods in some way necessary to one's state, or with moderate detriment to one's state. But according to others, probably, he must be succored only from goods which are superfluous to one's state or becomingness [3].

[3] In reality there was scarcely any disagreement about this among the doctors. For they were proposing the question whether in grave necessity alms were to be bestowed with detriment to one's own state. Now 1° some, such as, for example, Valentia (Tom. 3. Disp. 9. punct. 4.) and Bannez (In 2. 2. q. 32. art. 6. dub. 4.), therefore affirmed, because they were discoursing about a necessity of this kind which in reality could be aided without the loss of one's own state. For as they reasoned, since the becomingness of one's own state according to St. Thomas (4. Dist. 15. q. 2. art. 4. q. 1.) admits latitude, so that by many things added a man does not exceed the condition of his state, and by many things also removed the condition of his state is decently preserved; for this reason alms bring either no detriment or hardly any appreciable detriment (as Laymann says, lib. 2. Tr. 3. Cap. 6. n. 4.) to one's own state. Others, on the contrary, therefore denied, because they were speaking about that necessity for driving away which it would have been necessary to lose or certainly diminish one's own state; but they rightly contended that no one is bound to the loss of his own state. 2° Those who affirmed were discoursing about a necessity so grave that it approached extreme, or was to be equated with it; but those denying understood grave necessity insofar as it is broadly distinguished from extreme. Wherefore by the best right Viva (at Prop. XII from those condemned by Innocent XI, n. VIII.) according to this diverse acceptance of grave necessity calls each opinion both the more common and to be followed. Yet Viva's doctrine as to some part must be rightly understood.

For another head of controversy occurs here, concerning which you have the Doctors' opinions in reality especially discrepant: namely, whether the reason of grave necessity which otherwise does not tend toward extreme necessity induces an obligation, and indeed a grave one, of succoring a needy person certainly determined from superfluous things.

St. Alphonsus embraces the affirmative opinion (Lib. 2. n. 31.), and adds that it is clearly inferred from Prop. XII among those condemned by Innocent XI: Scarcely among secular persons will you find, even among kings, what is superfluous to one's state. And so scarcely anyone is bound to alms, when he is bound only from what is superfluous to one's state. But a proposition of this kind is too vague for that conclusion to be able to be inferred from it; and from whatever side it is considered, it plainly permits also the opposite opinion, which obliges one who has things superfluous to his state or becomingness indeed to distribute alms even outside the occasion of extreme or quasi-extreme necessity, yet does not impose the burden of succoring this or that particular person suffering necessity even grave. Whence Duarte rightly (Brev. Exposit. Propp. damnatt. V. Eleemosyna n. 222.) denies that this latter opinion is wounded in any way by the force of that condemnation.

Moreover if you inquire about the weight of authority, many say that the first opinion is commonly handed down by the Doctors. But if you yourself consult those Doctors, here and there you will find examples of necessity proposed which exhibit quasi-extreme necessity.

But if you inspect the force of the reasons, it must not be denied that each opinion is pressed by rather strong difficulties, so that at length it is lawful to conclude that this question is very obscure and most intricate. Concerning this matter, go to Vasquez (Opusc. De Eleemosyna Cap. 1. Dub. III.), who certainly ought to seem less suspect for this reason, that, inclining into the stricter doctrine, he does not hesitate to defend a grave obligation of alms in grave necessity of the neighbor even from things necessary to one's state, although the Jansenian treachery of Montaltius or Pascal did not hesitate to traduce him as the author of the aforesaid condemned thesis.

Therefore from these things you will infer that in this question that canon is finally to be summoned, that a certain obligation in so obscure and controverted a matter (see Sanchez, Consil. Lib. 1. Cap. 5. Dub. 5. n. 39. 40.) can by no means be urged, all the more because St. Thomas also stands for the opposite opinion, as is plain also from the following Note, and Vasquez himself too (l. c. Dub. IV.), although against himself, is finally forced to confess.

III. In common necessity, although there is no obligation of giving alms to this or that person in particular, nevertheless, from the common opinion of the Doctors, he could not be excused from sin who, having goods even superfluous to his state, would never be willing to give any alms [4].

[4] This is established against the opinion which in common necessity admits no obligation of giving even from things superfluous to one's state or becomingness; which opinion Bannez (In 2. 2. q. 32. art. 6. dub. 2.) attributes to Alensis, Gabriel, St. Antoninus, Turrecremata, and other Summists, and on account of their authority (ibid. Concl. 3.) calls it not improbable; but Peter Ledesma (Summ. Part. 2. Tr. 4. Cap. 3. Concl. 13.) calls it absolutely probable.

But what A. has here concerning common necessity, the same can be concluded concerning grave necessity with St. Thomas (Quodlib. 8. art. 12.): Supposing (he says) that someone has from the superfluous..., which he is bound to bestow upon the poor, either he sees in the poor person asking evident signs of extreme necessity, or not. If he sees them, it is certain that he is bound to give, and sins by not giving: for Ambrose speaks in this case: Feed the one dying from hunger; if you have not fed him, you have killed him. But if they do not appear, then he is not bound to give to the poor man asking: because although he is bound to give the superfluous to the poor, nevertheless he is not bound to give to all, nor to give to this one, but he is bound to distribute according as it shall seem opportune to himself. In these words it is plain that the obligation of giving alms on the part of the poor person is asserted only then, if his necessity appears extreme. But the superfluous from which the obligation of bestowing some alms generally is here drawn, must be understood of what is superfluous even to the becomingness of one's state, as St. Thomas clearly hands down both often elsewhere and in this place (In 4. Dist. 15. q. 2. art. 1. q. 2. ad 4.): The time to which the precept about making alms obliges is taken on the part of the recipient and on the part of the giver. But on the part of the recipient, because probable signs appear of extreme necessity to come, unless aid is given to him... But on the part of the giver, when a man has many things which he does not need either for the sustenance of his life and of his own, or for the decent preservation of his state, although the poor of extreme necessity do not appear.

228. Questions. - Q. 1° Does the precept of alms oblige under grave obligation?

Resp. 1° Affirm., in extreme necessity. - Thus all.

Resp. 2º Also affirm., in grave necessity which could soon turn into extreme. Otherwise, concerning grave sin, it is not clear, since the matter is subjected to controversy among the Doctors. But the precept of alms is in itself grave, and indeed also regards common necessity, since cases of grave necessity rarely occur. - Thus commonly with St. Lig. n. 32. [5], against Busemb. and many others.

[5] St. Alphonsus (Lib. 2. n. 32.), as is plain, adheres to the opinion which stands for a grave obligation as if to the more common. But indeed, while he alleges thirteen authors for it, against the opposite, which admits either no obligation or only a light one in this, he himself enumerates seventeen, to whom others could also easily be added. Moreover, since from those thirteen whom he cites for himself, you have ten, namely Palaus (Tr. 6. Disp. 2. Punct. 2. n. 15.), the Salmanticenses (Tract. 21. Cap. 7. n. 17.), and eight others brought forward by them, who indeed fight for some obligation, but nowhere hand down that this is to be called grave; thence it is to be concluded that this opinion is not common, but that of certain few against the common.

Hence the same St. Alphonsus (l. c.) does not reject the opinion of Laymann, namely that a Confessor ought not easily to deny absolution to a rich man who wishes to give no alms in common necessities, since about this obligation, what sort it is, the doctors do not agree. And Sanchez, who otherwise (Consil. Lib. 1. Cap. 5. Dub. 5. n. 37.) stands for grave obligation, at length (ibid. n. 41.) concludes that someone is not easily to be condemned, reporting these things from Medina: Because it is too difficult to judge to whom, and how much under mortal obligation we are bound to give; because it is uncertain by what necessary things can be distinguished from superfluous things; and what and how great necessity is required in the poor person; also how much is necessary to each one for nature and state; and whether the necessity of the poor person is true or simulated; and whether there are other rich persons who are willing to succor them; and many other things are uncertain, by ignorance of which they are not easily to be condemned. Compare Diana (Tom. 4. Tr. 7. Res. 8.), where, for the sake of a Confessor who was pressed by great straits in hearing the confessions of the rich, he excellently notes many things.

** Against this Note, VV. opposed not one or another, but altogether twenty columns (Pag. 152-161.). But to what end, it is scarcely possible to divine. For as to the hinge of the question, VV. could not deny those things which are contained in the Note, namely 1º that in St. Alphonsus himself are numbered seventeen (indeed in reality there are numbered twenty) who teach the contrary, and 2º that of thirteen brought forward for himself by St. Alphonsus, ten have not a word about the gravity of this obligation. Now is not even that one thing more than enough for establishing that the gravity of the obligation is not clear, and therefore from the common and certain canon it is not lawful for the Confessor to impose or intimate it? And although on account of the authority of St. Alphonsus we may wish to attribute probability to his opinion; but has not St. Alphonsus a hundred times inculcated that for imposing grave obligations a probable opinion is not sufficient?

But VV. are moved because in the Note it is said that St. Alphonsus's opinion should rather be called that of a few against the common opinion. We shall add some things about this also, which will be enough. And first of all, let it not be omitted what is to be judged about those three who remain from the thirteen alleged by St. Alphonsus for himself, and they are Holzmann, Collet, and Viva. Now 1º Holzmann (De Virt. Th. Tr. 1. §. 4. n. 177.) writes that the conclusion cannot be called simply certain. Therefore from here we have a mere probability of obligation. 2º Collet hands down things so enormous that even St. Alph. rejects them. For, considering the context, he indicates eternal punishment for one denying alms to a common poor person, unless by giving more to others you compensate what you denied to others (De Charit. art. 3.). 3º Finally Viva (Ad prop. XII. Innoc. XI. n. 10.) strengthens his thesis by four citations, of which three are certainly false, and perhaps even the fourth. Do authorities of this kind add weight to the thesis?

Let us come to the things which VV. oppose. And 1º they contend that those also are to be understood of a grave obligation who establish an obligation in any way, although they do not call it grave. The reason is that charity is a precept grave from its genus; and therefore only lightness of matter excuses from gravity of fault. - Resp. Perhaps these things could have force if authors had assigned no case of grave obligation concerning the same matter. But when, with various hypotheses made, some Author has already expressly established where grave obligation presses, and then moves a question about another hypothesis not against those who admit a light obligation, but against those who admit none (as in our case), and indeed asserts obligation, but, otherwise than he had previously been accustomed carefully to do, adds nothing about gravity, it is false that he is to be understood of a grave one; for he would not have omitted to note this also.

2º They note that in recounting those who teach the opinion of St. Alphonsus, St. Thomas was omitted, to whom they join Cajetan. - Resp. Let them produce, I ask, some words of St. Thomas or Cajetan where they assert a grave obligation in the common necessity of the poor. This surely they will never furnish.

3º Next they allege Suarez, Mastrius, Sporer, the Writers of the Society of Jesus as witness Croix, Reuter, Voit, Elbel, Charmes, Concina, Palaus, the Salmanticenses, Cajetan apud Gonet, Bannez, Peter de Ledesma, Tapia, Martinez, and finally Sanchez. - Resp. From all these, only five mention some grave obligation, namely Suarez, Sporer, Reuter, Voit, and Elbel; but the rest say that some obligation is present, by no means that it is grave. Moreover Suarez limits, unless someone should prefer to aid some grave necessity. Sporer (n. 66.) adds: The Doctors rightly warn with Laymann that a Confessor ought not easily or scarcely ever deny absolution to the rich who refuse to make alms in common necessity. Voit transcribes from Babenstuber, whom he alleges: but he omits that Babenstuber, no otherwise than Sporer, presently adopts the aforesaid warning of Laymann. Therefore altogether two remain, Elbel and Reuter, of whom the latter uses this magnificent (!) argument for his matter, that unless we are obliged under grave obligation in the common necessity of the poor, someone can easily slip from common necessity into grave necessity!

4º But, say VV., Sanchez alleges twenty Authors; Concina truly thirty-six; and finally Croix (n. 202.) confesses that the opinion of St. Alphonsus was commonly taught by the Writers of the Society of Jesus. - Resp. Sanchez (Cons. Lib. 1. c. 5. dub. 5. n. 36.) expressly says that the opposite opinion is quite probable; but the thesis for which (ibid. n. 37.) he alleges twenty Authors is this: The second, more probable opinion teaches that one is bound in common necessities: where there is nothing about a grave obligation. Likewise the thesis for which Concina (In Dec. diss. 6. c. 13. n. 6.) brings forward thirty-six Authors is of this kind: The rich are bound under precept to distribute superfluous things, both of nature and of person or state, among the poor: and here likewise you have not a word about the gravity of obligation. Finally, concerning the Authors of the Society of Jesus, Croix has these things (Lib. 2. n. 202.): Although the Authors of the Society commonly teach that the rich are bound in common necessity to give alms, etc., and again it is lawful to ask here: where in these is there a trace of grave obligation? Therefore let us conclude that from all that apparatus of twenty columns, which VV. elaborated with great zeal, scarcely two or three authors exist who can in any way be joined to the testimonies brought forward by St. Alphonsus, which are less firm of themselves.

5º Finally it pleased VV. to bring forward the things which Concina wrote on this argument against Antoninus Diana. - Resp. It is of no concern to us to dwell on these. For recently we saw that the thesis of Concina does not look to the gravity of obligation, but to some obligation or other. Therefore that dispute does not pertain to the present question.

Q. 2º What goods are judged necessary to one's state?

Resp. They are those which are required for sustaining servants, receiving guests, for honorable donations, for holding banquets according to custom, for moderate pomp according to condition, etc. - Thus commonly. - St. Lig. ibid. Q. 3º What quantity of goods is to be given to the poor?

Resp. 1º In extreme necessity, or necessity so grave that it can easily become extreme, as much must be given here and now as suffices for relieving this necessity, unless there are others who are willing to succor him. Yet no one is bound to pay out a great sum of money to free a poor man from danger of death, or to procure for him extraordinary and very expensive remedies [6]. - St. Lig. n. 31.

[6] Thence Palaus rightly says after others (Tr. 6. Disp. 2. Punct. 2. n. 6.) that although in extreme necessity of the neighbor you are bound to succor even from goods necessary to one's state, nevertheless you are not bound so far that you ought to fall from your state.

Resp. 2º In common necessity, a determinate quantity cannot be assigned. Yet more probably it seems to suffice to bestow the fiftieth part of those things which are superfluous to one's state. - Thus more commonly. - St. Lig. n. 32 and in Hom. apost. n. 19. [7]. Yet certain persons contend that the twentieth or even the tenth part must be bestowed upon the poor. Thus Concina, etc.

[7] Some, such as Roncaglia, Mazzotta, etc. apud St. Alphonsus (Lib. 2. n. 32.), express this measure as if the fiftieth part of annual revenues must be bestowed upon the poor; which rule, since it does not distinguish superfluous things from non-superfluous things, plainly sounds like something absurd. More clearly St. Alphonsus (Hom. Apost. Tr. 4. n. 19.) has it

thus: Nevertheless there is not an obligation of furnishing the whole superfluous, but it suffices if the fiftieth part of annual revenues, WHICH REMAIN OVER, be given...; and if the revenues are richer... less than the fiftieth part. And the mind of the Doctors is plainly evident from the comparison of laymen with clerics, while they obligate the latter to bestow the whole superfluous from beneficial fruits, but laymen only to some portion.

Q. 4º Who ought, or are able, to make alms?

Resp. 1º Generally, only those who are true owners and administrators of their goods [8].

[8] ** Yet alms can be made from another's goods when the neighbor is in extreme or quasi-extreme necessity, and cannot be succored otherwise. Thus with Busembaum St. Alphonsus (Lib. 2. n. 33.), who adds: But if you could have bestowed your own thing, and you gave another's, it seems that you are bound to restitution. Thus Croix (Lib. 3. p. 2. n. 434.) with Sporer. But in truth Sporer writes a little otherwise concerning this matter thus (In 4. Dec. Praec. Cap. 6. n. 50.): When several persons know the extreme necessity of the neighbor, all are bound to succor by equal parts: if the others are unwilling, all will be bound in solidum, and all knowing and omitting will sin mortally. If one should wish to furnish the whole by himself, the others will be freed. But if, after the others have been warned about contributing and refuse, one has furnished the whole, he will be able by right to exact proportionate parts from the others, or to compensate. Moreover, if at any time alms are made from another's goods in extreme necessity, one must beware 1º that these be superfluous to the life of the other; 2º that it not be that quantity which no one is bound to bestow even in the extreme necessity of another.

Resp. 2º Yet a wife can make ordinary and very common alms, according to the custom of her condition; but not extraordinary ones, without the consent of her husband, unless from goods wholly her own, of which, namely, she has both ownership and administration and receives the fruits. - St. Lig. n. 33.

Resp. 3º Children can give nothing, except in very slight matters. Except unless they have their own goods, or goods permitted to their liberty from the consent of the father or by another title. But servants can give nothing without the express, or tacit, or prudently presumed consent of their masters. - St. Lig. ibid.

229. Resolves. - 1º The rich sin who always harshly repel the poor from themselves, and reserve all superfluous things for acquiring a higher state. For otherwise so moderate an alms, which has been mentioned above, cannot impede an honorable ascent to a higher state.

2º Foreigners or infidels who are in necessity are not to be excluded from alms, provided nevertheless the right order of Charity is preserved, and unless for a just cause a custom or statute has obtained somewhere of keeping traveling poor away from cities, so that namely they may be supported by their own citizens.

3º Yet there is no obligation of making alms to poor persons unwilling to labor, because they are not truly poor; indeed this would be illicit, as harmful to them.

4º Physicians, advocates, etc., are bound to devote their work to the poor gratis, because they are in true necessity, nor can they be helped by others. - St. Thom. 2. 2. quaest. 71. art. 1.

5º Those who live in cities where begging for alms is prohibited are not exempt from the precept of alms, because other means of satisfying the precept are not lacking, for example, by bestowing money upon collectors in Churches, etc., or upon Pastors or others placed over the care of the needy [9]. But where the precept of succoring the neighbor in extreme necessity presses, the petition of the poor person is not to be awaited.

[9] Where begging for alms is forbidden, the poor are accustomed to be supported by public stipends; and therefore whoever pays tributes has already contributed something to that end, which can more or less contribute to fulfilling the precept of alms.

Point II. On Fraternal Correction

Fraternal correction is an admonition by which someone from Charity tries to call another back from sin [1].

[1] Fraternal correction, or rebuke (as St. Thomas prefers, 4. Dist. 19. q. 2. art. 1.), properly regards the amendment of a past fall. But the Holy Doctor defines it thus (ibid.): Fraternal rebuke is an admonition of a brother concerning the amendment of faults, proceeding from fraternal charity..., and it is made known by three things which are put there, namely the act itself, when he says admonition of a brother; the end, when he says concerning the amendment of faults; the principle, when he says proceeding from fraternal charity.

Why it is called fraternal, even when it is made by a prelate, the Holy Doctor excellently explains thus (ibid.): Someone departing from the way of rectitude can be led back to the way in two ways... In one way through fear of the shameful thing or hatred of the thing itself, as when someone abominates the shamefulness of sin and the confusion following from it. In another way through fear and hatred of the sorrowful thing, as when someone recoils from sin on account of penalties inflicted for sins, or which he fears will be inflicted. And after he notes that the first way is more properly called rebuke, but the other correction, he continues: The second way belongs only to prelates, whose words have coercive force through the infliction of penalties; but the first way does not require the order of prelacy: although even the order of prelacy requires it, because the second way ought not to be employed, except where the first has no place, even by prelates. And therefore rebuke, when it is done outside the order of prelacy, is called fraternal.

The Holy Doctor also beautifully gives the reason why amendment of faults, rather than of sins, is said (ibid. ad 5.): No one is moved from hatred or fear of the shameful thing except he in whom there is in some way the will of the beautiful and good: and therefore since rebuke proceeds by this way..., it properly belongs to him to be rebuked, who has a purpose of good, from which nevertheless either through ignorance or through some negligence he is turned away; and therefore it more properly regards omission, which can be considered in the very transgression, than the perversity of transgression: and for this reason it is more fittingly called amendment of faults than amendment of sins.

230. Principles. - I. There is a true precept of fraternal correction. This is clear 1º from the natural law of Charity, by which we are obliged to remove the evils of the neighbor. - 2º From Sacred Scripture, Eccli. 19.14: Rebuke the neighbor... lest perhaps he repeat it; and Matt. 18.15: If your brother has sinned against you, go and rebuke him between you and him alone. If he shall hear you, you will have gained your brother.

II. For the strict obligation of this precept there is required 1º that the sin of the neighbor, or the proximate danger of sinning, be certainly clear [2]. - 2º That some hope, indeed a greater probability, of amendment shine forth. - 3º That there is not another equally suitable person who is believed likely to rebuke. - 4º That the correction can be made without grave inconvenience to the one rebuking. - 5º That it be judged necessary for the amendment of the delinquent, and there be not at least probable hope that he will amend himself of his own accord. - St. Lig. n. 38 et seq., and others commonly.

[2] It has already been noted that the duty of fraternal rebuke properly regards not the warding off of future faults, but the amending of past ones.

Moreover the matter of rebuke can be not only mortal sins, but also venial ones. But the reasons why the obligation is rarer with regard to venial sins, see in Laymann (Lib. 2. Tr. 3. Cap. 7. n. 3.). Yet Diana deservedly (Tom. 7. Tr. 4. Res. 8.) adds an exception, if the discussion is about religious Orders. For if through venial sins the vigor of discipline seems either to be dissolved, or even greatly diminished, the obligation can be grave not only in prelates, but also in private persons, since each is bound from charity to avert this most grave evil of religion.

231. Questions. - Q. 1º Does the precept of fraternal correction oblige under grave obligation?

Resp. Affirm. per se, if the required conditions are present, and it is a matter of grave matter. Hence he can sin gravely who, from vain fear lest the neighbor be somewhat offended, or lest he himself suffer a slight detriment from it, omits correction in a grave matter, where he thinks it truly will profit. - Yet he sins lightly who from pusillanimity and shame reckons himself less suitable for rebuking. - St. Thom. 2. 2. qu. 33. art. 2. - St. Lig. n. 37.

Q. 2º Does the precept of correction have place where someone sins from ignorance?

Resp. 1º Affirm., if it is a matter of vincible ignorance, because this does not excuse from sin, according to what was said, n. 14.

Resp. 2º But if the ignorance is invincible, it is not so much a matter of fraternal correction as of warning, by which the neighbor is taught concerning the truth; since correction is an admonition of a brother concerning the amendment of faults. Now in the case Charity can impel in many ways, namely 1º on account of damage to a third party; 2º on account of damage to the ignorant person himself; 3º on account of scandal; 4º on account of the honor of God; 5º on account of irreverence toward Religion. But if no damage or inconvenience would follow, there will be almost no obligation of making the admonition, except with regard to those who from their office ought to teach others, among whom is also the Confessor. But they are to be taught both because ignorance is an evil of the ignorant person himself, and because other inconveniences can and are accustomed to flow thence.

They add generally that although fruit is not hoped for, and ignorance is invincible, nevertheless admonition still ought to be made if it is a matter of things necessary by necessity of means, or of those which furnish public scandal, namely lest others think that what is not corrected is lawful. - Scavini.

232. ○ Q. 3º What order is to be observed in fraternal correction?

Resp. The order assigned by Christ himself is to be observed, unless circumstances suggest otherwise. - Hence 1º Rebuke secretly: Rebuke him between you and him alone. - 2º Before witnesses, if the prior admonition does not suffice: If he shall not hear you, take with you one or two. - 3º Bring the matter to the Superior: Tell the Church (Matt. 18.15 et seq.).

Sometimes that order can and ought to be inverted, namely 1º if the sin is public or soon to be made public; - 2º if it is gravely harmful to another; 3º if secret admonition is not judged likely to profit; - 4º if it is preferable to manifest the matter at once to the Superior; - 5º if the delinquent has yielded his right, as happens in various religious Orders [3]. - St. Lig. n. 40, etc.

[3] This yielding of one's own right, so that it is lawful to bring the matter to the Superior without the delinquent being forewarned, is very opportune and nearly necessary for both the common good and the good of private persons. For private rebuke among brothers often involves many difficulties, and the hope of amendment is not rarely uncertain. Now either the omission of rebuke or the uncertain outcome of the same brings grave harm both to the guilty and to the common good: but, on the contrary, by the work of the Superior a result both more certain and more efficacious can be hoped for.

233. Resolves. - 1º Fraternal correction must be made with true Charity also as to the manner; therefore it ought to be paternal toward inferiors, benign among equals, and reverential toward Superiors [4].

[4] ** To this it pertains that time, place, and other circumstances be opportunely chosen. Therefore he does not sin who defers the matter to another time, when he can rebuke either more conveniently or just as conveniently, unless perhaps grave danger threatens from delay. Appositely St. Thomas (2. 2. q. 33. art. 2. ad 3.): Fraternal rebuke can be omitted... meritoriously, when someone omits correction from charity. For Augustine says in I. De Civ. Dei: If anyone spares those acting badly from being reproved and corrected for this reason, because an opportune time is sought, or he fears concerning the very same persons lest from this they be made worse, ... it does not seem to be an occasion of cupidity, but a counsel of charity.

2º Private persons among themselves are rarely bound to correction, at least under grave obligation, unless they are joined familiarly among themselves; because rarely are all the required conditions found [5]; still more rarely toward Superiors because of unsuitability.

[5] To this pertain the things which grave Doctors hand down concerning him who does not restrain detractors. Concerning this matter St. Thomas (2. 2. q. 73. art. 4.): If the sin does not please him, but from fear or negligence or even a certain shame he omits to repel the detractor, he indeed sins, but much less than the detractor, and for the most part venially. But in this matter the Confessor must use much discretion. For he cannot require that someone forestall detraction, when he does not even sufficiently know where the speech of the other tends: for this would both be injurious to the other, and too liable to scruples. But if detraction has manifestly come forth, the damage indeed is already scarcely reparable, but fraternal rebuke at that time is much more difficult, and more often will be found more apt for stirring up the heat of anger than for amending the detractor.

3º For the most part prudence counsels that correction be omitted toward those whose disposition is wholly unknown, lest receiving rebuke with an unjust mind they become worse.

4º The scrupulous are ordinarily excused from the office of fraternal correction; because either they are too much wearied, or they are unsuitable; for, disturbed by scruples and anxieties, they lack the necessary discretion for correcting, and are not strong enough to attend to excusing causes.

5º Prelates, Bishops, Pastors, Magistrates are bound, even with great inconvenience, to impede both public and occult sins of their subjects [6], because from justice they are obliged to procure and protect the common good.

[6] ** Yet this office, as is plain from the preceding definition, does not properly pertain to fraternal rebuke.

6º Superiors are bound from office to keep watch over subjects, and to inquire into their sins, yet not very much concerning some certain person, unless some particular reason moves them to this [7]. Nor ought they easily to admit spontaneous accusers, and much less immediately to give faith to them, because sometimes these, under the appearance of the common good, seek themselves.

[7] The duty of investigating pertains to Superiors insofar as they bear the special care of individuals and besides of the whole community; but by no means to the office of fraternal correction, which, as we said above with St. Thomas, per se is made outside the order of prelacy. St. Thomas well says (2. 2. q. 33. art. 2. ad 4.): Those benefits which are not owed to a certain person, but commonly to all neighbors, whether they are corporal or spiritual, we ought not to seek those upon whom we may bestow them, but it suffices that we bestow them on those who occur to us... And on account of this he says (Augustine) that our Lord warns us not to neglect our sins mutually, not by seeking what you may reprehend, but by seeing what you may correct. Otherwise we would be made spies of the life of others, contrary to what is said, Prov. 24: Do not seek impiety in the house of the just man, and do not devastate his rest.

Besides the fact that such investigation would become an intolerable burden, as indeed those who preside feel, it is vicious and reprehensible (as Diana well warns, Tom. 7. Tr. 4. Res. 25. n. 3.); because it generates scandals and furnishes occasion for hatreds and dissensions. For men bear with annoyance that their deeds are scrutinized by others, and by its very nature such inquiry inflicts an injury on the neighbor, whose honor and esteem it opposes, which all desire to have best concerning themselves.

7º In communities living under rule, in colleges, seminaries, etc., it is for the most part expedient that correction be made by way of denunciation to the Superior, either by oneself or through another [8]; nor can members or those living together be absolved if they do not consent to a denunciation of this kind where it is a matter of grave damage to the community. Likewise by natural right corrupting Priests, who inflict or seem likely to inflict great spiritual damage on the faithful, are to be denounced to ecclesiastical Superiors. - Thus commonly.

[8] Denunciation, which is called evangelical, is to be carefully distinguished from another, which is called judicial. The former, which is proper to fraternal correction, is made to the superior as to a father, and per se first tends to the good of the one denounced. But the other is made to the superior as to a judge, so that he may proceed from a known cause, and tends to the good of others, especially the common good or that of the denouncer himself. Now where denunciation is made to the superior merely as to a father, he can in no way proceed as judge.

Concerning this St. Thomas says (Quodlib. XI. art. 13.): If I know that a brother will be corrected through me, then I ought not to denounce this to the prelate. But if it seems that this may be better done through the prelate, and the prelate nevertheless is pious, discreet, and spiritual, not having rancor or hatred against that subject, then he can lawfully denounce this to him; and then he does not tell the Church, because he does not tell him as prelate, but as a person profiting toward the correction and amendment of the neighbor.

§ III. On the Vices Opposed to Charity Toward Neighbor

The principal ones are hatred, envy, quarrels, scandal, and cooperation with the sins of others.

We shall speak only about the two latter, since concerning the others it has already been treated in another place, or it must be spoken of in the fifth precept of the Decalogue.

Point I. On Scandal

Section I — On Scandal in General

234. ◦ DEFINITION. Scandal is a saying or deed less right, furnishing someone an occasion of spiritual ruin.

DIVISION. Scandal is distinguished as direct or indirect, according as the evil action of another either is intended, or although it is not intended, nevertheless is foreseen at least in the confused way.

Direct scandal is also called diabolical when the spiritual ruin of the neighbor is properly intended. But if the spiritual ruin of another is not intended, but only the satisfaction of one's own will, it is called simply direct [1].

[1] More briefly Suarez (De Char. Disp. 10. Sect. 2. n. 1.): It can be understood in three ways that one leads someone to sinning. First with this direct intention, that he may spiritually die, as the devil does. Second also directly by inducing to the work, not that he may fall, but on account of some utility or pleasure of mine. Third only indirectly, by doing something whence he is stirred up to sinning. The first with Cardinal de Lugo (De Poenit. Disp. 16. n. 157.) can be called direct and formal scandal; the second simply direct; the third indirect.

Theologians commonly distinguish active and passive scandal. Active scandal is that to which the given definition applies. Passive scandal is the spiritual ruin of the neighbor itself, and is improperly called scandal, since it ought better to be called the effect of scandal [2].

[2] It must be noted, says Suarez (De Char. Disp. 10. Sect. 1. n. 1.), that commonly this passive scandal is wont to be thought and called not so much the spiritual ruin which consists in sin, as a sort of astonishment and rumor which is stirred up in

neighbors from the sin of another; but that never has the proper reason of scandal, unless it includes some malice which in some way draws its origin from him who gave scandal, as is gathered from Jerome..., and St. Thomas.

But scandal can be active or given, without being passive or received; because an action apt per se for scandal can be placed without the effect following. And vice versa it can be received without being given; but then the scandal is not properly to be attributed to the action of the neighbor, but rather to the ignorance, imagination, or even malice of him who suffers the scandal, or admits it without foundation. But this is called scandal of the little ones, if it is taken up from weakness or ignorance of the neighbor; but it is called pharisaical if it comes from the mere malice of the subject. - St. Lig. n. 43.

235. Principles. - I. Scandal, even indirect, is not only a grave sin from its genus, but a sin of specific malice [3], most great and horrible, since it thrusts down into Gehenna souls redeemed by Christ. For this reason Christ the Lord exclaims, Matt. 18.7: Woe to the world from scandals... Woe to that man through whom scandal comes [4].

[3] The specific reason of this sin is that it is against charity, and, as St. Thomas says (2. 2. q. 43. art. 3.), it is directly opposed to fraternal correction, in which the removal of a special harm is intended. But there are those who think that St. Thomas held this only concerning direct scandal, and indeed that by which the sin of another is intended as his spiritual evil. Thus Suarez (De Charit. disp. 10. sect. 2. n. 4.), who alleges others of the older authors for the same opinion. But those words of St. Thomas: When someone... intends to draw another to sinning, do not necessarily signify the intention of drawing to sin insofar as it is the spiritual evil of another. Otherwise, indeed, Suarez himself (ibid. n. 3.) cites the same Holy Doctor for himself, where he attributes the proper malice of scandal to any direct scandal.

But that this malice is present also in indirect scandal is the common doctrine against some older authors (apud Suar. l. c. n. 5.), and is easily proved. For it is clear that a sin is aggravated, even by a new species, from harm foreseen with the obligation of avoiding it, even if it is not intended per se: and this is plainly evident, because in morals the direct and indirect voluntary belong to the same species.

[4] Yet do not infer that the sin of scandal is always mortal. For one can sin venially in this not only on account of the imperfection of the act, but also on account of smallness of matter, namely if you induce another only to a light fault, for example, to lying. Thus St. Thomas (2. 2. q. 43. art. 4.): But if he intends to induce the neighbor to sin venially..., it is a venial sin. And this indeed, as St. Thomas has (l. c.), has force not only with regard to indirect scandal, but also with regard to direct; and it is to be understood of the act insofar as it induces the spiritual ruin of another. For if the act by which scandal is begotten is considered in itself, certainly (as Sanchez well notes, Moral. Lib. I. cap. 6. n. 11.) it can happen that a work otherwise mortal per se is nevertheless light with regard to the reason of scandal, and vice versa grave by reason of scandal, although per se it is either light or even in no way evil, but only has the appearance of evil; whence that saying of Paul (1. Cor. VIII. 13.): If food scandalizes my brother, I will not eat flesh forever.

II. Scandal of the little ones or of the weak is to be avoided as often as this can be done without grave inconvenience, both by omission of an indifferent work, and even by omission of a good work not commanded; the reason is that from Charity we are bound to impede the ruin of the little ones when we easily can, for example, by abstaining from an action not very useful, or by deferring it, or by explaining our manner of acting, etc. [5].

[5] Since truly in this way too the occasion of spiritual ruin is furnished to the neighbor, so that in some proper sense this ruin is said to be caused; for this reason it has pleased others to call this scandal of the little ones not merely received, but also given. Thus Bonac. (De Pecc. Disp. 2. q. 4. p. 2. n. 2. 3.), Sanchez (Moral. Lib. I. cap. 6. n. 1.), and others.

III. Pharisaical, or malicious, scandal, at least ordinarily [6], is not necessarily to be avoided either by omission of a good work, or by omission even of an indifferent work, not having the appearance of

evil: the reason is that such scandal arises from the malice alone of him who receives the scandal, and for that reason it is in no way given, but purely received.

[6] Thus Suarez (De Charit. Disp. 10. Sect. 3. n. 9.): When it is said that the scandal of the Pharisees is not to be avoided by omitting spiritual goods, it must be understood either regularly, or certainly that it is never to be omitted in fact; nevertheless it is necessary sometimes to omit an external good work. But he gives the reason (ibid. n. 8.): If care for the good of the neighbor can oblige one to doing good, why not also sometimes to interrupting it? especially since a man is deprived of no spiritual good on account of this: both because that omission is chiefly necessary in an exterior act, but in interior desire he can retain the fruit and merit; and also because this very thing, that he deprives himself of the merit of that work on account of the good of the neighbor, will be a greater merit than the good work itself. Hence in works of counsel the matter is clear.

236. Questions. - Q. 1º Are precepts sometimes to be omitted on account of scandal of the little ones?

Resp. 1º Neg., with regard to negative precepts of natural right, because these oblige always and for always, and works contrary to them are intrinsically evil. But affirmative precepts which do not oblige for always can sometimes lawfully, indeed must [7], be omitted, for example, the precept of correcting sinners, if graver ruin is to be feared from it; but it must rather be said that then the law itself ceases. - St. Lig. n. 51.

[7] This rule is general; but, as Suarez notes (De Char. Disp. 10. Sect. 3. n. 9.), then one must prudently judge in the individual case what outweighs more, whether the ruin of the neighbor to be avoided, or that work to be omitted. It must also be considered how grave that precept is, how great its necessity or utility, and after all things have been considered judgment must be given, as must be done whenever things occur looking to diverse precepts, which nevertheless cannot be done at the same time. And indeed these things must also be considered when it is a matter of positive precepts.

Resp. 2º With regard to positive human precepts, it is controverted. The 1st probable opinion affirms, when grave inconvenience has been excluded, because the precept of avoiding scandal of the neighbor, as natural, is to be preferred to positive precepts. Hence a woman knowing that she will be shamefully desired by someone if she goes to the prescribed Mass is bound to omit it once or again, if hope is present that afterward the scandal will cease: nevertheless not more often, on account of the grave inconvenience which would follow from this. - St. Lig. ibid. - Suarez. - Laymann, etc. - Yet others deny no less probably [8]. - See St. Lig. ibid.

[8] They deny, namely, that a woman is bound to omit Mass, although they grant that she can omit it. This latter point indeed seems difficult, unless they grant it on account of whatever probability of the opposite opinion. For if the necessity of avoiding scandal is absent, it does not appear why she would not be bound to be present at Mass. Meanwhile note three things: 1º this question is made concerning scandal which someone in particular can suffer, but not when fear generally arises lest perhaps someone be scandalized; 2º an obligation of this kind of avoiding scandal rarely occurs, as Suarez notes (De Char. Disp. 10. Sect. 3. n. 10.); 3º in this variety of opinions the Confessor can indeed furnish counsels, but cannot urge obligations.

Q. 2º Are you bound to let go temporal goods in order to avoid scandal?

Resp. Neg., ordinarily speaking, because Charity toward the neighbor does not oblige with so great an inconvenience. Hence you are not bound to pay more than is fair to a workman or coachman, although you foresee that otherwise he is going to blaspheme: for that inconvenience, although light in itself, can occur more often, and thus easily becomes grave; indeed more, this could often be an incitement to blaspheming [9]. - St. Lig. n. 52.

[9] Thus neither is a pastor bound to let go those things which are owed to him by right of stole, in order, namely, to forestall slanders; for a grave inconvenience would arise from this not only to himself, but also to his successors; but with the poor it will be more expedient that he later help by alms those from whom he exacts his own right.

Q. 3º In scandal is there not only a sin against Charity, but also against the virtue to the violation of which the neighbor is induced?

Resp. 1º Affirm., with regard to direct scandal. For any virtue especially forbids not only that it be violated, but also that someone directly induce another to violate it. - Thus almost all.

Resp. 2º Some affirm also with regard to indirect scandal. Yet others better deny with Lugo, de Poenit. D. 16. n. 159. For otherwise he who by his example moves another to stealing would be bound to restitution, which the Doctors very commonly deny [10].

[10] Therefore it suffices in confession to express generally the sin of scandal, nor is it necessary to indicate the species of sin to which others were indirectly induced. Much less is there need that circumstances be expressed which perhaps add a species to the sins of others, for example, whether those who could have been induced to lust by shameful speech or picture are married or bound by vow, etc. Add that neither is it necessary, where several have been scandalized by the same act, to express their number, according to those things which were disputed in the Treatise on Sins.

** VV. (in the Note at Pag. 915.) object that what is said here, namely that it is not necessary to indicate the species of sin to which others were indirectly induced, does not cohere with the things contained in the Note at n. 235, namely that the proper malice of scandal is present both in direct and indirect scandal, because in morals the direct and indirect voluntary belong to the same species. - Resp. The proper malice of scandal is that which is opposed to charity; and this is found also in indirect scandal, because, as Suarez says (De Char. Disp. 10. Sect. 2. n. 9.), I can be bound to avoiding a work, lest the neighbor be induced to sinning, from the obligation of charity. But the same Suarez (ibid.) indicates the distinction between indirect and direct scandal with regard to guilt against another virtue thus: In that case (of indirect scandal) he is judged to be the moral cause of the ruin of the neighbor, insofar as it is against charity, but not insofar as it is against other virtues. Nor is it similar concerning him who directly induces by counsel: for this is openly against the obligation of any virtue. Lugo himself (De Poenit. Disp. 16. n. 161.) expressed this thus: Therefore neither do you sin against justice, if, foreseeing, outside your intention, that another will be induced from your intemperance to stealing, you do not impede it; because justice indeed obliges you not to procure that others steal, but not that you impede their thefts and abstain from intemperance for this end. Since Lugo has these things, and explains and defends them at length, it does not appear how St. Alphonsus (Lib. 2. n. 45.) alleges him for the opposite opinion, which he holds, as also Tamburini, who (Conf. Lib. 2. c. 1. n. 105.) teaches the same as Lugo, and moreover Collet (Tom. 3. p. 327.), who indeed establishes that one also sins against the virtue to the violation of which one induces by scandal; but he has this in the thesis concerning direct scandal.

237. ° Q. 4º Must one sinning with an accomplice declare in confession the circumstance of solicitation?

Resp. More probably neg., because, with the consent of the other acceding, solicitation is only a merely aggravating circumstance; nor less does the accomplice by consent become guilty of scandal; therefore the sin of scandal is sufficiently accused by confessing the sin committed with others. - St. Lig. n. 46. - Lugo. - Yet the Salmanticenses and others probably affirm, who say that the action of inducing to sinning is a distinct and special sin [11].

[11] That reason does not contradict the first opinion; for this does not deny that a special sin of scandal intervenes; but it affirms that this is common to each one sinning, and therefore is sufficiently expressed in confession when complicity with another is expressed, for example, the sin of fornication.

Q. 5º Is it lawful to persuade a lesser evil to someone determined upon a greater?

Resp. Affirm. more probably with St. Lig. n. 57. Yet some limit this, if the lesser evil is contained in some way in the greater, as striking in homicide, etc.; which limitation, however, does not seem

necessary to St. Alph. [12].

[12] Others except, if to one wishing to inflict a greater damage on one person, you persuade that a lesser damage is to be inflicted on another. Thus Sporer (T. 4. Cap. 3. n. 27.) after Lugo (de Iust. et Iur. Disp. 19. n. 47.), to whom St. Alph. adheres (Lib. 3. n. 565.). But Sanchez (De Matr. Lib. 7. Disp. 11. n. 24.), Turrianus (De Fide, etc. Disp. 95. dub. 6.), and Vasquez (Opusc. De Scandalo art. 1. dub. 2. n. 14.) affirm more probably that this is lawful. The reason is (says Vasquez), because this kind of counsel formally tends to this, that a greater sin not be committed, from which it happens that he from whom the robber steals that which is less is not reasonably unwilling concerning him who furnished the counsel. Nor does Lugo's reason on the opposite side seem very efficacious, because namely while you propose this theft to one who was thinking nothing about it, it is the same as if you opened the door for him to steal. For it still remains to be proved that in those circumstances it is illicit to open the door in that way.

Q. 6° Is it lawful to permit an occasion of sinning, so that the guilty person may be corrected?

Resp. Affirm., because to permit is not to induce, and there is sufficient reason for permitting the sin. Hence they are excused from sin per se: 1° parents and masters who allow children or servants to sin, so that they may find an opportune place of correcting them; - 2° guards of fields, vineyards, etc., who hide themselves so that those doing damage may be caught, and they may exact punishment from them. - Thus commonly. - St. Lig. n. 58. - Laymann, etc.

238. ○ Q. 7° Is it lawful even to place an occasion of sin?

Resp. It is controverted. Affirm. more probably, because the one sinning is not induced into sin, just as the usurer from whom a loan is requested is not induced: for an indifferent act is placed with sufficient reason. Hence probably a master does not sin who deliberately leaves the key of the chest in which money is stored placed there, in order to test the doubtful fidelity of a servant. - St. Lig. n. 28. - Laymann, Collet, against certain persons who deny for this reason, as if this were the same as positively concur with the sin, expressly creating its danger and inducing to it.

Q. 8° What about the communication of the faithful with Jews?

Resp. Both for protecting the dignity of the Christian Religion and for avoiding any danger whatever of perversion, it has been established by the Church: 1° that Christians not dwell with Jews; 2° that they not be present at their banquets; 3° that they not serve them; 4° that they not eat their unleavened bread; 5° that Christian women not nurse the infants of Jews, whether in the homes of the latter or in their own home (C. Nullus, C. Omnes, C. Iudaei, and St. Lig. n. 18. Pius IV Constit. Cum enim, and S. Congr. Inquisit. on the day 15 March 1612).

Nevertheless, with any danger of perversion excluded, probably it is not deadly, indeed there is no fault, if this is done from a reasonable cause. - St. Lig. l. 2. n. 18. - See Cases, n. 226 et seq.

Section II — On Scandal in Particular

1° Around lust; 2° around depraved books; 3° around dances; 4° around spectacles.

I. Around Lust

239. ○ It is a most grave scandal to do, represent, or display those things which notably provoke to lust; because no subtler poison can be offered to the soul.

Hence those are guilty of most grave scandal: - 1º who represent shameful things in comedies or other gatherings; - 2º who compose or sing shameful ditties or songs; - 3º who make or expose obscene statues or images; - 4º who seduce pupils entrusted to them by depraved examples. - St. Lig. n. 56.

Questions. - Q. 1º Does a woman walking with uncovered breast sin gravely?

Resp. Affirm., if the uncovering is immoderate, or very notable, notwithstanding any contrary custom whatever. But if it is not so immoderate, custom will easily excuse from grave sin. For custom notably diminishes the force of concupiscence, since accustomed things excite the imagination less. - St. Lig. n. 55. [13].

[13] Although it is the most common opinion of the Doctors, as St. Alphonsus testifies (Lib. 2. n. 55.), that a moderate uncovering of the breast is not to be condemned as mortal sin where such a custom flourishes; yet for the most part they perhaps do not say what kind of uncovering is moderate or immoderate, because the custom can be varied for various places. Concerning this matter Cajetan says thus (Sum. V. Ornatus): The (inordinate) quality of adornment commonly induces venial sin, if it is indecent and less chaste, as the adornment of women showing half the breasts. Nevertheless, where the custom is already accustomed, it seems to be without sin.

Whatever be the case, St. Alphonsus has two things (l. c.) most worthy of note. The first is, that those women who introduce this custom somewhere sin gravely. But the other is a general warning, which St. Antoninus hands down in these words: It seems that it must be said, that where in ornaments of this kind the Confessor finds what is clearly and undoubtedly mortal, he should not absolve such a one, unless she proposes to abstain from such a crime. But if he cannot clearly perceive whether it is mortal, then the sentence does not seem to be hastened (as William the Speculator says in a certain similar case), namely so that he would deny absolution on this account, or make for her a conscience concerning mortal sin; because by afterward acting against that, even if that were not mortal, it will be mortal for her, because everything which is against conscience builds unto gehenna... And since laws are more ready to loose than to bind... and it is better to render an account to the Lord concerning too much mercy than concerning too much severity, as Chrysostom says... it seems rather that she is to be absolved and left to the divine examination. Yet I confess that both preachers in preaching, and Confessors in the hearing of confessions, ought to detest such things, and persuade that they be put away, since they are excessive and immoderate, yet not so indiscriminately to assert that they are mortal.

Q. 2º Does a woman sin gravely who wears superfluous adornment, or paints her face with cosmetics?

Resp. to the 1st. Neg. per se, because adornment does not of its nature gravely provoke to lust; indeed it is often required for the becomingness of one's state [14]. Resp. to the 2nd. Neg. likewise: for of itself this by no means exceeds a venial stain, if it is done to catch a little vain glory; but it will be free of all sin if a just cause intervenes, for example a natural defect to be covered, etc.

[14] Let St. Thomas be consulted (2. 2. q. 169. art. 1.), where he shows that both virtue and vice can be present in adornment. Virtue indeed is present if the person conducts himself moderately in all things according to the custom of the country, and according to his own condition and dignity; but vice is present both by excess and by defect.

But specifically concerning the adornment and paints of women, the doctrine of St. Thomas is reduced to these heads (from 2. 2. q. 169. art. 2., and Comm. in Isai. cap. 4.): 1º They sin mortally if they adorn themselves with the mind of provoking to lust; 2º They sin venially if they employ ornaments merely from vanity, levity, ostentation; 3º It is a venial fault from its kind that adornment is superfluous, or beyond the condition of one's state, whether this is done by excess or by defect; 4º There is no sin per se if the custom of the country and the condition of the state is observed; 5º Women licitly add something of ornament, that they may please husbands either whom they have or whom they ought to take; 6º Paintings will be mortal if they are applied for lasciviousness; venial if merely for feigning beauty; but none if for concealing some defect; 7º Those are excused from sin who go about with hair not veiled, if they do this not from vanity, but from custom, which otherwise is not praiseworthy.

But to the question whether a woman is bound to put away adornment for avoiding the scandal of others, Suarez thus answers from the common opinion (De Charit. Disp. 10. Sect. 3. n. 10.): If the adornment is moderate and becoming, per se she is not bound (to put it away) for avoiding scandal; because of itself the act is not evil, nor does it have per se the character of active scandal more than natural beauty, and because it would be grave to oblige to this. And indeed, for avoiding the dangers of others, no one has yet obliged women to disfigure their own face.

Q. 3º Does a woman sin gravely who puts on men's clothing?

Resp. Neg. per se: for if this is done for a just cause, it can be free from every fault; if from levity or jest, it does not exceed venial sin, scandal or danger of lust being set aside, however. - St. Lig. n. 52.

Q. 4º Do those sin gravely who go about masked or in disguise?

Resp. Neg. per se, provided, that is, they do not go to those gatherings in which for the most part a proximate occasion of sinning occurs.

240. ○ Q. 5º Is it lawful to serve prostitutes or those keeping concubines?

Resp. to the 1st. Neg., both because of scandal, and also because of the very great danger of falling. But if perhaps any cases are to be excepted, these will have to be judged from the circumstances of the persons, or from the degree of necessity.

Resp. to the 2nd. It can indeed be permitted, if a concubine is not kept at home. But otherwise with difficulty, on account of the grave danger of seduction, unless nevertheless grave reasons are present for serving a master of this kind, or unless the male and female servants are judged more advanced in piety or in years. In few words: the solution of this question can scarcely be handed down, but must be sought from the various circumstances of things. - Thus commonly, against Concina, who admits no exception.

Q. 6º Is it lawful for a girl to accept small gifts from him by whom she is sought and loved apart from the end of marriage?

Resp. Neg. ordinarily [15], because gifts especially excite and foster mutual love; and almost always loves of this kind are not without either a depraved end or certainly danger. Hence, so far as can be done, the girl must be ordered either to return small gifts of this kind, or to distribute them to the poor, or to hand them over to the flames to be burned. - St. Lig. n. 76. - Lacroix, l. 2. n. 264.

[15] It is said ordinarily, because honorable friendship also, or benevolence which the gifts of the person excite, is sometimes accustomed to impel persons to destine small gifts of this kind both to girls and to men, apart from those dangers.

II. Concerning Evil Books

From every kind of scandals none is more execrable than that which is produced from impious and obscene books. This is a diabolical invention, the most efficacious of all for thrusting souls in crowds into the abyss of gehenna. This is the most dread and monstrous plague of all, which infects not only one region or age, but is spread to all places and times, and fills all things with innumerable slaughters. But who could say the horrendous evils which have arisen for Religion and morals from evil books as from a lethal fountain, and indeed are to be propagated and multiplied even to the end of the world?

Therefore let the ministers of God, namely preachers and Confessors, strive and exert their soul, that with all their strength they may oppose themselves to this torrent of iniquity, and snatch perishing

souls from the jaws of the infernal abyss.

Therefore the reading, printing, and divulging of books wholly opposed to Faith and morals must never be permitted.

241. Questions. - Q. 1° Can books be committed to type which are partly good, partly evil?

Resp. Neg. speaking generally, unless they have been accurately expurgated; otherwise, however, if the danger to be feared from them is not so grave, and this seems to be compensated by great utility to be received from them. But printers should diligently inquire from learned and experienced men, especially ecclesiastical Superiors, what is to be done in doubts.

Q. 2° Can evil books sometimes be sold?

Resp. They can in no way be sold indiscriminately, namely to any buyer whatever, as is clear. Nevertheless sometimes they can be sold to prudent and learned men, who can usefully read books of this kind, for example in order to refute them, etc. Except books entirely obscene, which are to be extirpated by the root.

Q. 3° What concerning the donation or leasing of evil books?

Resp. Generally the same must be said, with proportion preserved, as concerning their sale, because all these things are full of corruptions. - Gousset, l. 1. n. 392.

Q. 4° Can books of this kind be returned to their owner?

Resp. Neg., unless a prudent fear of some grave inconvenience otherwise advises. This flows of its own accord from the principles which we have handed down. But it is to be judged a grave inconvenience if you fear grave quarrels, blasphemies, hatreds, and other things of this sort from the owner. Slight sadness, or even fear of dissolving a friendship, would certainly not be judged a reason, at least for the most part, for returning evil books to a friend [16].

[16] These things deservedly can seem somewhat harsher, as is easily clear from those things which will be said below concerning cooperation with evil. Nor is the parity valid with the case of returning a sword to him who is about to kill another; for his own sword is not entirely nor perpetually taken away from him, and moreover a most grave damage to a third party is present, which is wholly to be impeded.

We shall speak concerning the prohibition of books in the Treatise on Censures.

III. On Dances

242. ° Dances or saltations, as they are commonly made, are full of danger and scandal, and entangle innumerable souls in the snares of the devil; and the holy Fathers unanimously inveigh against this kind of play. Yet not all dances equally carry the same evil or danger.

Principles. - I. Dances per se, even among persons of different sex, are not illicit, if they are done in an honorable manner, that is, with every impure touch, gesture, or act removed. The reason is, because dances per se are indifferent, nor are they prohibited by any law. - Thus commonly [17]. - St. Lig. l. 3. n. 429.

[17] Compare the doctrine of St. Thomas, which we brought forward above in the notes to n. 32. Q. 7.

II. Dances which are dishonorable by reason of nudities, the manner of dancing, words, gestures, songs, can be gravely illicit, as is clear. But among these many count the more recent dances, which in French are called la Walse, la Polka, le Galop, and others similar to these. But it will belong to the Confessor to judge concerning particular cases from the manner, circumstances, gravity of motive, etc.

III. In practice, generally any dances whatever among persons of different sex are to be impeded as much as can be done, because as they are usually held they are for the most part dangerous. Hence Pastors and Confessors ought to turn subjects and penitents away from them as much as can be done. - Thus commonly the Doctors of our age, and directors of souls.

243. Resolves. - 1º Those who are so infirm that they incur grave danger of sinning in dances ought to abstain from them under mortal sin; unless perhaps sometimes a certain necessity urges, and at least probably the danger of consent is absent.

2º To dance modestly or to be present at honorable dances from a certain necessity, or from the decency of one's state, without probable danger of sinning, is no sin; because there is given a sufficient reason for permitting the sins of others, if any there are. Hence girls destined for marriage are excused from sin by dancing becomingly, who cannot be absent from dances held in the paternal home, or among neighbors or relatives, or cannot refuse dancing, without being derided, or displeasing parents or suitors requiring them.

3º Indeed to be present at honorable dances, even without necessity, danger and notable scandal nevertheless being excluded, and in them to dance becomingly, is not only not mortal, but can also easily be free from every sin. For sometimes men, and not rarely women, are found to whom even in dances among persons of different sex, no danger or a very remote danger threatens. But these, although they are to be dissuaded from dances, nevertheless a promise of avoiding dances would imprudently be exacted from them under denial of absolution [18]. - Bouvier.

[18] In circumstances of this kind, not only imprudently, but also unjustly and therefore not without grave sin would absolution be denied; for absolution, when the penitent is present rightly disposed, is not an act of liberality, which the Confessor may either grant or refuse according to his whim.

244. Questions. - Q. 1º Can dances with masks be regarded as lawful?

Resp. Neg., speaking generally. For experience establishes that games of this kind are enticements to lust, and an efficacious cause of unchastity [19]. Attend nevertheless to various circumstances, and to the reason of greater or lesser danger which can be found in them.

[19] Masks, to be sure, sometimes furnish a fire for unbridled license, which otherwise modesty would prohibit.

Q. 2º Can those be absolved who do not wish to promise that they will leave off dances?

Resp. 1º Neg., if for them they are a proximate occasion of sinning, and they wish indiscriminately to be present also at dishonorable dances. For it is generally impossible for anyone often to be engaged in those companies of the most frivolous and most corrupt youth of either sex and not to be infected by impure contagion. - Thus commonly.

Resp. 2º Affirm. generally, if they are present only at honorable dances, for example if at some time they are celebrated by public authority, or at the weddings of relatives or friends, or even on the feast

day of the Patron of the place; in cases of this kind, which cannot be impeded, the Confessor will prudently dissemble; for penitents are not to be removed from the Sacraments on this account. - Thus Bouvier, de VI praecept. c. 4. art. 3. and others.

Q. 3º Can those easily be absolved who sometimes lead dances among relatives and friends?

Resp. Affirm., at least speaking generally, if the dances are done while pious parents are present, or others who are conspicuous in age and morals. For such games do not seem per se gravely dangerous; and on the other hand they scarcely, or not even scarcely, can be impeded, especially since they bear before themselves no appearance of evil. Except, unless even there a proximate occasion of sinning is present for someone.

Q. 4º Whether, or what fault it is, to grasp the hand of a woman in dances?

Resp. If it is grasped lightly according to custom in honorable dances, there is no fault per se, or at most it is venial, because in this generally no or slight danger of lust is present. - Thus St. Lig. with others, l. 4. n. 429.

But if with a depraved affection the hand of a woman were grasped or squeezed, the fault would be light or grave according to the depravity of the affection, or also according to the lesser or greater danger of consent in sin.

245. ○ Q. 5º Is it expedient publicly in preaching to reprehend dances?

Resp. Neg. generally in those places where they are in use, and are reputed something indifferent; because the preacher would profit nothing, and would turn those dancing away both from sermons and from the Sacraments. Therefore it is expedient that preachers, especially Pastors, act only indirectly against dances, and directly against the sins which are accustomed to be committed in them. But let them beware lest imprudently they affix marks of infamy both to those dancing and to others gathering for dances, nor let them threaten that such persons will not be admitted to the sacred table at Paschal time. - V. Casus, n. 223. et seq.

IV. On Spectacles

246. ○ Concerning spectacles, or plays, which are customarily represented through mimes or through actors, almost the same thing will have to be said as concerning dances. Therefore it may suffice to add these few things.

Principles. - I. Spectacles per se are not evil, and consequently not illicit; for they are opposed to no law, neither natural, nor positive, whether divine or human. Hence if shameful things were not represented in them, and if otherwise circumstances furnishing an incentive to lust were absent, they would in no way be to be reproved. - Thus commonly. - St. Thom. 2. 2. qu. 168. art. 3. [20].

[20] Thus St. Thomas (l. c. ad 3.) concerning the thing itself, and concerning those who serve it: It must be said that play is necessary for the intercourse of human life. But to all things which are useful for the intercourse of human life, certain lawful offices can be deputed: and therefore also the office of actors, which is ordered to furnishing solace to men, is not according to itself illicit, nor are they in a state of sin, provided they use play moderately, that is, by not using any illicit words or deeds for play, and by not applying play to undue business and times. And although in human affairs they do not use another office by comparison to other men, nevertheless by comparison to themselves and to God they have other serious and virtuous operations (for instance, when they pray, and compose their passions and operations, and sometimes

also give alms to the poor). Hence those who moderately assist them do not sin, but act justly, by giving them the payment of their ministry. But if any superfluously spend their goods on such persons, or also sustain those actors who use illicit plays, they sin, as fostering them in sin.

II. Spectacles in which notably shameful things are represented, or in which persons of different sex appear in notably indecent dress, speaking generally, are gravely illicit, because they are harmful both to actors and to spectators.

Yet since generally it is not illicit, when a just and proportionate cause exists, for someone to expose himself to danger, especially if, as is fitting, he fortifies himself with salutary safeguards, therefore there can be excused both soldiers who are bound to be present in order to watch, and servants who would suffer the grave indignation of their masters if they refused to be present, etc. - Scavini.

247. Resolves. - 1º He who, scandal being set aside, is present at a comedy not gravely shameful does not sin mortally, unless perhaps by experience he knows that he is vehemently moved to lust by plays of this kind, with proximate danger of consent, so that the spectacle is for him a proximate occasion of sinning. - St. Lig. de VI praec. n. 472.

2º If in comedies notably shameful things were represented, or represented in a shameful manner, it would indeed be mortal to watch them on account of the delight arising from the shameful things themselves; but venial on account only of curiosity or on account of vain solace, provided nevertheless there is excluded the danger of consent in shameful delight (St. Lig. ibid.), which will easily be present in adolescents, or in others of little timorous conscience, and unless scandal is present; which plainly would be present if Clerics and Religious were present at shameful comedies, as Benedict XIV warns. - St. Lig. Hom. apost. Tract. 9. n. 10.

3º Deservedly Holzmann and Lacroix, because of the scandal of others, condemn as mortal both those who by money or applause cooperate with notably shameful comedies; and also those who are bound to impede them, and when they conveniently can, do not impede them; but a fortiori those who represent them. - St. Lig. ibid. in the great work.

Point II. On Cooperation

Section I — On Cooperation in General

248. ○ DEFINITION. Cooperation in general is concurrence with another principally acting. - But insofar as it can be opposed to Charity, it is a certain participation in the depraved action of another [1].

[1] Cooperation can be opposed to charity, insofar as this virtue requires that we impede the sins of others, and accordingly that we not assist others in sinning by our works.

DIVISION. Cooperation is distinguished:

1º Immediate or mediate, according as the cooperator acts with the sinner in the very act of sin, or places other actions having some connection with the sin of another.

2º Proximate or remote, according as the action of the cooperator is connected more nearly or more remotely with the depraved action of another.

3º Positive or negative, according as the cooperator either places some action influencing the sin of another, for example by helping him, or omits a due act, for example if he does not obstruct, when he ought to obstruct.

4º Formal, which concurs with the evil will of another, and cannot be without sin; or material, which concurs only with the evil action of another without the intention of cooperating with sin.

There is also direct or indirect, physical or moral cooperation, as was said where voluntary in itself and in its cause was discussed: De Act. hum. n. 5. and 7.

Cooperation is made chiefly in nine ways, namely by commanding, counseling, consenting, praising, providing recourse, participating in action or profit, being silent, not obstructing, not manifesting. Hence the verses

> Command, counsel, consent, flatterer, recourse,
> Participant, mute, not obstructing, not manifesting.

See the things to be said in the Treatise on Justice.

Principles. - I. It is certain that formal cooperation is never lawful, since this morally influences the sin of another, and consequently is a moral cause of it. - St. Lig. n. 63.

II. Material cooperation is lawful, provided the action is per se good or at least indifferent, and there is present a just and proportionate cause relative to the gravity of the sin of another, and to the proximity of the concurrence to the execution of the sin. The reason is, because when you furnish an indifferent action without a depraved intention, if another should wish to abuse it for executing sin, you are bound to impede that only from Charity; and since Charity does not oblige with grave inconvenience, therefore by placing your cooperation with a just cause, you do not sin; for his sin does not arise from your cooperation, but from the malice of the one who abuses your action. - St. Lig. ibid. - See On Human Acts, n. 9.

III. The greater the reason required for cooperating, the nearer and greater the cooperation is, - the more probable and worse the effect that is to follow is, - the more probable it is that, if you do not cooperate, the other will not sin, - the more the sin is repugnant to justice or Charity.

249. Resolves. - 1º What cannot be granted without sin can never be asked [2], such as the violation of some obligation, for example from a notary something opposed to his office.

[2] Understand this when the malice holds itself on the part of the act, but not if merely on the part of the agent, as is clear from Resol. 3.

2º It is not lawful to paint obscene things; nor is it lawful to guard the rear for a thief, because it is to influence the depraved will of the thief [3]. - St. Lig. n. 571.

[3] Recall the first example rather to the general doctrine on scandal; and then except, if something of this kind must be painted, for example for the aid of anatomical or obstetrical science. The other example supposes a common design with the thief; for otherwise to watch for another and to warn him are acts indifferent per se, and consequently they could be recalled to material cooperation.

3º It is lawful to ask a loan from a usurer, Sacraments from an unworthy minister, an oath from him who perhaps will perjure himself, provided there is a just cause. - St. Lig. n. 77. 79.

Section II — On Cooperation in Particular

Namely chiefly 1° with regard to servants; 2° with regard to workers; 3° with regard to merchants; 4° with regard to innkeepers.

From the principles posited above it can for the most part be gathered when servants and others can or cannot cooperate with the sins of masters, associates, or others. Nevertheless several doubts are to be solved for the greater clarity of matters. Hence:

I. With Regard to Servants

250. Questions. - Q. 1° Can a servant, from fear of death or mutilation, place his shoulders under his master ascending to fornicate?

Resp. Affirm. more probably, because he does not place an action intrinsically evil. - St. Lig. n. 66. 68. But afterward he is bound to leave the house of his master, if he fears anything else of this kind. - Scavini. Resolve the same in similar cases.

Q. 2° Is it lawful for a servant to open the door of the house to a prostitute?

Resp. The more common affirm, provided there is another who, if he himself did not open, would open. - St. Lig. n. 66. For this circumstance makes the cooperation sufficiently remote.

Nevertheless several contend that it is never lawful to open the door to a prostitute, and they rely on the following proposition 51, condemned by Innocent XI: A servant who, with shoulders lowered, knowingly helps his master to ascend through windows to deflower a virgin, and serves him many times, by carrying a ladder, opening a door, or cooperating in something similar, does not sin mortally, if he does this from fear of notable detriment, for example lest he be badly treated by his master, lest he be looked upon with stern eyes, lest he be expelled from the house. - But these words opening a door manifestly must be understood of opening by force another's house, as is clear from the context. Besides, this proposition is damnable because it permitted cooperation even for the lightest cause, namely lest the servant be looked upon even with stern eyes.

In cities in which, for the sake of avoiding a greater evil, usurers or prostitutes are permitted to dwell, it is lawful to rent a house to them, especially if other tenants are lacking, or if it would be easy for them to rent other buildings; unless nevertheless the prostitutes gravely harm honorable neighbors, or because of the situation of the dwelling they furnish a greater occasion for sinning. - St. Lig. n. 70.

251. ○ Q. 3° Can a servant, by reason of service, saddle the horse of a master about to set out for sinning, or accompany him?

Resp. Indeed it does not seem illicit if the servant only saddles the horse, because in this he does not seem to cooperate more with the sin of the master than by opening the door to a prostitute [4]. But unless grave harm threatens, it would not be permitted to him to accompany the master to the place where the sin is to be committed, because the cooperation is nearer. - St. Lig. n. 64, and in Retract. n. 10. [5].

[4] To saddle the horse for a master seems to bear itself toward his sin in the same way as to hand him shoes or a hat when he is about to leave the house.

[5] St. Alphonsus affirms this not absolutely, but only as more probable, saying: More probably the reason of service alone does not suffice for this, even if without the servant's help the master would go; at least fear that is grave is required. Thus Sanchez Dec. Lib. 1. Cap. 7. n. 22., Viva in Prop. 51., Innoc. XI., n. 5., Salmant. Tract. 21. Cap. 8. n. 72. For the rest, neither Sanchez nor the Salmanticenses actually have the doctrine which St. Alphonsus here hands down in their name; but they suppose that the sin of the master, if the servant did not accompany him, was to be avoided. Thus Sanchez (l. c.): It is deduced that servants can saddle the horse, accompany and wait for the master (when not for the sake of keeping watch, as we shall say in the following number), although they know that he goes away to fornicate. Because these services are indifferent of themselves, nor are they exhibited by servants so that they may connive at the depraved intention of the master, but by an urgent necessity of obeying a master commanding an indifferent thing. Thus Angles, Navarr., Manuel... But the common reason of service

I judge not to excuse servants when that master would avoid the sin, if the servant did not saddle the horse or did not accompany him. For then a more ample cause would be required, such as that this service could not conveniently be denied to the master, and that it would be troublesome and harmful to the servant to leave the master on this account. - But the Salmanticenses (l. c.): It is lawful for servants... to accompany the master to the house of a concubine, when even if the servant were not his companion, the master would go, nor is he rendered bolder from this, because then it is mere accompaniment. But if the master were employing the servant as companion so that he might sin more safely and freely, ... it would be altogether illicit; because then it would already influence the sin proximately. See Sanch. and Diana... Therefore neither reason nor the authority of A. supports the doctrine; for Viva too, alleged by St. Alphonsus, relies only on a fallacious citation of Sanchez.

** VV. undertook to attack this Note in altogether sixteen columns (Pages 165-172.); whether by useful labor or by vain labor, let the equitable reader judge.

1º For could they bring forward anything by which they would show that that is false which shines forth evidently from the texts premised, namely that both Sanchez and the Salmanticenses teach the opposite opinion to that which St. Alphonsus attributed to them, who otherwise confirms his opinion by no argument other than by the authority of these? By no means indeed.

2º VV. heaped up many things from many Authors through those sixteen columns. But could they produce even one testimony of anyone, Viva excepted, in which the opinion of St. Alphonsus is contained, namely that even when without the help of the servant the master would go, the reason of service does not suffice so that he can licitly saddle the horse or accompany the master? By no means indeed. For the rest, what is said in the Note, that Viva relies only on a fallacious citation of Sanchez, is indeed less exact: namely it ought to have been written that Viva relies on a fallacious citation both of Sanchez and of Navarrus. For that Viva wrongly alleged also Navarrus is clear from the words which even VV. themselves (Page 169. in the Note) describe; since in them Navarrus speaks of servants when, if they themselves did not accompany, the master would not go; whereas Viva speaks (l. c.) of a servant who merely materially accompanies the master, and therefore is in no way a cause that the master goes out to sin.

Since these things are so, and since nothing else occurs in those sixteen columns which pertains to this question, there is no need that anything further be added here. It is useful to remember this one thing, also with regard to this question, that probabilities do not furnish a foundation by which the Confessor can impose obligations.

Q. 4º Is it lawful for a servant to carry gifts to a prostitute?

Resp. Neg. at least without a very grave cause, because since these gifts are apt for fostering lust, the cooperation is proximate [6]. - Thus commonly. Indeed St. Lig. n. 65 judges this intrinsically evil; because per se they foster shameful love. But more probably Viva contradicts this with others.

[6] Sporer, on the contrary, excuses these servants (de V. Praecepto Cap. 1. n. 99.), because (he says) on the one hand they by their office and condition are bound to serve and obey their masters; but on the other hand cooperation with sin is merely material, and only remote. Nor is that true which A. intimates, that the opposite opinion is commonly taught. For St. Alphonsus alleges no one for it except Concina, and the reason which the latter brings forward is rejected by all.

** There are two things which we must prove concerning this Note against the objections of VV. (Pages 173-175.). First, that no one, Concina excepted, favors the opinion of St. Alphonsus; second, that the reason brought forward by him, namely that carrying gifts is intrinsically evil, is rejected by all.

And as to the first, the matter is clear from this, that VV. were able to allege no one except Concina. For Amort and Cardenas, whom they invoke, do not have this question.

But the second becomes manifest from this, that even the Authors alleged by VV. (but not fully) acknowledge that this is lawful, at least if a grave cause is at hand. But if the thing is intrinsically evil, for no cause, and even if otherwise death is threatened, does it ever become lawful. Therefore.

With regard to this latter point, VV. acknowledge (Page 174.) that the reason of Concina, adopted by St. Alphonsus, is opposed to the common opinion of the Doctors; nevertheless they warn (ibid. p. 173.) that it could not have been rejected by all Authors, since Concina is later than they. - Resp. In order that the Doctors should reject Concina's reason, it was by no means necessary that they should foresee that someday Concina would employ it. But the Doctors more than sufficiently rejected that reason, when all, and even Cardenas, unanimously either supposed, or established as undoubted and evident, that the action about which the question is, or others of this kind, are per se indifferent. For to say that one and the same thing is per se indifferent, and at the same time intrinsically evil, is to speak contradictory things.

Q. 5° Is it lawful for a servant to carry amorous letters to the concubine of his master?

Resp. Neg., unless there is present a very grave reason. Indeed according to St. Lig. n. 68, it is never lawful, even when a most grave cause has been posited, because (as he says) this is intrinsically evil [7]; nevertheless Vogler teaches the opposite with others. For the rest, a servant is not bound to inquire what is contained in the letters.

[7] As sometimes at other times, so also here, it happened to St. Alphonsus that he was led away by fallacious allegations which he found among the Salmanticenses and Dominic Viva. For not even one of the doctors whom the Salmanticenses and Viva bring forward actually hands down a doctrine circumscribed by those limits. Thus, for example, Sanchez, whom all these allege, after many things concludes (Dec. Lib. 1. Cap. 7. n. 26.): Wherefore then these servants are judged to be, and truly are, pimps, when, helping the depraved intention of the master, they exhibit these services, as commonly happens; otherwise, when compelled by a good intention and by necessity of avoiding their own notable harm.

** VV. contend that St. Alphonsus was not indeed led away by fallacious allegations, as is said in this Note, but rather that readers are led into error by fallacious assertions from the author of the Note. Thus VV., who then through ten columns (Pages 175-180.) try to prove that the opinion of Sanchez, Bonacina, Laymann, Tamburini, Croix, etc., is the same as that of St. Alphonsus.

But VV. do not seem to have sufficiently inspected the thesis of St. Alphonsus. For how does that saying of St. Alphonsus, never lawful, cohere with the words of Sanchez, described in the Note, saying that one is excused by fear of notable harm? VV. also (Page 176.) wished to bring forward for themselves certain words of Sanchez; but they ought not to have cut off from that text also these words: For since these things (namely, by writing or by a messenger to agree with the concubine that she come at such an hour, or to such a place, or await the master), although in themselves indifferent, come very near to sin, and seem to cooperate with it almost directly, the common reason of service will not excuse, but notable detriment of the servant will. Now the never lawful of St. Alphonsus and the notable detriment excuses of Sanchez are mutually in conflict.

VV. bring forward for themselves the text of Bonacina. But they truncate these words: The same must be said (namely, that one can be excused when it is not lawful to desist from things of this kind... without grave harm) concerning a servant who... carries gifts or a letter, or acts as a messenger, or who writes letters, in which it is contained that a prostitute come to him at such a time... Now do perhaps that saying of Bonacina, one can be excused etc., and that saying of St. Alphonsus, never lawful, cohere?

Then VV. describe in the aforesaid aim certain words of Tamburini. But the things which followed there, and stand in this way, were not to be omitted by them (In Dec. Lib. 5. c. 1. §. 4. n. 19.): Besides, a subject will be excused not from the reason of service alone, but by fear of notable detriment... if he reports to the adulteress..., that at such an hour she should come to the house of the master, or to the appointed place...; for these things and similar things, since they are somewhat nearer to the sin of the one abusing, need a cause somewhat graver than is the reason of service. But that he will be excused of Tamburini, and that never lawful of St. Alphonsus, are far distant from each other.

VV. pluck out some words from Laymann (Lib. 2. Tr. 3. C. 13. n. 5.). But three things ought to have been noted. 1° Laymann speaks only doubtingly or by way of opinion: It does not seem, he says, to be permitted. 2° Laymann alleges for this opinion Angles against Navarrus, who (Laymann continues) says that services of this kind also of servants, if they are done by command without depraved affection, can be excused from mortal sin: and Rodriguez and Azor in part followed him: in whom you see opinions reported on both sides. 3° The reason is brought forward by Laymann, that these things contain a certain species of pimping; but in these things you have a hypothesis different from the hypothesis of Navarrus; whence it happens that on account of the diversity of hypotheses the two conclusions, otherwise opposite in appearance, are very well reconciled, as you can discern them reconciled in the text of Sanchez described in the Note, and as Rodriguez also reconciles them (Sum. P. 1. Cap. 205. n. 3.) saying: And thus they seem to me able to be reconciled with Navarrus who rise up against him, among whom is Angles: yet that absolute saying of St. Alphonsus, never lawful, does not admit this reconciliation.

VV. report certain words also from Mazzotta (Tr. 2. Disp. 2. Q. 1. c. 3. §. 4.). But they do not well omit the preceding things, in which, when he also reviews to carry messages or writings... containing the appointment of place or hour; these he enumerates among those things: for which the reason of service does not suffice, but a more urgent cause is required..., because they are actions, however indifferent according to themselves, yet nearer to the sin of another. These indeed, as is clear, are wholly repugnant to the absolute opinion of St. Alphonsus, never lawful.

For the rest, both from Mazzotta and also from others, the reason can be detected why VV. could seize upon some words from the cited Doctors which seem to harmonize with the opinion of St. Alphonsus, although nevertheless the things which we have brought forward up to this point plainly show that the opinion of St. Alphonsus is one thing, and the opinion of those Doctors another. For Mazzotta (l. c.) excepts shameful writings; and below he excepts knowingly carrying shameful messages or writings, or writing them. Sanchez (Dec. Lib. 1. c. 7. n. 26.) condemns if the writing contains shameful and amorous words or signs, and dishonorable things. Likewise Tamburini (l. c.) reproves if they contain shameful and amorous things, or things directly provoking to sin. And Laymann (l. c.) discusses letters inciting to shameful things and the induction of a woman to sin. Therefore the Doctors distinguish when writings or messages contain a direct provocation to shameful things and to sinning, and when otherwise. And Croix indeed (Lib. 2. n. 273.) touches only the other hypothesis, namely concerning letters or messages tending directly to sin, and likewise Viva (In Prop. 51. Innoc. XI. n. 5.) concerning letters provoking to sin. Rebellus, on the contrary, touches only the other hypothesis, concerning which the Doctors above; (P. I. Lib. 2. Q. 14. n. 53.).

Now since St. Alphonsus distinguishes nothing, and therefore when he alleges Rebellus as contrary to himself, he manifestly pronounces that never lawful concerning any hypothesis whatever; it is plain that the Holy Doctor departed from the authors whom he brings forward for himself after the Salmanticenses and Viva.

Now the things which have been said concerning servants are to be applied almost to other inferiors or subjects, for example to children, wives, etc.

II. With Regard to Workers

252. Questions. - Q. 1° Is it lawful for workers to build theaters, adorn them, etc.?

Resp. 1° As to building, it seems generally to be lawful, even if another grave reason is lacking; the reason is that it is lawful for Princes to permit spectacles.

Resp. 2° As to ornaments and other actions to be furnished by workers, it likewise seems lawful, if these are honorable in themselves, because the cooperation seems so remote that it is not sinful.

Q. 2° Is it lawful for workers to build temples of heretics?

Resp. 1° Neg. absolutely, if this is sought by heretics out of hatred of Religion.

Resp. 2° Affirm. in another hypothesis, when a grave cause urges, scandal and any contempt of Religion nevertheless being excluded [8].

[8] Concerning this matter Laymann (Lib. 2. Cap. 13. n. 4.): It is right to restore or build synagogues of Jews, temples of heretics, when the legitimate magistrate permits: concerning which Navarrus can be seen Lib. 5. Consil. 1. De Judaeis. And St. Alphonsus seems to have followed him (Lib. 2. n. 72.), as also Croix (Lib. 2. n. 250.), since they add no observation to Busembaum bringing forward the same doctrine from Laymann.

Q. 3º Is it lawful to make statues of false gods?

Resp. 1º Affirm., if these ought not to be employed for false worship, but for the ornament of streets, buildings, etc.

Resp. 2º Neg. altogether, if they are to be handed over to a pagan..., etc. - St. Lig. n. 69.

253. ○ Q. 4º Is it lawful for Christian captives, from grave fear, to row in the galleys of infidels against Catholics?

Resp. Affirm.; for they do not do anything intrinsically evil, nor proximately pernicious to Christians; on the other hand, from a most grave cause they are impelled to rowing, as is clear. - St. Lig. n. 73, etc.

Q. 5º Is it ever lawful to cooperate with publishing evil books?

Resp. 1º Generally it does not seem lawful immediately to cooperate with the printing of such books, for example to arrange the type, to set the paper to the type, to direct the printing, etc., because this is something intrinsically materially evil. Yet in the case of most grave detriment Laymann indicates that such a thing can be furnished for a brief time, de Charitate c. 13. n. 4.

Resp. 2º But it is lawful for a grave cause to cooperate mediately, or remotely, for example to prepare ink or paper, or to arrange printed books. - Thus commonly.

III. With Regard to Merchants

254. Rules. - First. It is lawful to sell indifferent things, or things which can easily have a good use, if the seller knows nothing concerning the evil intention of the buyer, because evil is not to be presumed.

Second. It is not lawful to sell indifferent things when it is certainly known that the buyer will use them badly, unless they cannot be denied without grave inconvenience.

Third. It is not lawful to sell things which from their institution or use are destined for evil, unless in the particular case it is established that the danger of abuse is absent, or unless a grave and proportionate reason excuses. - Vogler, n. 315..., etc.

Resolves. - 1º It is lawful for artisans or merchants to sell dice, swords, paints..., etc., although very many abuse these, because these things are not ordered per se to sin; indeed they often serve a good use, nor can they simply be impeded. - St. Lig. n. 71., and in Retr. n. 14.

2º It is lawful to sell honorable ornaments to a girl, which perhaps she will abuse, especially if she would equally buy from others; otherwise, however, if it were established to the seller himself concerning future abuse, unless otherwise he would suffer notable harm [9]. - St. Lig. n. 71. - See Sanchez, de praeceptis Decalogi, l. 1. c. 7. n. 12., where he aptly warns that the solution of these questions depends upon the consideration of many circumstances [10].

[9] The doctrine conceived in these words is altogether singular, and does not have support from the things which St. Alph. discusses lib. 2. n. 47. (to which place St. Alphonsus himself refers), nor is it true that it is handed down by Palaus or Suarez, who are usually alleged for it. The common doctrine is thus expounded by Croix (Lib. 2. n. 263.): He does not sin who sells ornaments to a girl, who through them will solicit others to sin, which ornaments would be sold by another. Thus Sanchez, Navar., Azor, Bonac., Diana... The reason is, partly because that sale is something indifferent and remotely bearing itself toward sin; partly also because if the seller sinned, it would therefore be because he does not impede the sin of the neighbor; but, although he did not sell, he would not for that reason impede it, for there would be another who would sell. Therefore by selling he does not sin. Compare the things which Sanchez, also alleged by A., discusses, whose words are brought forward in the following Note.

** In this Note nothing is said concerning the opinion of St. Alphonsus, as is clear; but it is only intimated that the opinion of Fr. Gury does not have support in St. Alphonsus, whom nevertheless he alleges; and the reason is that the doctrine of St. Alphonsus and Fr. Gury is not the same. Nevertheless VV. (Pages 180-185.) undertook to attack the Note through ten columns, because (they say) perhaps readers will extend to the doctrine of St. Alphonsus the things which are said concerning the opinion of Gury! But in reality it does not seem worth the labor to pursue even those things which do not bear upon the matter. Therefore let those take care of these things, if any are seized by suspicions of this kind.

Let there be some response to that one thing which pertains to Palaus and Suarez alleged in the Note. VV. contend that Palaus and Suarez favor the doctrine of St. Alphonsus. - Resp. Let it pass, and I deny the consequence with regard to Gury, because his opinion is not the same as that of St. Alphonsus; and neither Palaus nor Suarez requires that which Gury has, that is, notable harm.

[10] The things which Sanchez has are truly excellent; from them one may learn how many are the things which need diligent consideration, so that questions so manifold and varied in this matter may be rightly defined. Therefore, after distinguishing both those things which can serve only for evil, and those whose use is indifferent to good and evil, he discusses these things thus (In Decal. Lib. 1. C. 7. n. 12.): The same cause will not always be sufficient for excusing the ministration of these indifferent things. The reason is gathered from what has been said. For since the obligation of avoiding that ministration arises from the obligation of the virtue to which that sin of the neighbor, to which that occasion is given, is opposed, and the obligation of all virtues is not equal, but some oblige more than another; nor are the occasions equal, because some are more indifferent and bear themselves more remotely toward evil abuse, but some come more proximately to it and contain greater malice in themselves; moreover neither is the preparation of the one about to abuse them for evil use always equal, but sometimes he is more, sometimes less prepared; nor is the hope that he will desist from the depraved abuse, if I do not minister, always equal: therefore an equal cause will not always be proportionate for excusing this ministration, but sometimes a greater, sometimes a lesser will be necessary. Wherefore no certain rule of the quantity of this cause can be prescribed, but it must be left to the judgment of a prudent man. But in order that that judgment be prudent, he ought to attend, that a greater cause is required in proportion as the sin to which that ministration gives occasion is graver; and in proportion as it more proximately touches that sin, or of itself is more determined to evil; and in proportion as the effect of sin is more certain; and in proportion as it is more probable that that sin will be impeded by not ministering this. Therefore it must be observed most especially, that a more urgent cause is required which excuses one furnishing these indifferent things, when the abuse is against justice, and such a cause as can deservedly be preferred to the damage of another. And the reason is, because one is held by a greater bond to avoid the sins of another which are against justice than those which are against charity alone. For in the former an innocent person unwillingly suffers damage; but in the latter only the sinner suffers spiritual detriment, and this by his own will. He undergoes the same spiritual detriment when he sins against justice. And thus well Azor, lib. 8. Tom. 1. c. 22. q. 6., and cap. 24. q. 14. judges that the loss which someone suffers if he does not sell his goods which he has for sale is a just cause for selling indifferent things which of themselves do not proximately touch evil use, and when that use is not against justice.

3º It is lawful to sell meats on days of abstinence and in the time of Lent, because the seller cannot judge concerning the reasons of those buying, nor does it pertain to him to inquire concerning them. - Lacroix, n. 258.

4º It is not lawful to sell poison, unless it is morally established that the buyer will use it well, for example for the preparation of colors, medicine, etc.; because very great destruction of the human

race would follow if this were permitted indiscriminately. - Vogler, n. 316.

IV. With Regard to Innkeepers

255. Questions. - Q. 1º Is it lawful for innkeepers to give wine to those who are foreseen that they will become drunk?

Resp. It is not lawful without a grave reason, as is clear. But it is lawful on account of fear of some grave harm, for example cruelties, quarrels, etc.; because Charity does not oblige that we turn another away from sin with grave inconvenience. Likewise for preventing blasphemies, which are graver evils. - St. Lig. n. 69. - Billuart, de Scandalo, art. 6.

Q. 2º Is it lawful for innkeepers to give meats on prohibited days?

Resp. 1º It is not lawful by one's own motion without a sufficient reason, or unless fear of grave harm urges.

2º But it is commonly lawful when meats are asked for, unless the request is made in contempt of Religion; the reason is that it would be too difficult to inquire concerning the reasons of each one asking. - Bouvier, de praec. Ecclesiae, c. 3. art. 5. - Gousset, n. 303.

3º Indeed it is generally lawful for innkeepers, at whose establishments public coaches stop, to set the table with lawful and unlawful foods; because since it is established that most are going to ask for meats, it does not seem necessary to ask each one what they want. - Gousset, ibid.

256. ○ Q. 3º How must one act with innkeepers who admit dances in their buildings, so that they may entice more guests?

Resp. Generally they are to be turned away from this, insofar as can be done; because dances, especially those which are held in inns, are for the most part done less honorably, and furnish occasion for many sins. Yet absolution would not always have to be denied to them, but the circumstances and the ordinary manner in which those dances are done must be considered.

Q. 4º Is it lawful for the masters of establishments which are commonly called CAFEs to set before guests any public sheets whatever to be read?

Resp. 1º They cannot admit those which evidently and ordinarily are opposed to Religion and good morals, even if guests should cease to flow to them on that account.

Resp. 2º They can admit all those which treat of merely political matters [11]. Nor do they seem to be bound to reject some sheet because it sometimes contains something less right by reason of Faith, provided it is not generally opposed to Religion.

[11] Understand, unless the treatment itself of political matters is opposed to good morals; which indeed would happen if false and therefore harmful principles were either openly defended or craftily insinuated, or if the legitimate rights of anyone whatever were attacked, or peoples were excited to hatreds, disobedience, etc.

End of the Treatise on Virtues.

Treatise On the Precepts of the Decalogue

As the Symbol is the epitome of things to be believed, so the Decalogue is the epitome of things to be done. For it comprises the ten precepts handed down by God to Moses on Mount Sinai, in which all the duties of man, which the natural law prescribes, are contained more or less openly. The first three immediately regard God; the rest are referred to the neighbor.

On the First Precept of the Decalogue

I am the Lord thy God... thou shalt not have strange gods. Exod. 20. 2.

This precept, as affirmative, prescribes in the first place the acts of Religion, by which the worship due to the Divinity is rendered; as negative, it prohibits vices opposed to Religion.

Chapter I. On the Acts of the Virtue of Religion

The principal acts of Religion are adoration, prayer, sacrifice, vow, oath, and the sanctification of certain days... Concerning the last three it will be said in the 2nd and 3rd precept. Concerning sacrifice, in the Treatise on the Eucharist. Here therefore only concerning adoration and prayer.

Article I. On Adoration

257. ○ Adoration taken more broadly is worship exhibited to someone on account of his dignity, or is the act by which someone exhibits his own subjection to another in testimony of that one's excellence. Thus Princes and others constituted in dignity are said in some way to be adored; likewise those who are specially loved by others.

But adoration taken more strictly is honor exhibited to God on account of his highest excellence and supreme dominion.

Hence worship is distinguished as 1° Of Latria, which can be exhibited to God alone on account of his supreme dominion over all creatures.

2° Of Hyperdulia, which is attributed to the Blessed Virgin Mary.

3° Of Dulia, which belongs to Angels and other Saints.

The worship of latria is due to God 1° by natural right on account of his highest majesty and supreme dominion over creatures; 2° by positive divine right, as is proved from innumerable texts of Sacred Scripture, for example Matt. 4. 10: The Lord thy God shalt thou adore, and him only shalt thou serve.

Worship is either direct or relative, according as it is rendered either to God himself or to the Saints, or to images or to those things which have a special relation with them.

Things to Be Noted Concerning the Worship and Relics of the Saints

258. ○ Men who have departed from life with a reputation for sanctity cannot be honored with solemn and public worship, unless they have been enrolled by the Supreme Pontiff in the catalogue of Saints or Blessed. But public worship is that which is exhibited in the name of the Church or as instituted by her; private worship, however, is that which proceeds only from private devotion, even if it is done before others. Therefore it is not lawful to erect Churches or altars in honor of Saints not canonized, or at least not beatified; nor is it lawful to invoke them publicly in litanies, nor to expose their Relics or images to be publicly venerated, or to carry them around in processions. Nevertheless it is lawful to preserve these images or Relics privately, to kiss them reverently, etc., because such worship is altogether private.

1° New Relics of Saints are not to be exposed to public veneration, unless the Bishop has recognized them. - Thus the Council of Trent, sess. 25. on the invocation, veneration, and Relics of the Saints.

2° Aureoles, or rays, cannot be applied to images of the dead, although they are commonly held as Saints, unless they have been beatified by the Church; likewise it is not lawful to hang lamps at their sepulchers. - V. Casus, n. 447.

Article II. On Prayer

259. ○ DEFINITION. Prayer, taken more broadly, is the elevation of the mind to God, or any pious affection of the soul toward God and toward supernatural things. But in the stricter sense it is a petition of fitting things from God. - St. Thom. 2. 2. qu. 83. art. 1. - St. Lig. at the beginning of this Treatise.

DIVISION. It is 1° mental or vocal, according as it is performed by the mind alone, or the concepts of the mind are also expressed by the mouth; - 2° private or public, according as it is done by a private person and in a private name, or in community or by the authority and in the name of the Church.

Principles. - I. Prayer is necessary for all adults by necessity of precept, indeed more probably by necessity of means. - 1° This is proved from innumerable passages of Sacred Scripture, for example Matt. 14. 38: Watch and pray. - Luke 18. 1: It is necessary always to pray and not to faint. - 2° Because prayer is the ordinary means established by God for obtaining necessary graces: Ask, and you shall receive. John 16. 24. - St. Lig. l. 3. n. 1.

II. The precept of praying obliges frequently, as is clear from the cited texts, yet not without interruption, which is impossible to human weakness. Therefore the words, It is necessary always to pray, according to the common interpretation of the Doctors, signify that one must pray frequently at an opportune time, and that one must never cease from weariness, torpor, or dejection of soul; or also that our actions generally must be directed to God.

III. Prayer furnished with the due conditions has infallible efficacy from the promise of Christ. Luke 11. 10: Everyone who asks, receives, etc. - John 16. 25: If you ask the Father anything in my name, he will give it to you.

But the conditions required are that it be 1° pious, devout, and attentive; - 2° with perseverance; - 3° with humility and confidence; - 4° concerning necessary or useful things.

Temporal things ought not to be asked except with at least an implicit condition, namely insofar as they can contribute to the salvation of the soul.

260. ○ Q. 1° When does the precept of prayer urge?

Resp. 1° It urges per se frequently, so that it cannot be omitted for a notable time without sin; according to the common opinion, the time of one month is reputed notable. - Suarez, Lessius, etc. The stricter say that a week suffices for grave fault. But the more lax require a whole year [1]. For the rest, the Confessor, as the Doctors have it, Resp. 2° It urges per accidens 1° in grave temptation, which cannot easily be repelled in another way; 2° in manifest danger of death; 3° in public calamities; 4° whenever another precept must be fulfilled for which prayer is necessary, for example, if Sacraments are to be received; 5° whenever some special divine help seems necessary to us.

[1] One must distinguish when a man is bound to pray by force of another precept, for example if it is necessary for conquering temptation, for disposing himself to justification, etc., and when he is obliged from natural right alone or from the precept of religion.

As to the first, from common doctrine, whoever, then noticing the necessity of praying, neglects prayer, sins; yet this omission does not have a malice distinct from that sin into which he falls, and this from the general principle concerning the guilt of an omitted means which was necessary for avoiding some sin.

As to the other, however, although all the Doctors affirm that from natural right one must pray at some time, nevertheless nothing among them is more uncertain than the time for fulfilling this precept. Most acknowledge frankly that the time of frequency cannot be determined sufficiently, as is also customarily said concerning the precepts of charity or penance (See Struggl, Tr. 5 q. 1. n. 23., who says this opinion is common among Theologians). - Some, besides the time of the first use of reason and the article of death, require that one pray at least once in the year. Thus with others the Salmanticenses (Tr. 21. cap. 9. n. 17.). Some think this obligation urges every month, yet adding nothing concerning the lightness or gravity of this obligation. Thus Bonacina (De Hor. Can. Disp. 1. q. 2. p. 1. n. 12.), Suarez (De Orat. lib. 1. cap. 30. n. 16.), although he speaks doubtfully (for he says: the delay of one year is not to be permitted, nor perhaps of one month), and Lessius (De Iust. et Iur. Lib. 2. cap. 37. n. 12.), who nevertheless is not firm in it, when he writes, to one month or another; and John of St. Thomas (2. 2. q. 83. art. III. n. 6.) called the opinion of these (Suarez and Lessius), conceived in the aforesaid words, sufficiently reasonable. - Progressing further, Palaus called this monthly obligation grave (Tr. 7 Disp. 1. p. 8. n. 3.), to whom the Salmanticenses (l. c.) wrongly joined John of St. Thomas; and Roncaglia (Tr. 7. Q. 1. cap. 1. q. VII.) followed him by way of opinion (I would think, he says); although the opinion of Palaus scarcely pertains here, since he expressly discusses prayer necessary for conquering temptations. Finally certain others said that this precept urges every week, thinking, that is, that the precept of hearing Mass can scarcely be satisfied unless some prayer is added: which opinion, besides the fact that it does not bear upon the matter, because it discusses prayer as a means for observing another precept, is commonly rejected both as to itself and as to the reason brought forward.

Let us conclude by recalling here the principle admitted by all, namely that a grave fault or obligation is not to be asserted unless a manifest and evident reason demands it; but it is manifestly clear that a reason of this kind is lacking with regard to grave weekly or monthly obligations, since no one has yet been able to see it. Add also the very tangled question afterward, what is necessary for avoiding grave fault, whether it is enough to have said once: God, help me, or something else. Therefore A. deservedly warns that the Confessor ought to insist more on inculcating the necessity of praying frequently than on determining the gravity of the omission. ought to be more solicitous in inculcating the necessity of praying frequently, than in determining the grave fault of omitted prayer.

261. ○ Q. 2° Does one sin who omits morning or evening prayers?

Resp. Neg. precisely per se, if they are only sometimes omitted. The reason is that there is no law which commands determined prayers on individual days and at certain hours. Yet some warn that rarely is some fault of negligence and acedia absent.

For the rest, in practice, those who more often omit them cannot be entirely excused from some fault, both because perhaps they pray very little at another time, or in another way, and thus at some time they will fail in the precept of prayer; and because, on account of the dangers which occur daily, when prayer is neglected, they will fall into many sins.

Q. 3° In what way does one sin who is voluntarily distracted in prayer?

Resp. Per se he sins venially, whenever without a just reason he is voluntarily distracted; and this holds even if prayer is made without obligation, because he inflicts some irreverence upon God. - Elbel, n. 419.

262. ○ Q. 4° For whom must one pray?

Resp. 1° For ourselves (according to the first rule of Charity); 2° for all wayfaring men, even infidels; 3° for souls detained in purgatory. It is drawn 1° from the general law of Charity; 2° from the words of St. Paul, 1 Tim. 2. 1: I beseech therefore first of all that supplications, prayers, petitions, thanksgivings be made for all men, for kings, etc.; nor are enemies to be excepted, as is clear from the words of Christ, Matt. 5. 44: Pray for those persecuting and calumniating you [2].

[2] He satisfies this duty of praying for all, who, although in praying he employs no memory of others, nevertheless in prayers which are not poured forth only for himself, of which kind are the Lord's Prayer, the Angelic Salutation, etc., positively excludes no one.

Q. 5° Whom besides God can we pray to?

Resp. The Blessed Virgin Mary, as our mediatrix; Angels, as guardians of men; all the Saints and friends of God, as our intercessors before Him. Privately there can also be invoked baptized infants who died before the use of reason, and according to Less., Bellarm., Bonac., Elbel..., the same must more probably be said concerning souls detained in purgatory.

But invocation of the Saints is of counsel, not however of precept, since Trent, sess. 25., says only that it is good and useful to invoke them. Yet he who never invokes the Blessed Virgin Mary will seem very careless of his salvation, since by a peculiar and marvelous providence she has been constituted our mediatrix.

Chapter II. On the Vices Opposed to Religion

The vices opposed to Religion are 1° superstition by excess; 2° irreligiosity by defect.

Article I. On Superstition

Superstition is a vice opposed to Religion by excess, by which either undue worship is exhibited to the true God, or worship due to God alone is exhibited to a creature. - Thus commonly from St. Thomas 2. 2. q. 92. art. 1. [1].

[1] Thus St. Thomas: Superstition is a vice opposed to religion according to excess; not because it exhibits more in divine worship than true religion; but because it exhibits divine worship either to whom it ought not, or in the mode in which it ought not. Now just as superstition is opposed to the virtue of religion according to excess, so another vice is opposed to the same virtue according to defect, namely irreligiosity, concerning which the Author speaks in the following article.

But the Doctors thus distinguish a twofold superstition of undue worship, that is, of worship furnished to the true God, but in a manner in which it ought not: one is superstition of false worship, another of superfluous worship; concerning which

see St. Alph. (Lib. 3. n. 3.).

§ I. On Idolatry

263. ○ Idolatry is an action by which worship due to God alone is attributed to a creature; and this is done not only by sacrifice, but by any sign of honor by which someone intends to submit himself to a creature as to God, for example by genuflection. - St. Lig. n. 12.

A twofold idolatry is distinguished, namely 1º Material or simulated, when someone, without internal affection, from grave fear, exhibits worship to an idol. It would also be called material if it proceeded from invincible error, for example if someone, falsely thinking that a Host was consecrated, adored it. In the 1st case it would be a mortal sin; in the 2nd none, as is clear.

2º Formal and proper, which is done 1º by adoring a creature as God; 2º by exhibiting worship to a demon or to another creature as if to God, or at least with the mind of obtaining something from such a creature which can be asked from God alone [1]. - St. Lig. n. 13.

[1] Others more clearly distinguish perfect and imperfect idolatry. They call that perfect which has infidelity taken strictly, namely an error of the intellect, annexed to it, and therefore exhibits worship to a creature because it attributes divinity to it. But imperfect they call that which, not from error, but either from hatred against God, or from the desire of obtaining something, exhibits external worship to a demon or to another creature, as to God.

But it is outside controversy among all, that any idolatry whatever, whether perfect or imperfect, or even only simulated and external, when, that is, someone exhibits worship to an idol as God not from error or evil will, but merely from fear, for example of a tyrant, is a mortal sin.

§ II. On Vain Observance

264. ○ Vain observance is superstition which employs means neither proportioned nor instituted by God for obtaining a certain effect.

It is of three kinds, namely 1º Notorious art, or the art of acquiring science without labor [1]. 2º The art of healings, or the art of healing by various signs or sacred things. 3º Observance of events, by which from consideration of some fortuitous event it is conjectured what will be favorable or unfavorable in the future. - St. Lig. n. 14.

[1] Notorious art differs from divination, because by disproportionate means the latter seeks knowledge and prediction of certain hidden things, but the former directly seeks the infusion of science. But observance of events, although, as St. Thomas says (2. 2. q. 96. art. 3.), in some way it pertains to divination which is made through the stars, according to which favorable and unfavorable days were distinguished; nevertheless there is a difference, because observances of this kind are without reason and art; whence they are more vain and superstitious. Add from the same St. Thomas (In Galat. cap. IV. Lect. IV.), that observance of events looks to disposing one's own acts according to vain indications; but divination intends more the speculative knowledge of hidden things.

Principles. - I. Vain observance is a grave sin, because it attributes divine honor to a creature, while it expects from it what must be expected from God alone; and because it rests upon an implicit pact with the demon [2]. Yet it can often be venial from imperfection of the act, from simplicity, from some ignorance, or from timidity, as happens especially among the uncultivated in the observance of events. - St. Lig. n. 15.

[2] Vain observance, as Theologians commonly hold, is made in one way with an express, in another with a tacit invocation of the demon. The former occurs when someone, wishing to procure something through disordered means, expressly invokes

or desires the help of the demon, whether this is done with a pact or without a pact. But the latter occurs when someone employs disordered means, which neither of themselves nor from the institution of God have the power of effecting what is sought.

II. Vain observance is recognized especially 1º from the insufficiency of the cause for naturally producing the effect; 2º from the addition of a vain or false circumstance as if necessarily required; 3º from the infallibility which is attributed to means in no way infallible. - St. Lig. n. 16.

III. In doubt whether the effects come from a natural cause or from the demon, they can be attributed to the powers of nature; and consequently it is lawful to procure them, because it is not established that the thing is evil; nevertheless a protestation against any intervention whatever of the demon is advisedly premised. - But in doubt [3] whether the effects are produced by the demon or by God, if it is certainly established that they cannot come from a natural cause, they must be attributed to the demon, unless the sanctity of the one working or other clear indications persuade the contrary, because it is rash to think that miracles are always being done. Whence it is not then lawful to try whether the effect is to follow or not. - St. Lig. n. 20. - St. Thom. 2. 2. qu. 96. art. 1. and others commonly.

[3] Understand doubt in the strict sense of the school, when, that is, there is present no probable or prudent reason concerning the insufficiency of natural powers, or the intervention of the demon; which also ought to be established concerning the first part of this principle.

265. Resolves. - 1º Those are guilty of superstition who wear bindings marked with certain characters; who invoke certain unknown names, or employ a certain number of crosses or prayers for healing wounds, for making themselves invulnerable..., etc. - St. Lig. n. 17.

2º Likewise those who wear certain prayers to St. Bridget or other prayers, expecting from them an entirely infallible effect. - Yet those are not to be blamed, indeed they are greatly to be praised, who wear pious medals, sacred likenesses, or Relics of Saints, hoping that they will especially obtain divine help for themselves. - St. Lig. ibid.

3º Likewise those are guilty of superstition who hold some days as favorable, but others as unfavorable, so that from this they direct their actions, or who for expelling diseases require herbs gathered on such a feast..., etc. - St. Lig. ibid.

4º But it is not superstitious to observe the moon or the times more apt for gathering herbs, cutting trees, etc., nor to wear sacred things or words of Sacred Scripture for the honor of God or of the Saints, and for imploring their help. Likewise neither to recite a certain number of prayers, nor to do all those things which can increase devotion, provided infallible force is not attributed to them. - St. Lig. ibid.

5º Nor is it in any way superstitious, indeed it is very religious and pious, to recite novendial prayers, or to repeat prayers so many times in honor of Our Lord or the Blessed Virgin, or of some Saint, provided infallible force is not annexed to such a number, to a certain day, or to a fixed time. - St. Lig. ibid. - V. Casus, n. 253.

§ III. On Divination

266. º DEFINITION. Divination is an inquiry into hidden things by the help of the demon.

DIVISION. It is 1º express, if it is made by express invocation of the demon; 2º tacit, if that invocation is only in disproportionate means [1].

[1] Namely it is not required that the demon at some time have made a pact that he would concur in the use of some vain means: for by the very fact that someone uses vain things, the demon mixes himself in, even if it is beyond the intention of the user to invoke his assistance. Nor is he excused who believes such means useful because of experiences: indeed the demon procures these, that he may gradually ensnare men and induce them to using similar things. Conf. Sanchez in Decal. Lib. 2. Cap. 38. And these things indeed must also be retained with regard to vain observance. From forgetfulness of these things indeed it has happened that, in passing judgment on certain phenomena of magnetism (as they call it) in these our days, some altogether most imprudently either remained uncertain or even pronounced that free from any fault which even a boy imbued with the first rudiments of catechesis would have pronounced manifestly to be ascribed to diabolical fraud.

Various kinds of divination are distinguished, of which kind especially are 1º Judicial astrology from the stars; - 2º Augury from the cry of birds; - 3º Auspice from their flight; - 4º Haruspicy from the entrails of animals; - 5º Chiromancy from the lines of the hand; - 6º Geomancy from signs in the earth; - 7º Omen from a fortuitous event; - 8º Necromancy from the invocation of a dead person; - 9º Oneiromancy from dreams; - 10º Sortilege from lots; - 11º Oracle from idols; - 12º Vaticination from seers or cards. - St. Lig. n. 5-6.

267. Principles. - I. Whatever hidden thing is known in another way than through revelation or through natural means must be attributed to divination; for there is no other means of investigating hidden things. - But in doubt whether knowledge arises from natural means or not, whether from a good or from an evil spirit, the rules set forth above concerning vain observance must be applied.

II. Express divination can never be excused from mortal sin, not even through ignorance; for it is clear that a pact with the demon is something most gravely illicit.

This is openly established from Sacred Scripture. For thus Deut. 18. 10: Let there not be found in thee one who consults soothsayers, and observes dreams and auguries. Neither let there be an enchanter, nor one who consults pythons, nor diviners, or seeks the truth from the dead: all these things the Lord abominates. - And Lev. 20. 6: The soul which shall turn aside to magicians, and shall fornicate with them, I will set my face against it, and I will cut it off from the midst of my people.

III. But tacit divination can sometimes be excused from mortal sin on account of simplicity or ignorance, or on account of defect of certain faith. - St. Lig. n. 7. - Voit, n. 416.

268. Resolves. - 1º He who, using disproportionate means for some knowledge, protests that he intends no commerce with the demon, is not free from grave fault [2]; for he acts against his own protestation, and implicitly invokes the demon, since neither God nor the Angels mix themselves in such things. - Otherwise, however, in doubt whether the effect is had from a natural cause, as was said concerning vain observance. - St. Lig. n. 8. - Lacroix, - Bonacina, etc.

[2] Conf. the Response of the Sacred Penitentiary to the Bishop of Lausanne (below n. 280.), concerning knowledge of some secret to be drawn from a person who is induced into somnambulism by the help of magnetism.

2º Natural effects must be diligently distinguished from free effects; for the former can often be conjectured, as, for example, from the singing and flight of birds, or from the aspect of the stars,

tempest, rain, or serenity of the sky, etc., is conjectured: for experience establishes that a natural connection is present among these things; but otherwise must be said concerning the latter.

3º Disposition or state of soul can sometimes in some way be conjectured from the color of the face or other external signs, although in practice one must for the most part abstain from such conjectures on account of the danger of rash judgment; but free acts, whether past or future, can never be known certainly.

4º They sin gravely who inquire from seers concerning their fortune or future life (in French: faire dire sa bonne fortune ou sa bonne aventure; faire tirer les cartes); unless they act from simplicity, jest, or curiosity, without applying faith to the things said. - St. Lig. n. 10. - Sanchez, etc. - But if they do this seriously, seers can with difficulty be excused from grave culpability in cooperation. - Thus Reuter, n. 43.

269. Questions. - Q. 1º Is the use of lots sometimes lawful?

Resp. 1º Divisory lots, by which it is discerned what is to be assigned to each in settling lawsuits, or in distributing things, certainly are lawful, if every trace of superstition is absent.

Resp. 2º Consultory lots, by which the divine will is investigated, that it may be known what is to be done, are not lawful, unless they are made by special impulse of God, or it is a matter of grave business in which other counsel is lacking. The reason is that according to ordinary providence God does not will that inquiry be made concerning his will in this way, but recourse must be had to prudent men, or to ecclesiastical Superiors.

Resp. 3º Divinatory lots, by which the manifestation of a hidden thing is sought, for example from the casting of dice, etc., are always gravely illicit, as containing at least a tacit invocation of the demon. Superstition of this kind is properly called sortilege, under which name also other kinds of superstitions commonly come. - St. Lig. n. 10.

270. ○ Q. 2º Is it lawful to conjecture future things from dreams?

Resp. Neg. ordinarily, because dreams almost always come from natural causes, for example from the commotion of humors, etc. On the other hand, dreams sent by God are very rare, and are joined with signs by which they can certainly be distinguished from natural or diabolical dreams. - St. Lig. n. 9. - Tamburinus, etc.

Q. 3º Is the use of the divining rod lawful?

Resp. 1º It is certainly to be condemned, whenever the rod is moved, or is not moved, at the mere intention of him who holds it by the hand, nor is it moved in the presence of another thing not sought, although it is of the same nature. For there is no proportion between a natural thing and the intention of a man. Hence they sin gravely who use the rod for seeking a thief, or for detecting the boundary stone of a field.

Resp. 2º The use of the rod for detecting waters or metals does not seem certainly to be condemned, if the rod over these is moved equally in every case, whether they are sought or not sought, provided a protestation is made against diabolical operation, which perhaps could be present, and every

superstitious intention is excluded. - Thus commonly the more recent authors, against St. Lig. n. 8., where he reproves the use of the divining rod in every case [3]. - V. Casus, n. 263. et seq.

[3] ** It is not true that St. Alphonsus reproves the use of this rod in every case. He reproves it in the sense concerning which A. speaks in the first Response; but concerning the second hypothesis the Holy Doctor has not even a word.

§ IV. On Magic and Maleficium

271. ○ I. Magic taken broadly, or natural or artificial magic, which is called white magic, is the art of doing marvelous things, at least apparently, through natural causes or the industry of man, without any ministry of the demon.

Magic, strictly so called, is the art of doing marvelous things, which, although they are not supernatural, nevertheless surpass the powers of man, and consequently can be done by the help of the demon explicitly or implicitly invoked.

II. Maleficium is the art of harming with the intervention of the demon. A twofold maleficium is distinguished, namely amatory and poisonous. Amatory maleficium, or philtre, is a diabolical art by which wanton love or hatred is vehemently excited in some person toward another. Poisonous maleficium is precisely the art of harming the neighbor by the help of the demon, and this in various ways, for example by diseases, dullness, etc. - St. Lig. n. 23.

Maleficium is commonly called sortilege, because through it an evil lot is cast upon those against whom vengeance is exercised through diabolical operation. Hence in Canon Law and in ecclesiastical history male and female magicians are called male and female sorcerers.

272. Resolves. - 1º Magic does not differ from vain observance, except that its effects are more marvelous, for example the alteration of bodies etc. But in moral species it differs neither from vain observance, nor from divination; because it matters little whether knowledge of hidden things or marvelous effects are sought from the demon.

2º But maleficium differs in species from other superstitions, because besides the sin opposed to Religion, it adds harm to the neighbor.

3º Amatory maleficium does not necessarily induce one to commit the sin of luxury; because it does not take away freedom, but only vehemently excites to lust toward some determined person, by changing the imagination and exciting it more vividly, by exhibiting more beautiful appearances, and by stirring libidinous humors. - Reuter, - St. Lig. n. 23.

Q. Can it be asked of a magician that he remove a maleficium?

Resp. Neg., unless it can reasonably be presumed that it is to be removed by natural means. - Thus commonly Theologians. - St. Lig. n. 24. and 25.

Magicians and malefici incur excommunication reserved in a special way if formal heresy is added; and this easily happens when, for example, they mix sacred things, adore the devil as God, or consult concerning those things which God alone can know, etc. They also incur excommunication, heresy being excluded [1]. This is established from c. Si quis ariolos; but probably this is only of ferendae sententiae. In the Old Testament malefici were punished with death. Exod. 22. 18: Thou shalt not suffer malefici to live.

[1] ** This censure after the Constitution Apostolicae Sedis of Our Most Holy Lord Pope Pius IX is obsolete.

Moreover Pastors, preachers, and catechists ought diligently to beware lest they speak to the faithful concerning various sortileges and superstitions commonly unknown; but let them have a brief discourse only concerning those which are known in that region, lest they teach those things rather than turn men away from them.

Appendix I. On Rotating Tables (tables tournantes)

273. ○ A few years ago (especially the years 1852-53-54), first in America, then in all Europe, indeed in the whole world, the most astonishing portents of rotating tables became widely known. In the beginning tables, or even any other movable things, were seen to turn in a circle, while they were touched by the joined fingertip of those standing around. But soon tables appeared which, one or the other foot being raised on high, by striking the ground and by other signs exhibited responses to those questioning; and not long afterward they satisfied questions also about things entirely unknown, or future, or even accomplished outside the present life, by writing on paper placed beneath, by the help of an attached pen.

Then astonished pious men, who perhaps at first had thought that in rotating tables there was a merely physical phenomenon, undoubtedly recognized a diabolical work and an infernal divination. Nor was there any delay: that practice of interrogating tables was condemned by several Bishops as full of superstitions and dangers.

274. ○ And indeed whatever may be the case concerning the simple motion of tables, which at some time could seem physical [1], provided it is not made at the command of the will, the other effects, so astonishing, are in no way to be attributed to the powers of material nature, but wholly to a cause endowed with intellect. For does anyone propose questions to a wooden or marble table, and expect a response from the same? There is no one who would be so insane; and therefore the common persuasion deservedly prevailed that the matter is conducted with spirits, by whom the tables themselves are moved; and for this reason they were called knocking spirits (esprits frappeurs). Now those spirits cannot be good spirits; for it would be blasphemous to assert that Angels or Saints, enjoying eternal happiness, intervene in these childish games of men, obey their vain will, and satisfy their most foolish curiosity. Moreover it would be asserted entirely impiously that God, who abominates divination and has prohibited it so severely, permits that the citizens of heaven serve it. Therefore spirits of this kind must be called evil spirits, cursed by God eternally, who continually lay snares for men. Now is it not horrendous to have such fellowship with unclean spirits, to invoke them with prayers, and thus to exhibit true worship to them? Is not that the crime of divination, which was prohibited by God as a great abomination?

[1] That certain persons wished to inquire, indeed to direct all the powers of their mind to this, that they might assign these phenomena to some natural cause, if any could be found, could perhaps be attributed to praise. But that seriously at last they attributed effects of this kind to powers exerted from the extremity of the fingers, either on account of imperceptible impulses of the nerves, or on account of the motion of an artery, or on account of some imagined magnetic force (all of which indeed were afterward repudiated even by those who first devised them through empty conjectures), and that not a

few, otherwise sensible men, seemed to admit these things as in some way plausible - this indeed it is uncertain whether it brings more grief or shame to our age. To these vain fantasies indeed it is really due that the common people did not receive prestiges of this kind with the horror with which it was fitting, and being childishly delighted with them as with a kind of game, opened wide access to a more notable fraud of the demon, namely of giving responses through tables, more stupid even than the stupid pagans themselves, by as much as it is a grosser stupidity to have expected some response from wooden tables than oracles from Pythian seers.

275. ○ Moreover, how many terrors of soul, how many detractions and calumnies concerning the neighbor, how many dissensions and disgraces of families, how many errors and apostasies from the true Faith, how many dangers of eternal salvation have arisen from this impious and pestiferous divination! Yet it must be acknowledged that not absolutely all things which are attributed to tables are true. Sometimes human fraud has crept in for deceiving the simple. But in so great a number of portents of this kind, very many are altogether undoubted, since they have been proved by most approved witnesses worthy of all faith. Although sometimes fraud was present, nevertheless where the thing is conducted as true, this in no way excuses from crime.

Nor is it right to interrogate tables or other things of this kind for the sake of experiment or jest. For it is not lawful to attempt an experiment in a thing evidently evil, nor to amuse oneself concerning it. And to this indeed pertains that excellent saying of St. Peter Chrysologus: He who wishes to jest with the devil will not be able to rejoice with Christ. - V. Casus, n. 271.

Concerning this matter see, among other things, the work of D. de Mirville, whose title is: Des Esprits et de leurs manifestations fluidiques.

Appendix II. On Animal Magnetism

276. ○ The inventor of animal magnetism is said to be Antonius Mesmer, a German physician, who, seeking new methods of curing, thought that he had found a marvelous means of various diseases in a certain most subtle flux generally emanating from the bodies of animals [1], similar to the flux of a magnet, which therefore he called animal magnetism.

[1] According to others, Mesmer fashioned for himself, or rather dreamed, the hypothesis of I know not what fluid, which would pervade and occupy not only animals, but absolutely all bodies. But concerning the very many things which he himself added about driving away diseases by the help of this fantastic fluid, all indeed very ridiculous, there is no need to say anything; for they lie buried with their author, his disciples having turned to other things.

The magnetic flux is supposed [2] to flow from the body of the magnetizer of the one magnetizing into the body of the one magnetized by the help of various gestures and touches of one upon the other, indeed by the act of presence alone, or of the will alone of the agent; nor rarely, as they say, especially the first time, the express will of the patient is required.

[2] Here A. touches only a peculiar opinion of certain persons. For it is known that the crowd of those who undertook to profess an art of this kind and to say something for defending it went away into the most disparate inventions. And some indeed, called spiritualists, attributed all phenomena solely to certain spirits, and for that reason rejected as mere impostures whatever else others bring forth on this matter. Others repeat all things from the will alone of the agent or (as they say) magnetizer, and ascribe to impostures whatever is added concerning some material intermediary as if it were the cause of the phenomena. Others, on the contrary, contend that the effects are obtained by the force of some material medium; but even among these, some devised a certain magnetic fluid, others a nervous fluid, others a biotic or vital fluid, others also an electric fluid, each according to his pleasure and the force of imagination. Meanwhile, however (which indeed

is most worthy of note), whatever they are accustomed to boast about their own fluid, whether magnetic, nervous, or biotic, they have nevertheless not yet brought forward even the least thing by which they prove the existence of this fluid and its emanation from bodies, or that their effect has its origin from causes of this kind. Hence A. excellently said that this fluid is supposed to flow from bodies, but by no means established. And indeed this one thing at last they chatter fearlessly, each on behalf of his own fluid or on behalf of the force of the commanding will: that those phenomena are due to the fluid devised by him; so that if perhaps you ask why this man attributes them to biotic fluid, that man to nervous fluid, those men to magnetic fluid, or what indication there is of a cause of this kind, you will find all mute, as fishes; and by wholly equal right you will decide that you can ascribe the effects to air, or heat, or oxygen. For the rest, it is indeed no wonder that in all these things certain monsters of systems are exhibited, in which there is nothing solid, nothing coherent with itself, nothing which savors of logic. For men of such a kind did not apply hand or labor to constructing them, who, accustomed to exact disciplines and cultivated by solid sciences, would know the philosophical manner of arranging things, which requires that certain principles and facts be established beforehand, from which afterward certain conclusions are deduced through the severe laws of logic; the matter is, namely, with a band of men from the lowest plebeian class of physicians, who proceed by almost that method which street jugglers also are accustomed to use. And hence it has happened that whatever at last they boasted, either by proclaiming or by writing, concerning fluids of this kind and their marvelous powers, all these things were received with laughter and contempt by the Academies of sciences, as many as are in Europe, and were sent away to charlatans.

Three principal effects or degrees of magnetism are exhibited: 1º the state of sleep, in which the senses are entirely lulled, as in natural sleep [3]; 2º the state of somnambulism, in which someone, wholly destitute of the use of the senses, nevertheless sees, hears, speaks, and responds to all things which are asked of him; 3º marvelous knowledge of his own state and of remedies suitable to his diseases, as well as the vision of actions of other men even far distant, and of all those things which are being done both near and far.

[3] Take the comparison between natural sleep and this artificial sleep only as to some general stupor of the senses. For otherwise stupor differs from stupor by the whole heaven. And indeed, is that done concerning natural sleep which we have concerning artificial sleep also in the Postulate of the Bishop of Lausanne (below n. 280.), when someone enters into that state of stupor, that neither the greatest crash at his ears, nor any vehemence of iron or fire can rouse him? See Caroli (Del Magnetismo Animale Part. 1. Cap. 9. n. 30.), who, after reviewing manifold difference between sleep and sleep, deservedly concludes after others that this artificial stupor does not properly merit even the name of sleep, with which, namely, it has nothing common.

Theologians and physicians have gone into three opinions [4], which we shall briefly report with their principal reasons.

[4] Deservedly A. passes over a fourth opinion, namely of some, who wished either to reject as fables, or to have believed as impostures and mere prestiges of jugglers, the marvelous phenomena of magnetism, as many as are narrated. Thus, for example, Debreyne, whose wares someone thought it worth the labor to transport even into our Italy. To the other miseries, namely, this also was added by bad fate, that where it was most necessary to rouse the common vigilance, lest this plague spread more widely, these men with entirely notable imprudence directed all their cares to lulling men to sleep, thinking, as it seems, that they had won singular praise for themselves in the critical art, while in reality they were able to bring back only the mark of marvelous simplicity.

277. ○ The 1st OPINION rejects and execrates magnetism in every case as a diabolical work; for those marvelous effects, they say, can be traced back neither to God nor to nature.

1º Not from God. For who ever of sound mind would fashion for himself God as so obeying the nod of a man, even an impious man, that when he requires it, God immediately concurs in things so prodigious, and changes the laws established by himself, as often as it has pleased man? Can God, contrary to the order of things, be compelled by human will to manifest his infinite power? An assertion of this kind would be blasphemous.

2º Nor from nature. For to produce the effects of magnetism the will of the agent is required, indeed also of the patient, at least the first time. But no natural proportion is given between a merely internal act of the will and the effect of a physical cause. For physical causes always act in the same way, the due conditions having been posited, independently of the human will, as is clear by the example of electric flux [5]; therefore, the proportion between effect and cause failing, this cause certainly cannot be judged natural, and consequently the effect must be traced back to infernal power. - Moreover the marvelous effects of magnetism seem wholly to surpass the powers of our nature; for it is not understood how one magnetized, even an uncultivated man, deprived of the use of reason and the senses, can at once acquire for himself so many excellent sciences [6], know languages entirely unknown, to see things most remote, to inspect the innermost thoughts of the magnetizer, as well as his own and others' illnesses, and to know remedies suited to these, which otherwise he utterly ignores, and of which, restored to his natural state, he does not remember.

[5] Namely according to these men, in one there is required, as they say, the will of magnetizing, but in the other, consent to receiving the action of the other. Now if speech is about those who deny any emission and efficacy whatever of any fluid, and repeat the whole effect from the command of the will alone, the absurdity of the hypothesis will be clear per se; for no philosophy, no theology (for no one is bound to defer anything to the dreams of physicians without logic) has ever conceded this force over external objects to an internal act of the will apart from the ministry of other powers. But if it is conducted with those who repeat the efficacy from a fluid, then indeed the reasoning of the Author is valid, namely that it is most absurdly said that the action of the fluid emitted, as is supposed, is so tempered according to the pleasure of the will, that it either immediately exerts force or suspends this force, or either prolongs the effect or quickly completes it, etc. And these things indeed as to the will of the one magnetizing.

But much less can a reason be rendered (a reason, I say, which can satisfy a man still using a sound mind), why the consent of the patient is required. For where has philosophy, where has the common sense of men admitted, or will ever admit, that the consent of our will is required beforehand, so that the physical force of an external cause, for example of heat, can affect our body and senses? Some reply that the consent of the patient is required beforehand, lest the influence of a contrary will on the body impede the effect of magnetism in the bodily organs. Thus they. But 1º no obstacle of this kind can be in him who, unthinking, is put to sleep; indeed he, as tranquil, would be more prepared for receiving the effects. Why therefore do they also require consent? 2º Consent is required, that he subject himself to the action of the magnetizer, but in no way that the effects follow; hence 3º after someone has once consented, the effect follows, however much the patient strongly resists the operation and tries to impede it; see several examples of this kind in Caroli (Op. cit. part. I. Cap. 4.), in which several times you will discern the image of the raving sibyl whom the pythonic spirit wearies, taming the rabid mouth and fierce hearts, and fashions by pressing (Aeneid. Lib. 6. v. 80.). And indeed this one indication by itself would suffice for the character of these prestiges, unless someone wishes of his own accord to be blind.

[6] These and other things of this kind, as superstitious, have already been expressly condemned by the Apostolic See in the decrees set below.

And indeed this first opinion rests upon a foundation certainly solid and firmer than the others.

278. ○ The 2nd OPINION holds that all the effects of magnetism can proceed from the powers of nature. Thus not a few physicians. Their reason is, 1º Because in certain human bodies there can be most subtle effluvia [7], after the manner of a magnet's flux, which act upon the bodies of others, and through the organs, upon the soul itself. For we do not know all the powers of nature, and innumerable are their effects, whose reason we cannot render to ourselves [8]. - 2º Because similar effects are produced in natural somnambulism; for somnambulists see, hear, and do astonishing things, which cannot be done by them in the state of waking, nor belong to the ordinary powers of nature [9]. - 3º Nor does it stand in the way that sometimes or ordinarily the will of the patient is

required; for it is not required insofar as will, or insofar as a merely internal faculty of the soul and independent of the body; but insofar as a means for exciting the imagination and moving the subtle spirits of the body, and thus for exercising force upon the moral state of man [10].

[7] The question here ought not to be made whether subtle effluvia can be diffused from human bodies: for all of us daily experience that effluvia of this kind, and quite often foul-smelling, indeed even harmful, are diffused not only from human bodies, both living and especially dead, but also from other bodies. But there are other things which more bear upon the matter, and which from those physicians, plainly either inexperienced in or forgetful of philosophy, still wait in vain for some study. Therefore let them prove 1° that this effluvium, which they fashion gratuitously and gratuitously call magnetic, betrays itself by some indication, not otherwise than electric fluid and magnetic currents of this sort manifest themselves; 2° let them prove that effluvia of this kind are so subject to the command of the will that this will, according to its pleasure, can retain them, emit them, and even recall them into its own body (as those men dream); 3° let them prove that those fluids, even after they have been emitted from the body, nevertheless can obey the precepts of the will (for even these things are boasted, with a heap added to other monsters of opinions), not otherwise than a servant obeys his master.

[8] Although not all the powers of nature are known to us, nevertheless this is known: what is repugnant to the powers of nature and the laws of acting. Now from those things which these men boast, innumerable things are plainly repugnant to the laws of nature; we shall hint at a few below.

[9] Even the patrons of magnetism themselves at last admit only a certain analogy between natural and magnetic somnambulism (which they acknowledge is improperly called somnambulism). For otherwise both the nature and the phenomena of each state are very far distant from one another.

[10] These things are said wholly falsely and merely for making a cosmetic covering; and this is proved not only from the things said above (§ preceding, note a), but also because, as they themselves acknowledge, after someone has once consented, even unthinking, and therefore apart from any excitation of imagination, he is seized by stupor.

But those reasons do not lay open how an uncultivated man, plainly ignorant of things and words, enjoys infused science; how he can discern things very far distant from himself, and also discuss them. Therefore it appears not at all by what reason this practice can be excused from the crime of divination. Let the patrons of this doctrine also explain to us by what reason true miracles can be discerned from the prestiges of magnetism. For several marvels which are perpetrated by the magnetized have been held in holy men by the Church as exceeding the powers and order of nature [11]. Therefore this opinion, as false and full of dangers, must be rejected.

[11] These things attack those Catholics who, with a certain marvelous good faith, know how to suspect nothing of superstition in all these things. For unbelievers and enemies of the Christian Religion indeed abuse these phenomena, which they contend are natural, for overturning the authority of miracles. But that certain persons, for defending the authority of the same miracles, directed their effort solely to this, that partly by calling the facts themselves into doubt, partly by conjectures sometimes very poor, violently dragging the same things over to natural effects, they might show that whatever is attributed to magnetism is far removed from the notes of a true miracle, claims for itself some praise of ingenuity, but none of prudent judgment.

279. ○ The 3rd OPINION distinguishes among the various effects produced by magnetism. According to its patrons, it must indeed be admitted that very often the demon operates in magnetism, and this when the effect produced depends only, or at least chiefly, on the will of the agent; or when the one magnetized through infused science learns writing, letters, or even languages, the knowledge of which he entirely lacked before; or when he knows or sees those things which are done at a great distance. For this seems wholly to exceed the powers of nature, nor are such things effected in natural somnambulism. Nevertheless it is not repugnant, they say, that magnetism naturally work other

marvelous effects; for marvelous is the power and efficacy of natural flux in various bodies.

Hence the patrons of this opinion conclude that the effects of magnetism in the first and perhaps in the second degree, namely in sleep and in somnambulism [12], can probably be admitted as natural, but not in the third degree, or in the state of vision. But (which these men little notice) it would have to be proved that none of effects of this kind in any way are repugnant to physical laws [13], and therefore can come from nature itself.

[12] There were those who would drag even the responses of the Apostolic See into the patronage of magnetism; because, namely, the Congregation of the Holy Office, to the question whether magnetism, accepted generally and in itself, ought to be judged lawful or unlawful, on June 23, 1840, responded: that every error, sortilege, explicit or implicit invocation of the demon having been removed, the mere act of employing physical means otherwise lawful is not morally forbidden, etc.; and moreover the same Congregation, referring to the same response in Letters given to the Bishops of the Pontifical Domain in the year 1856, made express mention of the use of magnetism thus: Every error, sortilege, explicit or implicit invocation of the demon having been removed, the use of magnetism, namely the mere act of employing physical means otherwise lawful, is not morally forbidden, etc.; as if, namely, according to the opinion of the Sacred Congregation some animal magnetism, whose use is lawful, were to be admitted in reality.

But nothing is more inept. The Sacred Congregation, as the Consultors of the same Sacred Congregation have often piously testified, never instituted any examination concerning the physical question of this magnetism. This indeed is also clearly apparent from the response which His Eminence Cardinal Gousset narrates was rendered to himself by the Apostolic See (Theolog. moral. Tom. 1. n. 425.): In the year 1842 we consulted the Supreme Pontiff concerning this question, that is, whether, the abuses of the thing being set aside and every covenant with the demon rejected, it is lawful to exercise animal magnetism, and to have recourse to it as to a remedy which many hold as natural and useful for health. His Eminence the Cardinal Major Penitentiary responded on September 2, 1843: This question has not yet been seriously weighed by the Holy See, nor would it respond so quickly. Now would not a response of this kind seem to be in conflict with the preceding? Or shall we suspect that the Apostolic See in the year 1840, namely before weighing the question, resolved the same? Thus, therefore, the matter stands: that the Sacred Congregation, whatever uncertain rumors concerning magnetism were carrying, whatever also there might be in the empty dreams or conjectures of those who were quarreling among themselves concerning the cause of these phenomena, being questioned by certain persons who were struck with fear at these new prestiges, judged that sufficient provision would be made for them by recalling to their mind those first principles by which theologians have always been accustomed to use in resolving doubts of this kind, namely that there is nothing of superstition in using means proportioned to connatural ends; otherwise, if this proportion between cause and effect were absent. For rendering this response there was indeed no need to institute an examination concerning uncertain rumors about phenomena and their causes. Therefore the Sacred Congregation employed the name of magnetism, because by this name all commonly use it, and because those who had sought the responses had used the same.

[13] This question of so great importance seems to be touched by certain persons less skillfully; and perhaps from this it happens that, rather than bringing some light to it, they wrap it in denser darkness and entangle it more.

Certain persons transfer the question from its real and concrete state to fantastic regions, and, indulging fantasy, ask whether perhaps some force is possible, whether some effect is possible, if that imaginary force were to exert its power, etc. And hence there is a most wretched illusion; for, carried away by these phantasms, they wish to give judgment concerning facts according to the rule of the same phantasms. They are to be asked that, the mockeries of fantasy having been dismissed, they inquire concretely concerning those things which really happen, and concerning the way in which they happen, and what reason is customarily rendered for them. Otherwise they will deceive both themselves and others, and, as the proverb has it, they will beat the air.

Others, however, consider the matter only inadequately, and seem to bring the whole question solely to the inquiry whether the phenomena, as they say, magnetic, can have place in natural somnambulism or not, defining from this the absence or presence of superstition, and therefore the lawful or unlawful use of magnetism. - But this theory labors under more than one inconvenience. And first indeed do we not all acknowledge, and do not these men also acknowledge with us, that in magnetic somnambulism even those phenomena appear which were expressly condemned by the Apostolic See as

superstitious and diabolical, and which therefore cannot be attributed to the powers of nature even in natural somnambulism? Therefore magnetic somnambulism, whose effects and phenomena do not correspond to the powers of nature, cannot be natural. But where it is established that a cause is present which is not natural, it would be wrongly argued that that cause is natural because some effect perhaps could flow also from natural powers. For indeed from the insufficiency of a natural cause for some effect the presence and efficacy of a preternatural cause is necessarily argued; but not vice versa from a natural effect is it rightly concluded that the cause is natural, when a preternatural cause, which is present, can produce more and less, and therefore the effect of each order. Nor indeed is it only not necessary in these circumstances to have recourse to a natural cause; but sound reason forbids that we should even suspect it. And indeed constant experience establishes that in magnetic somnambulism phenomena of each order indiscriminately (so that we may speak from the opinion of these men), namely preternatural and (as they will) natural, are had; but that phenomena of this rather than of that order show themselves does not depend on some diversity of the somnambulism or on a change induced in the state of the somnambulist or sleep-talker, but merely on the choice of those standing by, who perhaps ask for this or that response, this or that prestige. But where the distinction of effects, if there is any, depends merely on an accidental extrinsic occasion, and otherwise it is established that a preternatural cause is present, able for all those effects, which undergoes no change, another causality would wrongly be sought in natural somnambulism, of which no trace appears. Therefore.

And hence indeed it is lawful to proceed further by reasoning. For if the state of somnambulism of this kind has a preternatural cause annexed, but somnambulism almost accompanies magnetic sleep, and is not separated from it except per accidens, as is established by experience; deservedly now both sleep and somnambulism will be ascribed to the same cause.

But it is preferable to prove this very thing directly, namely that magnetic stupor or sleep bears before itself so many and such manifest indications of superstition, that it is altogether marvelous that they could have escaped the eyes of men otherwise sensible. And hence it will again become clear how by vain labor certain persons, for excusing from the crime of superstition this sort of thing which they call magnetism, think that this one thing must be inquired into: whether some phenomenon of this magnetic somnambulism can be judged possible also in natural somnambulism. For if sleep itself, preceding somnambulism, is not without a superstitious work, it is now clear that doubts about the other things following the sleep itself are moved in vain. Meanwhile let this alone be held as ratified: judgment must be given concerning facts, not as someone fantastically fashions them for himself, but as they really happen and are narrated by witnesses; for once this has been established, the superstition of magnetic sleep, as they say, betrays itself with little difficulty.

And indeed it is established, and ought to be established among all, that in the case there is to be judged a superstitious and therefore diabolical work, where, on account of the defect of proportion between cause and effect, no natural cause of the phenomenon can be assigned. But on account of the defect of proportion between effect and cause, whatever things could be devised for assigning a natural cause to magnetic sleep fall in vain. Therefore.

It remains only to prove the minor proposition of the argument. Therefore, those being passed over who attribute all these things to certain spirits (for spirits of this kind could be believed to be only demoniac), no cause could be devised except either the mere will of the magnetizer, or the same will with the intermediary of some fluid, by whatever name at last one pleases to call it. But neither cause has proportion with the effect.

And as to the will alone, either we suppose a mere act immanent in it, or one using the ministry of another power. But the whole power of an immanent act is consummated in the will itself, nor does it pass transitively to an effect extrinsic to itself. But the action of the will, if it uses the ministry of a power subordinated to it, is so circumscribed by the faculty of the same power that the effect cannot exceed that faculty itself; but no one has yet dreamed that there is in any of the powers subordinated to the will the force of producing per se the effects about which the discussion is. Therefore it is manifest that a cause equal to the phenomena of magnetic stupor is not had in the will alone of the magnetizer, unless recourse is further had to another instrument.

But recourse to the help of some fluid is no less absurd. Let us touch upon a few of the many things which could be said. And indeed the matter could be completed by a single argument. For if the cause of magnetic sleep must be referred back to the force of a fluid, when the force of this fluid has been removed, sleep would in no way be had from that principle: when the cause has been taken away, the effect must be taken away. But experience establishes that this sleep is obtained even when this instrument of the fluid has been cast aside; indeed, the leading men from the patrons of magnetism frankly acknowledge that whatever things are accustomed to be said concerning the force of some fluid, or concerning the touches

and gestures prescribed for transmitting the fluid, must all be sent away to impostures. Therefore it is clear that the cause of this sleep cannot be placed in any of the dreamed-up fluids.

But even if the hypothesis of some fluid is inspected in itself, this no less teems with absurdities. Certainly, since there is no middle between spiritual and material substance, we must altogether reckon this fluid among material substances. Therefore its action ought not to be repugnant to the laws of physical powers. But the phenomena of the magnetic action by which sleep is induced are found everywhere to be wholly repugnant to these laws.

And indeed 1º The action of physical powers is not varied according to the diversity of intention alone; hence if you put your hand near fire, you will be warmed, whether intention is present or not present. But any gesticulation whatever of the magnetizer has no effect unless the intention of magnetizing is present. Therefore.

2º Magnetic action so depends on intention that, when two or more persons are present and in altogether the same circumstances, according to the intention of the magnetizer, one is seized, the other suffers nothing, and this even when the magnetic effluvium cannot reach that one unless it first invades this one. But this is repugnant in a merely physical cause. Therefore.

3º It is repugnant to the action of a merely physical and material cause that it suspend a motion conceived at the mere command of the will, for example, that a stone projected into the air would retard its course at the nod of the will. But, the cause of magnetic sleep now posited, nevertheless the effect is suspended according to the choice of the will for two, three, or several hours. Therefore.

4º It is repugnant to the powers of a merely physical and material cause that it of itself seek the object to be seized, and one unknown to the principal agent, not otherwise than, namely, a dog is sent out to seek a hare. But when someone absent even by many leagues is magnetized, the magnetic fluid by itself must seek the person to be magnetized, although the magnetizer himself also does not know where he may be, whether to the east or to the west. Therefore.

5º Let the same be said concerning the phenomena of a certain partial paralysis or catalepsy, which is induced while magnetizing. For suddenly either an eye, or an arm, or a finger, or the tongue, etc., at the nod of the magnetizer the magnetic force seizes, stupefies, stiffens, and suddenly at the nod releases. Therefore it would be necessary that the magnetic fluid both understand the commands of the magnetizer and, all the other parts of the body and the rest of the nerves being passed over, most knowingly know how to touch only those nerves which are suitable for carrying out the command of the magnetizer, and which otherwise the magnetizer himself does not know. But all these things are repugnant to the powers of a merely material cause, and involve a heap of absurdities. Therefore.

6º Nor can another judgment be borne when that sleep is induced not through magnetic effluvium immediately cast into the person, but by means of some thing, as they say, magnetized. For in this hypothesis 1º the magnetic fluid, when the magnetizer thus commands, receives and keeps itself entirely collected in some small body, for example a ring, scissors, a nut, etc.; 2º and while it remains bound there in such a way that by any chemical means being applied it is not drawn away, and when the thing itself has been burned it remains in the ashes, nevertheless at the nod of the will it immediately flies away from there; 3º although, however, several persons touch, turn, retain, etc. the magnetized little body, nevertheless that one alone whom the magnetizer previously by his will designated. But it is repugnant to physical laws 1º that a merely material force, for example an effluvium of odor, once emitted, should obey the will by receiving itself wholly into a little body; 2º that by the force of the commanding will alone it should depart thence; 3º likewise that at the command of the will it should exert its power on this man and not on other men, so that, for example, the odor affects the nostrils of one only, not of others. Therefore.

7º It is repugnant to physical laws that a man's ears, while the slightest whistle affects them, nevertheless are not affected by the crash of a cannon or thunderbolt; and likewise that he perceives the touch of a finger or curl, who nevertheless does not perceive even glowing iron brought near him. But these phenomena also appear in a man induced into sleep by magnetic force. Therefore.

8º A man once induced into magnetic sleep, while he cannot be shaken out of sleep either by himself or by any other means however violent, is nevertheless awakened at the mere command of the magnetizer, even one far absent. But these things are manifestly repugnant to the action of merely physical causes. Therefore.

9º Moreover 1º a person seized by magnetic sleep experiences any sensations whatever of any object, with no object nevertheless present, according to the command of the magnetizer, as if, namely, magnetic elements understood and

executed the will of the magnetizer; 2° the magnetizer by the nod of the will alone not only so draws to himself the person sunk in sleep that this person very quickly and with any obstacle overcome follows him, but by the will alone raises him upward into the air, and keeps him suspended there as long as he pleases. But these things also are repugnant both to the laws of physical powers and to the action of a merely material instrument. Therefore. (Concerning these and things of this kind, conf. Monticelli, Del Mesmerismo, P. I, and Caroli, Del Magnetismo Animale, Tom. I.).

And let these few things out of several which could be brought forward suffice, so that it may be established: 1° that, for defining whether the use of magnetism is to be judged lawful or unlawful, certain persons imprudently turn the whole question to this: whether the phenomena of magnetic somnambulism bear before themselves something similar to the phenomena either of natural somnambulism, or of a woman laboring either under a cataleptic or hysterical disease; 2° that the things which Theologians are accustomed to hand down in doubt whether an effect ought to be ascribed to a natural or preternatural cause pertain nothing here: for here no indication, no even slightly probable conjecture of disease or of another natural cause is at hand; but very grave reasons persuade that a preternatural cause is present; 3° finally, that those act most imprudently who, without any diligent inquiry being employed into what this matter is, what is being done, what evil, what danger can be feared, rashly permit the faithful to each one's own choice, who will scarcely have an excuse from invincible ignorance before the eternal Judge.

The Roman Curia, questioned concerning the use of magnetism in general, responded in the Congregation of the Holy Office on April 21, 1841: The use of magnetism, as it is set forth, is not lawful [14]. This response the Sacred Penitentiary confirmed in the same words in the response to the Bishop of Lausanne on July 1 of the same year. But the question was set forth with various effects and circumstances which are customarily wont to occur in magnetism, as follows:

[14] The Author does not indicate what kind was the use of magnetism which was proscribed by the Sacred Congregation as illicit. The very distinguished Peter Scavini (Th. Mor. Tr. 5. Disp. 3. Cap. 1.) hints that the question proposed was concerning magnetism with circumstances not rarely occurring, namely that the magnetized person, evidently untaught, is immediately seen to be most learned, ignorant of reading, reads Arabic writings, even closed ones, without the use of the eyes, obeys the magnetizer although he is distant from him by several leagues, and does other things of this kind, which simply cannot be held as natural effects. Likewise that magnetism very often has place with persons of different sex not without great danger to honesty.

Debreyne however (Essai sur la Théolog. moral. page 322.) reports the question proposed to the Holy See otherwise, thus: In magnetic operations there exists a tendency toward unbelief and toward the corruption of morals; one would desire, for the tranquillity of consciences, to know on this subject what is the true opinion of the Holy See. And these things perhaps correspond more to the text of the Author, who says that the question was proposed in general concerning the use of magnetism.

Whatever be the case, dangers both concerning faith and concerning honesty of morals are not vainly imagined. And indeed danger to faith threatens in two ways. For 1° those magnetic somnambulists, not otherwise than the responses of tables and spirits, often babble something either against the truth of the Catholic Christian religion, or even against certain articles of faith, especially those which regard the immutable and eternal punishment of the reprobate; to which also pertains that they proclaim certain wicked men who died without penance as blessed in heaven, and on the contrary designate others, concerning whose eternal salvation there is no reason for despairing, as thrust down to Tartarus; 2° from these phenomena, as if effects of natural powers, an occasion is taken of detracting both from the authority of miracles and from the honor and force of the graces which we are accustomed to call gratuitously given.

But as regards honesty of morals, there are indeed those who think that only something is perhaps to be feared from immodest gestures; wherefore they judge that enough provision has been made for honesty if some upright witness stands by those magnetic scenes. But experience clearly teaches that danger of this kind extends much more widely. For 1° it almost happens that magnetized persons are carried toward the magnetizer by a vehement, indeed insane love, and by an untamable affection; 2° through that deep sleep, which can be shaken off only at the command of the magnetizer, there is an obvious occasion of shamefully abusing the magnetized person, who is then neither master of herself, nor afterward remembers or can have any knowledge of those things which happened to her while oppressed by sleep; Debreyne (p. 234.) reports with others stories of women who, having suffered force during that time, afterward in amazement found themselves pregnant, and certain report hands them down; 3° while magnetic sleep and somnambulism is induced,

magnetized persons, as the facts testify, are seized by venereal movements and pleasures; 4º and thence, as experience teaches, there is accustomed to follow their unbridled inclination toward venereal things; 5º since it is in the power of the magnetizer that he, according to his pleasure, excite and hold fast any sensations whatever in the magnetized person even without the presence of the object, hence another occasion and spring of foul deeds runs rampant with impunity; 6º finally there is added this, which writers on the magnetic matter hand down, that in spontaneous somnambulism also, which a person trained by long use can induce in herself, there is present the power of exciting these sensations in herself. All these things indeed abundantly suffice, so that the use of magnetism, as opening wide access to corruption of morals, ought to be judged prohibited by the very law of nature.

But besides the dangers of faith and morals, other reasons are not lacking on account of which the use of this sort of magnetism ought to be held illicit. And first indeed, by the opinion of all, it is intrinsically evil voluntarily to cast oneself into a complete incapacity of using both reason and freedom of choice, and besides to commit this very freedom wholly to the choice of another, who can abuse the faculties of soul and body and bend them to the worst things. But these things occur in the case; for it is admitted that the magnetized person in the state of sleep and somnambulism is not of his own choice, but remains wholly in the power of another (See Caroli, P. I, page 414.). Therefore. - Moreover the obligation is injured by which each one is bound both to preserve his own life and to ward off the danger of grave harm. For experience establishes that from those who permitted themselves to be magnetized, as they say, some were seized by death in the very action (See Debreyne page 314., Caroli, etc.), others fell into grave diseases, And from these things it is manifest how incautiously certain persons, after they have persuaded themselves that the use of magnetism can be believed free of superstition, now think it enough that they proclaim it lawful and plainly to be permitted to the liberty of the faithful. For even if that were true, which is very far from the truth, that there is no reason for suspecting diabolical intervention; yet there are many other things, and those sufficiently grave, which can and ought wholly to restrain the faithful from these prestiges.

others afterward were vexed by lasting illnesses, indeed through the whole life too, but others remained afterward entirely insane, finally others afterward suffered those things which we know are customary in men possessed by the demon.

Postulate — Of the Bishop of Lausanne Concerning Magnetism

Most Eminent Lord,

280. ○ "Since up to now the responses concerning animal magnetism seem by no means sufficient, and since it is greatly to be desired that cases not rarely occurring can be solved more safely and more uniformly, the undersigned humbly sets forth the following to Your Eminence.

"The magnetized person, who for the most part is of the female sex, enters into that state of sleep called magnetic somnambulism, so deeply that neither the greatest crash at her ears, nor any vehemence of iron or fire can awaken her. By the magnetizer alone, to whom she has given her consent (for consent is necessary), she is led to that kind of ecstasy, whether by various touches or gesticulations when he is present, or by a simple command and the same internal, when he is distant even by several leagues [15].

[15] If by a simple command, and the same internal, when the magnetizer is distant even by several leagues, that effect is obtained; therefore whatever is boasted concerning touches, or gesticulations, or the emission of a fluid (by whatever name it is called), as if causes of sleep and somnambulism, must be rejected as impostures and a mockery of the simple.

"Then, when questioned by living voice, or mentally, concerning her own disease and that of absent persons wholly unknown to her, this person, evidently untaught, immediately far surpasses physicians in science; she most accurately declares anatomical matters; she points out the cause, seat, and nature of internal diseases in the human body, which are most difficult for experts to know and

define [16], and unfolds their progress, variations, and complications, and this in proper terms; often also she exactly foretells the duration of the said diseases, and prescribes the simplest and most efficacious remedies.

[16] Certain persons have recourse to the highest degree of sensibility (as they say), which a person sunk in sleep obtains. But it is one thing to feel, another to know causes, nature, progress, future variations, remedies, etc.

"If the person concerning whom the magnetized woman is consulted is present, the magnetizer establishes a relation between each through contact; "but when he is absent, a curl from his hair replaces it and suffices. For when this curl alone is brought to the palm of the magnetized woman, at once she declares what it is (without looking with the eyes), whose the hairs are [17], where now the person to whom they pertain is living, what things he is doing, and concerning his disease she supplies all the aforesaid documents, not otherwise than if she herself inspected the body in the manner of physicians.

[17] If she knows the name, place, etc. of an absent person by the simple touch of a curl, what proportion, I ask, is there between cause and effect? Do we not have here that superstitious kind of soothsaying by which unknown and distant things are detected, and which is condemned as superstitious in the encyclical of the Sacred Congregation of the Holy Office set below?

"Finally the magnetized woman does not discern with the eyes; when these have been veiled, whatever it may be she will read, being ignorant of reading, whether a book or a manuscript, whether open or closed, whether placed upon the head or upon the belly. Her words also seem to go forth from this region. But when brought out of this state, either at the command, even internal, of the magnetizer, or as if spontaneously at the very point of time foretold by herself, she seems to be conscious of absolutely nothing concerning things done in the paroxysm, however long it lasted: what things were asked of her, what she answered, what things she endured - all these left no idea in her intellect, nor the least trace in the memory.

"Therefore the undersigned petitioner, seeing such strong reasons for doubting whether such effects are simply natural, whose occasional cause is shown to be so little proportioned to them [18], earnestly and most vehemently asks Your Eminence, that you, according to your wisdom, for the greater glory of the Omnipotent, as well as for the greater good of souls, which, redeemed by the Lord, stood at so great a price, would deign to decree whether, the truth of the aforesaid things being posited, a Confessor or Pastor can safely permit his penitents or parishioners:

[18] Observe diligently that both the postulate of the Bishop of Lausanne and consequently the response of the Sacred Penitentiary regard this one question: whether the use of magnetism of this kind ought to be judged polluted by the crime of superstition, and therefore proscribed as illicit. This very thing has been clearly confirmed from the encyclical letters given by the Congregation of the Sacred Inquisition to the Bishops of the Pontifical Domain, which we shall set below.

"1° That they exercise animal magnetism endowed with those characters and other similar ones, as an auxiliary and supplementary art of medicine;

"2° That they consent to be placed into that state of magnetic somnambulism;

"3° That they consult persons magnetized in that way, either concerning themselves or concerning others;

"4° That they undertake one of the three aforesaid things, after first having had the precaution formally from the soul of renouncing any explicit diabolical pact, and also every satanic intervention,

since this caution does not stand in the way that from magnetism of this kind either the same or some effects have already been obtained by some persons [19].

[19] From these things you have that which the common doctrine also hands down, that protestations are employed in vain for excusing a work from the guilt of superstition, when from the defect of proportion between causes and effects the diabolical intervention can be sufficiently established.

For the rest, since here we have it defined that in the aforesaid things the intervention of the demon is certainly present; and since the opinion of the Sacred Penitentiary ought to respond to the questions made, it is necessary to conclude that the response pertains to one of the first three questions, and that in it guilt is contained on account of the intervention of the demon.

But you have those three questions so bound among themselves, that one being proscribed on account of the crime of superstition, the remaining ones must necessarily undergo the same sentence. And indeed, if by comparison, as is fitting, of this response with the decree of the Sacred Inquisition described below, you determine that the crime of superstition shows itself from divination of unknown things, it is now easy to conclude that the reason of condemnation resides at least in the third question. Therefore the Apostolic See judged that responses are sought and given from the demon, and therefore that those somnambulists are the instrument which the devil uses for deceiving and ensnaring men. But this being posited, the same condemnation certainly necessarily embraces the second question also, that is, somnambulism itself, even if the reasons which persuade (See note a, p. 243.) that this state of somnambulism cannot be traced back to natural causes are omitted. For somnambulism is so bound with superstitious and therefore condemned effects that, even when any renunciation of the works of the demon has been premised, those effects are had. But sleep or somnambulism which, notwithstanding any protestation against the intervention of the demon, nevertheless betrays itself as an instrument of the demon, cannot fail to be illicit. Therefore. And hence there is an easy transition to the condemnation of the matter proposed also in the first question, namely concerning the use of magnetism as an auxiliary art of medicine. For the whole aid is expected from somnambulism and from the responses rendered by the somnambulist. But from what has been said, all these things are to be judged infected by the vice of superstition and therefore condemned by the Apostolic See. Therefore.

"Most Eminent Lords, of Your Eminence,

"By mandate of the Most Reverend Bishop of Lausanne and Geneva, the most humble and most obedient servant, James Xavier Fontana, Canon Chancellor of the Bishop.

"Fribourg of Switzerland, from the Bishop's residence, May 19, 1841."

Response

"The Sacred Penitentiary, the things set forth having been maturely weighed, judges that one must respond, as it responds: The use of magnetism, as it is set forth in the case, is not lawful.

"Given at Rome, in the Sacred Penitentiary, July 1, 1841 [20].

[20] There were certain most zealous patrons of magnetism who kept saying that this response of the Sacred Penitentiary had been retracted by later decrees, or at least did not hold authority of such a kind that, on account of it, the opposite opinion must necessarily be abandoned.

But that these things are wrongly said is manifestly clear from the Encyclical letters of the Supreme Roman Inquisition, given to all the Bishops and Inquisitors of the Pontifical Domain on May 21, 1856, in which it is expressly declared that the premised response must altogether be held as a decree of the Apostolic See issued through the organ of the Sacred Penitentiary. For they read thus: From the time when the magnetic phenomena began to be spread abroad, the Holy See, having been consulted, issued various decisions through the organ of the Penitentiary and of the Holy Office relative to the particular cases proposed concerning the lawfulness or unlawfulness of the use of magnetism. Now the decrees of the Apostolic See, issued through the organ of the Sacred Penitentiary with regard to the lawful or unlawful use of magnetism, are none besides this response of the Sacred Penitentiary to the Bishop of Lausanne. Therefore.

Card. Castracane, m. p.

Ph. Pomella, S. F. Secretary."

(Friend of Religion, August 7, 1841).

281. ○ Several other responses of the Holy See concerning the same matter being omitted, it is pleasing to report the recent decision of the Holy Office.

"ENCYCLICAL LETTER of the Sacred Roman Inquisition to all Bishops against the abuses of magnetism.

Wednesday, July 30, 1856

"In the general Congregation of the Sacred Roman and Universal Inquisition held in the convent of St. Mary above Minerva, the Eminent and Most Reverend Lord Cardinals, General Inquisitors throughout the whole Christian Republic against heretical depravity, after maturely weighing those things which have been reported from all sides by men worthy of faith concerning the experiments of magnetism, decreed that the present encyclical letters be issued to all Bishops for restraining the abuses of magnetism.

"For it is established that a certain new kind of superstition is brought in from magnetic phenomena [21], by which several innovators are occupied not, as would be fitting, in explaining physical sciences, but in deceiving and seducing men, thinking that hidden, remote, and future things can be detected by the art or prestige of magnetism, especially by the help of little women who depend solely on the nod of the magnetizer." (But with the response already given on July 28, 1847 [22], having been related, the Sacred Congregation adds):

[21] Since the Sacred Congregation pronounces that it is established that a certain new kind of superstition is brought in from magnetic phenomena, and indeed (as is said a little before) after the Eminent Cardinals Inquisitors maturely weighed those things which had been reported from all sides by men worthy of faith concerning experiments of magnetism, everyone sees that they are already sufficiently injurious even to the Apostolic See itself, who, selling themselves as the only clear-sighted persons in the whole human race, wish to hold as impostures whatever things are narrated concerning magnetic phenomena going beyond natural powers.

[22] You may see this response inserted below into the encyclical letters to the Bishops and Inquisitors of the Pontifical Domain.

"Although by this general decree the lawfulness or "unlawfulness in the use or abuse of magnetism is sufficiently explained; nevertheless the malice of men has so increased that, the lawful study of science having been neglected [23], pursuing curiosities with great loss of souls and detriment of civil society itself, they boast that they have obtained a certain principle of soothsaying and divining. Hence by the prestiges of somnambulism [24] and of clear intuition, as they call it, those little women, carried away by gesticulations not always modest, babble that they behold whatever things are invisible, and presume with rash daring to institute discourses concerning Religion itself, to evoke the souls of the dead, to receive responses, to detect unknown and distant things, and to exercise other superstitious things of this kind, certainly to obtain great gain for themselves and their masters by divining. In all these things, whatever art or illusion at last they may use, since physical means are ordered to effects not natural, there is found an altogether illicit and heretical deception, and scandal against honesty of morals.

[23] The Sacred Congregation wisely adds these things, lest anyone take an occasion of calumniating, as if studies were reproved which, concerning the terrestrial phenomena of magnetism due to electric currents, are handled by experts in

physics. But we have already said that as many learned men as cultivated this part of the physical sciences, all to a man, either were entirely silent concerning that fictitious animal magnetism to which the prestiges of somnambulism are due, or spoke with contempt as concerning mere impostures of charlatans.

[24] Observe how the Sacred Congregation also reckons somnambulism of this kind among prestiges.

"Therefore, for effectively checking so great a crime, most hostile both to Religion and to civil society, the pastoral solicitude, vigilance, and zeal of all Bishops must be aroused as much as possible. Wherefore, as far as they can with divine grace helping, let the Ordinaries of places, by the warnings of paternal charity, by severe rebukes, and finally by remedies of law being employed, as they shall judge expedient in the Lord with attention to the circumstances of places, persons, and times, expend every effort for repressing and tearing out abuses of magnetism of this kind, so that the Lord's flock may be defended from the enemy man, the deposit of Faith preserved whole and untouched, and the faithful entrusted to them preserved from corruption of morals.

"Given at Rome, in the Chancery of the Holy Office at the Vatican, August 4, 1856 [25].

[25] It is useful here to set down also the encyclical letters given by the same Congregation of the Holy Office to all Bishops and Inquisitors of the Pontifical Domain in the year 1856.

To all the Bishops and Inquisitors of the Pontifical State.

From the time when magnetic phenomena began to be spread abroad, the Holy See, having been consulted, issued various decisions through the organ of the Penitentiary and of the Holy Office relative to the particular cases proposed concerning the lawfulness or unlawfulness of the use of magnetism. Then, with regard to the general maxim, after profound discussions on Wednesday, July 28, 1847, renewing the resolutions of June 23, 1840, it was decreed as follows: "Every error, sortilege, explicit or implicit invocation of the demon having been removed, the use of magnetism, namely the mere act of employing physical means otherwise lawful, is not morally forbidden, provided it does not tend to an illicit or in any way depraved end. But the application of principles and means purely physical to things and effects truly supernatural, so that they may be physically explained, is nothing other than an entirely illicit and heretical deception."

Although with such a decree that which regards physical science and the repression of vicious and reprovable magnetic applications seemed to be reconciled, nevertheless a sad experience has made known the need of more efficacious provisions. For magnetism is not employed with due modes and for natural honorable ends: but according to the continual complaints of notable subjects advanced from many cities of the same Pontifical State, there are magnetizers who dare to apply magnetism to non-natural ends with most grave harm to private and common public morality, making use of women subject to disorderly postures, with the claim also of divining and revealing hidden and future events. Therefore, since such spectacles are not separated from an illicit and irreligious illusion, it has been judged necessary to prohibit them entirely, and to punish their authors, cooperators, and favorers.

For which reason it is enjoined on all the Bishops and Inquisitors of our provinces to watch over this, and to proceed summarily in an economic way, the truth of the matter having been inspected, after the opinion of God-fearing and learned persons, proportioning the penalties to the delinquencies with incarceration determinable in time according to the greater or lesser guilt, and keeping the Supreme informed about it, particularly when the use of magnetism qualified by heretical circumstances should require a rigorous process according to the norm of the sacred canons.

This circular shall be distributed to the district Vicars, and its exact fulfillment shall be procured.

Rome, in the Chancery of the Holy Office at the Vatican, Wednesday, May 21, 1856.

V. Card. Macchi."

V. Card. Macchi.

Appendix III. On the Consultation of Spirits, or on Spiritism

282. ○ Behold a recent superstition, but the worst of all, which in this age has arisen from Orcus for the destruction of souls.

For almost a whole century the monstrous plague of magnetism had raged throughout the whole world. Subsequently the phenomena of rotating tables came forth and became widely known; by various motions these gave responses to questions proposed to them concerning hidden things, and also concerning the state of souls of the dead. Soon the tables were silent, or a little afterward, or in these our times, namely from the year 1862, demons who had deceived men through the predictions of sleepers and afterward through the responses of tables, mock and lie in wait for them through pythons or intermediary persons themselves (they call them mediums).

But the consultation of spirits is had in this way: You go to a python, to whom you signify what you desire to know concerning matters wholly hidden, especially those pertaining to the other life. By him, with you present and hearing, some spirit is interrogated, as if it were some soul which had already migrated from this life, for example the soul of your father, mother, sister, etc. From the responses which are given, you could by no means doubt that you truly have a conversation with most dear deceased persons. For those persons report very many things to you, and indeed things known to you alone, but wholly unknown to others; indeed the responses are issued in their very style. This superstition, much worse than the former ones, smells still more of heresy and impiety; for it overturns the unshaken dogmas of our Faith, especially the eternity of the punishments of gehenna. For the dead, when questioned concerning their present state, respond that they are already blessed, or soon to be freed from punishments, although they do not deny that they have been sunk into hell.

From what has been said, it is sufficiently clear that the consultation of spirits is diabolical, and is properly called divination so severely prohibited by Sacred Letters.

Those who consult spirits, or Spiritists, in order that they may more easily spread their pestiferous error, at the persuasion of the devil have coalesced into a sect, which day by day grows especially in great cities.

Now it is not only gravely illicit to consult and interrogate spirits concerning hidden things, but also to be present at a consultation even merely passively, since it is a sin of cooperation in a thing intrinsically evil. - V. Casus, n. 277. et seq.

See more concerning the consultation of spirits, in various little works recently published, especially On Spiritism, by the Rev. Fr. Nampon, of the Society of Jesus. The Dead and the Living; Conversations on communications from beyond the tomb, by the Rev. Fr. Matignon, S. J. Magnetism, Spiritism, and Possession; Conversations on spirits, by Fr. Pailloux, S. J.

Article II. On Irreligiosity

Irreligiosity is a special irreverence which is inflicted on God, either immediately in himself, or mediately in persons or sacred things. Its principal species are tempting God, sacrilege, simony, blasphemy, and perjury. Concerning the last two it will be said in the 2nd precept.

§ I. On Tempting God

283. ○ Tempting God is a saying or deed by which someone explores whether God is powerful, wise, merciful, or endowed with another perfection. - Thus the common opinion with St. Thom. 2. 2. q. 97. art. 1.

But it proceeds from a twofold vice, namely either from infidelity, when someone, doubting concerning some perfection of God, says or does something with the intention of obtaining from God a manifestation of that perfection; or from mere presumption, when someone, doubting nothing concerning the perfections of God, without necessity wishes to obtain either a manifestation of the divine will, or special help of God through prodigies [1].

[1] Certain persons call tempting God arising from infidelity tempting strictly so called; but that arising from mere presumption they call less strictly so called. Others call the former express and formal; but the latter virtual and interpretative. Yet this does not please others; because express temptation does not always proceed from doubt concerning the attributes of God, but can arise from levity, curiosity, imprudent confidence, etc.

It is certain that formal express tempting of God is always a mortal sin against Religion [2]. - But if it is only implicit, often on account of ignorance, inadvertence, or smallness of matter it can be venial [3]. - St. Lig. n. 29., etc.

[2] Understand this concerning that tempting of God in which doubt concerning the divine perfections intervenes. For smallness of matter has no place in a deliberate doubt against faith. Nor nevertheless ought the sin against faith to be confused with the guilt of tempting God, which formally, on account of irreverence toward God, pertains to irreligiosity. But in this act there is present a twofold sin diverse in species: one against faith, the other against religion. For the rest, if revelation has not been sufficiently proposed to someone, it can happen that without sin a sign is asked from God for exploring the truth. See Suarez, De Relig. Tr. 3. Lib. 1. Cap. 2. n. 9.

[3] Formal tempting of God differs from interpretative not only because the latter admits smallness of matter, but the former in no way (for as regards lightness of fault on account of imperfection of the act, that is common to both); but besides, as Suarez warns, the mode of sin in interpretative tempting is far different from formal tempting of God; for formal tempting proceeds from doubt concerning the attributes of God, but interpretative, on the contrary, from too much confidence; the former besides is an exploration of divine perfection, the latter is in no way an exploration, but reductively and implicitly is rather a certain imprudent and presumptuous imploration of divine help. Wherefore Suarez concludes that these two seem to him to be distinguished even by specific malice.

Resolves. - 1º He sins gravely against Religion who asks that his innocence be proved by a duel, by glowing iron, etc. [4], or who voluntarily offers himself for martyrdom, unless he is excused by good faith or divine inspiration.

[4] When someone rashly exposes himself to grave danger, imprudently presuming on divine help, he sins in two ways, namely against the virtue of religion and against the fifth precept, as is said in the following resolution. See Less. lib. 2. C. 45. n. 4.

Yet it is lawful to ask from God a miracle under the condition, if it shall have pleased him, whenever there is present a grave cause for our salvation or that of others, or for fulfilling the divine will, or (as St. Thom. 2. 2. q. 97. a. 2. says) when there is underneath a just necessity or pious utility, and the other things which ought to concur for this; for then it is not to tempt God, but to ask earnestly for God's help at an opportune time.

2º Likewise he sins gravely who without a just cause exposes himself to the danger of death, because he expects divine help; but if he only acts rashly, without certainly trusting in divine Providence, he does not sin against religion, but only against the fifth precept of the Decalogue.

3º He sins only lightly who in a slight illness, remedies having been rejected, hopes for health from God; because there is no grave disorder there. Indeed he is excused from every fault if he hopes that, God helping, he will naturally be freed from such an illness. - St. Lig. n. 3. [5].

[5] St. Alphonsus (h. l.) attributes to Cajetan, Valentia, Lessius, Sayrus, and

Busembaum, that they said that there is a light fault if someone in a light matter and without danger of grave harm were to tempt God from mere curiosity of seeing some supernatural work. But in fact those authors have nothing of this kind; and Busembaum, in St. Alphonsus himself (ibid. n. 29), teaches the opposite with Lessius. But the fallacy of the citations in this passage of St. Alphonsus flowed, as often elsewhere, from the Salmanticenses (Tract. 21. Cap. 12. n. 4).

** If ever at another time, certainly on the occasion of this Note the VV. show themselves vehemently moved; and against those six lines they set up the mass of eight columns (Pag. 187-190). But rather than follow them running about here and there, it will be useful simply to set forth the state of the question, and the manner in which St. Alphonsus treats it.

The resolution of Fr. Gury, as is evident, regards interpretative tempting of God; and St. Alphonsus also treats of interpretative tempting (Lib. 3. n. 30), whose words are these: But this is the question, whether in INTERPRETATIVE tempting of God, as above, there is smallness of matter. Busembaum affirms with Cajetan and Valentia in 2. 2. D. 6. q. 14. n. 2. (Correct: Punct. 2), Lessius Lib. 2. C. 45. n. 4, Sayrus Clav. Reg. Lib. 6. (Correct: Lib. 4) c. 7. n. 14, and Toletus Lib. 4. c. 19. n. 7. These say that if someone in a light matter and without danger of grave harm were to tempt God from the mere curiosity of looking upon some supernatural work, he would sin only venially. But Sanchez more probably, Dec. Lib. 2. c. 34. n. 5, Suarez De Relig. Tom. 1. Tr. 3. c. 3. (Correct: c. 2) n. 16, condemn him of mortal sin, unless he were excused by reason of ignorance or lack of deliberation. Thus far the text of St. Alphonsus, from which the words were taken in the Note described above.

But who does not see that the question is indeed proposed by the Holy Doctor concerning material and interpretative tempting, but that then a case is added which pertains to formal tempting, such as belongs to one seeking to see a supernatural work for the sake of curiosity? And hence is the true cause of the whole confusion. For Busembaum, immediately before the words of St. Alphonsus (Lib. 3. n. 29 in fin.), was indeed saying that the fault can be light because of the smallness of the danger; but he was dealing expressly with interpretative tempting, nor does he have anything about curiosity for seeing a supernatural work, and with due right he cites Toletus, Sayrus, and Cajetan for his purpose. Likewise Valentia (l. c.): It happens that it is venial, if it is material and interpretative tempting, ... unless someone were to expose himself to the greatest danger. But about the curiosity of seeing supernatural works he has nothing at all. So also Sayrus (l. c.): Sometimes, however, it will be only venial, if it is material and interpretative tempting... unless someone were to expose himself to the greatest danger. But nothing occurs there about the aforesaid curiosity. But if Lessius (l. c.) and Toletus (l. c.) introduce mention of him who seeks something supernatural from curiosity, they refer that not to interpretative, but to formal tempting; but when they treat of interpretative tempting, they think the same as Busembaum, and they mix in nothing about the curiosity of seeing supernatural things. Therefore those Doctors are less to the point when cited there by St. Alphonsus.

The VV. take it ill (Pag. 188) that citations derived by St. Alphonsus from the Salmanticenses are sometimes said to be so. - Resp. Not only the citations in this place, but also, what is more to be regretted, St. Alphonsus took the form of the disputation from them. The excellent exploit of the Salmanticenses was this: after they had set forth beforehand (Tr. 21. c. 12. n. 2) the notions of temptation, both formal and interpretative, when afterward inquiring what kind of sin it is (ibid. n. 3. 4), they would distinguish nothing between formal and interpretative. Indeed, when they proposed the example common among the Doctors concerning interpretative temptation, namely of a man who, in a light illness, rejects medicines, trusting that he will obtain health from God, yet not expressly asking for a miraculous cure, or if he prays badly and irreverently, hopes that he will obtain those things which others commonly are wont to obtain, they altogether wish to look into that man, so that they may condemn him of grave fault, vain curiosity of seeing a miracle, and therefore they expressly exhibit him as dealing with God as with a juggler. Hence the true origin of whatever confusion there is also in St. Alphonsus. If the VV. desire a clearer argument of this origin, let them go to St. Alphonsus' edition of the year 1748, where the Holy Doctor speaks thus of this controversy (Lib. 3. Tr. 1. C. 2. Dub. 1. not. A): The question is whether smallness of matter is found in tempting God from lightness of matter? e.g., if in a light illness you reject medicines, expecting health from God, yet not expressly asking for a miracle, and similar things? Toletus, Bonacina, Sayrus, Valentia, AMONG THE SALMANTICENSES Tr. 21. c. 12. n. 3. (correct: 4), affirm. But the SALMANTICENSES deny, as more probable, with Suarez and Palaus. Does not the nucleus here plainly appear, excerpted literally from the Salmanticenses? Nevertheless, already from the edition of

the year 1757, as to the case thus proposed, the Holy Doctor had withdrawn from this anomalous opinion of the Salmanticenses. It would also have been desirable that he should discuss interpretative tempting on his own account, and should leave the Salmanticenses to themselves, who in that confusion oppose Sanchez also to Busembaum, although Sanchez, concerning the same case no otherwise than Busembaum, writes (Dec. Lib. 2. c. 34. n. 5 in fin.): Yet it must be confessed that sometimes the matter and danger can be so slight that the fault is venial, as Leonardus (Lessius) well teaches, whose example I set down, as, in a light illness, to be unwilling to use medicines, vainly hoping for health from God, without asking for a miracle. But Suarez, whom St. Alphonsus after the Salmanticenses opposes together with Sanchez, deals not with interpretative, but with formal tempting; and indeed the fact that this second head was cited by St. Alphonsus, and that chapter 3 was written erroneously in his text, is manifest from this, that § 16 is seen precisely in the second chapter, and not in chapter 3, since this has only ten sections.

4. Likewise he sins per se venially who, from negligence, comes unprepared to preach the word of God, hoping for special help from God.

§ II. On Sacrilege

284. ○ Sacrilege is the violation or unworthy handling of a sacred thing. It is distinguished as threefold: 1. personal; 2. local; 3. real.

Principles. - I. Sacred here is said of whatever is deputed to divine worship by a public rite from divine or ecclesiastical institution, and for that reason merits special reverence. - St. Thomas 2. 2. q. 99. art. 3.

Hence 1. Sacred persons are those who are deputed to divine worship by sacred tonsure, or by religious vows.

2. Sacred places are those which by public authority of the Church are dedicated to divine worship, as churches, cemeteries, public chapels, even those not consecrated or blessed; but not private chapels.

3. Sacred things are those which pertain to divine worship or are proximately referred to it, as the Sacraments, consecrated vessels, Relics or images of Saints; likewise those things which pertain to the adornment of the Church or of ministers; and finally ecclesiastical goods, even movable ones. - St. Thomas ibid., etc.

II. Sacrilege is a mortal sin from its kind, because it is opposed to the most excellent virtue, namely religion, and for the most part regards grave matter. - Nevertheless it can become light by reason of smallness of matter, or imperfection of the act. - St. Lig. n. 33, etc.

III. Sacrilege differs in species according as it affects a person, a place, or a sacred thing [1]; hence in confession these circumstances are to be explained. - St. Lig. n. 34. - St. Thomas ibid., etc.

[1] Although Suarez (De Relig. Tract. 3. Lib. 3. Cap. 1. n. 8) notes that the sufficiency of this division is not to be demanded with speculative rigor, and that no reason is given for this partition according to matter except that this magisterial division is commonly admitted, and is accommodated to explaining all sacrileges and comprehending them under certain heads, and to excluding whatever does not pertain to sacrilege; nevertheless (ibid. Cap. 5) he adheres to the common opinion, which recognizes in this threefold partition a threefold distinct species of sacrilege, and therefore holds that it must be explained in confession.

But it must be added with St. Alphonsus (Lib. 3. n. 34) that it is more probable that these species of sacrilege are not subaltern, but lowest species; for which opinion those words of St. Thomas make (2. 2. q. 99. art. 3. ad 2): And thus

likewise it is possible that two sins differ in species according to the material acts, but agree in species according to one formal notion of sacrilege, for instance if someone should violate a nun by striking her or by lying with her.

285. You will resolve. - 1. Personal sacrilege is committed 1. by laying violent hands on a Cleric or Religious; 2. by lustfully violating persons dedicated to God, even by mere touches; 3. by subjecting ecclesiastical persons to the judgment of the forum. - But it will not be sacrilege to detract from a priest, because only his person is sacred, but not his reputation. - St. Lig. n. 35.

2. Local sacrilege is committed 1. by all sins by which a Church is polluted by Canon Law, namely by the shedding of blood and of human seed, by homicide, by the burial of an excommunicated person or infidel in a Church; 2. by all sins which are committed against the immunity [2] and sanctity of a sacred place, such as breaking in, spoliation, theft, quarrels, and the like; 3. by actions unbecoming to the sanctity of the place, such as trading, clamors, the noise of trials, unless a grave cause excuses. - St. Lig. n. 36.

[2] Where there is question of sacrilege on account of the violated immunity of a sacred place, the notion of a sacred place extends much more widely than when there is question of acts directly opposed to the sanctity of a sacred place. For as regards these acts, by which a Church can also be polluted, sacred place means only the enclosure of a blessed place deputed for divine offices or for burying the dead, from roof down to pavement. But if the discussion is about the immunity of a sacred place, here the exterior parts of the Church also are included: the porticoes, e.g., the sacristy, tower, roof, subterranean crypts, stairs to the church, and the whole exterior base. Cemeteries even separated from the Church are held in the same reckoning, the Bishop's palace, and even the house of the parish priest, if it is joined to the Church, the convents of Religious with barns, gardens, and all those things which are enclosed by their precinct, and finally hospitals erected by authority of the Bishop and having a chapel for celebrating.

3. Real sacrilege is committed 1. by unworthy administration or reception of the Sacraments; 2. by unworthy handling of sacred Relics, images, etc.; 3. by profanation of sacred vessels, instruments, and ornaments; 4. by theft of a thing pertaining to divine worship or to the Church; 5. by abuse of Scripture, e.g., by twisting its words to vain things, etc.; 6. by negligence concerning sacred vessels, corporals, etc., in those who ought to care for these things religiously. - St. Lig. n. 40 and 48.

286. Questions. - QUESTION 1. Whether the violation of a person bound outside Religion by a simple vow of chastity is sacrilege?

Resp. It is controverted. The 1st OPINION affirms, because through any vow of chastity whatsoever a man is truly consecrated to God. For one's own will suffices for consecrating one's own acts to God, just as public authority is sufficient for public consecration. - Billuart, diss. 10. - St. Lig. n. 47, as more probable [3].

[3] This opinion has against it the common doctrine of Theologians, which defines sacrilege as the violation of a sacred thing, understanding under this name of sacred thing not only things, but also persons and places which by some special reason are destined for divine worship. But if there is discussion of sacred persons, Not every private devotion, as Suarez well says (De Sacrileg. Lib. 3. Cap. 2. n. 1), or purpose of dedicating oneself wholly to divine worship constitutes a sacred person, but it is necessary that such a consecration of the person be made by law. But this consecration is made either by sacred ordination in clerics, or by dedication to the perpetual worship of God in some state approved by the Church (Suarez, ibid. n. 1 and 4). Therefore a person is never made sacred unless he has been dedicated to divine worship by the public law of the Church, either through reception of sacred Order or through a religious state, as Laymann says (Lib. 4. Tr. 10. c. 7. n. 4), and as Cap. Duo sunt 7. Caus. 12. q. 1 also suggests.

And indeed St. Alphonsus seems to have preferred the opposite opinion, relying on the doctrine which the Salmanticenses (Tr. 21. Cap. 12. n. 22) attributed to St. Thomas, as if the violation of any vow were truly and properly sacrilege. But in fact, just as the same men (ibid. n. 21) falsely ascribe this opinion both to Azor and Bonacina, who hand down nothing of this kind, and to Lessius, who on the contrary writes expressly (Lib. 2. Cap. 45. n. 11) that it is called sacrilege rather improperly, so they wrongly invoke St. Thomas for it, and gratuitously imagine for themselves that the Holy Doctor, when (2. 2. q. 99. a. 3. ad 3) he names a virgin dedicated to God, understood this of a virgin bound by a simple vow. For the opposite is clear not only from the parallel place 2. 2. q. 154. a. 10. ad 2 and 3, where he more clearly names a person specially consecrated, but especially from a comparison made with 4. Dist. 38. q. 1. art. 3. q. 2 and 3, and 2. 2. q. 154. art. 1. ad 3; but also, and much more evidently, from his general doctrine, which does not bring back violation of a vow (2. 2. q. 88. a. 3) to the species of sacrilege, but to the vice opposed to fidelity. Moreover (2. 2. q. 97. Prooem.) he counts infidelity in promises, no otherwise than perjury, among sins which pertain directly to irreverence toward God, and altogether distinguishes them from sins which pertain to irreverence toward sacred things, of which sort sacrilege is by its own nature and definition. Therefore the reason collapses, namely the authority of St. Thomas, on account of which St. Alphonsus inclined to that opinion. Compare Suarez (De Sacril. Lib. 3. Cap. 3 and De voto Lib. 5. Cap. 3. n. 4 and 5), who also from the doctrine of St. Thomas plainly shows how greatly Cajetan hallucinated, who (Comm. ad 2. 2. q. 99. a. 3) was the first to bring in the anomalous opinion which recalls to sacrileges any infractions whatsoever of any vow, which for that reason Billuart also (De Relig. Dissert. 10) admits to be foreign to the common opinion, although he himself preferred to except the vow of chastity, less noticing that the condition of any private vow whatsoever, as regards making a thing sacred, is altogether equal. And this also shines forth from this, that by the consent of all sacrilege concerning persons truly sacred is committed not only through acts opposed to chastity, but also through violent laying on of hands upon them. But no one has regarded as guilty of sacrilege him who has laid hands upon a person obliged by a private vow of chastity.

This also is added, finally, that nowhere, as Suarez notes (De voto Lib. 5. Cap. 3. n. 4), is it found in the Canons that by a simple vow alone (unless, namely, a special consecration or handing over intervenes) a thing or person is made sacred. But with private vows of this kind no handing over of a thing or person is joined. The reason is that God does not accept these oblations or donations through Himself, but, as Suarez says (De Stat. Relig. Lib. 2. Cap. 7. n. 12), if anything is given to Him or for His worship, He wills it to be given to His ministers, so that it may be accepted and administered by them in His name; and otherwise the donation made is vain and void, as being foreign to the ordinary providence of God. From these things the same Suarez (ibid. n. 13) concludes that in this that opinion proceeds rightly... which establishes a difference between the simple and solemn vow of chastity; because a simple vow is only a promise not joined with a handing over; but a solemn vow of chastity always has some handing over joined to it, which is made not immediately to God, but through His ministers, and is accepted through them, and therefore the thing thus handed over to God remains under their care and governance.

Moreover, the opinion of which Suarez speaks here is that which he himself elsewhere (De Voto Lib. 1. Cap. 14. n. 7) had called common to very many Doctors, and among these also to St. Thomas, who hands down the reason for the difference between each vow, namely solemn and simple, which elsewhere (4. Dist. 38. Q. 1. a. 2. q. 2) he calls private, in this way (Quodl. 3. a. 18): The reason for this diversity is that a solemn vow has a promise with a certain handing over; hence a vow of continence is not solemnized except by the reception of sacred Order..., or by profession according to a certain rule, and the reception of the habit of the Professed.... But a simple vow has a promise without handing over. But it is manifest that after someone not only promises to someone a thing which was within his power, but also hands it over, he cannot afterward give it to another...; and even if afterward he should wish to donate it to another, the second donation is not valid.... But he who promises something to someone, but has not yet handed it over, if afterward he actually hands it over to another, although he breaks the fidelity of the promise, nevertheless the second donation is valid. And hence elsewhere (4. Dist. 38. Q. 1. art. 3. q. 2. ad 1) he adds: In like manner a simple vow obliges, just as betrothals do; and in the same way, comparing a solemn vow elsewhere with marriage, he concludes (2. 2. Q. 154. art. 1. ad 3) that the sacrilege which is committed in the violation of such a woman is a certain spiritual adultery.

But by no means should you think it must be feared that through these things the doctrine, now common and certain after the Constitutions of Boniface VIII and Gregory XIII, is perhaps weakened, namely that the solemnity of vows and the force attached to them of producing certain effects is to be derived merely from ecclesiastical law. And indeed how would Suarez, as we have seen, have said that the difference between a solemn and a simple vow is rightly established by those Doctors, if this were repugnant to the doctrine of the Apostolic Constitutions just mentioned, which in the same place he defends with all his strength? It must be noted, namely, what the same Suarez most learnedly premisses in these words when he is about to call that doctrine to examination (cit. cap. 7. Lib. 2. Tract. de Stat. Relig.): For accurately investigating the truth or

probability of such an opinion, I suppose that IN TWO WAYS that handing over can be understood to incapacitate the person for marriage, EITHER FROM ITS OWN NATURE AND THEREFORE BY NATURAL DIVINE LAW, OR FROM THE INSTITUTION OF THE CHURCH. Having premised these things, he adds that concerning the former manner the whole controversy exists, and that it is attacked by Scotus, Paludanus, and many other authors, although by reasons in his judgment less firm, for which then he himself (ibid. from n. 14) substitutes more efficacious ones from the Apostolic Constitutions. Therefore, provided that you hold that the incapacity for marriage which is attached to a solemn vow is to be derived from the institution of the Church, you can most rightly retain, even in the judgment of Suarez himself, that difference between a solemn and simple vow which we have said was commonly admitted by the Doctors.

Since, moreover, the discussion has fallen upon the doctrines of Suarez, it will be useful to hint in passing that there is by no means a need to embrace also that opinion of the Excellent Doctor by which he establishes that the nature or essence of the solemnity of vows consists in the power of voiding certain acts contrary to vows, or, as he himself speaks (De Stat. Relig. Lib. 2. Cap. 14. n. 10), in the force of incapacitating the person for certain moral effects, namely of bringing it about that those solemnly professed are incapable of contracting marriage, or of acquiring ownership, or of entering firm contracts; as if, namely, a vow could not be solemn unless it produced these effects. This opinion, as it is not supported by any solid reason, so it labors under many difficulties and disadvantages, and these not light.

Therefore it seemed otherwise to very weighty Theologians, such as Michael Medina, theologian of the Council of Trent, Cardinal Bellarmine, Gabriel Vasquez, John Azor, Cardinal De Lugo, John Malderus, etc., that this matter ought to be determined. And since from the Apostolic Constitutions we find the scholastics of the Society of Jesus incapable of marriage; and moreover the Formed Coadjutors of the same Society are declared incapable not only of marriage, but also of any ownership and property whatsoever, although both are bound to the same Society by simple vows only; while on the other hand many examples prove that at other times solemn vows in the Church did not obtain these effects, it is easy to conclude that that force of voiding certain acts is not necessarily implanted in, and in a certain manner essential to, the solemnity of vows itself, but comes to it extrinsically from a positive decree of the Church, whose right and power it is, as Bellarmine says (De Matrim. Lib. 1. Cap. 21), to render contracts of this kind legitimate or illegitimate by her decree, by making them altogether valid or invalid. And lest perhaps you conclude that therefore no distinction remains between a solemn and simple vow, compare those things which the praised Bellarmine, wisely in his usual manner, discusses at the end of the cited Chapter.

** A few things concerning the argument of this Note had been inserted in the Edition of the year 1866. Then more fully (Edition of the year 1869) the difficulty of certain persons in France introduced the necessity of explaining and confirming them, as if that Note detracted from the most true doctrine which holds that the solemnity of vows is of ecclesiastical law; which difficulty indeed also deterred Sanchez (De Matr. Lib. 7. Disp. 25. n. 14) from the opinion set forth above, which otherwise (ibid. n. 7) he shows to be the most common and to have been that of St. Thomas. But now behold, the VV. oppose to these things no fewer than twenty-eight columns. To what end? Namely that they may conclude that what St. Alphonsus says after the Salmanticenses is more probable, that even the violation of a simple vow is sacrilege. This conclusion indeed, as to practice, would conclude nothing. And indeed, if you suppose, e.g., that the sin of sacrilege is reserved, this probability would not forbid a simple Confessor from being able to absolve from the violation of a simple vow. But the VV. did not devote their labors, as would have been desirable, to recalling the question to its own principles, which they could have seen indicated at the beginning of the Note, and thus shedding some light upon it; but merely they heaped up from every side shreds of Authors which with some appearance might seem somehow to disagree with the opinions of this Note, as they almost always do. Therefore it will be better not to omit that which was of greatest importance. For if the question is recalled to its own principles, it will soon become clear what judgment must be made concerning that enormous mass of twenty-eight columns, and concerning all those texts or shreds of Authors.

It must first be premised that the name sacrilege is used both in a strict sense and in a broad one; but in this latter sense any sin against the virtue of Religion has been accustomed to be called sacrilege. See Azor (P. 1. L. 9. c. 27. q. 1), Filliuccius (Tr. 24. C. 9. n. 220), Palaus (Tr. 17. D. 1. Q. 2. C. 1. init.), Tamburini (Dec. L. 2. C. 6. § 3. n. 1), Catalani (Part. 2. Q. 7. C. 1. n. 1), Mazzotta (Tr. 2. D. 1. Q. 2. C. 1. init.), etc. In this sense, therefore, perjury, blasphemy, idolatry, etc., can be called sacrilege. - But in the strict sense, and insofar as it is a special sin, sacrilege is called the violation of a sacred thing. Thus Palaus (l. c.): Therefore the proper meaning of sacrilege is that which is taken from the injury or violation of a sacred thing, distinct from God: thus St. Thomas, RECEIVED BY ALL, 2. 2. q. 99. a. 1 and 3.

There follows a question of the highest importance: What comes under the name of a sacred thing? Laymann answers (Lib. 4. Tr. 10. Cap. 7. n. 2) that properly that thing alone is considered sacred WHICH BY PUBLIC RITE OR INSTITUTION

HAS BEEN DEPUTED TO THE WORSHIP OF GOD, as the jurists teach in L. In tantum, and L. Sacra ff. de divisione rerum. Palaus has the very same thing (l. c. § 1. n. 1), Voit (T. 1. n. 465), Suarez (De Rel. Tr. 3. L. 3. C. 1), Struggl (Tr. 5. Q. 6. art. 2. n. 9), Filliuccius (l. c.), Azor (l. c.), etc. And in fact the texts cited by Laymann agree. For L. Summa 1. ff. de divis. rer.: Some things are of divine right..., such as sacred things: whence that statement of St. Thomas (2. 2. q. 99. a. 1): From the fact that something is deputed to the worship of God, it is made something divine. And L. Sacra 9. ff. De divis. rer. has it thus: Sacred places are those which have been publicly dedicated. And § 1: It must be known that a place can become sacred when the Prince has dedicated it, or has given the power of dedicating it. And L. In tantum § 3. ff. eod.: Sacred things, however, are those which have been publicly consecrated, not privately: therefore if someone privately shall have constituted something sacred for himself, it is not sacred, but profane.

And from these things it is clear why Laymann (l. c.) added: A thing or person is not made sacred by any private purpose or vow whatsoever, but it is necessary that it have a public consecration by law, or deputation to the worship of God. And Suarez (l. c. C. 2. n. 1): Not every private devotion or purpose of devoting oneself wholly to divine worship constitutes a sacred person, but it is necessary that such a consecration of the person be made by law. And Filliuccius (l. c. n. 224): Not every private devotion or purpose of dedicating oneself to God constitutes a sacred person, but it is required that it be made according to the use of the Church and juridically.

Hence follows the consequence that a private vow of itself makes neither the thing vowed nor the person vowing sacred, because here no public and juridical deputation, dedication, or consecration of the thing or of the person to the worship of God intervenes. Therefore violation of a vow of this kind is indeed a sin against the virtue of Religion, because it involves a great irreverence toward God by breaking the fidelity given to Him; and insofar as it is a sin against the virtue of Religion, it can also be called sacrilege in that broad sense in which we have said that perjury, idolatry, divination, vain observance, blasphemy, etc., are called sacrilege; but it can in no way be called sacrilege in that strict sense by which violation of a sacred thing is denoted.

When, therefore, on account of a violated vow of chastity, which is the question, will sacrilege properly so called be present? Resp. When by juridical dedication to the worship of God a person has been consecrated, not in just any manner, but in order to preserve chastity perpetually. I have said, not in just any manner; because, e.g., clerics constituted in minor orders are sacred persons; but because they are not yet consecrated to preserving chastity, just as neither are priests of the Greek rite, hence by violating chastity they do not incur the guilt of sacrilege properly so called. Therefore there is required consecration in order to preserving continence, which has place 1. in sacred ordination, and 2. in religious profession.

Indeed, if it is asked whether the reason of sacrilege in the injury of chastity is to be derived rather from the nature of a vow, even a solemn one, or from the constitution of the Church ordering continence to the worship of God, we ought to conclude that the guilt of sacrilege proceeds from this ordinance of the Church. For let it now pass that the guilt of sacrilege is incurred also by those who, although they are truly Religious, are still bound only by simple perpetual vows; concerning which matter see Suarez and Filliuccius (ll. cc.). But this is more clearly evident from the doctrine of Theologians, which St. Alphonsus also (Lib. 6. n. 808 and 809) maintains, namely that a priest is to be said no less guilty of sacrilege because of violation of chastity, even if he is thought to be bound to preserving chastity not by force of any vow, but only by ecclesiastical law.

Therefore let it be concluded that, if the question is brought back to its own principles, no reason is available why the injury of a simple and private vow should have attached to it the guilt of sacrilege properly taken.

But for passing judgment concerning the weight of the authority of so many Writers, which is objected against this conclusion, it is better to inquire in what sense authors use the word sacrilege; indeed whether it is certain that they noticed the different sense in which it is used; furthermore whether they prefer any, or the genuine, notion of a sacred thing; and then whether they have weighed whence persons are made sacred. Finally, even if they have rightly premised those notions, whether they then determined coherently concerning individual matters, or whether they permitted themselves to be carried away by the authority of others, with the matter in no way weighed.

The 2nd OPINION, not less probable, denies, because by a simple vow of chastity a person is not made sacred; for public deputation by the Church is required for consecrating any person. - Elbel, n. 584.

But whoever is bound by a vow of chastity, as often as he violates this, certainly commits a twofold sin, namely one against chastity, and the other against Religion. - Lacroix, l. 3. n. 55. QUESTION 2. Whether all sins of lust committed in a Church or cemetery are sacrileges?

Resp. 1. Merely internal sins are not to be held as sacrileges, because they do not seem specially to affect the sacred place, unless there is an external desire of sinning in the sacred place itself. - Thus commonly. - St. Lig. n. 462. - But if they are held as sacrileges, nevertheless this circumstance, as being lightly culpable, is not necessarily to be disclosed in confession. Likewise, sacrilege will be a desire of sinning in a sacred place held outside that place, but not a desire conceived in a sacred place of sinning outside the same. - St. Lig. n. 462.

Resp. 2. As regards external sins, it is certain that sacrilege is committed by consummated acts, namely by voluntary pollution, fornication, etc. This is openly clear from Canon Law [4]. But whether it is also committed by other grave external sins, e.g., gravely shameful touches, is controverted. St. Lig. n. 459, Collet, etc., more probably affirm. Sanchez, Tamburini, Bonacina, etc. deny, however, not improbably [5].

[4] The sole chapter De Consecr. in VI, C. Si Ecclesia fin. De Consecr., and C. Ecclesiis 20. De Consecr. Dist. 2 are usually cited. But in fact these texts have only this: that a Church polluted by the spilling of seed needs reconciliation.

[5] The principle on which that opinion rests you have in Sanchez (De Matrim. Lib. 9. Disp. 15. n. 4), namely that this malice and special deformity does not arise from the law of nature, but from the statute of the Church alone; but no ecclesiastical law is found prohibiting these things from being done in a sacred place except the texts ... which establish that a Church is violated by the shedding of blood or seed. But this principle utterly recoils from the common sense of men. For certain actions are so shameful in themselves, or at least profane, that even if the Church's prohibition is set aside, they are unbecoming to the sanctity of sacred places, and are so opposed to this that, if they are perpetrated in those places, they are judged to detract from the honor and reverence due to them; and this, truly, not only the Christian people, but even the heathens themselves recognized by the natural light of reason and always professed. For it is indecent in itself that a place deputed to prayer and divine worship be converted into a place of sinning and offending the same God, as Lugo says (De Poenit. Disp. 16. n. 466). Moreover the malice of this irreverence, as the same Lugo cleverly notes (l. c.), does not appear opposed to any virtue except religion on account of the special reverence which is owed to a sacred place, and therefore it does not appear to belong to any species of sin, besides sacrilege.

There is also the disadvantage of the opposite opinion. For the ecclesiastical law from which those theologians draw the notion of sacrilege speaks merely of the necessity of reconciling a Church; whence the first authors of this doctrine, Cajetan (Opusc. Tom. 1. Resp. 12) and Navarrus (In C. Consideret n. 20), infer that sacrilege is had only in an act by which a place is made unsuitable for divine worship. But from this flows the consequence which Pontius (De Matr. Lib. 10. Cap. 10. n. 15) with others drew: that no crime of lust, even the most unspeakable, perpetrated in a church, can be held and called sacrilegious if the shedding of seed remains hidden; since if this is entirely concealed, or becomes known only to some few, the church does not need reconciliation. Hence two absurdities spontaneously flow. First, that no action in itself, while it remains hidden, will be sacrilegious. Then, that an action will not be sacrilegious as long as it remains hidden; but afterward it will become sacrilegious if perhaps the crime, which long remained hidden, comes to the knowledge of many.

Hence the truer doctrine must be considered that which Lugo handed down (l. c.), namely that, ignorance and inadvertence being set aside, all sins committed in churches include some special irreverence; and although this is not always grave, but can be light and therefore not necessarily to be explained in confession, nevertheless it pertains to the malice of sacrilege.

It must not here be passed over in silence that St. Alphonsus (Lib. 3. n. 485), after the Salmanticenses (Tract. IX. Cap. 15. n. 61-62), hands down as probable that, scandal apart, marital intercourse had in a Church is never sacrilege. But this opinion has no foundation, besides fallacious citations. For the doctors cited by the Salmanticenses in fact affirm this only concerning a case of necessity. But the circumstance of scandal does not of itself introduce the malice of sacrilege.

** On the occasion of this Note, the VV. wrote thirty-two columns (Pag. 205-221), yet with no other profit than that the bulk of the book was not a little increased.

And indeed as to the first part of the Note, the VV. remark that the opinion of Sanchez is also rejected by St. Alphonsus; nevertheless they add that it is less rightly explained in the Note. But, I ask, could it have been explained more rightly than by faithfully transcribing the words of Sanchez?

They wish to prove this by adducing the conclusion of Suarez (De Relig. Tr. 2. Lib. 3. c. 7. n. 11), that it seems more probable that immodest touches, especially the graver ones and those in dishonorable parts, are grave sacrileges. Then they add: Therefore he judges the opposite probable. I answer: I deny the consequence; for the VV. themselves immediately before report these words of Suarez: I say: every sin, at least an external one, done in a Church has thence some malice, at least venial. Therefore from those words of Suarez it follows indeed that the fault of sacrilege is probably not mortal, but not that the principle of Sanchez is probable. Indeed Sanchez himself, little consistent with himself (l. c. n. 21), admits that because of irreverence toward the place there is a venial fault. I have said, little consistent with himself; for if he derives the fault from irreverence, therefore from natural law, and not from positive law alone, he admits that a shameful act has sacrilegious malice; therefore he himself condemns his own principle.

The VV. then add (Pag. 208) that the opinion of Cajetan and Navarrus is less rightly explained in the Note. Resp. In the Note it is said that, according to the mind of Cajetan and Navarrus, sacrilege is had only in an act by which a place is made unsuitable for divine worship. But the VV. (Pag. 210) write thus: From this doctrine of Cajetan and Navarrus... it follows that, for sacrilege, it is always required that the sin be such that divine worship is impeded: because the Church..... has prescribed that, once the crime has been perpetrated, the sacred place be reconciled. Therefore by their own testimony the VV. admit that the opinion of Cajetan and Navarrus is rightly explained in the Note.

To these things the VV. undertake to defend the opinion of Pontius (Pag. 212), although they not only admit that rather few have admitted it, but add that it is commonly rejected, and must altogether be rejected. Nevertheless they contend that from it those two absurdities of which the Note speaks do not follow. - Resp. As to the first absurd consequence, namely that no action, however shameful, be it even the unspeakable crime of sodomy or bestiality, would ever be sacrilegious as long as it remains hidden, the VV. say nothing. Will that saying hold here or not: He who is silent seems to consent, even if they did not conceal their inclination to deny? - But as to the second absurdity, namely that an action would not be sacrilegious as long as it remains hidden, but would become sacrilegious if perhaps the crime which long remained hidden comes to the knowledge of many, the VV. observe (ibid.) that, according to the mind of Pontius, one is not sacrilegious in the forum of conscience if someone exercises fornication in a Church without contempt, if the crime remains hidden; but if afterward the crime becomes known, he is reputed sacrilegious in the external forum, and punished as such, because it is presumed to have been done with contempt. - Resp. Thus the absurdity is not avoided, but doubled. For Pontius surely must be understood of formal contempt; for otherwise, if you understand him also of virtual contempt, the question would now be about one who performs shameful things in a Church without any advertence to irreverence; but thus it would be altogether ridiculous to oppose the opinion of Pontius to the opinions of others. Therefore the opinion of Pontius will be this: that he is guilty of sacrilege, whoever exercises fornication in a temple with the direct intention of dishonoring the temple; but that he is not guilty of sacrilege, if he indeed knows that through his shameless acts he dishonors the sanctity of the temple, yet does not directly intend this. But 1. even this is said absurdly, that he is not guilty of irreverence who knows that he acts irreverently, although he does not directly intend this. And what is sacrilege except irreverence toward a sacred place? But 2. not even if formal contempt is present will the crime of fornication be sacrilegious according to the mind of Pontius. For he contends that sacrilege does not exist unless the reverence which the Church requires by positive precept, and on account of whose violation the temple must be reconciled, is injured. But, as he himself reasons (Lib. 10. C. 10. n. 15), the Church is judged to be polluted by the spilling of seed because it brings irreverence, and reverence consists also in the common estimation of men; it is therefore necessary that this quasi-defamation of the Church be notorious. Therefore if the crime remains hidden, sacrilege will be absent; and then, if it becomes notorious after the crime has long lain hidden, behold the absurdity of an act which was not sacrilegious and afterward becomes sacrilegious by becoming known.

Afterward the VV. write (Pag. 213) that they cannot sufficiently marvel that in the Note against the others there is invoked as the truer doctrine the one which Lugo hands down. For, they say, Lugo S.J. judges the doctrine of Sanchez to be truer, namely that touches, looks, and shameful words, provided they are not done with danger of pollution... do not have the species of GRAVE SACRILEGE. - Resp. The VV. themselves (Pag. 214) report the words by which Lugo S.J. teaches that all sins contract from a sacred place some special irreverence, and that this, although light, pertains to the species of sacrilege. Moreover that all sins contract from a sacred place some malice of sacrilege, at least light, is not opposed to the assertion

that the aforesaid looks, touches, and words do not have grave malice of sacrilege. Therefore the VV. can well restrain themselves, without any risk, from that immense astonishment.

Finally, the VV. (Pag. 215-221) undertake, through fourteen columns, to attack the last little part of the Note, in which it is said that, with no other foundation except fallacious citations, after the Salmanticenses it is handed down by St. Alphonsus as probable that, scandal apart, marital intercourse had in a Church is never sacrilege. And the reason is given in the Note, because the Authors cited by the Salmanticenses affirm this only concerning a case of necessity. Resp. The VV. themselves (Pag. 220) write: This opinion supposes that intercourse is exercised in the Church on account of an URGENT CAUSE. But if the matter so stands, why do they attack the Note, which says only that the opinion is based on false citations, the opinion which contends that intercourse in a Church is lawful even outside the case of an urgent cause or necessity? Besides, from so many Authors whom the VV. cite, only Pontius, and after him Perez, dared to affirm this. - But if there are any who say that it is in some manner probable, or not improbable, we find that this is always based on false citations of others, which one can see heaped up not only among the Salmanticenses, but also in Pontius. And the VV. too wished to contribute their token, citing for that opinion the Summa Rosella, Sa, and Soto. Let them consult that Summa (V. Consecratio § 1. n. 9), Emmanuel Sa (V. Debitum coniugale n. 12), and Soto (In 4. Sent. Dist. 32. art. 3. penult. col.), and they will find that the opposite is most manifestly handed down by them.

QUESTION 3. Whether every theft in a Church is sacrilege?

Resp. 1. It is certain that every theft of a sacred thing is sacrilege, and also of a non-sacred thing, but one committed to the custody of a sacred place, as is clear from Canon Law C. Quisquis, 21. § 2. causa 17. Quaest. 4, where it is read: Likewise sacrilege is committed by taking a sacred thing from a sacred place, or a non-sacred thing from a sacred place, or a sacred thing from a non-sacred place.

Resp. 2. As regards things which are found in a Church by chance or per accidens, such as purses, a watch, etc., it is controverted. More probably it is denied with Lugo, Azor, Lessius, etc., against Laymann and others [6].

[6] From the doctrine set forth it must better be said that even these thefts, from the circumstance of a sacred place, are not lacking the malice of sacrilege; yet since this is light, it will not necessarily have to be expressed by the penitent.

287. ○ QUESTION 4. Whether injury to any goods whatsoever pertaining to Clerics constitutes sacrilege?

Resp. No, but only injury to goods which Clerics possess not in their own name but in the name of the Church, and of which they cannot dispose, because only these are sacred. - St. Lig. n. 42 and others commonly.

QUESTION 5. Whether sacred vessels and vestments can be converted to profane use?

Resp. Affirmatively, if the thing is so totally changed that it is reduced to common use, e.g., if a Chalice by fire or iron is made into a mass of silver.

But otherwise, if it is not totally changed. Hence it is not lawful from an old chasuble to repair profane garments, nor to apply the ornaments of Priests to profane uses. But otherwise concerning those which are not blessed, such as carpets and candlesticks. - St. Lig. n. 41.

QUESTION 6. Whether Chalices and other vessels, consecrated by sacred unction, whether they still retain consecration or not, before they are handed over to an artisan to be repaired, must be desecrated by a priest?

Resp. S. R. C., April 20, 1822. Negatively.

QUESTION 7. To whom is it lawful to touch sacred vessels?

Resp. To all and only Clerics without special permission. This is also granted to regular lay sacristans by privilege of Sixtus IV, and also to nun sacristans by communication of privileges. - St. Lig. n. 48. - Salmanticenses, and others commonly.

But it is lawful for all to touch other sacred things, of which sort are, e.g., an Agnus Dei, at least by today's custom, Relics of Saints, sacred ornaments, except those which immediately touch the Holy Eucharist.

§ III. On Simony

288. ○ DEFINITION. Simony, so called from Simon Magus, is the deliberate will of selling or buying for a temporal price something spiritual, or something attached to the spiritual. It is called a deliberate will, that is, a will with deliberation [1].

[1] Simony is defined as a deliberate will, not only because, no otherwise than other sins, it requires deliberation, but also because for its essential malice it is not required that a pact be completed by mutual consent or in fact, but the internal or one-sided simoniacal affection suffices, namely the will of making a pact or of obliging.

A temporal price is distinguished in Canon Law [2] as of three kinds: 1. munus a manu, or recompense of any temporal thing whatsoever estimable by price [3]; 2. munus a lingua, or patronage, under whose name come praises, recommendations, prayers, etc., to be interposed by agreement in favor of one conferring a spiritual thing [4]; 3. munus ab obsequio, or any service whatever, or offices rendered to another, e.g., household service or any similar office.

[2] Thus St. Gregory, related in Can. Sunt nonnulli Caus. 1. q. 1: One thing is a gift from service, another a gift from the hand, another a gift from the tongue. A gift from service is subjection unduly expended. A gift from the hand is money. A gift from the tongue is favor.

But munus here, as is clear, is not taken for a liberal gift, but for a price, or debt, which induces a necessary burden and obligation.

[3] To this is referred not only remission of a debt, which is openly clear from Cap. Veniens 10. De Testibus et attestationibus, but also delay of payment, or anticipated payment, and a loan; yet when certain persons wish to give an account of these, they entangle themselves and the whole matter not a little.

And indeed St. Alphonsus (Lib. 3. n. 57) was compelled by his own right mind to say that exacting a loan for a spiritual thing is simoniacal, and therefore to put after it the opinion which condemns as depraved only a pact of lending in the future, but not of lending in the present; which opinion the Salmanticenses wrongly ascribe to St. Thomas (De Simon. Cap. 1. n. 35); for the Holy Doctor (2. 2. q. 78. art. 4. ad 2) does not speak of an imposed obligation of lending, but of the benevolence to be sought, by which someone is inclined of his own accord to lend in return.

Besides, St. Alphonsus (l. c.) gives no reason except that Simony is to hand over anything temporal for a spiritual thing. But the difficulty remains in what way a loan, which ought to be gratuitous, can be called something temporal in that sense, so that it is equated to a price. For, as St. Thomas says (2. 2. q. 100. art. 5), for Simony there is required a price or something estimable by price, which is absent from the gratuitousness of a loan.

Therefore Laymann (Lib. 4. Tr. 10. Cap. VIII. § 3. n. 25), in order to reconcile the gratuitousness of a loan with the Simony of one exacting a loan, has recourse to a broader sense of price, so that it comprehends every other temporal advantage which is given by agreement for a spiritual thing. But you would rightly call these things contradictory. For a temporal advantage which is not estimable by price is a chimera. See St. Thomas 2. 2. q. 100. art. 5 and 4. Dist. 25. q. 5. art. 3.

In order to solve the same knot the Salmanticenses (l. c. n. 36) reply that such purity is not necessary in a loan as is required in spiritual things. But this is nothing. For the purity which is required is precisely this, that it ward off compensation which is estimable by price.

Therefore the true reason why it is simoniacal to exact a loan for a spiritual thing must be sought from this, that the use of one's own money granted to others is in itself really something estimable by price; and this not only the common sense of men, but also very many doctors, admit (see Lugo De Iust. et Iur. Disp. 25. n. 18. 24) with St. Thomas (3. Dist. 37. q. 1. art. 6. ob. 2. coll. 4. Dist. 25. q. 3. art. 3). Nor, however, does it follow from this that a price can lawfully be exacted for a loan. For a loan, by the opinion of all, is reckoned among gratuitous contracts, no otherwise than a loan for use and a donation. Therefore whoever lends money voluntarily, from liberality, renounces compensation which he could lawfully exact, just as he who lends for use or donates a horse voluntarily renounces the compensation or price which he otherwise could receive for the use of the horse or for the horse itself. But he who exacts a loan by agreement for a spiritual thing does not receive something liberally offered, but imposes a burden in itself estimable by price. Therefore this is deservedly judged simoniacal.

** With sixteen columns (Pag. 222-229) the VV. detain the reader concerning this Note. But the sum of them is reduced to these heads: 1. That the Salmanticenses rightly cite St. Thomas; 2. That Laymann does not speak of a reciprocal loan; 3. That St. Alphonsus did not bring forward the reasons for his opinion because he judged the reasons cited by the Salmanticenses altogether convincing; 4. That the reason for the doctrine cited in the Note is true, but that the new reasons for the same are not true.

Resp. To 1. The Salmanticenses wished to prove that it is not simoniacal to give spiritual things for a loan; and to confirm this they said that from St. Thomas it is not usury to lend with an agreement that the other lend in return. - But this is false. For the VV. themselves bring forward two places from St. Thomas in which St. Thomas denies that it is lawful to exact something by debt of justice, although he grants that something can be received if it is given from affection of friendship, or from affection of benevolence. But what is given by agreement is given from debt of justice. Therefore the Salmanticenses wrongfully fasten that absurd opinion upon St. Thomas. - After the texts of St. Thomas have been brought forward, the VV. add (Pag. 224): Therefore here the Angelic Doctor teaches in clear and express words that it is lawful for one lending one thing at the same time to receive another loan. - Resp. It is lawful to receive from affection of benevolence and friendship, as St. Thomas has it, Granted; it is lawful to exact and receive what is given by agreement, as the Salmanticenses contend, Denied.

Resp. To 2. It is neither said in the Note, nor was there need to inquire, whether Laymann there treats or does not treat of a reciprocal loan. Therefore those things do nothing to the point.

Resp. To 3. That St. Alphonsus brought forward no reason for his most correct opinion because he held the reasons of the Salmanticenses to be altogether convincing is a mere conjecture of the VV., which otherwise would not contribute very much to the honor and glory of the Holy Doctor. And since the VV. admit (Pag. 228) that the reason of the doctrine brought forward in the Note is true, by that very fact, when they say that the reasons of the Salmanticenses are altogether convincing, they speak contradictory things.

Resp. To 4. The Author of the Notes pursues novelties neither elsewhere nor in this place, nor has he brought forward other new reasons here; but, other less suitable reasons having been put aside, he sought the true reason of the doctrine from the certain principles of St. Thomas and of other Doctors.

[4] This simony, therefore, is committed when through the conferral of a spiritual thing the conferrer, by some express or tacit agreement, intends to oblige another to pour forth prayers for him, or to some other office of this kind.

From this Suarez (De Simonia Cap. 40) shows that certain persons have extended this munus a lingua beyond what is fair, when they contended that it is simoniacal even for someone to give something spiritual, moved by the prayers either of the one to whom the spiritual thing is granted, or of another; which opinion, as Suarez (ibid. n. 5) notes, certain persons wrongly attributed to St. Thomas. Yet certain persons rightly make an exception if the conferrer exacts these prayers as a condition, especially if he exacts them from a prince-person, whose humble service in these things he seeks. Yet this would rather have to be called munus ab obsequio than munus a lingua.

Thus, therefore, Suarez, rightly distinguishing case from case (l. c. n. 3): I say, therefore, 1. To ask some Prelate, and the same applies to others, to confer a benefice on someone without another promise or agreement, is never sufficient for simony, nor do those prayers have the notion of a price, nor will the Prelate who confers the benefice principally because of them commit simony, although otherwise he can sin. This is now the common and received opinion.

And below (ibid. n. 9): It is gathered from what has been said that it is not simony to induce by prayers a powerful man or a familiar of the Pope or of a Bishop, so that from him he may obtain a benefice for me.

But he then explains the crime of Simony thus (ibid. n. 12): I say secondly: if through the conferral of a benefice or another spiritual thing the conferrer intends to oblige another to pour forth prayers for him, then he properly receives a munus a lingua; whence if he receives under an express or tacit agreement, he commits simony; and the same holds as often as prayers and intercessions have preceded under an agreement or promise of a benefice, if they should be made. This assertion is common.

And he gives the reason, because prayers of this kind are something temporal and estimable by price, and they are made for the favor and gain of him who gives the spiritual thing because of them.... But for this notion of price to intervene, it is necessary that a promise or agreement interpose; for if such prayers precede without obligation, and the conferral of a benefice follows from gratitude alone, or conversely if a spiritual gift precedes and intercession for the giver follows from gratitude alone, it is not simony.

And here those things must not be omitted which Schmalzgrueber notes (Lib. 5. Tit. 3. n. 114). For after he has observed that praises, recommendations, and prayers are called munus a lingua, e.g., if someone confers a benefice on another, one influential with a prince, with an agreement that this man interpose... his prayers with the prince... for obtaining a certain favor which he himself desires, he soon adds: Nor does it matter, even if the intercession is ordered to something spiritual, e.g., to obtaining through it an ecclesiastical benefice; because this intercession in itself is something temporal: therefore while a benefice is given for it, now a spiritual thing is given for a temporal thing; consequently simony is committed. Those ought to have kept these things before their eyes who, among the arguments by which they wish to confirm that the guilt of simony exists in buying with money prayers for obtaining a benefice, use also this, that those prayers are something spiritual. But indeed, if they are spiritual, we would have in the proposed case nothing but an exchange of a spiritual thing with another spiritual thing, and therefore not that temporal price which we call munus a lingua, and consequently neither simony; which nevertheless is contrary to the sacred canons and the common opinion of all.

Likewise the temporal thing attached to a spiritual thing is threefold: 1. antecedently, to which the spiritual thing accedes, as the right of patronage inhering in an estate; 2. consequently, that which depends on the spiritual thing, as the right of receiving tithes; 3. concomitantly, as labor in sacred functions. This labor attached to a spiritual thing is either intrinsically or extrinsically attached. It is called intrinsically attached if it is not easily separable from the thing itself; otherwise it is called extrinsically attached. Thus the celebration of Mass is labor intrinsically attached to a spiritual thing; but extraordinary fatigue, such as singing, delay until midday, a long or difficult journey to be undertaken for celebrating, and other similar things, pertain to labor extrinsically attached.

DIVISION. Simony is distinguished as:

1. Mental, if it is done merely internally or without agreement [5].

[5] Mental simony is called not indeed the purpose of entering into a simoniacal agreement with another, but the will by which someone, without any external bargaining, intends to oblige another to render a spiritual thing while he confers a temporal thing on him, or vice versa. Thus, e.g., if someone commends his son to the conferrer of a vacant benefice, and meanwhile, under the appearance of a liberal gift, sends silver vessels to him with that internal intention of moving and obliging him to present his son. And to this entirely pertains proposition 45 from those proscribed by Innocent XI: To give a temporal thing for a spiritual thing is not simony if the temporal thing is not given as a price, but as a motive of conferring or effecting the spiritual thing.

To this also pertains if someone, for a temporal thing accepted, confers a spiritual thing on another as compensation owed from justice, or vice versa, for a spiritual thing accepted, a temporal thing.

2. Conventional, if an agreement indeed intervenes, but has in no way been put into execution [6].

[6] Different partitions of simony occur among different authors. Some divide it in three ways, into mental, conventional, and real; and these indeed distinguish a twofold conventional simony, namely pure, when the agreement has been fulfilled on neither side, and mixed, if it has been fulfilled by only one of the two sides.

But others divide simony in two ways, into mental and conventional; but they distinguish this latter in three ways, namely 1. pure, when neither party has completed the handing over of the thing, 2. mixed, when only one party has handed over, 3. real, when handing over has been made on both sides. And it will indeed be useful to have noted these things for rightly understanding the authors.

But since a convention is the consent of two or more persons to the same resolution, it is clear that the promise of only one of the two parties does not suffice for conventional simony, but it is necessary that the promise have been accepted by the other; otherwise it will be called mental simony rather than conventional.

3. Real, if the agreement is fulfilled on each side [7].

[7] Three things must be noted here: 1. That simony be reckoned real, and that penalties be incurred, it is not necessary that for the spiritual thing already handed over the simoniacal price have been paid in full, but it suffices that it have been handed over incipiently or in part.

2. Although after the spiritual thing has been handed over simony is held as conventional as long as the simoniacal price has not begun to be handed over, nevertheless as to the penalties of law it is drawn back to the time of the past agreement. See Schmalzgrueber (Lib. 5. Tit. 3. n. 35) and Reiffenstuel (eod. tit. n. 25).

3. Although certain persons thought (see in Suarez De Simon. Cap. 41. n. 7-9) that, as to the effect of incurring penalties, simony must be held as real when the spiritual thing has already been handed over, although the temporal price has not yet been handed over; and this both because of certain texts of law in which a penalty is threatened, although money has only been promised (see Schmalzgrueber Lib. 5. Tit. 3. n. 217), and because of confidential simony; nevertheless the more common opinion requires some handing over on each side; and Reiffenstuel clearly shows (Lib. 5.

Tit. 3. n. 239-243) that the texts objected are not efficacious for persuading the contrary. But that, once a benefice has been handed over in confidence, penalties are incurred even before the other has fulfilled his promise, this is so singular from the Constitutions of Pius IV and Pius V that not even the mediators of this simony themselves, although otherwise struck with excommunication on account of real simony (C. Cum detestabile 2. De simonia Extrav.), incur the penalty unless the handing over has been completed on both sides, since they are not comprehended in the Constitutions of Pius IV and Pius V.

There is added confidential Simony, which is done by any agreement or confidence in election or presentation to benefices, or in their resignation, etc. [8]. - St. Lig. n. 49, 56, etc.

[8] Confidential simony has special laws and penalties from the Constitution Romanum of Pius IV and the Constitution Intolerabilis of Pius V; and its matter is ecclesiastical benefices alone. Therefore if simoniacal agreements are made concerning pensions or any other right which is not properly comprehended under the name of benefice, they must be referred to common simony, but not to confidential simony.

But this special simony consists in this: that he who gives another a benefice in whatever way, that is, either by electing, or presenting, or postulating, or conferring, or giving in Commendam, or instituting, or resigning in favor of another, reserves something by his own authority from an agreement, express or tacit, either concerning the fruits of the benefice or concerning the benefice itself. I have said by an agreement: for the interior intention alone of obliging would induce mental simony, but not confidential simony; for which, nevertheless, according to § 3 of the Constitution of Pius V, the express consent of the one receiving the benefice is not required, but it suffices that, once the giver's reservation is known, he accepts the benefice.

Moreover, reservation concerning the benefice itself is manifold, as is also drawn from the Constitution of Pius V, and is distinguished, namely:

1. Reservation of access, when someone wishes the benefice to come finally to a blood-relative, or even to himself; meanwhile, however, he confers it in some way upon another by this agreement, that at the opportune time this man resign it to the blood-relative or to himself.

2. Reservation of ingress, when someone resigns to another, on this condition, a benefice already conferred upon himself but not yet possessed: that when this man relinquishes it for whatever reason, he himself, the one resigning, has the right of entering upon its possession.

3. Finally, reservation of regress, when someone resigns to another a benefice already possessed by himself by this agreement, that whenever it becomes vacant in any way, it is to return to the one resigning or to another certain person.

But the principal cause of prohibiting these resignations is hinted at also by the Council of Trent (Sess. 25. Cap. 7. De Reform.), namely a certain hateful species of hereditary succession in benefices; whence the Holy Synod also decrees that coadjutorships are to be granted most cautiously.

Simony is also distinguished as of divine, or natural, law, and of ecclesiastical law. The former is had if the thing exchanged simoniacally is spiritual from its own nature, as are indulgences, Sacraments, etc.; but the latter if the thing is spiritual only from the institution of the Church, as are benefices [9].

[9] Others more clearly say: Simony of divine law is present where the dignity of a spiritual thing is disparaged by comparison and exchange with a temporal thing, namely when for a temporal thing there is given a thing per se truly spiritual or attached to the spiritual. But it is of ecclesiastical law when a spiritual thing or a thing attached to this is given for another likewise spiritual thing or a thing attached to this, as in the exchange of benefices without the authority of superiors, or also when a thing per se temporal is given for a temporal price, as if someone buys the office of steward, treasurer, etc. For although the malice of the aforesaid contempt is absent from these exchanges, nevertheless the Church deservedly forbade them from a motive of religion and reverence toward sacred things. Thus the common opinion, which also holds this latter as simony properly so called. See Schmalzgrueber (Lib. 5. Tit. 3. n. 24-25).

289. Principles. - I. For Simony it is required that a temporal thing be given or accepted, whether formally or virtually, for the spiritual thing itself, and in exchange for it, so that an equivalence of the spiritual thing with the temporal is made, or an exchange from the primary motive of having one for the other as a price or just compensation. The reason is clear from the very definition of Simony. Hence if some honest motive intervenes, by force of which the temporal and in turn the spiritual is bestowed, one would no longer be the motive of the other, but only its impulsive cause, and therefore Simony would not exist.

I have said 1. formally, that is, that someone directly intends, in place of the temporal thing and on account of its estimation, to accept the spiritual.

I have said 2. virtually, namely that someone through a temporal thing wishes proximately and immediately to obtain a spiritual thing, and no other true and honest motive intervenes. For in this will there is virtually included the intention of exchanging one thing with the other. - Thus Suarez, etc.

II. It is lawful to give for a temporal price something attached to the spiritual antecedently and concomitantly extrinsically, provided the price is not increased on account of the spiritual thing attached. But it is in no way lawful to give for a price something attached to the spiritual concomitantly intrinsically, or inseparably, nor something attached consequently.

The reason for the first is that the things and the labor of the action are truly in themselves estimable by price. Nevertheless, by Canon Law the sale of the balsam which is contained in Chrism is prohibited, although it preexists the consecration; because, since it is of slight price, the Bishop would seem to sell the Sacraments. - St. Lig. n. 72.

Nevertheless, concerning blessed oil or sacred Chrism, Scavini notes: A custom has prevailed in some cathedral Churches, that something is accepted from particular Churches for compensating expenses incurred in procuring the matter.

The reason for the second is that what is intrinsically attached to the spiritual is inseparable from it, whence the thing itself or action would be judged to be sold. Yet even if extrinsic labor is set aside, something can lawfully be accepted for sacred ministry by reason of stipend, or sustenance, as is clear from the practice of the Church. For natural equity demands that honest sustenance be granted to those who devote themselves to the utility of others. Hence Christ, Luke 10:7: The workman is worthy of his wage. - And the Apostle, 1 Cor. 9:13: Do you not know that those who work in the sanctuary eat the things that are of the sanctuary; and those who serve the altar partake with the altar? So also the Lord ordained for those who announce the Gospel, to live from the Gospel.

For the administration of the Sacraments, however, nothing is to be accepted under this title, even from those giving spontaneously; but if anything is spontaneously offered, it can be accepted as alms. - S. Congr. Conc., February 1, 1593.

The reason for the third is that what is consequent is considered spiritual, or bound to the spiritual. This is also drawn from the special disposition of Canon Law.

III. Simony is a most grave sin [10]; and if it is of divine and natural law, it does not admit smallness of matter. But if Simony is of ecclesiastical law, smallness of matter can be found in it according to St. Lig. l. 3. n. 50 [11]. - The reason is that any spiritual thing whatsoever, from comparison with a temporal thing, is disparaged with great injury to God Himself. This is also clear from the words of St. Peter to Simon Magus, Acts 8:20: May your money be with you unto perdition, because you have thought that the gift of God is possessed by money.

[10] The common doctrine is that simony is reduced to the species of real sacrilege, by which a sacred thing is handled irreverently. For in fact there immediately appears profanation and injurious handling of sacred things, when they are equated to a temporal price, and thus are altogether cast down beneath the dignity by which they surpass every price. See Suarez (De Simon. Cap. 1. n. 7) and Schmalzgrueber (Lib. 5. Tit. 3. n. 12).

[11] The reason why lightness of matter can be found in simony of ecclesiastical law is this: that such simony is not forbidden as if a temporal price were given for a spiritual thing, but it is prohibited by the Church for removing every appearance of simony and avarice, and other disadvantages; whence through this injury is not properly done to a sacred thing, but only the precept of the Church is violated; and in this smallness of matter can be found.

Indeed, the smallness of the gift offered can excuse even from simony of divine law, insofar as a thing of light moment, e.g., some little birds, or rare flowers, or first fruits, since it is not apt to induce any obligation, e.g., of presenting to a Canonry, and therefore cannot have the notion of a price, by that very fact removes any suspicion of a contract, whether express or tacit. Pirhing (Lib. 5. Tit. 3. n. 133).

Yet these things do not seem to be valid as to examiners in a competition for a parish. For to these, under the penalties proper to simony, it is forbidden to receive absolutely anything, whether from the candidate, who by giving would incur the same penalties, even if otherwise he was going to receive sufficient votes, or from others. And although some wish to excuse them from penalties on account of lightness of matter, as if someone bestowed moderate food or drink upon an examiner, nevertheless both the words of the decree, "absolutely anything," and the declaration of the S. Congregation stand in the way. See Thesaurus (De Poenis Eccl. V. Simonia, cap. 4).

290. Questions. - QUESTION 1. Whether it is Simony to give a temporal thing principally indeed on account of a spiritual thing, but not uniquely?

Resp. Affirmatively. The reason is that even thus there is present a comparison of a temporal thing with a spiritual. For the motive which is added, however honest it may be, does not destroy the malice and impiety of the former motive, on account of which the temporal thing is principally given. This is also clear from proposition 45 condemned by Innocent XI. - St. Lig. n. 54.

QUESTION 2. Whether it is Simony to give a temporal thing for conciliating a Superior to oneself with a view to obtaining a benefice?

Resp. No, if the primary intention is of giving the temporal thing gratuitously; because then the immediate comparison is made of a temporal thing with a temporal thing, namely the benevolence of the Superior. But otherwise if the spiritual thing is intended as a due recompense, and not as an effect of gratitude of soul. - St. Lig. n. 51.

QUESTION 3. Whether it is Simony to perform sacred functions principally on account of a stipend, or to receive something for one's doctrine?

Resp. to the 1st. No, at least more probably, because the stipend is not received as a price of a sacred thing, but as something owed to the person who is occupied for the sake of the neighbor. - St. Lig. n. 55. - Lacroix, n. 62, and others commonly, against some. Therefore if some inordinate affection intervenes, for every fault will be absent if need or another honest cause impels one to seek stipends of this kind, it will be a vice not of Simony, but of avarice.

Resp. to the 2nd. Affirmatively, if the instruction tends to the spiritual good of others, because it is a spiritual thing, unless, however, it is accepted under the title of stipend or sustenance. But otherwise if the instruction is merely temporal, e.g., in handing down an explanation of sacred Letters or theology [12]. - St. Lig. n. 94.

[12] St. Thomas: He who has knowledge, and has not received with this an office by which he is obliged to expend the use of knowledge for others, can lawfully accept the price of his doctrine or counsel, not as selling truth or knowledge, but as hiring out his services (2. 2. q. 100. art. 3. ad 3).

291. ◦ QUESTION 4. Whether it is Simony to redeem oneself by money from unjust vexation concerning benefices, or another spiritual good, e.g., Sacraments, etc.?

Resp. No, at least more probably, because liberation from vexation, which alone is directly intended, is something temporal. - Hence you can give money to your enemy, if he attempts by fraud to impede the electors from favoring you. - St. Lig. n. 101, and others commonly. Indeed Doctors agree in this very thing, even if he wishes to impede by prayers alone [13]. But you cannot give money to those who can harm or benefit by electing or presenting to a benefice; for to offer money to them lest they harm would be the same as to offer it so that they benefit, namely that they not deny consent. - St. Lig. n. 99. Nor is it lawful for you to give money to your competitor so that he desist from competing for the benefice; because there is no unjust vexation for you to redeem, and you would be preparing a direct way to the benefice for yourself through money, which is simoniacal. - Thus the more common opinion.

[13] Thus St. Alphonsus (Lib. 3. n. 101 and 102). The reason: because if it is lawful to give money so that another cease from vexing me against justice, it will also be lawful to give so that he cease to vex against charity.

QUESTION 5. Whether it is Simony to give or accept something for entrance into Religion?

Resp. 1. It is certain that it is not lawful to give or accept something for entrance alone; because this would be an exchange of a sacred thing, of which sort Religion is, with a temporal thing.

2. It is also certain that it is lawful for a poor monastery to exact something for the sustenance of the one entering, because then a spiritual thing is not exchanged with a temporal thing; and

otherwise equity demands that something be received, lest the monastery, weighed down by burdens, collapse.

3. It is likewise certain that it is lawful for a monastery to exact something for the sustenance of Novices, because since they do not yet pertain to Religion, and can depart at will, and often in fact do depart, it is not equitable for the monastery to be under so grave a burden for them. The Religion of the Friars Minor, however, by special decree can accept nothing.

4. But it is controverted if there is question of a wealthy monastery. St. Lig. n. 92 denies that it is lawful, unless the one to be received is old or infirm. Yet not a few others affirm, provided money is not exacted for the entrance itself, but is received or requested only by reason of sustenance, or of dowry [14]. Besides, now every doubt vanishes because of the difficulty of the times. For there are found no monasteries founded so opulently that they in no way need outside help for the present and the future. Besides, Nuns can always exact the established dowry [15], as is clear from many decrees.

[14] Namely, from the indult that nuns can receive a dowry from those entering, even if the monastery is rich, certain persons wished generally to infer the same concerning monasteries of men, so that at least under the title of sustenance something can lawfully be exacted.

But unless there is question of goods spontaneously offered, because every danger and appearance of simony ceases in these, although otherwise even a gratuitous donation can be prohibited for other causes, as happens in a donation bestowed upon examiners of parish priests, the truer and common opinion with St. Thomas (2. 2. q. 100. art. 3. ad 4) denies this, and rests on C. Quoniam 40. De Simonia. The reason is that the revenues of a monastery are ecclesiastical, ordered to supplying gratuitously the sustenance of religious. Therefore by the very fact that someone is received into Religion, he has a right to receive sustenance from the revenues of the monastery. Therefore under the title of sustenance, which a rich monastery is equal to providing, nothing can be exacted. But when the title of sustenance is lacking, it now remains that something seems to be exacted for the entrance itself. Schmalzgrueber (Lib. 5. Tit. 3. n. 200-201).

[15] Yet a threefold limitation must be added: 1. that the agreed dowry not be given for the entrance itself; for this would be simoniacal, even if the monastery is poor. - 2. That no one unsuitable be admitted from the sole hope of receiving something temporal from her; for thus the end of the reception, and indeed the principal end intended by those receiving, would be something temporal. But it is simoniacal to give something spiritual on account of an extrinsic temporal end, especially if this is principally intended. - 3. That apart from necessity a dowry not be exacted indiscriminately from all; for thus the poor, often more worthy and suitable, would be utterly excluded from the religious state, while others, perhaps less suitable, as being rich, would be received; which indeed is unreasonable. Schmalzgrueber (Lib. 5. Tit. 3. n. 197).

292. ○ QUESTION 6. Whether a Priest commits Simony who wagers a Mass with a layman on the outcome of a game, while the partner sets out a temporal price?

Resp. No per se, because in this way a spiritual thing is not properly equated to a temporal thing, just as it is not equated when Mass is said for a stipend; but only the execution of a spiritual thing is offered in place of a temporal thing which otherwise would have to be handed over. For he does not sin who offers to a creditor 100 Masses to be celebrated for him, so that he remit a debt of 100 francs; therefore by parity neither does he sin who wagers a Mass on the outcome of a game while the other sets out 20 asses. - Thus Voit, n. 506, against others. - Besides, a game of this kind rarely lacks some scandal, and therefore it must always be dissuaded.

QUESTION 7. Whether a Priest commits Simony who for a Mass exacts a stipend above the customary rate or the rate established by the Bishop?

Resp. No, unless he acts with a simoniacal mind; because, since he has another title for exacting remuneration, the comparison between the spiritual and the temporal is lacking. He would indeed sin against obedience or justice by exacting more than is fair, but by no means against Religion. Voit, n. 497, however, contradicts this, because, he says, then every just title for exacting the temporal thing is lacking [16].

[16] Voit is not alone in holding this opinion; for Reiffenstuel also teaches it (Lib. 5. Tit. 3. n. 200), and Schmalzgrueber (Lib. 5. Tit. 3. n. 100) with Friderich (De Simon. Cap. 2. n. 67), and Azor (Part. 3. Lib. 12. Cap. 6. q. 1), and Suarez inclines to it (De Simon. Cap. 47. n. 6), whom therefore the Salmanticenses falsely cite for the opposite (Tract. 19. Cap. 2. n. 23), besides gratuitously attributing this opposite to Dominic Soto and Toletus. Add that others affirm that at least presumed simony is found in this. Thus Bonacina (De Simon. Disp. 1. Q. 6. P. 2. n. 3), Palaus (De Simon. Disp. 3. Punct. 9. n. 2), Filliuccius (Tract. 45. Cap. 10. q. 7. n. 28), and Lessius (Lib. 2. Cap. 35. n. 51).

293. ∘ QUESTION 8. What are the penalties enacted against simoniacs?

Resp. 1. Only confidential Simony and real Simony in the conferral of Orders and benefices, and in entrance into Religion, are subject to ecclesiastical penalties [17]: for the Pontiff Paul II, renewing all penalties previously enacted against simoniacs, speaks only of the aforesaid species of Simony; indeed, according to not a few, the penalties for simoniacal entrance into Religion have gone into desuetude; at least now the case of incurring them is very rare [18].

[17] ** Except, however, with Fagnanus (In cap. Nobis De Simonia n. 13), even merely conventional simony in the election of the Roman Pontiff. For Julius II, Const. Cum tam divino, January 14, 1505, § 1, established penalties against electors who have committed simony by giving, promising, or receiving monies, goods of any kind, castles, offices or benefices, or promises and obligations, by themselves or by another or others in whatever manner and in whatever way, etc. But you have the penalties listed in § 5 of the same Constitution. But of these and other penalties, thus Our Most Holy Lord Pope Pius IX (Const. Apostolicae Sedis): But the censures, whether of excommunication, or suspension, or interdict, which by Our Constitutions or those of Our Predecessors, or by the sacred canons, besides those which We have listed, have been enacted, and thus far have persisted in their force for the election of the Roman Pontiff..., all these We will and declare to be firm and to remain in their force.

[18] ** In the preceding Edition it was noted that penalties of this kind are rarely incurred, and for more than one reason. And 1. because the Constitution of Urban IV (Extrav. Sane 1. De Simonia), which inflicts the penalties, did not seem to have been received everywhere, and Navarrus, most learned, as Schmalzgrueber says (Lib. 5. Tit. 3. n. 255), in the Apostolic Constitutions, contends that it was not received; and Lessius, Palaus, Silvester, and every other who taught that excommunication is incurred only on account of simony in sacred Orders and Benefices had followed him. - 2. Apart from nuns, who have permission to receive a dowry and to make agreement concerning it, in monasteries of men also, if anything is received, it is almost always received only because it has been spontaneously offered; or, even if it is exacted, the exaction is given an honorable color because of the poverty of monasteries, so that it may seem necessary for the sustenance of the professed; or finally, if the monastery is rich, although the crime of simony is not absent, nevertheless the constitution could seem not to have been received as to penalties, as Schmalzgrueber notes (l. c. n. 256). But since in the Constitution Apostolicae Sedis of Our Most Holy Lord Pius IX, among excommunications latae sententiae reserved to the Roman Pontiff, there is listed (n. 10) the one inflicted against those guilty of real simony on account of entrance into Religion, therefore what was customarily said concerning the Constitution of Urban IV not having been received, or at least not having been received as to that penalty, must now be held as obsolete.

Resp. 2. The penalties against simoniacal ordination from the old law were: As regards the one ordaining [19]:

[19] He must be understood not only as one who conferred orders, but also as one who presented for ordination; this office was ordinarily that of the Archdeacon, whose duty it was to examine whether those to be ordained had the title of ordination, whether they were worthy, etc. Also comprehended were both the local Ordinaries who had given dimissorial

letters for ordination to be received from some Bishop, and also Regular superiors who had given letters of this kind to their subjects.

Moreover, under the name of Ordination here there seems also to be comprehended the conferral of first tonsure, as is clear from these words of Sixtus V, Const. Sanctum § 6: But if any Prelate or Abbot, all things indeed being observed... which ought to be observed in the conferral of tonsure itself and of orders, shall hereafter have marked with tonsure or promoted suitable and fit persons, yet having received from those upon whom he confers tonsure or order money, a price, or a reward simoniacally; We will that, besides the other censures and penalties previously inflicted and imposed by the sacred Canons and Apostolic Constitutions against those simoniacally ordaining and ordained, from which We in no way intend to derogate, also each and all the things aforesaid should have place in those thus promoting and promoted. From these words perhaps an easy way is paved for solving the question which was debated among the Doctors, whether the penalties enacted against simoniacal ordinations ought to be extended to the simoniacal conferral of first tonsure; authors indeed usually touched upon this in such a way that they said even the denying opinion was probable, led by this reason, that the Council of Trent (Sess. 21. Cap. 1. De Reform.) decrees against this crime only the penalties inflicted by law; but the laws inflict penalties on the simoniacal conferral of Orders, under which name they denied that tonsure comes (see St. Alph. Lib. 3. n. 110). - But indeed in the Constitution of Sixtus we have a twofold kind of penalties: namely 1. penalties and censures inflicted by law; 2. penalties and censures added by Sixtus V himself. Now granted, then, that the special penalties added by Sixtus V are held now to have been abrogated by the Constitution Apostolicae Sedis; yet it will deservedly seem rather hard to think that the Council of Trent, and after it Sixtus V, willed indeed, as it seems, to restrain by penalties contained in law, some penalties certainly, even the simoniacal conferral of first tonsure, and nevertheless, while they appeal to the laws, so lapsed in memory that what the schools call the supposition could be denied them. But whatever may be said of this, it ought to have been certain at least that the penalties and censures established in the Constitution of Sixtus on account of simoniacal conferral of tonsure could not have been avoided, so that the one Ordaining (§ 2) existed suspended from the conferral of any orders whatsoever and therefore even of tonsure itself, and from the execution of all Pontifical functions, and interdicted from entrance into the Church. Besides, the uncertain opinions of authors on this matter seem to have to be traced to this, that for a long time in many places this Constitution of Sixtus was unknown.

** The VV. complain (Pag. 241): 1. that in this Note it is reproached to Authors that, appealing to the laws, they lapsed in memory and forgot what Sixtus V established; 2. that (Pag. 243) the uncertain opinions of Authors are attributed to ignorance of the Constitution of Sixtus, while, they say, all the cited Authors often cite Sixtus.

Resp. To 1. I deny the whole. For as is clear to one reading, the

Authors are not there censured as having lapsed in memory, but it is said that it is hard to suppose that the Fathers of Trent and Sixtus V lapsed in memory in this way, etc. Add that in the Note those Authors are said rather to have been ignorant of the Constitution of Sixtus than to have lapsed in memory; which then the VV. themselves criticize.

Resp. To 2. It was to be desired that the VV. would better prove what they say, namely that the cited Authors were so far from being ignorant of the Constitution of Sixtus that they often cite it. For they themselves cite six; but four of these, namely Palaus, Reginaldus, Lacroix, and Viva, do not name the Constitution of Sixtus, and therefore seem to have been ignorant of it. But Billuart and the Salmanticenses indeed cite it, yet they do not seem to have read it; otherwise they would have made some effort to solve the difficulty which arises from it. Besides, that the Constitution of Sixtus was unknown in many places, as is said in the Note, is confirmed by the testimony of Lessius; for the VV. themselves (Pag. 242) report these words of Lessius: Yet I think this Constitution of Sixtus is unknown in very many places.

1. excommunication reserved to the Pope;
2. suspension from the conferral of any Order, even of first Tonsure;
3. suspension from the execution of all pontifical functions;
4. interdict from entrance into the Church;
5. suspension from the administration of the Church [20]. - Schmalzgrueber, Lib. 5. tit. 3. n. 257. But since none of these censures is confirmed or renewed in the Constitution Apostolicae

Sedis of Our Most Holy Lord Pius IX, by that very fact all these must be held as abrogated.

[20] ** The excommunication against those simoniacally ordaining was already reserved to the Supreme Pontiff in Extrav. Cum detestabile 2. de Simonia. But Sixtus V, Const. Sanctum, January 5, 1588, as to it expressly derogated from the disposition of Trent, Cap. Liceat Sess. XXIV. Cap. 6. De Reform., when the crime was occult; and the same had to be said about absolution from other censures, from which therefore the Bishop, whether the cases were occult or public, could not absolve.

Moreover, the fact that St. Alphonsus (Lib. 3. n. 117) attributed that Constitution of Sixtus V to St. Pius V, adding that it had not been received as to this, is entirely due to the confusion introduced by the Salmanticenses, where they write (De Simon. Cap. 4. n. 34) that from excommunication incurred on account of simony in Order, Benefice, and Religion..., if they are not public, the Bishop can absolve. Nor, they say, does the Bull of Pius V revoking this and other faculties of Religious stand against this, because as to this part it has not been received. And they cite Lessius, Sa, Suarez, and Palaus. - But not Pius V, but Sixtus V, as has been said, had taken this faculty away from bishops, yet not as to all those censures, but only as to the simoniacal conferral of the Most Holy Orders. It is false besides that Sa and Suarez favored this error; indeed Suarez teaches the opposite (De Simon. Cap. 61. n. 6). Finally Lessius (Lib. 2. Cap. 35. n. 134) says only that the Constitution of Sixtus, not indeed of Pius V, is unknown in many places, and therefore there it has not been received by usage.

Nor should it have stood in the way that the Constitution of Sixtus V was reduced to the terms of common law by Clement VIII (Const. Romanum, February 28, 1595). For this must be understood as to the other things contained there; for the penalties and censures against simoniacal ordination enacted by Sixtus V had also been confirmed by Clement VIII, as the Doctors commonly note. Thus Clement (Const. cit. § 2): We restrict and reduce the aforesaid letters of Sixtus V to the terms of the Holy Canons..., and to the disposition of the decrees of the Council of Trent, and also We moderate and abolish the censures and penalties in the same letters of Sixtus against whomsoever, EXCEPT THOSE INFLICTED AGAINST THOSE SIMONIACALLY ORDAINING AND ORDAINED, WHICH WE WILL TO REMAIN IN THEIR FORCE.

** Here the VV. heap up through fifteen columns (Pag. 230-237) texts from Authors, so that they may exempt from any mark those words of St. Alphonsus (Lib. 3. n. 117): But Lessius and the Salmanticenses say that the Bull to the contrary of St. Pius V has not been received by usage in this matter. - Resp. St. Alphonsus took these things not from Lessius, but from the Salmanticenses. For 1. otherwise he would have written Sixtus V, and not St. Pius V. Besides, the opinion of the Salmanticenses and of Lessius is not the same. They universally affirm that the Bull of St. Pius, that is, Sixtus, V, as to this part has not been received. But Lessius more narrowly: that it is unknown IN VERY MANY PLACES, and therefore has not been received by usage. Therefore even among the writers cited by the VV., Billuart, for example, says circumspectly that it has not been received everywhere. And Pichler: Except simony in the conferral of Orders, WHERE the Constitution of Sixtus V HAS BEEN RECEIVED. And Collet: But where the Bull of Sixtus V has not been received as to this. Antoine with Lessius: That it has not been received by usage in very many places. Holzmann: Where the Constitution of Sixtus V has been received. But St. Alphonsus writes without limitation, with the Salmanticenses, who, against the rules of law, extend the privilege or exemption of custom to places in which the custom does not exist, that the Bull has not been received. Therefore the Holy Doctor derived those opinions from the Salmanticenses. Besides, these things now pertain merely to history; and therefore there is no profit in dwelling on them.

2. From the old law as regards the one ordained:

1. excommunication reserved to the Pope [21];

[21] It was reserved to the Supreme Pontiff, even if the crime was occult, as was said above.

2. suspension from the execution at least of the Order simoniacally received [22];

[22] ** The question was debated among the Doctors whether this suspension had to be restricted to the order badly received, or whether it had to be extended also to other orders previously received. This controversy now, since that censure has already been removed, no longer has place.

3. likewise suspension from the hope of ascending to higher Orders [23];

[23] ** Since suspension from the hope of ascending to higher Orders is not properly a censure, but rather an irregularity, therefore this seems to remain in its force. For by the Constitution Apostolicae Sedis all censures indeed were removed, except those which the Supreme Pontiff declared and established there to be in force; but as to other penalties which do not properly come under the name of censure, nothing was decreed or renewed in that Constitution. If, however, the crime is occult, will even the Bishop be able to dispense from this irregularity from cap. Liceat? It seems it must be denied; for, as is contained in the preceding Note, Sixtus V, as to the penalties inflicted on this crime, derogated from the faculty given to Bishops by the Council of Trent of dispensing in irregularities on account of an occult crime. Unless, as an exception, the Constitution has not been received by usage somewhere.

And 4. if suspensions of this kind were violated, there was added privation of offices and benefices as regards a secular Cleric, but privation of both active and passive voice as regards a regular Cleric.

But by force of the Constitution Apostolicae Sedis, censures of this kind no longer have place [24].

[24] Although it is certain and manifest that by force of the Constitution Apostolicae Sedis all censures have ceased which had been enacted by Sixtus V and confirmed by Clement VIII against simoniacal Ordinations; nevertheless doubt can deservedly arise whether, for another reason, some censures enacted against this crime still remain in force. The reason for doubting can be from this, that in the aforesaid Constitution of Pius IX it is decreed that those censures should remain firm in their force which the Holy Synod of Trent inflicted. Moreover, the Synod of Trent (sess. 21. Cap. 1. de reform.) established that those guilty of simony in the conferral of any orders whatsoever, even clerical tonsure... incur ipso facto the penalties inflicted by law; but undoubtedly censures inflicted by law upon that crime are found.

But if the form of the words of the Constitution is examined, these seem altogether to refer to censures which the Holy Synod established by itself. For thus concerning the censure of excommunication: Besides those thus far listed, those also whom the sacrosanct Council of Trent excommunicated, whether with absolution reserved to the Supreme Pontiff or to Ordinaries, or without any reservation, We likewise declare to be thus excommunicated. And again: Finally, all others whom the sacrosanct Council of Trent decreed to be suspended or interdicted by law itself, We will and declare that they are subject in like manner to suspension or interdict. But it would be said less properly that the Holy Synod excommunicated, and indeed by declaring whether it reserved absolution or not to the Roman Pontiff or to Ordinaries, and likewise decreed that certain persons were suspended or interdicted, when it was merely threatening or confirming in general penalties inflicted by law.

Furthermore, as Peter Avanzini rightly argues (Append. ad Comment. de Constit. Apost. Sedis Pag. 156), this is sufficiently derived from the purpose of the Constitution, which was that the most grave disadvantages might be met which arose from the great number of censures that had been ordered and promulgated through the individual ages, of which certain ones, with times and customs changed, had fallen away from the end and causes on account of which they had been imposed, or from their former usefulness and opportuneness; for which reason, not infrequently, whether in those who have the care of souls or in the faithful themselves, doubts, anxieties, and distresses arose. Hence the Supreme Pontiff says: We, wishing to meet disadvantages of this kind, ordered a full review of the same to be made and proposed to Us, so that, after diligent consideration had been applied, We might establish which of them it was fitting to preserve and retain, and which it was fitting to moderate or abrogate. Therefore, that review having been made... We decree that from whatever censures... only those which We insert in this very Constitution should thereafter have force. Therefore the purpose, for removing the aforesaid disadvantages, was that a certain number and list of censures be established. But that purpose would fail, nor would the aforesaid disadvantages cease, if censures comprehended through general words, renewed or confirmed by the Synod of Trent, are understood.

Resp. 3. The penalties on account of real simony in benefice matter [25] are:

[25] These things must be taken of benefices properly so called, of which sort pensions, or temporary vicariates, etc., are not; hence he who sells a spiritual pension indeed commits simony, but does not incur the penalties set beneath. But benefices are understood not only as secular, e.g., bishoprics, canonries, deaneries, parishes, etc., but also as regular, of which sort generally are the prelatures of Regulars which do not consist in a bare commission revocable at will, but in an ordinary office, such as generalate, provincialate, abbacy, provostship, priorship, rectorship, guardianship, etc.

1. excommunication reserved to the Pope; this penalty indeed is incurred not only by the one conferring and the one receiving the benefice, but also by those by whose mediation and

cooperation the simoniacal contract is completed. For in the Constitution Apostolicae Sedis, among excommunications latae sententiae reserved to the Roman Pontiff, there is had (n. 8) also the one inflicted against those guilty of real simony in any Benefices whatsoever, and their accomplices [26].

[26] ** If the crime is occult, the Bishop can absolve from this excommunication from Cap. Liceat. For thus expressly in the cited Constitution Apostolicae Sedis: Nevertheless We will that the faculty of absolving granted to Bishops by the Synod of Trent, sess. XXIV. cap. 6. de reform., remain firm in whatsoever censures reserved to the Apostolic See by this Our Constitution, excepting only those which We have declared to be reserved in a special manner to the same Apostolic See. But the excommunication against those guilty of real simony in any Benefices whatsoever, and their accomplices, does not pertain to those reserved to the Apostolic See in a special manner. Therefore.

Before the aforesaid Constitution of Pius IX, by force of a special Privilege the Mendicants also could absolve from an excommunication of this kind, yet with the limitation added by Clement VIII, namely outside Italy, and within the City, by which name the Doctors understand also the district of the City. But whether, after privileges of this kind and all faculties of absolving from papal cases were revoked, suppressed, and abolished in the Constitution mentioned, the Apostolic See, which through that Constitution certainly did not take away from itself the faculty of granting privileges anew, granted anything to certain persons, must be asked of the same mendicants.

2. nullity of election or presentation to a benefice or to any Dignity [27];

[27] Some things must be noted here. And 1. One guilty of Simony is not defended by the rule concerning triennial possession, because he is expressly excepted where it is said: without simoniacal entry. Nor does it help one presented or elected simoniacally that the confirmation or institution lacked this vice; for if simony was committed in the prior act, all following acts are void. But otherwise if one legitimately elected or presented obtains confirmation or institution simoniacally; for then this alone, in which the vice was committed, is voided. Therefore if by dispensation the incapacity contracted through this later act is removed, there would not be need of a new election. Reiffenstuel (Lib. 5. Tit. 3. n. 265).

2. The act is null even if, in an election which is made by many by right of a community or college, only one, while the greater part elects rightly, casts his vote simoniacally. But otherwise if presentation is made by many as individuals, so that there are as many presentations as patrons; for the simoniacal conferral of one does not infect the legitimate conferral of another. Schmalzgrueber (Lib. 5. Tit. 3. n. 266).

3. The provision is void, even if the one promoted himself did not commit the simony, but another did, while he himself was ignorant; except if this man did it in fraud, namely so that he might render the elected or presented person incapable of the benefice. Schmalzgrueber (l. c.).

4. A fortiori, however, the provision is void if the one provided, after he knew that money was to be given by another, not in fraud but in his favor, did not contradict it; or indeed contradicted, but nevertheless, not being ignorant that the other had not desisted from the simoniacal work, accepted the benefice, or even before the benefice was obtained refunded to the payer the money simoniacally paid by another for him. Thus from Cap. Sicut 33. De Simonia.

5. Yet the provision will be valid if the one promoted, after the simoniacal plan of another has become known, expressly contradicted it, although afterward, notwithstanding this contradiction, with himself ignorant, the benefice is in fact obtained through money. But if, after the benefice has been obtained, the matter having become known, he refunds to the simoniacal payer the money paid without his knowledge before the benefice was obtained, he indeed stains himself with simony, unless, as many say, he does this merely from friendship, and lest the other suffer harm because of him; nevertheless he does not seem to incur ipso facto the penalty of voiding; hence he will be able to retain the benefice until the sentence of privation has been pronounced. The reason: because that maxim, ratification is drawn back and is equated to mandate, must be understood of those things which depend on the consent of the one ratifying, but not of those things which before this consent have already been fully and absolutely completed. Schmalzgrueber (Lib. 5. Tit. 3. n. 266).

6. To privation of the benefice there is added the obligation of restoring the fruits acquired from it. This indeed holds both if the simony was perpetrated by the beneficiary, and if by another while the beneficiary himself knew and did not contradict, or indeed contradicted but nevertheless accepted the benefice with knowledge of the simony intervening notwithstanding

his protestation. The reason is that since he has neither good faith nor a title in which the right of receiving the fruits is rooted, he does not make them his own, and therefore he is bound to restore them. And this must be understood not only as regards extant fruits, but also as regards those consumed; indeed also as regards those which could have been received by a legitimate possessor, as is commonly handed down concerning a possessor in bad faith. Nevertheless, he is not bound to restore stole fees, and the fruits of other parochial functions; for these are not received as revenues of the benefice, but as stipends of the office. See St. Alphonsus (Lib. 3. n. 111).

7. But if the simony was committed by another while the beneficiary was ignorant, he gains the fruits as long as he remains in good faith, no otherwise than any possessor in good faith. Yet since the conferral is invalid of itself, unless the simony was committed by another in fraud, as was said above, when ignorance ceases the fruits which are extant must be restored. For the possessor did not obtain ownership of these except only revocably. Schmalzgrueber (l. c.).

8. But if this man for three years has persisted with the same good faith in peaceful possession of the benefice, he is defended, as Schmalzgrueber says (ibid. n. 267), by the rule concerning triennial possession, so that when that three years has elapsed he is bound to restore neither the fruits nor the benefice. And this doctrine indeed did not please some. But, Rigantius says (ad Reg. 36. Cancell. n. 232), the contrary opinion is the more received in practice, namely that the exception of this rule applies to one provided with a benefice who is ignorant of simony committed by a third party. On this matter the same Rigantius brings forward both the support of many and very weighty Doctors and several decisions of the Sacred Roman Rota; and one may see others, both Theologians and Canonists, in Schmalzgrueber (l. c.) and Reiffenstuel (Lib. 5. Tit. 3. n. 278), who moreover dissolve the little reasons objected both by the Gallican Cabassutius and by the more-than-Gallican Van Espen in his proscribed work.

3. perpetual incapacity, or, according to the opinion of certain persons, incapacity for obtaining the same benefice at least on that occasion [28];

[28] Schmalzgrueber also thought (l. c. n. 268) that the incapacity could be restricted to obtaining the benefice on that occasion. But, as Reiffenstuel says (l. c. n. 266), although in Cap. penult. De Electione it seems that one obtaining a benefice simoniacally is incapable of obtaining it only on that occasion, as the gloss also holds..., nevertheless after the aforesaid Constitution of Pius V, beginning Cum primum, April 1, 1566, because of its words, the matter is beyond controversy, that he is perpetually incapable of obtaining the same benefice, unless the Pope dispenses.

But the words of Pius V (Const. cit. § 8) are these: He who shall have obtained a benefice or ecclesiastical office simoniacally, shall similarly be deprived of those by law itself, and shall be bound to restitution of all the fruits which he has received, and shall be PERPETUALLY incapable OF OBTAINING THEM and any other benefices.

4. incapacity for other benefices after the judge's sentence, at least declaratory [29].

[29] Concerning this matter Suarez (De Simon. Lib. 4. Cap. 58. n. 16): Where it is not clearly certain that the Constitution of Pius V has been received in the former rigorous sense, I think that in practice the opinion of Navarrus can be observed with a safe conscience, and that dispensation for other benefices is not necessary when the delict has not been brought to the contentious forum and declared in it. To which opinion, besides others, Pirhing (Lib. 5. Tit. 3. n. 170) and Reiffenstuel (Lib. 5. Tit. 3. n. 267) give support.

But as regards the faculty of dispensing from the incapacity of obtaining a benefice simoniacally conferred, these things must be retained:

1. If the benefice is simple, namely one which has no jurisdiction, administration, care of souls, or special preeminence attached, concerning which see Schmalzgrueber Lib. 3. Tit. 5. n. 30-32, but at most obliges to mere assistance in choir or to service of the altar; and if simony intervened while the beneficiary was ignorant; the Bishop can dispense so that this man may retain the benefice, or better, so that he may be able to acquire it anew, provided he first resigns it. This is the common and certain doctrine from Cap. Si alicuius 59. De Electione. Nor does what Vallensis adds (in Schmalzgrueber h. tit. n. 268) seem to be admitted, that there is not even need of the Bishop's dispensation; this opinion deservedly seems to have had no other follower.

2. Indeed the same faculty must be attributed to the Bishop when the benefice is indeed double, but its conferral has not been declared void by sentence. For, once a sentence of this kind occurs, recourse would have to be had to the Supreme

Pontiff for dispensation at least on that occasion. It is said on that occasion; because if the same benefice is first conferred on another, and it happens to become vacant again, it certainly will be able to be conferred on him who had been ignorant of the simony committed by another in his provision. See Reiffenstuel (Lib. 5. Tit. 3. n. 337).

3. But when either the beneficiary himself, or another while he was not ignorant, committed the simony, it is certain among all that the Bishop cannot dispense with the beneficiary so that he may be able to acquire that benefice either then or on another occasion. And this has place even if the crime is occult, as is clear, other things omitted, from the declaration of the S. Congregation, which Palaus reports thus from Farinaccius (De Simon. punct. 28. n. 3): A Bishop, although he can absolve secretly from simony, nevertheless cannot rehabilitate a simoniac to obtain benefices in the future, nor to retain those which he retains through occult simony. Reiffenstuel (l. c. n. 340).

Resp. 4. The penalties on account of completed confidential Simony, that is, when a benefice has been given and accepted in confidence, even if the agreement has not yet been fulfilled by the other party [30], are:

[30] As regards mediators, however, as was said above, simony is not considered completed, and therefore the penalties do not have place, unless the handing over on each side has at least been begun.

1. papal excommunication; for the Constitution Apostolicae Sedis establishes an excommunication reserved to the Pontiff (n. 9) against those guilty of confidential simony in any Benefices whatsoever, of whatever dignity they may be: by which words even major Prelates, not excluding Cardinals, are comprehended [31];

[31] As regards these penalties some confusion had crept in among most authors. For since two Constitutions were had concerning this matter, one of Pius IV, beginning Romanum Pontificem, October 16, 1564, the other of Pius V, beginning Intolerabilis, June 1, 1569, some knew only the first, others only the second; but few, mentioning each, defined the matter exactly from each, as Schmalzgrueber (Lib. 5. Tit. 3. n. 270).

Pius IV therefore punished major Prelates, namely Cardinals and also Bishops, Patriarchs, Bishops, and Archbishops, with interdict from entrance into the church, but punished the rest with excommunication latae sententiae. Namely, to Cardinals, he says, in the cited Constitution § 4, and to other Prelates of this kind, in virtue of holy obedience and under penalty of interdict from entrance into the church, but to the rest under penalty of major excommunication latae sententiae, to be incurred ipso facto by those acting contrary, from which they cannot be absolved except by Us or by the Roman Pontiff existing at the time, except those situated at the point of death, We more strictly forbid. But Pius V (Const. cit. § 8) enacted against all those guilty of this crime the penalty of excommunication incurred ipso facto and reserved to the Roman Pontiff; and on November 14 of the same year, 1569, he declared, which declaration is placed beneath the same Constitution in the Roman Bullarium, that all Cardinals of the Holy Roman Church are comprehended in the aforesaid Constitution and letters and in each of their parts, even as to privations and each and all censures and penalties contained in them.

And from these things the sense of the words of St. Alphonsus must be drawn (Lib. 3. n. 89): Through this simony... the penalties incurred are: 1. interdict from entrance into church; 2. papal excommunication ipso facto; 3. nullity of conferral, etc., namely that all, as many as commit this crime, incurred papal excommunication ipso facto; but the major Prelates were also struck with interdict from entrance into church; for neither did the words of Pius V allow the major Prelates to be exempt from the penalty of excommunication, nor did they remove the penalty decreed against them by Pius IV. But now by force of the new Constitution of Pius IX, the penalty of excommunication indeed remains, comprehending the same persons as the Constitution of Pius V; however, the penalty of interdict from entrance into the Church, which Pius IV had established against major Prelates, has been removed.

2. nullity of resignation or conferral made in confidence;

3. incapacity for obtaining the same benefice, and other benefices;

4. privation of benefices and pensions which had previously been legitimately obtained, yet after the judge's sentence [32];

[32] St. Alphonsus (Lib. 3. n. 111. q. 3) proves, with the common opinion of the Doctors, that the judge's sentence, at least declaratory of the crime, is required, from the principle that it is too rigid for the guilty man to execute penalties on himself and deprive himself of goods possessed. He himself, however, doubts whether this holds as regards examiners of parochial benefices; since in Sess. 24. Cap. 18 of the Council of Trent it is proclaimed that these cannot be absolved unless the benefices have been dismissed. Nevertheless others judge that this penalty has not been received with such great rigor. See Thesaurus, De Poenis Eccl. V. Simonia Cap. 4. n. 1.

5. reservation of the same benefice to the Apostolic See [33]. - See Schmalzgrueber, ibid. n. 270.

[33] Nevertheless it must be inspected whether concordats have intervened with the Apostolic See. For if in the concordats it is established that outside papal months, by no reservation or disposition not contained in the concordats themselves, free conferral is interdicted to Ordinaries, then not even by force of confidential simony is this reservation judged to have place. Thus, e.g., Sixtus V (Const. Pastoralis officii, August 13, 1587), as regards the kingdom of France, permitted benefices vacant by reason of confidence to the free conferral of Ordinaries, provided that the collators themselves had not been participants in or consenting to the crime. See Schmalzgrueber (Lib. 5. Tit. 3. n. 273).

294. You will resolve. - 1. He does not commit Simony who exchanges Relics with Relics; because thus the spiritual is not given for the temporal. The same must be said of other sacred things, if you except benefices, whose exchange, lest it be done by one's own authority, has been prohibited by the Church.

2. He does not commit Simony who sells blessed wax, rosaries or medals to which indulgences are attached [34], or sacred Relics enclosed in precious cases, or other similar things; because these are not sold by reason of the sacred thing, but by reason of the price of the temporal thing attached; but otherwise if, on account of the sacred thing itself, these were sold at a higher price.

[34] Yet by several decrees of the S. Congregation of Indulgences it has been forbidden that blessed rosaries, crosses, or medals be exposed for sale.

3. He does not commit Simony who pays money to a heretical prince, lest he be impeded from entrance into the Church or from frequenting religious assemblies of Catholics; or to a malicious man, lest he be unjustly defamed by him and kept away from a benefice to which he has or can have a right. The reason is that in this way the temporal thing is not given for a spiritual right, but for removing or preventing an injury, which is something temporal [35].

[35] Not any condition joined to the conferral of a spiritual thing induces simony, but only that which brings a new burden or a new obligation of justice by way of exchange. Therefore it is not simony if I give a spiritual thing in order to obtain a temporal thing which is owed to me by title of justice, but is denied through injustice alone; and likewise if by the conferral of a spiritual thing I wish to avert an evil to be unjustly inflicted on me, e.g., lest a debtor unjustly delay payment, or lest I lose a credit, lest someone unjustly harm my life or reputation, etc.

4. They are not to be accused of Simony who serve gratuitously or for an inadequate wage, so that on this occasion they may demonstrate their probity or skill with the hope of sometime obtaining some benefice; because they do not expect that spiritual thing as the price of their labors. - Elbel, n. 618.

295. ○ 5. Nor are they culpable of Simony who from gratitude furnish a temporal thing on account of a spiritual thing accepted, and vice versa [36]. Thus the Chaplain would not sin who would more willingly render services to the Bishop from whom he

obtained a benefice, nor the Bishop who would confer a benefice on a Cleric in recognition of services; because these are not furnished as a price; besides, it is honorable and praiseworthy to show oneself grateful for service received. Yet one must carefully beware lest disguised Simony lie hidden under the title of gratitude; but this would happen where an implicit agreement intervened of giving a benefice for temporal service, or vice versa.

[36] Refer other cases to this. For it is not simony, although one may sin for other causes, to confer a benefice on account of blood-relationship, or friendship, or in order to relieve the need of another, even if in this way someone intends to exempt himself from the burden of sustaining either a blood-relative or another by alms. For upon the one receiving the spiritual thing there is by no means imposed the burden of returning something temporal by agreement.

Say the same with St. Alphonsus (Lib. 3. n. 59), if you give a temporal thing to someone so that he may perform something spiritual for his own advantage, e.g., if you promise gifts to a young man so that he may frequent the sacraments, or a dowry to a girl if she enters a monastery. For no exchange intervenes when the spiritual and the temporal together fall to one person. Nor does it stand in the way, contrary to what the Salmanticenses thought (De Simon. Cap. 1. n. 41. in St. Alph. l. c.), that per accidens this perhaps redounds to some utility of the giver also. For he does not here receive the spiritual thing, and therefore there is present no irreverence of estimating a spiritual thing by a temporal price.

** There are two things which the VV. reprehend in this Note, concerning which they then discuss through ten columns (Pag. 244-249). And 1. The things contained in the Note, they say (Pag. 245), are rather confused; and therefore before the rest (?) it must be better distinguished. Resp. In the Note there is reported the doctrine which St. Alphonsus also approves. Indeed, the Holy Doctor afterward, citing the Salmanticenses and some Authors from those cited by the Salmanticenses, proposes another case in which the same Salmanticenses with the Authors previously cited find the stain of Simony. But this second case was not brought forward in the Note, because it did not serve the matter and purpose of the Note. Is there in this the confusion which the VV. criticize? For that the objected confusion is found elsewhere, the VV. nowhere afterward say.

2. To that which is said at the end of the Note: Nor does it stand in the way, contrary to what the Salmanticenses thought, etc., the VV. reply (Pag. 248): If perhaps per accidens this if it should happen, certainly simony is not committed. But no one ever affirmed this, perhaps denied it? The hypothesis of the Salmanticenses and of the rest is that the one giving or promising intends and seeks not the spiritual utility of another, but his own temporal utility. - Resp. St. Alphonsus, after the Salmanticenses, has it thus (Lib. 3. n. 59): It is otherwise, namely simony would be present, ... if the condition were of furnishing something for the utility of the giver, for instance if that person's entrance into religion should redound to the advantage of the giver. Thus the Salmanticenses, ibid. n. 41. I ask: does a context of this kind exclude the hypothesis of utility which perhaps per accidens redounds to the giver? Certainly not. Elsewhere the VV. concede that no simony is present in this case. Therefore they must also concede this, that by the opinion of the Salmanticenses, being too vague and general, even hypotheses which ought not to be condemned are condemned.

6. But it would be Simony to perform sacred ministries precisely on account of receiving a price as such, e.g., to accept money for absolution from sins, from censures, or for dispensation in a vow, oath, irregularity, and impediments of marriage; the reason is that it is a spiritual act both by reason of the principle or spiritual power, and by reason of the end or salvation of souls. Nevertheless money is lawfully accepted on the occasion of dispensations [37], especially when another just cause is not present, namely under the title of commutation or alms, or of sustaining the burdens of the Pontificate, for assisting the necessities of the Church, e.g., of Churches, Missions, etc., or for other pious uses, e.g., for relieving the poor, endowing hospitals, expenses of tribunals by which dispensations are granted, etc.; for a suitable stipend is to be assigned to the various officials or ministers employed for expediting causes. - Besides, the Holy See itself establishes in the Briefs what is to be assigned for various dispensations. - See Cases, n. 285 and following.

[37] ** So also St. Alphonsus (Lib. 3. n. 96), whose arguments, however, taken from the Salmanticenses, are less suitable. For he cites Cap. Iacobus 44 de Simonia; but in this the only thing forbidden is that canons receive a meal from a new canon. He cites Trent, Sess. 24. Cap. Dicunt 6; but this merely establishes that Bishops absolve from censures gratuitously and dispense in occult irregularities. The Salmanticenses add (Tr. 19. Cap. 2. n. 37) Can. Ex multis 9. Caus. 1. q. 3; but in it nothing to the point occurs, but there is discussion of the conferral of benefices.

Questions. QUESTION 1. Whether a spiritual thing simoniacally acquired must be restored?

Resp. 1. Affirmatively as regards benefices; thus the common and certain opinion of the Doctors. The reason is that the laws, as a penalty of the delict, stand in the way so that the receiver, whether of the price or of the benefice, cannot acquire ownership of what was accepted. And since the acquisition of the benefice is void, by that very fact ownership of the fruits also cannot be acquired, and therefore these also must be restored [38].

[38] Certain persons judged that pensions are comprehended by the same law as benefices, and not only those which are called simply spiritual and are given to a cleric on account of spiritual ministry, but also mixed ones, which according to the style of the Roman Curia can neither be sold nor even redeemed without apostolic dispensation. But since the laws, as Schmalzgrueber observes (Lib. 5. Tit. 3. n. 285), speak only of benefices, they are not, since the matter is penal and therefore odious, to be extended to another thing.

Resp. 2. Negatively as regards the remaining things, although the judge can impose restitution as punishment for the crime. Thus the common opinion with Schmalzgrueber, Lib. 5. tit. 3. n. 284. The reason is not only that certain things cannot be restored, e.g., sacred order, but also because for the transfer of a spiritual thing, e.g., of Most Holy Relics, to be valid, by divine law nothing more is required than power in one to transfer and in the other to receive ownership of the thing; but, unless from some other source there is a defect in one of the two, this power is present in each as regards a spiritual thing. Therefore. But if the transfer is valid by divine law, it will also be valid by human law, since by this law hardly anything except simoniacal provisions of benefices alone are decreed void.

QUESTION 2. Whether the price simoniacally accepted for a spiritual thing must be restored?

Resp. 1. If only the crime of simony intervened, but no injury of justice, there is no obligation of restoring the simoniacal price before the condemnatory sentence of the judge [39], unless the price itself exceeds the estimation of the temporal advantage which is transferred to another with the spiritual thing. Thus Suarez, Lessius, Laymann, Reiffenstuel in Schmalzgrueber, Lib. 5. tit. 3. num. 286 [40].

[39] Understand this with the exception of benefice matter, in which what was given and accepted must be restored in the forum of conscience before every sentence of the judge, not indeed by natural law, but only by ecclesiastical law from Cap. De hoc 11. h. tit. The reason is that the laws prevent both the one accepting the benefice and the one accepting the price from being able to acquire ownership of what has been accepted, and this as punishment for so grave a delict (Schmalzgrueber Lib. 5. Tit. 3. n. 283).

As regards other matters, Cap. Pactiones fin. De Pactis, where Gregory IX declares any simoniacal agreement whatever to be void, does not stand against the doctrine of the Author. For that disposition must be restricted to benefice matter; or it can also be said that Gregory's words are to be taken of the obligation of fulfilling the simoniacal agreement, which certainly is none; from which, however, it does not follow that the price must be restored; that is, just as the Doctors are accustomed to speak of a contract of a shameful thing, and of the price accepted after the shameful deed.

[40] For this reason he is indeed guilty of simony, but will not be bound to restore the price before the judge's sentence, whoever, against ecclesiastical laws, 1. sells a temporal office of the Church, e.g., of steward, custodian, etc.; 2. sells, at a price not exceeding the value of the matter, sacred oil, chrism, and other things of this kind; 3. receives money for the admission of someone into Religion; 4. against a special prohibition, yet under the title of stipend for sustenance, accepts

money for a spiritual function; 5. whoever accepts a stipend otherwise not forbidden by law as the price of a spiritual function, e.g., of a sacrifice, etc. 6. For the same reason, as Schmalzgrueber says, even he who sells his benefice to another, transferring not indeed ownership of it, but the advantage of the benefice matter to another, is not bound to restitution of the price, natural law alone being considered; and although he commits simony in this, he nevertheless does not sin against justice. See Schmalzgrueber (Lib. 5. Tit. 3. n. 287-291).

Resp. 2. But where the simoniacal agreement is repugnant also to commutative justice, the price must be restored before every sentence of a judge. Thus the Common opinion. The reason is that from the injury of commutative justice the obligation of restoring arises by the very law of nature [41].

QUESTION 3. To whom must the simoniacal price be restored?

[41] Therefore he is bound to restore the price: 1. who accepts a price for a merely spiritual thing which brings no temporal advantage; since of a thing which is not estimable by price there is no price, and therefore a price is accepted for it against justice; 2. who accepts a price for a spiritual thing, even if it brings temporal advantage, which nevertheless someone, e.g., a parish priest, is bound by office and justice to furnish; 3. a Bishop or Prelate who sells benefices or ecclesiastical offices, whose conferral pertains to him by force of his office; since by his office he must dispense them gratuitously, and therefore by accepting a price he sins against justice. See Schmalzgrueber (l. c. n. 293-295).

Resp. 1. If the price was given, but the spiritual thing has not yet been handed over, the common opinion teaches that the price must be restored to him who gave it, unless the judge decrees otherwise. The reason is that the laws establish penalties only against real simony.

Resp. 2. But if the handing over has followed on each side, the benefice cause must be distinguished from the rest. For in this the simoniacal price, from Cap. De hoc 11. De Simonia, must be restored to the Church in which the benefice is situated, or, if the superior wishes, it can be distributed to the poor, as St. Thomas notes, 2. 2. q. 100. art. 6. ad 3 [42].

[42] Yet Reiffenstuel (Lib. 5. Tit. 3. n. 296), with several other Theologians and Canonists, rightly warns that before a sentence which commands the price to be restored to the Church or the poor, it can be returned to the one who gave it. Nor does the cited C. De hoc stand against this; for, as Schmalzgrueber notes (h. t. n. 304), this one thing is inferred from it, that the money accepted cannot be retained without grave peril of salvation.

But as regards the price accepted for another spiritual thing, since we find nothing clearly decreed by law, it remains that it be restored to him who paid it. The reason is that per se, and when law or the superior does not establish something else, where an unjust acceptance has intervened, restitution must be made to him who was injured. But in the case, the one injured was the one who gave the price. Therefore, etc. Hence, if the one who paid the simoniacal price gratuitously remits what was paid, he who accepted it lawfully retains the same until, as punishment for the crime, he is ordered by the judge to pay it out to the Church or to the poor. See Schmalzgrueber, Lib. 5. tit. 3. n. 297, who then in n. 298-301 vindicates this doctrine from objections [43].

[43] From these things it is clear that the Salmanticenses (in St. Alphonsus, Lib. 3. n. 115) disputed less neatly concerning these things when, with no distinction made among causes plainly diverse, they say generally that three opinions are present concerning this matter, and that they are probable, of which one holds that the price is to be restored to him who paid, another to the Church, and the third to the poor. Moreover, Lessius, who stands for the third, is seen in the same St. Alphonsus alleged for the first, and Suarez, who certainly fights for the first, cited for the second.

** The VV. take it ill that the Note says that St. Alphonsus, in alleging the Salmanticenses as saying that there are three opinions, and these probable, does not distinguish between causes plainly diverse; and they add that Gury should rather be blamed on this point, who in Q. 2 did not notice that a distinction must be made between the other matters of simony and beneficiary matter.

Resp. The VV. rightly and deservedly note this about Gury. Accordingly the omission has been provided for here. Let the VV. themselves see whether some gloss should also provide for the obscurity which is brought into the text of the holy

Doctor from this, that he proposes the question of simony generally *concerning a spiritual thing*, but the opinions which he then brings forward refer to a certain special matter: and yet, as if the opinions referred to the same subject of the question, he concludes that all these opinions are probable. In this inconstancy of the subject of the question they will find the reason why authors seem to be alleged by the holy Doctor beside the point.

On the Second Precept of the Decalogue

Thou shalt not take the name of the Lord thy God in vain. Exod. 20. 7.

By this precept every irreverence toward God is forbidden, whether by the vain use of His most holy Name, or by blasphemy, or by an oath or a vow, either unlawful or violated.

Chapter I. On the Vain Usurpation of the Name of God and on Blasphemy

Article I. On the Vain Usurpation of the Most Holy Name of God

296. ○ The Most Holy Name of God is said to be used in vain when it is taken up without reasonable cause, or without due reverence. And this is commonly done chiefly in three ways, namely:

1. *From impatience*, or *indignation* against creatures, even inanimate ones, or against oneself; for example: *My God! Good God! how badly this matter goes! My God! what a fool I am!...* Or in French: *Mon Dieu, est-il possible? Mon Dieu, laissez-moi donc tranquille* [1]!

[1] When the use of the Name of God or of the Saints happens in this way from impatience, it in reality sounds and implies a certain manner of invocation. Wherefore, where the habit of this usage seems hard to amend, it will be useful to exhort the faithful that the mind also hold the sense which they utter in words.

2. *From admiration*, by way of exclamation. Thus one says: *Jesus, Mary! O God! My God!* (*Mon Dieu! Grand Dieu! O bon Jésus!*).

3. *Superfluously*, mostly from mere formula, or from levity, or from a certain habit. Thus one says: *My God, yes, it is so,* or *not so* (*Mon Dieu oui; - Mon Dieu, non; - Mon Dieu, que voulez-vous?*) [2].

[2] To the vain use of the *divine Name and of sacred things* must also be referred the formulas *By God, by Christ!*, which of themselves would rather belong to the formula of swearing, or *Body of God, Blood of God, of Christ, of the Blessed Virgin, of St. Peter!* etc., whether they are uttered from impatience or from admiration. Concerning which Escobar (*Lib. 28, n. 570*): *To name or to swear by the honorable members of Christ, namely by the head, the body, and the blood, will be blasphemy if it is uttered by way of contempt or derision... But if these words are used not by way of vituperation and abuse, but for a great exaggeration of the truth, they will not be blasphemous, and perhaps (unless scandal is present) they will be without fault; because neither in substance nor in the manner of speaking are they injurious to God. So also Silvester, Valent., and Sanch.*, who (*in Decal. Lib. 2, Cap. 32, n. 29*) alleges others for the same doctrine. The fault, however, will be venial, and, as Busembaum says, *among venial sins a grave one*, when these words are employed idly and as a kind of stock interjection, namely on account of a certain irreverence.

The reason of *scandal* moves some. But even if there were *direct* scandal, surely an impulse to a fault venial in itself cannot be mortal. Scavini, however (*Tr. 5, Diss. 3, Cap. 2, art. 2, q. 1, not. 1*), excepts the case in which these things flow from the mouth of a priest. But the reason must then be sought elsewhere, namely from this, that on this account both the horror of sin among the faithful generally and the esteem of ecclesiastical men are lessened, just as when a man of the clergy is found to be either a liar, or half-drunk, or a defrauder of another's goods, even in light matter.

But as for the fact that some think it a fit remedy for keeping these forms of speech from the mouth of the faithful to condemn them as a grave fault, the words of St. Antoninus must be recalled to their memory (*Above, note a, to n. 152*), namely, that this is nothing else than *to build for hell*.

297. **Questions.** Q. 1. Whether the vain usurpation of the Name of God is always a sin, or of what sort?

Resp. 1. **In itself it is a sin**, because it wounds the reverence due to the divine Name. It is established besides from Ecclus. 23. 10: *Let not the naming of God be usual in thy mouth.*

Resp. 2. **In itself it is only a venial sin**, because that reverence is not gravely wounded. But it can become mortal by reason of contempt or grave anger [3], because then it is held to share in the nature of blasphemy.

[3] Understand *formal contempt*; for *virtual contempt*, which is generally present in any failure of reverence, deference and obedience toward God, by no means brings gravity of guilt. *Anger*, again, is to be understood here either as that which is borne against God, or as that which goes on to *formal contempt of God*. Otherwise anger, however very grave, does not change the nature of the words. And these things are certainly to be heeded carefully, especially by preachers, lest, while they vehemently assail these vices, they instill a false conscience about the gravity of the fault, and so themselves become the true authors of this grave fault and of the spiritual ruin of very many, *building for hell*.

Resp. 3. Although it is often without fault because of inadvertence, yet those are not to be excused who, without any sense of reverence, from custom always have the Most Holy Name of God in their mouth. - Bouvier, *On the 2nd precept*.

On the other hand, if the Most Holy Name of God is used with due reverence, even in indifferent matters, not only will there be no sin, but where it is so used by way of invocation, it will be a good and meritorious work. For the rest, those will more easily be excused from sin who use the Most Holy Name of God by way of admiration or interjection, because then irreverence is more easily absent.

298. ○ **Q. 2. Whether it is a sin to use the names of the Saints uselessly?**

Resp. **Yes.** For what is said of the most holy Name of God, the same, due proportion observed, must be said also of the names of the Saints, as is established from the place of Ecclus. cited, where it is added: *And mix not thyself with the names of the Saints.* The same also must be said of the vain use of the words of sacred Scripture, when they are taken irreverently.

Q. 3. Whether a frequent and useless use of the name of the devil is a sin?

Resp. **No, in itself** [4]. Yet it is to be reproved as less becoming in the mouth of Christians, especially in Priests, who by reason of scandal are sometimes not free from some fault. - Busemb. in St. Lig., n. 131. - Bouvier, etc. - Some, however, assert that it is venial in itself. So Voit, n. 514.

[4] Indeed, wherever the vice of cursing God or the Saints has prevailed (*managgia...*, that is, *may it fare ill...*), and one is dealing with men who in the heat of anger barely, or not even barely, know how to restrain themselves from vehement emphasis, it is certainly expedient to suggest that they substitute the execrable name of the Devil for the sacred names of God or of the Saints.

Article II. On Blasphemy

299. ○ **Definition.** Blasphemy is speech injurious to God [1]. Speech, however, can be made not only by an explicit word, but in some sense also by the mind and by deed. If it is a question, however, of reservation or of the other penalties inflicted on blasphemy, only the spoken is properly understood.

[1] Some, with St. Thomas (*2. 2. q. 13. art. 1*), hold that it belongs to the notion of blasphemy that it state something false about God. Others require merely that it contain some contumely; and others reconcile these with the first, because whoever despises God in words by that very act declares God to be contemptible, which is certainly false. However this may be, lest the Author's definition extend too widely, the word *injurious* is to be understood of *contumely*. Hence Suarez (*De Relig. Tr. 5, Lib. 1, Cap. 4, n. 1*): Blasphemy *is a word of malediction, reproach, or contumely against God*. And others: *It is speech against God or sacred things by way of contumely*.

Division. Blasphemy is distinguished first of all

1. Into *direct*, or *indirect*, according as the dishonoring of God either is *directly* and formally intended by the blasphemer, or, though not intended, some contumely against God is nevertheless contained in his words or gestures [2].

[2] Laymann (*Lib. 4, Tr. 10, Cap. 6, n. 12*) affirms that the *direct will of dishonoring God* is a circumstance to be expressed in confession. For which opinion St. Alphonsus (*Lib. 3, n. 126*) adds Lessius, and indeed says that it is the common opinion, citing the Salmanticenses (*Tr. 21, Cap. 3, n. 123*); and Scavini too follows St. Alphonsus (*Tract. 5, Disp. 3, Cap. 2, art. 2, q. 3*).

But the case of Laymann and Lessius is one thing, that of the Salmanticenses another. For the former assert it led by the opinion of the necessity of confessing certain merely aggravating circumstances; whence Laymann refers the reader to (*Lib. 1, Tr. 2, Cap. 10, n. 3*), where he teaches this: whereas the Salmanticenses say it of the case in which, on account of hatred of God or heresy, another species of sin accrues. Since therefore, even in the opinion of St. Alphonsus, the necessity of confessing merely aggravating circumstances is none in itself, and the doctrine of the Salmanticenses is not to the point, it is plain that the opinion which says that the circumstance of *direct blasphemy* must be expressed rests on no solid foundation.

** This Note too displeases the VV., and (*Pag. 918*) they contend that *St. Alphonsus rightly cited the Authors alleged by him*. But the VV. themselves (*ibid.*) admit that St. Alphonsus (*Lib. 3, n. 126*) holds the same as Busembaum. Now Busembaum says indeed that the circumstance of *direct blasphemy* must be expressed, but he omits why he affirms it, and merely alleges Laymann (*Lib. 4, Tr. 10, Cap. 6, n. 12*). But the reason adduced there by Laymann is: *because this circumstance aggravates intimately, and increases the contempt and dishonoring of God, in which the essential malice of blasphemy consists*. Therefore both Laymann and Busembaum say that that circumstance must be expressed only because it is an *aggravating* circumstance. But St. Alphonsus, as the VV. will have it, teaches that it is to be expressed because it changes the *species*. Therefore they must admit that neither Busembaum nor Laymann stands for the opinion of St. Alphonsus.

The VV. insist, saying that Laymann adds this: *Then also because such a perverse intention often comes from hatred, at least of abomination, toward God, which is a sin specifically distinct from blasphemy.* - Resp. Laymann continues thus: *But because it does not always come from hatred, but sometimes only from anger, weariness, or despair.* Hence thus: Laymann teaches that a distinct species accrues to *blasphemy uttered with a formal and direct intention of dishonoring God* only when it comes from hatred; but Laymann denies that such blasphemy always comes from hatred. Therefore in formal blasphemy considered in itself he does not recognize a distinct species.

As to the Salmanticenses, the VV. (*l. c.*) have this: *St. Alphonsus with the best right alleges the Salmanticenses, since they teach with the common opinion that blasphemies proceeding from hatred of God are of a species different from other blasphemies.* - Resp. The question now is not whether a new species is added from hatred of God, but whether *direct* blasphemy contains in itself a species different from other blasphemies. A new species accrues to blasphemy also from heresy: whence the Salmanticenses write there thus: *It is answered by saying that heretical blasphemies, and those proceeding from hatred of God, are of a species different from other blasphemies. The reason of the first part is, because heretical blasphemy has heresy joined to it... and is opposed to faith... The reason of the second part is, because hatred of God is opposed to charity.* Now just as you would absurdly say that *direct* blasphemy is in itself

always of a different species because heresy sometimes accrues, so the same is badly concluded because it can sometimes be joined with hatred of God.

Finally, as regards Lessius, the VV. (*l. c.*) note that Lessius concludes in these words: *Hence there is no doubt that this is to be disclosed in Confession as a peculiar species, in which the malice itself is directly willed.* - Resp. The sense of Lessius is that that circumstance must be disclosed, as a *peculiar species* must be disclosed; not, however, that it must be disclosed because the circumstance itself brings a new species. And this is made manifest by a double reason: 1. because the reason applied by Lessius is confined to this, *that that affection is incomparably worse*, because *in a higher way it is malice in act*, because *it is incomparably worse to do an injury to someone with the affection of harming*... But these indicate not a *change of species*, but a mere increase of malice within the same species. 2. Because, as Lessius says, *this is the most formal blasphemy*. But it is absurd that *formal blasphemy* should differ in species from the common notion of blasphemy. Therefore.

Hence, however, we must proceed to the conclusion, which is the head of the matter. For here it is a question of the obligation of confessing some circumstance. But obligations, unless they are certainly established, are not to be asserted. Now in the present case, so far are we from having arguments that induce certitude, that we have not even reasons effective for producing some probability. Therefore.

2. Into *immediate*, or *mediate*, according as it affects God Himself immediately, or only mediately, namely by dishonoring the Saints [3] or sacred things with words.

[3] Whatever some have disputed, contending that blasphemy against the Saints differs in species from blasphemy against God (see Lugo, *De Poenit. Disp. 16, n. 279-280*), it can be held probable with St. Alphonsus (*Lib. 3, n. 132*) that in reality it does not differ in species, and therefore that there is no obligation of declaring in confession whether the blasphemous words were uttered against God or against the Mother of God, or against the Saints or the Angels. And this indeed contributes much to practice; for it frees the Confessor and the penitent at once from the necessity of inquiring how often one has sinned by blaspheming against God, how often against the Saints, since all these can more expeditiously be gathered together in one sum.

3. Into *heretical*, *imprecatory*, and *merely reproachful*, according as it contains heresy, or imprecation, or mere contumely.

Principles. - I. Every formal and deliberate blasphemy, whether it be direct or indirect, immediate or mediate, is a mortal sin *ex toto genere suo*. The reason is, because any contumely against God is a grave injury inflicted on the divine Majesty. - Hence Lev. 24. 16: *The man that curseth his God shall bear his sin: and he that blasphemeth the name of the Lord, dying let him die.* - Hence also St. Jerome, on Isaias, bk. 7, ch. 18, says: *Nothing is more horrible than blasphemy, which setteth its mouth against the Most High.* - And St. Thomas says, 2. 2. q. 13. art. 3: *Every sin compared with blasphemy is lighter.* - It can, however, become venial from imperfection of the act, namely from defect of advertence, or of perfect consent.

II. For blasphemy perfect by reason of the act, an express and explicit intention of dishonoring God is not necessary, but an implicit one suffices, namely when someone with advertence utters things which contain a real contumely against God, even in jest or in anger against creatures. The reason is, because from these there follows a grave dishonoring of God, though an indirect one; for a grave irreverence against God is committed when words contumelious to Him are employed for jest [4], or to express anger. - Reuter, *On blasphemy*, n. 442.

[4] Reuter, from whom the Author brings these things, thus delimits the doctrine on blasphemy uttered *in jest* (*P. II, Tr. V, De Blasphemia, n. 442*): *Blasphemy is grave..... 5. If someone says blasphemous words in jest, where among the hearers a dishonoring of God is joined to them.* The grave guilt will therefore be absent when that sense is lacking among the hearers.

III. Those words are to be held blasphemous *in themselves* which, from common apprehension, or from the usage of the country or region, or from a derisive or angry manner of speaking, or from other

circumstances, contain a dishonoring of God; which, although in themselves they do not sound like blasphemy, are yet held as blasphemous from common apprehension. - Reuter, *ibid.* [5].

[5] The Author perhaps has in view what Reuter (*l. c., n. 441*) has concerning those who *with mockery, reproach, or contumely name the death of Christ, His blood, wounds, sacraments, etc.*; of which we spoke above in the note to n. 296. Nevertheless, where it is a question not of *mockery, reproach*, etc., but only of an *apprehension* by which words in reality not blasphemous are by error thought *blasphemous*, the grave obligation must certainly be recalled to mind by which, in the opinion of all, Confessors are bound to recall the faithful who sin from an erroneous conscience from their pernicious error. Rather, therefore, than attack these words as blasphemous, let Confessors teach that there is no blasphemy in them, lest otherwise, namely from a false zeal, as we have said several times already, they *build for hell*.

300. **Resolves.** - 1. According to some it is blasphemy to say: *May death destroy you*, or *the blood of God; may the Sacraments destroy you.* But more truly these seem to be merely imprecatory words. It is blasphemy, however, to spit toward heaven, to gnash the teeth at it, to say that one wishes to do something against God's will, and the like.

2. It is blasphemy to say: *God has entirely forgotten me: Why did God create me?* - Except, however, if these things are uttered in a human manner of speaking from levity, or to show the gravity of grief or weariness, as very often happens. But those are never to be excused from grave sin who advertently and seriously say: - *God is unjust. - God unjustly burdens me with tribulations. - Unjustly He permits the wicked to be happy in the world.* - Voit, n. 519.

3. Those do not sin gravely who, carried away by anger or some passion, utter words of blasphemy not adverting to their meaning [6].

[6] So St. Thomas (*2. 2. q. 13. art. 2. ad 3*): *Blasphemy can proceed without deliberation, by surprise, in two ways. In one way, that someone does not advert that what he says is blasphemy: which can happen when someone suddenly, from some passion, bursts into imagined words whose meaning he does not consider; and then it is a venial sin, and does not properly have the nature of blasphemy.* These things can bring it about that the opinion be set aside which St. Alphonsus (*Lib. 3, n. 127*) attributes to Giordanini (*Istruzione per li novelli Confessori*), namely that *there is always present some advertence to the malice of the blasphemy*.

** It could hardly have seemed credible; yet this too has happened, that the VV. (*Pag. 256-260*) found matter for writing through eight columns against this very brief Note, in which, besides, the opinion is attributed to another rather than to St. Alphonsus, who, the VV. advise (and this matters nothing), is *Giuseppe Iorio*, not *Giordanini*.

Accordingly (*Pag. 257*) they complain, 1. that the passage of St. Thomas is brought forward *not entire, but torn from its context*. - Resp. St. Thomas had objected to himself: *Sins which are committed without deliberation are not mortal.... But blasphemy sometimes proceeds without deliberation. Therefore it is not always a mortal sin.* And he answers by distinguishing whether advertence to the blasphemy is lacking or present. The first case, which was to the point, is faithfully set out in the Note. Of the other case St. Thomas adds: *In another way, when he adverts that it is blasphemy, considering the meaning of the words: and then he is not excused from mortal sin.* And these things were omitted because, as is plain, they were not to the point, nor was it the Author's aim to heap up useless things to increase the bulk of the book. What is there in this that can rightly be found fault with?

2. The VV. add (*Pag. 257*) that in the text of St. Alphonsus the word ALWAYS is to be understood *of things which happen ordinarily and commonly*. - Resp. If they themselves contend that the word ALWAYS cannot be understood there as ALWAYS, then ALWAYS is less aptly said there. For the rest, why then do they attack the Note, which merely notes that that ALWAYS does not agree with the doctrine of St. Thomas?

3. The VV. (*Pag. 257-258*) wish to reconcile St. Alphonsus with St. Thomas, because St. Thomas does not discuss the habituated, but those who by surprise burst into imagined words without consideration. St. Alphonsus, however, agrees with St. Thomas that someone from anger may not advert to the malice of blasphemy; but he deals chiefly with the habituated, of whom he writes (*Prax. Conf. Cap. 2, n. 31*): *Finally I add with a certain learned Author (Giordanini) that blasphemers are not excused from grave sin on the ground that, because of the force of the bad habit or a vehement commotion of mind from anger, they did*

not advert to what they were saying; for these badly habituated persons, although they have a knowledge less vivid than others who have not contracted the use of blaspheming, nevertheless ALWAYS have that ACTUAL knowledge sufficient for this, that the act be deliberate and gravely sinful. - Resp. 1. St. Thomas discusses generally those who *from some passion burst into imagined words whose meaning they do not consider*. But this happens also to the habituated; indeed, as is plain of itself, much more easily and frequently to the habituated than to others. Therefore some reconciliation is sought here in vain. - 2. The passage of St. Alphonsus of which the Note speaks (*Lib. 3, n. 127*) embraces both the habituated and the *non-habituated*. Behold the words of the holy Doctor: *Some DD. say that these (blasphemers) SOMETIMES, on account of the impulse of anger or of the habit contracted, can blaspheme without advertence. But I think with the Author cited* (Iorio) *that in blaspheming there is ALWAYS some at least confused advertence to the malice of that utterance.* Therefore, 1. since St. Alphonsus opposes his ALWAYS to the SOMETIMES of the other DD., it cannot be so understood, as the VV. contend, that it means *ordinarily*; for *ordinarily* admits an exception *sometimes*. Therefore, 2. it is false that St. Alphonsus admits exceptions as regards the non-habituated. - Resp. 3. But then a further task remains for the VV., namely that, if they cannot reconcile St. Alphonsus with St. Thomas, they at least reconcile St. Alphonsus with St. Alphonsus. For the VV. themselves (*Pag. 258*) bring forward these words of the holy Doctor (*De Act. Hum. n. 24*): *Nor should the Confessor easily believe a penitent who excuses himself... for having blasphemed... without advertence... as from habit: for if he has not striven to root out that habit by applying some remedies, then he is voluntary in cause when he blasphemes..., and therefore is not excused from fault: but otherwise if, diligence having been applied, he blasphemes inadvertently.* Hence thus: 1. this last one he excuses from fault, if he blasphemes *from habit*, because he blasphemes *inadvertently*; 2. the first he does not excuse from fault, because the blasphemy is voluntary *in cause*, and this supposes that *actual* knowledge was lacking, because otherwise it would be voluntary *in act*. Therefore the holy Doctor too teaches that the habituated blaspheme inadvertently.

But what may seem more astonishing, the VV. themselves, as if to strengthen that opinion of St. Alphonsus about advertence, which is to be thought always present in the habituated, bring forward (*Pag. 259*) the opinion *of many*, as they say, grave Doctors, *who teach that the habituated person who does not care about amendment... sins mortally as often as he utters blasphemous words, although without any advertence*. Do they thus prove or confirm the aforesaid opinion of St. Alphonsus (*from the Praxis Confess. Cap. 2, n. 31*), that they ALWAYS *have that ACTUAL knowledge sufficient for this, that the act be deliberate and gravely sinful*?

Nor those who, from an inveterate habit of blaspheming now retracted, break out indeliberately into such words [7].

[7] That the Confessor may judge rightly of blasphemies (and say the same of the other vices of the tongue) uttered inadvertently and by force of habit, he must apply the principles which are commonly handed down (*in the Treatise on Human Acts*) concerning sins *in cause*. Namely, although these words uttered inadvertently are held and called sins, nevertheless one does not then sin when he pours them forth from his mouth materially and without advertence; for no act without deliberation can of itself have the nature of fault; but since they are sins *in cause*, the guilt is incurred then, when the cause is placed. It is useless, therefore, to inquire of the penitent the number of these sins, or material acts; for the whole guilt of these is in the cause; and this guilt is neither increased nor diminished by the greater or smaller number of the acts following afterward, but is to be estimated from the foresight of the effects which was present when the cause was placed. (See Laymann, *Lib. 1, Tr. 2, Cap. 3, n. 6.*)

But what is this cause, in which the guilt resides? Some take refuge in the origin of the habit, and find a twofold or aggravated malice in the preceding frequentation of acts from which the habit grew. So Laymann (*l. c.*); who, however, aptly warns that for this it is needed that, while one blasphemes, he advert that by this he is engendering that habit in himself. - But in practice you will scarcely find that men adverted to this, especially if they contracted the habit from boyhood; moreover, even if someone adverts to the danger, yet since he has no purpose of frequenting the acts, indeed promises himself that otherwise he will not blaspheme, you will hardly find this guilt.

Yet although guilt should be lacking on this side, it is certainly had in this, that one neglects to amend the habit, which he is bound under grave obligation to remove; and this negligence indeed suffices for the acts to be *indirectly voluntary*, as all the effects of an omission are voluntary to us, namely when we do not remove a cause which we are bound to remove. And thus it is plain how the guilt of the habit is voluntary, although advertence and guilt were lacking in contracting the habit itself.

From these things, however, it is easy to pass judgment on these matters. For either the blasphemies are not uttered indeliberately (for the habit does not bring it about that all the acts are indeliberate), and then they have guilt in themselves, as being voluntary in themselves.

But when they are plainly indeliberate, it will happen that they are wholly excused from sin, if one seriously strives to take away the habit. The reason is, because they have no guilt in themselves, as we have said, but can have it only in cause. Now the cause is understood either as the former frequentation of acts whence the habit was induced, and this guilt has already been taken away by retractation or penance; or the cause is understood as an *indirect* one, namely the negligence of removing the habit, and this likewise is absent, since we suppose the man to be seriously intent on removing the habit. And these things indeed are to be inculcated on the penitent; for they are wont to add great courage for undertaking the extirpation of the vice.

But if the penitent either altogether refuses amendment of the habit, or does not indeed refuse, but meanwhile neglects to apply sufficient care or effort to it: in the first case he is incapable of absolution, as one who voluntarily remains in the state of sin, just as one who will not either restore another's goods or leave an occasion; but in the other case the DD. advise that it is *expedient* that absolution be discreetly deferred, so that the penitent may shake off his sloth and be in some way moved to apply effort and care effectively. *Discreetly*, I say; for if absolution cannot *conveniently* be deferred, and otherwise sufficient signs appear of a serious will to amend the bad habit, he can be absolved, as also when the delay does not seem likely to profit for taking away the bad habit. But of these things more fully where we treat of the Sacrament of Penance.

Meanwhile note that it can be decided only with difficulty when the guilt of negligence is grave in those who indeed retract the cause and apply some effort, which, however, is not always intense.

4. He does not sin gravely who pronounces words in themselves indeed blasphemous, but halved or corrupted, so that he does not attend to their true sense; for example, he who says in French: *Jarnidié! mortdié! ventredié! morbleu!* For these no longer have the nature of blasphemy [8]. - St. Lig., n. 125. - Bouvier, *On the 2nd precept*, art. 1.

[8] Indeed, the effort to twist, mutilate, and in any way corrupt the pronunciation of words which otherwise would sound like blasphemy shows a detestation of blasphemy. And since the common people, when struck by a vehement feeling, especially of anger, with the greatest difficulty refrain from some emphatic expression, it is certainly more advisable to suggest to them some harmless way of signifying that heat than to demand silence.

301. **Questions.** - Q. 1. Whether these French expressions are blasphemous: NOM DE DIEU! NOM DE NOMS! MILLE NOMS! SACRÉ NOM! *with nothing added*, etc.?

Resp. **No, in itself**, even if they are uttered in anger, unless the anger is directed against God Himself, or unless there is a blasphemous intention [9], which is mostly absent. For these words contain no blasphemy in themselves. They will therefore be only venial, on account of the vain use of the name of God; but if the name of God is used in the formulas neither *explicitly* nor *implicitly*, they will *in themselves* lack all fault. - Bouvier, *ibid.*

[9] Those are certainly to be called too morose who unseasonably busy themselves in fishing out and searching for blasphemy, which in the words is none, in the intention.

A fortiori, those rude expressions so frequently used among our country people, which begin with the letters *B. F. M.* or *J.-F.*, etc., will not be blasphemies, even if the word *sacré* is placed before them, for example *Sacré B., Sacré M.*, or if this word is joined to other rude nouns. Indeed these are *in themselves* free of fault, unless they go against charity toward the neighbor, as happens when such words are uttered for the sake of abuse. - *So commonly.* - Bouvier, *ibid.*

302. ○ **Q. 2. Whether the French expression S. NOM DE D. is blasphemy?**

Resp. **Yes, in itself**, or by reason of the common acceptance of the words. For such expressions, in the sense of the faithful, are contumelious against God. For there is no one moderately pious who does not shudder on hearing them. Indeed those who use this expression do in fact act from

contempt of the Most Holy Name of God, at least implicitly, just as if they said: *Cursed be the Name of God.*

Nor may you say that these words contain no blasphemy in themselves, because in the obvious sense they really signify *blessed be the Name of God*. For they bear both senses, the one from the genuine signification of the words, the other from the general acceptance of men. Indeed they are never used by the pious faithful for honoring God, but are always heard by them with horror and indignation, while on the contrary they are constantly used by the impious for cursing Him.

This expression is held as blasphemous by Vernier, *On the 2nd precept of the Decalogue*. - Rousselot, *in the additions to the Theology of Saettler, ibid.* - Collationes Anicienses (*Conférences du Puy*), *On the virtue of Religion, p. 2, c. 1*. - The Most Illustrious D. D. Parisis, Bishop of Langres (now of Arras), *in a Pastoral Letter for the pious sodality to be erected for the destruction of blasphemy*. Bouvier also inclines to this opinion, *On the 2nd precept of the Decalogue*, c. 1.

303. ○ Many others, however, do not apprehend the nature of blasphemy in this manner of speaking *in itself* [10], unless a blasphemous intention, explicit or at least implicit, intervenes. - So Gousset, t. 1, n. 460. - D. Valentin, *Examens raisonnés sur les Commandements*.

[10] And indeed with the same sense of horror with which pious men in France are affected by the aforesaid words, the pious faithful elsewhere are wont to be affected when they hear *the body of God, the blood of Christ*, etc. used in anger; and here the sense of the faithful certainly proves that something is present by which one sins against God. But whether from this horror of the faithful the species of the sin further should or even can be determined, whether it is irreverence toward the name of God or sacred things, or blasphemy, or heresy, whether there is a contempt proper to contumely or a contempt merely detracting from reverence, others will not easily admit. Indeed, even if the common people called these forms of words blasphemies, it would conclude nothing whatever, since it is established that by the name of blasphemy, in a vague notion, the common people designate not only any words against God, but also those which are in no way directed against God, of which the Author spoke in the preceding number; but otherwise it is right that Theologians should not seek out and learn these things from the common people, but the common people from Theologians.

I have said, *in itself*. For in practice not all who utter such words are to be convicted of mortal sin. For it is certain, experience bearing witness, that not a few, especially the uneducated, do not apprehend grave malice in them [11]. Let the Confessor therefore attend above all to the various circumstances of the penitents. However that may be, he must with due prudence strive to destroy this bad habit in the penitents entirely, as far as it can be done.

[11] Since these things are so, whether it was a prudent counsel on the part of the more recent writers whom the Author named a little before, that they should with strenuous effort persuade the faithful that there is altogether blasphemy in those words which in themselves are in reality not blasphemous, and moreover for this end should with exquisite subtlety have attached to the words a sense of which the common people had perhaps never thought, and should have tried to search out the blasphemy, which they did not find in the words, at least in an intention even merely implicit, let wiser men judge. This indeed is most certain, that neither the glory and honor of God nor the salvation of souls is well provided for by this, that the conscience of a grave crime is instilled in the faithful beyond necessity. For although perhaps it is thus obtained that someone sometimes refrains from that form of words, yet certainly by this gain the grave offense of our God and the grave ruin of souls, which are wholly owed to this saying, as to a new snare unseasonably thrown on someone, are in no way compensated.

304. ○ **Q. 3. Whether it is blasphemy to curse creatures?**

Resp. **Distinguish.** It is blasphemy to curse creatures with relation to God, for example the rains, the winds, as commanded by God, or with the word *of God* added; likewise to curse a creature which of itself has a special relation to God, for example our soul, the Catholic Faith, heaven, and the like. But it is otherwise, as nearly always happens, if indignation is directed against creatures without relation to God. - *So commonly.* - St. Lig., n. 128.

Q. 4. Whether it is blasphemy to curse the whole world?

Resp. **St. Lig. affirms it**, because just as to swear by creatures, in which the divine attributes shine forth more, is a true oath, so to curse these very things is true blasphemy, because in them God is indirectly contemned. - St. Alphonsus, n. 129. - In reality, however, such a meaning scarcely tends to occur to the mind of the one uttering these things.

305. **Q. 5. Whether it is blasphemy to curse the dead?**

Resp. **It is denied**, unless the mind is specifically directed to the souls in purgatory; because the dead in general do not have a special relation with God [12]. - St. Alphonsus, n. 130.

[12] The character of this malediction is in reality to cast reproach upon the living, and to attack them with insults, not truly to imprecate evils upon the dead or to affect them with injury.

Chapter II. On Oath

306. **Definition.** An oath is an invocation [1] of the divine Name as testimony of the truth [2].

[1] By this chiefly an oath differs from a vow, whose essence consists in the promise alone.

[2] Others, in order to explain better the twofold end of an oath, say that an oath is an invocation of the divine Name as testimony, either for giving credibility to words, or for confirming a promise.

Division. An oath is distinguished:

1. Into **assertory** or **promissory**, according as the truth [3] alone is asserted, or a promise or agreement is confirmed.

[3] Others, in order to include both a true and a false oath, define an assertory oath as that by which present or past things are affirmed or denied; for a promissory oath, as is clear, extends itself only to future things. Although not every oath concerning the future is promissory. For a twofold oath concerning the future is distinguished by the doctors: one bare and simple, which contains no promise toward another, for example if you swear that you will not enter this house or tavern, etc.; another truly promissory, which is confirmatory of a promise either toward God, which is a sworn vow, or toward one's neighbor, which adds to the obligation of justice or fidelity arising from the promise an obligation from the virtue of religion.

2. Into **solemn** or **simple**, according as it is made with the form required by law, or with solemn ceremonies, or with these set aside [4].

[4] Clerics, especially priests, cannot interpose a solemn oath except by permission of the Bishop, which is granted only for a grave cause.

3. Into **explicit** or **implicit**, according as God is expressly invoked as witness, or creatures are employed as testimony, in which the divine attributes shine forth in a special way [5].

[5] The doctors warn that an oath by creatures, by heaven, for example by earth, etc., should be used only by more perfect and spiritual persons, for whom it is easy to apply the due reverence by which we honor God in creatures. Besides, among us that custom is not in force; and if someone, for example, swears by the sun, he is judged to be jesting.

There is added also an **imprecatory oath**, by which God is invoked at the same time as witness and as avenger of perjury [6].

[6] This distinction of an oath into **contestatory** and **execratory** or **imprecatory** is also common. But it is disputed whether, when someone confirms a falsehood by an imprecatory oath, by which he obliges himself or something pertaining to himself (as St. Thomas says, 2. 2, q. 89, art. 1 ad 3) to punishment, another species of malice is added, namely against charity toward oneself or one's neighbor. The doctors more commonly deny this, because a person is not accustomed to imprecate such an evil upon himself or his own from his heart, but rather thinks that God will not do it. Thus St. Alphonsus (lib. 3, n. 140), who soon after (n. 142) notes that, according to the common opinion, all oaths are of the same species.

An oath clothed with due conditions is honorable and lawful, and if it is promissory, it obliges in conscience, unless a just cause prevents it, or its obligation has lawfully ceased. - Thus all, and it is clear both from the definition of the Council of Constance, sess. 8, against Wyclif, and from the universal practice of the Church and of peoples, and also from various places of Sacred Scripture. Deuteronomy 6. 13: "You shall fear the Lord your God... and by His name you shall swear." - St. Alphonsus, n. 133, 439 and following.

Article I. On the Conditions of an Oath

I. On the Requisites for the Essence of an Oath

307. Two things are required for an oath, namely: 1. The intention of swearing, at least virtual; because without such intention a formal oath cannot exist [1]. 2. An oath-formula, either explicitly by God, or implicitly by creatures; because, since God is invoked as witness, it is necessary that this be expressed in the oath. - St. Alphonsus, n. 134.

[1] Intention of swearing contributes so much to the validity of an oath that, if this mind is present, a person truly swears (for the internal forum), although the words may be less suited to express the invocation of God, and therefore among others (as also in an oath by a merely internal act) he does not in reality swear; and contrariwise, when that intention is lacking, there is no oath, even if the words are juratory, whether that intention is lacking because of the deceit of one fictitiously swearing, or because of the ignorance of one not knowing what the act of swearing means. Laymann (lib. 4, tr. 3, c. 1, n. 3); Suarez (*De Religione*, tr. 5, lib. 1, c. 11, n. 2); Croix (lib. 3, p. 1, n. 258).

308. **Resolves.** 1. A fictitious promissory oath, or a merely external one, is not valid, because of a defect of will or intention. But one swearing thus sins; yet more probably, speaking per se, only venially, because it is nothing but a lie with a vain usurpation of the Name of God [2]. - St. Alphonsus, *Homo apostolicus*, n. 17. Often, however, this is mortal by reason of common or particular harm.

[2] You have on this matter proposition 25, proscribed by Innocent XI: "With cause it is lawful to swear without the mind of swearing, whether the matter is light or grave." Besides, St. Alphonsus, both in the cited place and lib. 3, n. 172, certainly teaches with the common opinion that one sins venially; but he limits this, if one swearing fictitiously thus otherwise has the mind of fulfilling the things promised; for otherwise, he says that one sins mortally. See the reasons in Sanchez (*Decal.*, lib. 3, c. 6, n. 8-10).

2. More probably, an oath made with the mind indeed of swearing, but not of obliging oneself from religion, is not valid, because this is nugatory. But an oath made with the mind of swearing indeed, but not of obliging oneself from justice or from fidelity, is valid.

3. It is an oath to say: "I swear by God, by the Saints, the temple, the cross, the altar, the Gospel, the Catholic Faith, the Church, heaven, earth." Likewise to say: "I call God to witness... May God be witness to me... I invoke God as witness." It is otherwise if someone swears by creatures in which the divine goodness or power does not shine forth in a special way, for example by the beard, etc. - St. Alphonsus, n. 134, 138.

4. It is not an oath to say: "God knows... I speak before God," etc., if these are uttered narratively; but otherwise if invocatively, which is discerned from the circumstances or the intention of the speaker. Nor is it an oath to say: "This is as true as God exists... as I exist... as I am in this place... on the faith of a good man [3]... by my faith... by my conscience... may I die... or may the devil destroy me," unless it is so intended [4]. Indeed, according to St. Alphonsus, it is not even an oath to say: "I swear," or "I swear that it is so," unless a question about furnishing an oath has preceded. - St. Alphonsus, ibid., and many others.

[3] The same is to be said of a priest interposing his priestly faith or holy consecration (c. *Si quis presbyter*, 4, caus. 2, quaest. 5), or of kings or princes, etc., who in place of an oath pledge on the faith, or by the faith, of a king, prince, soldier, etc.

[4] On these things St. Alphonsus says (lib. 3, n. 143): "The words, 'May I be killed if this is not so,' and similar words, although they are true oaths if they are said by way of execration... besides, commonly they contain nothing except a certain pledge or obligation to punishment." Therefore the rule which the author sets forth first must be applied, namely that the words, and also usage, circumstances, and the intention of the speaker be inspected. But the invocation of God, and thus execration, is more easily understood where the matter concerns events which, according to the common sense of men, are judged to be disposed and directed by the special providence of God.

** To the other formulas St. Alphonsus (l.c.) also adds this one: "So may God favor me"; and he alleges the Salamancans, tr. 17, c. 2, n. 27. But the Salamancans do not have it thus, but thus: "May God favor me better"; which is very different.

II. On the Requisites for the Lawfulness of an Oath

309. A threefold condition is required for the lawfulness of an oath, according to that saying of Jeremiah 4. 2: "You shall swear: The Lord lives, in truth, and in judgment, and in justice."

I. Therefore **truth** is required, that is, conformity of the assertion with the intention and cognition of the one swearing. Therefore it excludes every lie, but not every error. In an assertory oath, truth regards the existence of the fact; in a promissory oath, the existence of the intention [5].

[5] In a promissory oath an assertory oath is also included; for a person both calls God as witness that he now has the intention or will of doing what he promises, and, by employing the same God somehow as surety of the promise, assumes from the virtue of religion the obligation of fulfilling the promise. Nevertheless someone could swear only concerning his present purpose or intention, for example: "I swear that I now have the will of going to Rome next month"; and certainly someone could afterward break such a purpose without perjury. Laymann (lib. 4, tr. 3, c. 4, n. 4).

II. **Judgment**, that is, that it be done with discretion, prudence, consideration, and reverence, and not without necessity or grave cause.

III. **Justice**, that is, that the oath be concerning a just, lawful, and honorable matter: thus he would swear against justice who by oath obligated himself to inflict damage unjustly upon his neighbor, or

to do anything else prohibited. - St. Alphonsus, n. 144 [6].

[6] Many doctors require justice not only in a promissory oath, but also in an assertory oath, yet with this distinction: that in a promissory oath they seem to consider the defect of justice with regard to the thing sworn, but in an assertory oath with regard to the act itself of swearing.

And here the Salamancans (tr. 17, c. 2, n. 45-47), whom St. Alphonsus follows (lib. 3, n. 146), having posed the question whether a defect of justice is a grave sin even in an assertory oath, introduce Soto with Toledo, Ledesma, and Aragon as affirming, and oppose to them Suarez with Sanchez, Tamburini, and others; and they confess that they follow these, except in the case of grave detraction confirmed by oath. But this disagreement among the doctors is plainly imaginary. For Soto (*De Iust. et Iur.*, lib. 8, q. 1, art. 3), Aragon (*In* 2.2, q. 89, art. 3), and de Ledesma (*Sum. hisp.*, tom. 2, tr. 11, c. 2, dub. 4) say that he sins who, revealing hidden crimes, confirms them by oath; but they do not say whether he sins gravely or lightly. Toledo (lib. 4, c. 21, n. 8) holds that the sin is grave or light according to the nature of the matter; and indeed these authors observe that every sin can be absent, if a just cause is present, for example of revealing a hidden crime to a judge with an oath. But Suarez (*De Religione*, tr. 5, lib. 3, c. 12, n. 7-8), with Sanchez and others, whose opinion St. Alphonsus calls more probable, judges that the fault is generally light, because the thing sworn is supposed true, and only judgment is lacking in the swearing. Nevertheless he excepts an oath added to the narration of a true crime for the purpose of procuring greater credibility for it, because in that way the oath is assumed as a means to iniquity.

** Here the VV. deny that the disagreement of the doctors, of which the Salamancans speak, and after them St. Alphonsus, is imaginary; and therefore through eighteen columns (pp. 260-269) they wish to prove that disagreement actually existed among the doctors. But perhaps the VV. themselves do not sufficiently beware of the rock upon which the Salamancans rather often strike, because they consider too little whether the authors whom they present as dissenting dispute about the same matter and under the same respect, or rather about a diverse matter or under a diverse respect; whence it happens (as was noted at this place in another edition) that they wrongly feign battles of the doctors, and then enter into battle now against these, now against those. Whether this has happened in the present case must now be seen briefly.

According to the Salamancans, the disagreement of the doctors resides in this: that some condemn the defect of justice in an assertory oath as a **grave** fault, others as a **light** fault. Now let this be set aside for the moment: that even those authors whom the VV. allege (p. 267), namely Navarrus, Bonacina, Concina, Collet, Potestas, and Voit, would prove this disagreement to be imaginary, since they generally hold that the sin is grave or light (as Bonacina says) according to the gravity or lightness of the matter. But let these be omitted, since, as the VV. also observe (ibid.), they do not sufficiently determine the state of the question.

Marcus Struggl has the question better determined (tr. 5, q. 3, art. 1, n. 9), where he asks what sort of sin an oath from defect of justice is. And he responds: "An assertory oath concerning an unjust thing, if the assertion is just, is not a sin; because the unjust thing is only the material and extrinsic object of the oath... Thus, therefore, a witness can swear in court that Peter committed homicide... But if the assertion itself is gravely unjust, then the oath also, as its confirmation, is gravely unjust; but if it is lightly unjust, then the oath also is a lightly unjust confirmation. Hence he who discloses another's hidden crime, and gravely defames him, and confirms by oath the crime committed, sins mortally by swearing; but he who discloses another's light crime, and confirms the committed crime by oath, sins venially by swearing."

No less clearly Peter Catalani says (*Th. Mor.*, part 2, q. 9, c. 4, n. 6): "It must be said secondly that the defect of justice in an assertory oath is grave or light, not from the grave or light thing asserted, but from the grave or light mode of asserting, namely from the evil mind, greater or lesser, by which God is brought in as witness of the thing asserted... so that, because of your evil end, it may be rendered safer and firmer. Therefore if the end for which you use an assertory oath as a means is mortal, the oath will be mortal; but if it is venial, the oath will be venial. Thus Sanchez, Suarez, Castropalaus. Hence if you gravely detract from your neighbor, and confirm the detraction by oath for the end of gravely harming him, you would commit a grave sin beyond the detraction from defect of justice in the oath; for you would assume the oath as a means to confirming grave iniquity. But if you detract lightly from your neighbor, etc."

Here indeed one begins to ask: What is the reason that Suarez and Sanchez are here alleged for this doctrine, when the Salamancans say that these stand for light fault against Soto, Ledesma, and Toledo, as though these stand for grave fault? But further, what, I ask, does Toledo say on this matter? Behold (*Sum.*, lib. 4, c. 21, n. 8): "Concerning justice, observe that it is not enough to swear what is true, for the oath to be lawful, but one must swear with justice; that is, a man ought not to swear that truth which it is a sin to reveal. For if someone were to reveal another's hidden crime, defaming him, he

would sin, although he spoke the truth, because he acts against justice; and if he swore this truth, he would sin again. But this oath is mortal when the injustice upon which one swears is mortal; it is venial when the injustice is venial." Thus far Toledo. Do these things differ even in the least from what, according to Catalani as witness, Sanchez and Suarez teach?

And what does Soto say? You may see it with your own eyes. After he has related (*De Iust. et Iur.*, lib. 8, q. 1, art. 3) the opinion of Cajetan, as though justice were not the companion of an assertory oath, he adds: "But perhaps more rightly it is judged that justice also properly belongs to an assertory oath. For justice properly regards not only the thing sworn, but also the cause of swearing, as St. Thomas says in the solution to the second... Hence if I, asserting under oath crimes of a citizen wholly hidden, denounce them, certainly the oath is unjust... But if, required by law and custom, I reveal those things, my oath becomes just." Here the VV. subsume (p. 262) that Soto must surely be understood of mortal sin. - Resp. This will be admitted when they have shown that whatever is unjust, according to the mind of Soto, is a mortal sin of its whole genus.

From Ledesma the VV. (p. 263) report these words: "But if justice is taken in the other sense, it always accompanies a lawful assertory oath; since if the cause which moves one to swear is not just, the assertory oath will be iniquitous." Do the VV. wish even Ledesma to hold as grave sin whatever is not just? Therefore let them not conclude that the Salamancans rightly attributed that doctrine to Ledesma. For it was vigilantly said in the Note above that Soto, Ledesma, and Aragon said that one sins in the case; but whether gravely or lightly, that they do not say; nor did the aim either of Soto or of Ledesma require this further.

But that Catalani rightly attributes this common doctrine to Sanchez is clear from these words (*Decal.*, lib. 3, c. 4, n. 33): "More clearly Soto, Aragon, Peter de Ledesma, and Toledo say that for the honorableness of an assertory oath justice as companion is required, and that this is attended not only on the part of the thing sworn, but also on the part of the cause of swearing, and therefore an oath is unjust whenever by it a neighbor's crime is unjustly uncovered. And Soto and Ledesma add that this oath is no less unjust than when an unjust thing to be done is promised by oath. And Toledo says that this sin is mortal when the sworn assertion is mortal, and venial when it is venial." Sanchez adds that he admits these things, and that they are also held by Sayrus and Suarez.

The things said up to this point can and indeed ought to seem sufficiently clear, and at the same time sufficient to persuade that the disagreement of authors in this question is imaginary. Nevertheless it is worthwhile also to hint whence the occasion arose for the confusion which this question presents among the Salamancans.

Namely, there were those who extended more broadly the justice which is the companion of an oath. Hence that saying of Tamburini (*Decal.*, lib. 3, c. 1, §4, n. 5): "Justice consists in this: that what is sworn is sworn honorably and without sin... for here justice is not taken strictly for the virtue of rendering to each his own, but broadly according to that saying: 'It is fitting for me to fulfill all justice.'"

But Sanchez explains this thus (l.c.): "According to the opinion of some, whenever someone by an assertory oath affirms a matter in the assertion of which mortal fault is committed, then by asserting it there is, besides that mortal fault of the assertion, another mortal fault of the oath from defect of justice. And if a venial fault is committed in the assertion, there is another venial fault by reason of the oath, as we have said happens in a promissory oath." He then gives examples in this way (ibid.): "For example, if someone without just cause discloses the hidden grave infamy of a neighbor, or says a mortal contumely to him, asserting this by oath; or by oath relates his own mortal crime with boastfulness or delight over it; beyond the mortal sin of detraction, contumely, boastfulness, or delight, that oath is mortal from defect of justice." He alleges St. Thomas (2. 2, q. 89, a. 3 ad 2), Cajetan (ibid.), and Valentia (2. 2, disp. 6, q. 7, punct. 3), who nevertheless merely say that the justice of an oath regards the cause of swearing, and the example touched on by Valentia is referred to justice strictly so called.

But whatever may be the case about this, it is certain that Suarez also considered the justice which is companion of an oath in that broad sense of which we have spoken. For diverse circumstances or hypotheses he thus gives diverse judgment concerning the guilt of the assertion. "Although," he says (*De Iuram.*, lib. 3, c. 12, n. 7), "the narration is about a mortal sin, often it is not itself a sin, at least not mortal, because it is not done with complacency in it, nor with injury to a third party, nor with scandal; indeed if that narration has an honorable cause or necessity, there can be no sin; but if it is done lightly, of itself it will only be a venial sin. Therefore to confirm it by oath will either be no sin, if it is done for a good end with usefulness or necessity, or it will only be a venial fault." But as regards injury to a third party, which he supposed to be absent in this text, he does not hesitate at all to affirm that grave fault is added through an added oath. "An exception must be made," he says (ibid., n. 8), "... unless the malice itself of the wicked narration is increased by oath, as, for example, if

someone defames his neighbor against justice by narrating hidden truth, and adds an oath so that the infamy may become more probable. For then the malice against religion and the irreverence toward God seem to be gravely increased, so that under this title it is necessary to explain that circumstance in confession; because the Name of God is assumed as an instrument for doing grave injury to a neighbor, which contains grave injury to God."

But in giving diverse judgment according to the diversity of hypothesis, Sanchez and Tamburini certainly followed Suarez, and therefore, in the narration of some grave sin confirmed by oath, they teach with Suarez that a light fault can intervene. Yet that does not prevent each from agreeing altogether with the same authors with regard to the question commonly proposed by authors, of which we spoke above. And indeed, concerning Sanchez we saw this above. But as regards Tamburini, it is clear from these words of his (l.c.): "Therefore he who, for example, defamed someone with an oath... would commit an oath lacking justice, to be opened specially to the confessor besides the infamy... because to take the testimony of God as a means for acting wickedly is... irreverence against God... What if the wicked action of detraction is only venial? I respond that the oath will be venially rash."

Therefore let us conclude what is manifestly clear from these premises: When the subject of the question is the same, as we have seen regarding justice of an oath taken strictly, Suarez and Sanchez and Tamburini, etc., agree exactly with Soto and Ledesma and Toledo, etc. Therefore the disagreement and battle which the Salamancans fashioned among them is imaginary. But when Suarez and Sanchez and Tamburini, etc., take the justice which is companion of an oath in a broad sense, while Soto and Ledesma and Toledo, etc., take the justice which is companion of an oath only in a strict sense, there can be no battle among them, because the subject of the question is diverse. Again, therefore, it is clear that the disagreement vaunted among them by the Salamancans is plainly imaginary.

310. **Questions. Q. 1. What is a sufficient cause for swearing?**

Resp. Any honorable cause of some weight, for example peace to be confirmed in families, greater security in contracts, etc. - St. Alphonsus, *Homo apostolicus*, n. 14.

Q. 2. Whether it is lawful to swear with probability of truth?

Resp. **It is denied**, because God cannot be invoked except as testimony of a certain thing; nevertheless a certain moral certitude suffices. - St. Alphonsus, *Homo apostolicus*, ibid. [7].

[7] St. Alphonsus (lib. 3, n. 148): "Some moral certitude suffices, or a certain probability which reaches to a certain moral certitude..." Indeed Sanchez with Valentia, Suarez, and the Salamancans, with the **common** opinion, say more expressly that in an oath, whether assertory or promissory, probability of the asserted truth or of the fulfillment of the promised thing to be carried out suffices; provided, it is to be understood, that there is not a probable reason to the contrary.

Q. 3. Whether it is lawful to swear with a mental restriction?

Resp. **It is denied**, if it is purely mental [8]; but otherwise, if it is broadly mental, from a just cause [9]. See what is to be said on the eighth precept, n. 442 and following.

[8] To this, according to the common opinion, pertain propositions 26 and 27 from those condemned by Innocent XI. Indeed St. Alphonsus recalls also proposition 28 to mental restriction strictly and purely taken, which reads thus: "He who by means of recommendation or gift has been promoted to a magistracy or public office can, with mental restriction, furnish the oath which is customarily required by command of the king, without regard to the intention of the one exacting it, because he is not bound to confess a hidden crime."

But others judge (see Viva on proposition 28 of Innocent XI, n. 1 and III) that here the case of restriction even not purely mental is included. For the doctors commonly agree that cases of this sort occur, in which one must abstain even from a restriction that is not purely mental; which Cardinal Lugo also indicates thus (*De Fid.*, disp. 4, n. 67): "In certain cases there is without doubt an obligation of abstaining from equivocations, and of using words in that sense in which they are received by the hearers. 1. When from that error the hearers would fall into some grave inconvenience; and then the obligation will be from the virtue of faith or religion, when the error which they would conceive would be against faith; just as when it would be against justice or chastity or other virtues, the use of amphibology would indirectly be against these virtues. 2. When by reason of office we are bound to instruct someone and to teach truths, lest he err; and all the more, if

we are bound to this after accepting payment or stipend. 3. When we celebrate onerous and mutual contracts; for we ought from justice to utter words according to the mind of the contracting party, lest we deceive him. 4. When we are commanded to respond to a judge or prelate legitimately interrogating; for we ought to respond in the sense of the one interrogating, or certainly in the sense in which he ought to interrogate."

And to this last case pertains both the example proposed in the cited proposition 28 and many others, for example if someone to be promoted to sacred orders is interrogated concerning birth, irregularities, censures, or if someone wishing to contract marriage is interrogated about impediments. For it is not lawful for these to use equivocation; but they must sincerely confess the things about which they are interrogated. Nor does it stand in the way that it seems harsh (as is objected in the cited proposition 28) to compel someone to the confession of his own crime. For, as Viva (cited place) observes, here confession of the crime is not required for vengeance, to which confession the accused is not bound unless he has been convicted by proofs; indeed, neither is it required absolutely that someone manifest his crime or defect, but only that he withdraw from his request; namely, that offices or sacred order or marriage may not be conferred upon the unworthy to the detriment of the commonwealth.

[9] On this matter St. Alphonsus says (lib. 3, n. 151): "It is certain and common among all, that from a just cause it is lawful to use equivocation... and to confirm it by oath."

But what the just cause may be, he soon explains thus (ibid.): "A just cause can be any honorable end for preserving goods useful to spirit or body." And again (ibid.): "An absolutely grave cause is not required, but any reasonable cause suffices, for example to free oneself from the importunate and unjust interrogation of another." Indeed, as he adds with the common opinion of the doctors, n. 170, when there is a just cause of necessity or utility, one can use amphibologies in an oath, even if he spontaneously offers himself to swear.

Finally he adds (ibid.) that, according to the more probable opinion, it is venial if someone does this without cause. "The reason," he says, "is that in an oath of this sort truth and justice are already present, and only judgment or discretion is lacking, the deficiency of which is only venial." But for more examples of equivocations, which at times are useful for practice, see the same St. Alphonsus, n. 155 to 167.

Q. 4. Whether it is lawful to furnish an oath in disturbances of the commonwealth?

Resp. This depends very often on circumstances. Weigh what justice or the common good demands, and what the obligations of the required oath are, whether positive or negative [10]. - But especially it is expedient to consult ecclesiastical superiors, to whom it belongs to define what is to be done according to various circumstances.

[10] You would call negative, for example, the obligation which in certain modern codes of law, atheistic by their own character, is imposed, that subjects not impede certain crimes against God and good morals, whose free faculty for each person the atheistic law commands to be preserved.

311. **Q. 5. What sort of sin is it to swear without truth, judgment, and justice?**

Resp. **To the first.** It is mortal; because to bring God as testimony of falsehood is to will to destroy His truthfulness. It is also clear from proposition 24 condemned by Innocent XI.

Resp. **To the second.** It is venial per se, that is, with the danger of perjury set aside; because it is only a vain usurpation of the Name of God. - Thus nearly all, even the stricter authors.

Resp. **To the third.** Certainly it is mortal, if the matter is grave, as is clear. But more probably otherwise, if the matter is light; because from this grave injury does not seem to redound to God, since He is invoked not as surety of sin, but as witness of the purpose. - Suarez, Collet, Antoine (with whom St. Alphonsus also agrees) [11], against others.

[11] It is said less exactly that St. Alphonsus agrees with this opinion, since he has these words (lib. 3, n. 146): "But the opposite opinion pleases me more, which Elbel holds... with March., Turr., etc.; because it seems not light but grave irreverence to invoke God as witness and surety of sin, even if light." Suarez (De Religione, tr. 5, lib. 3, c. 19, n. 3) follows

the other opinion as common, giving the reason that God is merely invoked as witness of the truth, namely of the present purpose, no differently than in an assertory oath God is brought as witness concerning a past thing that is most wicked. But this reason will perhaps seem less to cohere with the notion of a promissory oath, which is commonly handed down, and also admitted by Suarez (ibid., lib. 1, c. 8, n. 2, 3), namely that besides confirmation of present truth it includes an obligation from the virtue of religion that a man make true that which he swore, according to his possibility (which are the words of St. Thomas, 2. 2, q. 89, art. 7 ad 1), by which indeed God is brought in as surety of the promise to be fulfilled, as we said above (note to n. 309) with Laymann.

Among prohibited oaths are numbered those which are customarily emitted in secret societies, whether of the Carbonari or of the Freemasons (*Francs-Maçons*). For an oath cannot in any way be held lawful which its authors do not wish to be manifested even to the Church.

Article II. On the Obligation of a Promissory Oath

312. **Principles.** I. Every promissory oath concerning a lawful and honorable matter, besides the obligation of justice or of fidelity which arises from the simple promise, also induces an obligation of religion. The reason is that the promise by itself already obliges, and is confirmed and strengthened by the divine testimony invoked. - But an oath concerning an unlawful or entirely useless matter does not oblige in the least; because an oath, as an act of religion, cannot be the bond of iniquity or of an idle matter [1].

[1] Oaths of this sort do not revive, even if the matter afterward ceases to be idle or unlawful, according to Rule of Law 18 in VI: "That which by law does not subsist from the beginning is not strengthened by lapse of time." Thus he who, contrary to the fidelity of prior betrothals, has contracted a second betrothal under oath, if the prior betrothed woman dies before the wedding, is not to be compelled to the second betrothal, since both the promise and the oath contained an unlawful matter, and therefore were void from the beginning; just as, namely, if a spouse, with the other spouse unwilling or ignorant, professed religion and afterward was brought back from the monastery, when the other spouse has died, he is not to be compelled to the profession of religion, since it had been void from the beginning. For that rule is applied to an oath: "A vow" (and the same reason holds for an oath) "made at an unsuitable time does not oblige at a suitable time." See other examples in Laymann (lib. 4, tr. 3, c. 6, n. 4).

II. The obligation of an oath must be interpreted strictly; and it follows the nature of the act or contract to which it is added, and all its conditions. The reason for the first is that one swearing is judged to have willed to bind himself as little as he could; but the reason for the second is that an oath does not change the nature of the act, but adds to it only the obligation of religion, and therefore it ought to have the same conditions and limitations.

III. The obligation of an oath must also be interpreted according to the tacit conditions included in it or understood under it, which are: 1. if I can without grave harm; 2. if the matter has not been notably changed; 3. if the rights or will of the superior do not stand in the way; 4. if the other party has preserved reciprocal fidelity; 5. unless the other party yields from his right. - St. Alphonsus, n. 180.

313. **Questions. Q. 1. Whether smallness of matter is given in the transgression of a promissory oath?**

Resp. **The first opinion denies it**, because not only a simple promise is violated, but a sworn promise. Therefore in any matter whatever grave injury is inflicted on God, whose testimony has been invoked in vain by the one swearing. - Bonacina, Lessius, Toledo.

The second opinion affirms it, because in a promissory oath God is not properly brought in as witness of the future execution of the promised thing, but only of the actual promise, or of the true intention of executing the promise [2]. Suarez, Navarrus, Laymann, etc. - St. Alphonsus in the *Work*, n. 173, says that each opinion is probable; but in the *Homo apostolicus*, n. 13, he adheres more to the second opinion and says: "If the thing promised is not grave, infidelity does not reach grave fault."

[2] This reason, from what was just said (note a, p. 307), seems less firm; for the obligation of religion, of which the author speaks at n. 312, I, does not consist merely in not lying when the promise is made (in which, certainly, there would never be light fault), but also in fulfilling the promise. Therefore one must rather have recourse to the nature of the obligation from religion, which admits smallness of matter. And indeed, if this is admitted in the violation of a promise made to God by vow, it does not appear why it cannot be admitted in a promise for which God has in some way been summoned as surety.

Q. 2. Whether a promissory oath emitted by error or deceit obliges?

Resp. **It is denied**, if the error or deceit concerns the substance of the matter; but otherwise, if it affects only its accidental adjuncts; because a simple contract would be invalid in the former case, but not in the latter. - St. Alphonsus, n. 175 [3].

[3] Nevertheless the same St. Alphonsus observes (lib. 3, n. 187) that the opposite opinion is probable when the error or deceit concerns those circumstances, even if accidental, which, if they had been known from the beginning, would have deterred from the oath and promise. And this observation of St. Alphonsus ought to hold just as in vows, so in gratuitous contracts, but not in onerous contracts; otherwise, as we shall see in the tract on contracts, contracts would have to be dissolved too often, since errors of this sort occur everywhere, or can be alleged as a pretext.

314. **Q. 3. Whether a promissory oath extorted by grave and unjust fear obliges?**

Resp. **It is disputed. The first and more common opinion affirms it**, because although the simple contract perhaps would be void when viewed according to natural law, yet it is made firm by the oath acceding to it, which must be kept from religion whenever it can be kept without sin. - St. Alphonsus, n. 174, and lib. 3, n. 716. Nevertheless the patrons of this opinion hold with St. Alphonsus that he who has suffered fear can ask relaxation of the oath, so that he may be excused from the obligation of paying; but if he has already paid, he can seek in court what he gave, or compensate himself secretly [4]. - St. Alphonsus, n. 174, and lib. 3, n. 717.

[4] If secret compensation is lawful, the obligation of giving even on account of the oath seems futile. For will religion impose a ridiculous obligation, that I place the material act of giving that which by my own authority I can afterward take away and recover, and which the other cannot lawfully receive?

But when the texts of canon law are inspected, by which this obligation from religion is customarily proved, it appears not obscurely that the Roman Pontiffs required that dispensation be sought, not so much because they judged these oaths per se obligatory, as that by this precaution the dangers of illusion and perjury might be met, as also the reasons for this economy adduced by Reiffenstuel (lib. 1, tit. 40, n. 59) insinuate.

The second opinion, which seems sufficiently probable, denies it; because an oath cannot confirm a promise void by natural law. For an oath follows the nature of the act to which it is added. See what is to be said in the tract *On Contracts in General*.

Q. 4. How does the obligation of an oath cease?

Resp. 1. It ceases **from within** [5], just as law does, by cessation of the motive cause, etc.

[5] This happens 1. because of a notable change of matter; concerning which St. Alphonsus (lib. 3, n. 187) admits the rule handed down by the Salamancans (tr. 17, c. 3, n. 22), that what, if it had been known from the beginning, would have

prevented the vow or oath from being made, liberates from the obligation of the vow or oath; you have examples below in the third resolution; 2. because of the cessation of the final cause, for example if by oath you promised alms to Paul as poor, and he becomes rich (St. Alphonsus, lib. 3, n. 188).

Resp. 2. It ceases **from without** by irritation, commutation, and dispensation, just as a vow does, of which we shall speak in the following chapter [6]. It ceases also by relaxation or remission of the obligation made by him in whose favor the sworn promise was emitted, because anyone can yield his own right.

[6] These words of Suarez (*De Voto*, lib. 6, c. 14, n. 6) are to be noted: "It is sufficiently probable that delegated power simply to dispense in vows extends to dispensing in pious oaths concerning the same matter, when they stand by themselves and produce only their own obligation. This is the common opinion, and without doubt it can be observed in practice." To this doctrine the Salamancans (tr. 17, c. 3, n. 3), whom St. Alphonsus followed (lib. 3, n. 190), incautiously oppose certain authors, as, for example, Sanchez, who in reality were not treating of an oath alone, nor even of sworn vows, but of an oath which does not depend on a vow emitted concerning the same matter.

But concerning this case the same Suarez says (l.c., n. 19): "Even if the vow and the oath immediately fall upon the same matter, and each obliges by itself to the honor of God, by an absolute faculty of dispensing in vows either the vow, or the oath, or both can be removed at the discretion of the one dispensing. For this assertion we can allege all the authors of the first," that is, the preceding, "assertion... and other modern and learned men hold it."

*Against this note the VV. fight through twelve columns (pp. 269-275), and directly establish against it this thesis (p. 270): "The authors cited by St. Alphonsus with the Salamancans for the negative opinion are rightly alleged by them." - Resp. In the Note it is written that certain authors are alleged without cause, not all. With this premised, it must be added that the thesis proposed by the VV. would have to be called false if anyone should detect even one writer wrongly alleged. But the VV. themselves concede (p. 272) that Sanchez stands not for the negative opinion with St. Alphonsus, but for the affirmative. Therefore. And in reality Sanchez (*Decal.*, lib. 4, c. 53, n. 8-9) writes: "The third opinion says that delegated faculty for the dispensation or commutation of vows extends to the dispensation and commutation of oaths which are made to God alone... And this opinion has truth, although the oath does not have a promise included, but is made without it to God alone."

But next Bonacina too must be added to Sanchez. The reason is that one question is that of which Bonacina treats, while another is that of which the Salamancans treat, and after them St. Alphonsus. Among the Salamancans the question is (tr. 17, c. 3, n. 3): "Whether if to someone faculty is granted of dispensing or commuting vows, by this very fact faculty is judged granted of dispensing or commuting whatever oaths have been furnished to God alone." But St. Alphonsus says (lib. 3, n. 189): "It is asked whether he who has delegated faculty of dispensing in vows can dispense in oaths"; and that the sense of each question is the same is clear both from the context of St. Alphonsus and from the allegations which the holy Doctor transcribes from them. But Bonacina has it otherwise (*De 2 Praec.*, disp. 4, q. 1, punct. 17, n. 12): "There is doubt whether those commuting vows from faculty delegated to them can also commute oaths annexed to such vows." But this latter question, by the consent of all the doctors, is plainly diverse from the former. Therefore. And indeed it was to be wished that in reporting Bonacina's opinion on this question the VV. had not omitted the final words. "Each opinion," Bonacina writes, "is probable; but the first seems more probable to me." Here the VV. stop. But Bonacina adds: "especially in a promissory oath; for this is not a vow, since it is not made to God, but to man." These words show that Bonacina affirmed this from an entirely different reason.

Besides, not all will easily concede what the VV. hold as certain, namely that the reason is invincible on account of which St. Alphonsus, after he had said concerning the question proposed by himself that each opinion was probable, that is, both the negative and the affirmative, then concludes that the first, negative opinion must altogether be held, because the obligation of an oath already contracted, since it is certain and possesses, cannot be removed by a dispensation only probably valid. Someone, arguing *ad hominem*, could say that both sins and censures are certain, but remission or absolution uncertain when the jurisdiction of the confessor is only probable; therefore etc., etc.; which conclusion St. Alphonsus, as is known, does not admit.

315. **Resolves.** 1. He who has sworn an evil matter is never obligated by the oath; indeed he sins in two ways if he fulfills the oath, namely against religion and against the virtue to which the

matter of the oath is opposed. - St. Alphonsus, n. 176.

2. He is not obligated by an oath who has confirmed a prodigal promise by swearing, because that promise is at least lightly evil. - Thus Suarez, the Salamancans, and others commonly with St. Alphonsus, who admits this as more probable, n. 185 [7].

[7] Yet do not conclude from this that he is not bound to that in which no prodigality appears. Make an exception, unless the promised thing is indivisible.

3. He is not obligated by an oath who, under oath, promised marriage to a girl who was rich, healthy, a virgin, and of good reputation, if she falls into poverty, infirmity, infamy, or fornication; because the simple promise then does not oblige. - St. Alphonsus, n. 180.

4. He does not sin against an oath who for the sake of courtesy swore that he would not sit, drink, enter the house, etc., before another, if, compelled by the other, he first sits, drinks, or enters; because for the most part an oath of this sort is null from defect of intention of swearing; or, if it is valid, it is relaxed by the other. - St. Alphonsus, n. 180.

5. He does not sin who reveals a sworn secret when the law itself of the secret ceases to oblige; because an oath, as we have said, follows the nature of the act to which it is joined [8].

[8] Hence St. Alphonsus says (lib. 3, n. 183): "Oaths about keeping a secret, which are furnished in congregations concerning elections or other things, oblige gravely or lightly according to the harm which they can bring." Moreover those things must be observed which the same St. Alphonsus (ibid., n. 180-181) has concerning an oath by which someone obliges himself to observe the decrees and rules or statutes of some congregation, university, chapter, etc. Namely he proposes these rules after the doctors: 1. The oath is understood of statutes already published, but not of those to be published; 2. It is judged to oblige under grave or light obligation, or under penalty only, or only under counsel, according as, namely, the statute obliges; 3. It does not oblige to those things whose obligation is not in force because of impossibility or desuetude; and this holds even if an oath is furnished concerning some particular statute of that sort; 4. Finally, it does not oblige when some statute is not observed by the greater part of the community or college.

6. Parents rarely sin when they do not fulfill an oath of punishing children; because for the most part the oath concerns a useless thing, or rather disordered vengeance; there is added the fact that the delinquents either have already been amended, or at least have promised amendment. - St. Alphonsus, n. 180.

7. Merchants also, for the most part, do not seem to be bound by an oath not to sell for less, or not to buy for more; either because oaths of this sort are for the most part about a useless thing, or because these men do not have the mind of swearing, or certainly because there is in the oath a tacit condition: unless matters seem to turn out better otherwise. - Thus more commonly. - See *Cases*, n. 296 and following.

Appendix. On Adjuration

316. **Definition.** Adjuration is an authoritative and deprecative petition, with the Name of God, or of the Saints, or of a sacred thing interposed, so that another may be induced to do or omit something.

Therefore it differs from an oath in this, that it does not introduce God as witness, but only interposes His Name for obtaining the desired thing more efficaciously because of the reverence due to the Divinity or to sacred things.

Division. Adjuration is distinguished:

1. Into **solemn** or **private**, according as it is done by the ministers of the Church, and in the mode determined by her, or is destitute of solemnities and can be done by all.

2. Into **deprecative** or **imperative**, according as it is done through prayers or through command. This latter belongs only to superiors toward subjects, and to exorcists toward demons. - St. Alphonsus, Appendix *On Adjuration*, n. 1 (after n. 193).

317. **Principles.** I. Solemn adjuration is lawful only to ministers of the Church to whom it is expressly permitted by the Bishop; but to others, in the present discipline of the Church, it is prohibited under grave obligation; indeed in many places clerics incur the penalty of suspension if they presume to perform exorcisms without due faculty of the Church. - St. Alphonsus, ibid., n. 4.

II. Private adjuration is lawful or unlawful in all those circumstances in which an oath is lawful or prohibited; hence the things which have been said about an oath are also to be applied to adjuration.

III. Only intellectual creatures, namely men and demons, can be directly adjured; irrational creatures also can be adjured indirectly, such as the sun, water, clouds, locusts, etc., namely by adjuring demons lest they harm us through them, or by beseeching God or the Saints that they assist those who will use things of this sort. - St. Alphonsus, ibid., n. 3.

But adjuration against demons must be done only in the imperative mode, and for removing harms and the vexation of the possessed person, not for vanity or curiosity. - St. Alphonsus, n. 5.

318. **Questions. Q. 1. Whether it is lawful to use exorcisms when possession is doubtful?**

Resp. **It is affirmed**, if the Bishop, with the matter clearly known, approves it; but scandal and contempt of the Church must be carefully avoided.

Q. 2. Concerning what matters can a demon be interrogated?

Resp. In general, concerning all things which conduce to his expulsion, for example concerning the time and cause of the possession, concerning the sign of departure, etc. - St. Alphonsus, ibid.

Q. 3. How does he sin who curiously interrogates a demon about those things which do not pertain to the matter?

Resp. Per se he sins gravely if he has many useless conversations with the besieging demon; *a fortiori*, if he jokes with him. It is otherwise if he interposes only one or another curious question in an imperative mode. - St. Alphonsus, ibid.

Q. 4. What are the signs of true possession?

Resp. The chief signs are: 1. to speak in a language entirely unknown before the time of possession; 2. to manifest hidden and distant things which naturally cannot be known by man; 3. to obey a

merely internal command of the priest, etc.; 4. a greater vexation of the demon, or greater peace, to appear from a wholly unknown contact with sacred things, etc. - See *Cases*, n. 303.

In general, it is not to be easily believed that someone is possessed by a demon; because true possessions in our times are rare, and most of those which are reported are found false.

Chapter III. On Vow

319. **Definition.** A vow is a deliberate promise made to God [1] concerning a better good.

[1] A vow is an act of latria due to God alone. Wherefore when we vow certain things to the Saints, the sense is that these things are vowed to God in honor also of the Saints; just as we build churches and altars to God in honor of the same. St. Alphonsus, lib. 3, n. 194.

Division. A vow is distinguished:

1. Into **solemn** or **simple**, according as it is made solemnly and accepted by the Church, or held ratified, or is emitted with solemnity and the acceptance of the Church set aside [2].

[2] And hence there is also the distinction between violation of a simple and a solemn vow, as we touched upon where sacrilege was discussed. Other things which pertain to a solemn vow are more conveniently reserved to the tract on particular states.

2. Into **personal** or **real**, according as an action or omission, or some thing separable from the action of the person, is promised.

3. Into **temporary** or **perpetual**, according as it is promised to be observed only for a certain time, or throughout the whole of life.

We must treat: 1. of the conditions required for a vow; 2. of the obligation of a vow; 3. of its cessation.

Article I. On the Conditions Required for a Vow

The conditions required for the validity of a vow are contained in the very definition of a vow, and there are two principal ones: 1. true intention; 2. suitable matter.

§ I. On the Intention Required for a Vow

320. For the validity of a vow there is required a true and deliberate intention of emitting a vow, or a true promise made to God and inducing obligation; for a vow is after the likeness of a certain law, which the one vowing, otherwise capable of weighing the burden which he assumes, imposes upon himself. But the will and deliberation which are required for mortal sin suffice [1].

[1] These words do not mean that, for the validity of any vow whatsoever, that discretion and maturity of judgment suffice which suffice for sinning mortally. For for grave sin it is enough to know confusedly the gravity of the guilt, just as for merit a general and confused notion of moral good suffices; but for assuming an obligation a general and confused notion of obligation does not suffice; rather, a more perfect knowledge is required of the burden to which one obliges himself. Certainly this knowledge demands that the adjuncts necessary to be known for prudent deliberation be present to the mind of the one deliberating. Thus, then, understand that equal advertence of mind suffices in each case, although for assuming

either the obligation of a vow or of betrothal, prudent deliberation and advertence is more difficult, and therefore demands a greater discretion of judgment.

Hence a vow differs essentially from a purpose; because a purpose, however firm, does not produce a bond of obligation, nor is omission of the proposed matter a sin, except perhaps sometimes by accident, for example on account of inconstancy, weariness, or negligence, which per se do not exceed venial sin. - St. Alphonsus, n. 196-199.

321. **Questions. Q. 1. Whether a vow made with ignorance of the obligation, or with inadvertence to the obligation already known, is valid?**

Resp. **To the first.** A vow made with every kind of ignorance of the obligation which it induces is not valid; because without the intention of obliging oneself there is no vow.

Resp. **To the second.** It is valid if the person who emits the vow habitually knows clearly its obligation, although he does not actually attend to it; or also if he who vows, although he does not clearly know the obligation, nevertheless apprehends it confusedly, or wills it implicitly, when, for example, he wishes to vow this or that, just as others are accustomed to vow [2]. Nevertheless it must generally be held that no greater obligation is induced beyond that which a person wills to impose upon himself and has apprehended. - St. Alphonsus, n. 201.

[2] An implicit promise can suffice for a vow. Thus certain religious emit vows merely by professing obedience according to the rule. This is more clearly evident in the reception of sacred orders; for although one does not say, "I vow," or, "I promise chastity," nevertheless this vow is made implicitly by this very fact: that, knowing the Church has annexed that vow to those orders, you receive them. But if someone were entirely ignorant of this, St. Alphonsus judges (lib. 6, n. 809) that more probably he is not bound by the vow; and this can scarcely seem doubtful, for the obligation of a vow is wholly from the will which imposes that obligation on itself; but there is no will where there is no knowledge. Nevertheless the Church could compel such a person either to abstain from sacred ministry, or to observe chastity, and indeed by emitting a vow (as St. Alphonsus more probably holds, lib. 3, n. 200, after Laymann), or certainly so that he be guilty of sacrilege unless he observes it, because she commands it from the virtue of religion, as the same St. Alphonsus observes (lib. 6, n. 809).

Q. 2. Whether a vow emitted from error is valid?

Resp. 1. **It is denied**, if the error concerns the substance of the matter, or substantial circumstances, or those which are chiefly intended, or pertain to the substance, or notably change it [3]; because then the promised matter is not sufficiently known and willed. - St. Alphonsus, n. 198, and others.

[3] Error concerning a merely impulsive cause does not vitiate a vow; because this is only a secondary cause, and when it is set aside, the act is sufficiently voluntary according to substance. For example, someone vowed a pilgrimage to Rome with zeal for worshiping God, and at the same time also had a secondary impulsive cause, namely to visit his brother, whom he thought to be in Rome. Even if afterward he understands that he is not there, he does not for that reason cease to be bound by the vow. St. Alphonsus, lib. 3, n. 198. Nevertheless Sanchez rightly observes (*Decal.*, lib. 4, c. 2, n. 51) that, because of an error of this sort, an easier cause for dispensing is furnished.

Resp. 2. **It is affirmed**, if the error concerns accidental circumstances of lesser moment which would not have stood in the way of the vow if they had been known with the error set aside; for he who vows is judged to oblige himself to undergoing merely accidental inconveniences which can occur in fulfilling the vow. - Thus St. Alphonsus [4], Elbel.

[4] Nevertheless St. Alphonsus (lib. 3, n. 198) does not deny that it is probable that error invalidates a vow even in accidental circumstances, if these are of great moment, and if, had they been known, the vow would not have been emitted.

Nevertheless vows must be excepted which are emitted after the novitiate in any approved order; for these are not void because of any error, except only a substantial error concerning the substance. St. Alphonsus, l.c. The reason is, as Lugo says (*De Iust. et Iur.*, disp. 22, n. 88), "because in those things which constitute a state firm and irrevocable by its own nature, such as profession and marriage, the will, according to the nature of the thing in question, accommodates itself and consents without restriction or condition, but entirely absolutely and independently of other conditions besides those which are of the substance of the same contract. For from these conditions marriages and professions would remain uncertain, and therefore the state itself, which is not according to the nature of the thing in question." And, as Sanchez adds (*De Matr.*, lib. 10, disp. 9, n. 20), from dependence of this sort it would follow that many professions and most marriages would have to be judged void, which would redound to grave damage and scandal of the commonwealth.

322. **Q. 3. Whether a vow made from fear is valid?**

Resp. 1. **It is denied**, if the fear is grave, unjust, and inflicted for extorting the vow. The reason is that that cannot be acceptable to God which is extorted by force from someone through injury, when the law of nature demands that the right be restored in full. And this indeed proves that vows of this sort are invalid by natural law. It is clear, however, from canon law with regard to solemn vows of religion, and more probably also with regard to other vows, according to the more common interpretation of theologians. - St. Alphonsus, n. 197.

Resp. 2. **It is affirmed**, if the fear arises from within or from a necessary cause, unless it takes away from the one vowing the use of reason; the reason is that vows of this sort are simply voluntary. Likewise if the fear proceeds from a light cause, because light fear is not judged to influence the act efficaciously, and is rather the occasion than the cause of the vow. - Thus commonly with Sanchez [5], Azor, the Salamancans; and St. Alphonsus says this is more probable, n. 197.

[5] Nevertheless Sanchez (*In Dec.*, lib. 4, c. 3, n. 23) judges probable the opinion of those who hold that vows are invalid when fear, even relatively light, yet unjust, was in reality the cause of vowing; which they affirm both of simple vows and of religious profession, at least with regard to the forum of conscience; for in the external forum light fear is not presumed to be the cause of a vow.

Q. 4. Whether he is held by a vow who doubts whether he emitted a vow or a mere purpose, or whether he had sufficient deliberation?

Resp. **To the first.** No. It is clear from what has been said about probabilism. But if in promising he believed that he would sin if perhaps he did not carry out the proposed matter, it can be judged that he truly vowed [6]. - St. Alphonsus, n. 201.

[6] Except, however, the uneducated, who not rarely falsely think that they sin when they break a purpose, especially if the matter concerns certain pious works to be performed at their own time, for example reciting the crown of the Blessed Virgin Mary daily, or fasting on individual Saturdays, etc.

Resp. **To the second.** No, for the same reason, when he positively and gravely doubts concerning sufficient deliberation. For the most part the matter is to be decided from the circumstances considered. - St. Alphonsus affirms, n. 196 [7]. - See *Cases*, n. 305 and following.

[7] Suarez, after he has reviewed various causes on account of which there can be doubt concerning defect of sufficient deliberation, namely either because of weak age, or because of a state of drunkenness or madness, or because of a vehement affection either of anger or of fear, rightly concludes that the disagreement, if there is any among the doctors, does not concern principles, namely whether a vow is valid where sufficiency of deliberation is uncertain, but when that defect ought to be supposed or not supposed. Thus he says (*De Relig.*, tr. 6, lib. 4, c. 6, n. 10): "I observe... that it is one thing to ask whether, with a true doubt standing concerning actual use of reason and sufficient for free consent, an obligation arises; but it is another thing to ask when there is, or is not, such doubt. In the former question it is always true, with the hypothesis standing that such doubt is true, that the vow does not oblige, because it is doubtful whether it is a vow, and thus all the

things said above proceed. Therefore the said authors properly treat the second question, and in that sense say that a vow made from the heat of anger, if it is not positively and by an almost certain judgment clear that it took away the use of reason, obliges; because the heat of anger alone by itself does not suffice to constitute moral doubt about sufficient use of reason, unless other circumstances accede."

** The Salamancans (tr. 17, c. 1, n. 11) rightly affirm with others that it is not a sufficient indication of defect of liberty and deliberation that someone immediately repents of his vow. For this can arise from levity and inconstancy of mind. But they themselves (ibid.) give another reason, namely that it often happens that acts fully deliberate are immediately retracted by us because of a new difficulty, consideration, or circumstance. St. Alphonsus seems to be looking to these things (lib. 3, n. 196), where, alleging this place of the Salamancans, he says that it must be seen whether other joined circumstances are present.

But these things need some suitable explanation, so that they can be reconciled with another doctrine which the Salamancans have (ibid., n. 152), and which after them St. Alphonsus (lib. 3, n. 226) thus presents: "The Salamancans themselves, c. 1, n. 152, judge that that is a notable change which, if it had been known from the beginning, a person would not have obligated himself. This opinion," namely that in the case there is no obligation of the vow, "seems to me no less probable, indeed perhaps more probable, than the first... Because when a circumstance not foreseen supervenes, by which the vow is rendered more burdensome, the matter of the vow becomes different from that promised."

§ II. On the Matter of a Vow

323. **Principles.** I. The matter of a vow must be a morally good thing, indeed concerning a better good. The reason is that God is not worshiped by an indifferent action, or one whose placing is not better than its omission. But a better good is understood not only absolutely in itself, but also relatively to the circumstances.

II. The matter of a vow must be morally possible; because a vow is a promise made to God with the intention of obliging oneself; but no one can obligate himself to something morally impossible to himself. But if the thing is divisible and in part possible, the vow is valid for this part [1]; but it is not valid if it is morally indivisible. - Thus commonly. - St. Alphonsus, n. 202.

[1] Except, however, if it were clear that the one vowing wished to obligate himself to each part by way of one whole, and had each indivisibly before his eyes. The reason is that a vow is a particular law which is not extended beyond the intention of the one vowing; and therefore if the one vowing collectively promised each part, and one dependent on the other, if one part is impossible... the whole whole remains void. Thus the Salamancans (tr. 17, c. 1, n. 74), who soon after (ibid., n. 75-76) add many examples of vows which either must be observed from the part which remains possible, or are judged void because of the impossibility of some part.

324. **Questions. Q. 1. Whether a vow concerning matter already prescribed from another source is valid?**

Resp. **It is affirmed**, first because it is not repugnant for a debtor to be obligated by diverse titles; then because a vow of this sort concerns a thing good in itself, since it is supposed to be prescribed, and it concerns a better good, since a new bond can confer greater fidelity and devotion in fulfilling the law [2]. - Thus commonly. - St. Alphonsus, n. 213. - Salamancans.

[2] Moreover, to actions placed from a vow of this sort there accedes the nobility which flows from the virtue of religion and the notion of richer merit.

Q. 2. Whether a vow of a good thing with an evil end, or an evil condition, is valid?

Resp. **To the first.** No, if the evil end holds itself on the part of the thing vowed, for example if you vow alms in order to obtain a successful outcome to theft, or in thanksgiving for robbery. The reason

is that the giving of alms for such an end is a blasphemous action, as though God were bringing aid for sinning. It must be said otherwise, according to the common opinion, if the evil intention only accompanies the vow accidentally, and the wicked end, as St. Alphonsus says, holds itself entirely on the part of the one vowing; for example if someone, vowing for the glory of God, then more willingly vows externally from vain ostentation. - St. Alphonsus, n. 206 [3].

[3] At this place St. Alphonsus also intimates the opinion of the Salamancans (tr. 17, c. 1, n. 66-68), namely that a vow is invalid even if the wicked end is only impulsive, yet such that without it the vow would not have occurred; and these things indeed can seem contradictory. For when the cause of an act is of such a kind that without it the act would not happen, it is called not only impulsive, but motive, principal, and primary. Besides, if the end is merely impulsive, it is therefore an end joined to another principal end. Therefore this end is not the total nor principal cause of the thing vowed or of vowing. But an end of this sort, thus added to the principal end, does not wholly corrupt an act formally good from its object, but can be held as something coming accidentally and extrinsic to the act. Therefore it does not take away the validity of the vow.

** The VV. rebuke us (p. 919) because in the Note it is said that he speaks contradictory things who calls that cause impulsive without which the matter would not occur; and they wish to prove this by the example of a man who from a desire for eternal salvation wishes to embrace the religious state, and from a desire for fish chooses the Carthusian order. Resp. Since otherwise this man would have chosen not the Carthusian order but another religious order, the desire for fish will be called the motive cause of choosing that order, no differently than the desire for eternal salvation will be called the motive cause of choosing the religious state in general; and only abusively will either desire be called merely impulsive.

Resp. **To the second.** It is affirmed, if the vow is made from affection toward a good thing, as good, although joined with an evil cause or condition, as if someone vows alms if he is not caught in theft. For although theft is evil, nevertheless not to be harmed is not evil, but a gift of God; and the vow does not fall upon the evil, but upon the good, insofar as it is good in itself. Much more, however, does this hold if the vow is made from detestation of the evil condition; as if someone vows alms if and whenever he blasphemes. - Laymann, lib. 4, tr. 4, c. 2, n. 7.

Q. 3. Whether a vow of not sinning is valid?

Resp. 1. A vow of avoiding all sins, even the very slightest, is not valid, because this is impossible. - Trent, sess. 6.

Resp. 2. But a vow of avoiding all mortal sins, or all fully deliberate venial sins, is valid, because this is possible with divine grace and without a special privilege, if, however, the matter concerns pious persons [4]. Likewise a vow of not committing venial sins of a certain kind is valid, for example of never lying, although because of the excessive difficulty of execution, vows of this sort are not expedient for most people. - Bouvier, and not a few others.

[4] Understand persons not professing piety in just any way, but, as St. Alphonsus has it (lib. 3, n. 203), striving intensely for Christian perfection. Say the same of a vow of avoiding venial sins of a certain kind; for it will be valid, as St. Alphonsus says (ibid.), "in persons of great virtue," that is, in those long exercised in solid virtue; "but in others of moderate virtue it will be impossible matter; indeed," St. Alphonsus goes on, "in some matters, such as dishonorable thoughts" (understand as to any subreption whatever or even the slightest, not as to plainly deliberate fault), "idle thoughts, etc., since they are unavoidable for all, the vow is null." And to this pertains a vow of avoiding acts of impatience or anger. For since the passion of anger is indifferent to good and evil, to be angry at times is not only in accord with reason, but plainly necessary; but otherwise to hold the mean in such a way that one sins neither by excess nor by defect is most difficult, not to say morally impossible.

Others add (in Suarez, *De Relig.*, tr. 6, lib. 2, c. 3, n. 2) that a vow of avoiding all mortal sins, or mortal sins of a certain kind, is not valid if the matter concerns a fragile person. Although Suarez himself does not adhere to this opinion, he nevertheless approves what Navarrus says, that vows of this sort are neither useful nor expedient, and that sufficient cause for dispensation or commutation is present. On this matter, what some object is childish: that a dispensation of this sort is

equated with a license to sin, which therefore must be denied. For this dispensation is neither sought nor granted so that one may sin more freely, but so that the bond may be taken away which, considering the fragility of the one vowing, does not hold him back from sinning, and thus redounds solely, rather than to his spiritual utility and the glory of God, indeed to him as a snare and to God as a graver offense.

Article II. On the Obligation of a Vow

325. **Principles.** I. A vow obliges per se, like a law or precept of the Church, and therefore gravely in grave matter, and lightly in light matter; for a vow is, as it were, a certain private law which someone imposes upon himself.

II. A vow obliges according to the intention of the one vowing, if he determines the quantity of the obligation in the act of vowing, so that he can bind himself only under light obligation in matter however grave. The reason is that just as a legislator or superior can oblige in grave matter only under light obligation, so also he who vows concerning a grave matter can impose on himself only a light obligation. - Nevertheless, conversely, he cannot bind himself gravely in a light matter, because light matter is not capable of grave obligation [1]. - Thus commonly. - St. Alphonsus, n. 211 and 213.

[1] It pertains to the prudence of the confessor to admonish penitents on this matter who have vowed spontaneously; namely, lest, as sometimes happens, they sin gravely from an erroneous conscience even where the matter of the vow does not admit grave obligation. To the same prudence it pertains that the confessor persuade a penitent eager to vow that, even if the matter is grave, he should nevertheless assume only a light obligation of the vow, so that the occasion of offending God gravely may be very far away. And this cause existed why many most holy and most wise founders of religious orders, although most desirous of regular observance, nevertheless, in order to avert occasions of divine offense, decreed that rules founded by God's impulse should induce no obligation per se and by their own force which would bind violators by guilt of sin.

And indeed nothing prevents a vow under light obligation from being pronounced also in that matter which, considered according to natural law, obliges under grave obligation, for example in the matter of chastity.

326. **Questions. Q. 1. What matter is judged light or grave per se in a vow?**

Resp. That matter is judged grave which, when it is prescribed by the Church, obliges gravely, such as fasting, Mass, etc.; or which, compared with another precept, seems grave; or which contributes notably to the end of the vow or to the worship of God. - Reuter.

Q. 2. Whether several light matters coalesce to make grave matter?

Resp. **No**, if the light matters are vowed separately, so that the obligation is attached precisely to the time or day, or to sanctifying that day. - But it is otherwise if the light matters are vowed by way of one thing, so that the determination of the day accedes only for urging the execution, as happens generally in real vows; nevertheless make an exception unless something else is clear from the intention of the one vowing, on which the whole obligation and the reason of the obligation depend.

327. **Q. 3. Whether someone can be bound by another's vow?**

Resp. **No**, at least by reason of the vow; the reason is that a vow is a personal burden voluntarily undertaken, and therefore no one can promise another's thing or action. - Hence the vows of parents dedicating their children to some religion, or imposing an obligation on them, for example of fasting on certain days, etc., cannot bind them. Although children are not held by the vow of parents who have dedicated them to religion or to some obligation, nevertheless the vow obliges the parents, so

that, as far as is in them, with the freedom of the children preserved, they move them to embrace that which they vowed on their behalf, and much more so that they not stand in the way of children who wish to embrace it [2].

[2] Vows of this sort have annexed the condition: if the children are willing. But ratification must not be judged to consist in the silence alone of the children; rather, true and real consent must accede when they have reached the years of discretion, because silence in those things which are burdensome and laborious does not indicate consent. Salamancans, tr. 17, c. 1, n. 117.

Nevertheless this doctrine, namely that it denies that anyone is bound by another's vow because a vow is a law which each imposes on himself by his own will, must not stand in the way of this: that by vows which the magistrate or religious superior emits in the name of the whole community, all the citizens or subjects are bound, and not only those present, but also those who afterward become members of that community; and indeed they are bound in such a way that, if they violate the vow, they sin against the virtue of religion. Now since different authors have said different things for giving the reason for these vows (see Suarez, *De Relig.*, tr. 6, lib. 4, c. 9), that doctrine seems preferable which the same Suarez attributes to Navarrus (l.c., n. 6-7), namely that these vows are to be compared with other agreements by which a community binds itself, and whose obligation passes to posterity. For magistrates, as heads of the community, can bind it by this kind of obligation also. And since it flows from the nature of a community that the members ought to conform themselves to the head by obeying, and obedience transfers the obligation to the kind of virtue in view of which it is induced, from this the obligation arising from it, as Suarez himself says, is an obligation to accept such a vow with respect to the obligation of the vow.

I said, **at least by reason of the vow**; for from justice an heir is bound to fulfill the real vows of the deceased. - St. Alphonsus, ibid. - See what is to be said in the tract *On Contracts*, where promise is treated.

Q. 4. What delay is to be judged grave?

Resp. 1. Per se any delay of a vow gravely obliging is grave, when it is affixed to a determined time, as is a vow of fasting on such a vigil, etc.; because when the time has elapsed the obligation of the vow ceases, and cannot be compensated [3].

[3] Both he who allows the time to pass in which the vow was to be fulfilled, and he who by force or deceit prevents the condition from being fulfilled under which he was bound to render the vow, binds himself by the sin of infidelity which is proper to the violation of vows; nevertheless he is held to nothing else except repentance for the sin, from the general principle that transgression of a vow does not oblige to compensation. See Laymann, lib. 4, tr. 4, c. 6, n. 2-4.

Resp. 2. But if a determined time has not been fixed, or has been fixed beforehand only for urging the execution of the vow, a notable delay in a grave matter will be a grave sin, according to St. Alphonsus, n. 221, and others. Tamburini, however, with others, judges that no delay, however long, is mortal per se, with the danger, namely, of forgetfulness or inability perhaps supervening set aside [4]. Yet the matter seems to be determined from the circumstances and from the mind of the one vowing.

[4] St. Alphonsus (n. 221, at the end) attributes this opinion also to St. Antoninus, namely that delay is not mortal except when delay occurs through long periods and from the delay itself there is danger of forgetfulness or inability to fulfill. And certainly, as Tamburini argues well (*Decal.*, lib. 3, c. 12, §3, n. 11), no one who gives the whole which he promised, and by delay inflicts no harm on the creditor which had to be guarded against by his promise, seems to be condemned for grave injury, but only for light negligence. But in the case, the matter stands thus. Therefore Sporer rightly says (in the same St. Alphonsus) that the doctrine of St. Antoninus is probable; nor does any weight of reasons, beyond some external authority, fight for the opposite, which Palaus seems to have brought forth first of all (*De Vot.*, disp. 1, punct. 13, n. 7), drawing by conjecture this opinion of his concerning a grave delay of two or three years. Yet these things are not to be transferred to a vow in which delay diminishes the promised matter, for example if someone has vowed religious life; on this matter one may see the diverse opinions of the doctors in St. Alphonsus (l.c.). And to this chiefly pertains what the author has, that the matter must be determined from the circumstances and from the mind of the one vowing.

** Here the VV. ask (pp. 919-920 in the Note) whether the author of this Note has forgotten the sayings of Sacred Scripture, where it is read (Ecclesiastes 5. 3): "If you have vowed anything to God, do not delay to render it"; and (Deuteronomy 23. 21): "When you have vowed a vow..., you shall not delay to render it," etc. - Resp. Had St. Antoninus also forgotten these sayings when he wrote that delay is not mortal except when delay occurs through long periods and from the delay itself there is danger of forgetfulness or inability to fulfill, as St. Alphonsus also reports (lib. 3, n. 221)? Certainly someone would affirm against the sacred letters if he said that a delay of this sort is laudable. But in the present matter the question is not whether this is laudable, but whether it is a mortal sin. Some have affirmed; some have denied; and certainly each judged his own opinion more probable. What then? Let the canon be recalled which St. Alphonsus inculcates so often: that one must not be condemned for mortal sin unless what is certain and evident by reason is clear to be mortal.

Palaus, who seems to be the first author of the affirmative opinion, wrote conjecturally: "I would judge that a delay of two or three years is notable. For although the promised thing is to be executed, nevertheless to defer its execution for so long a time against the will of God the creditor contains grave disorder; and this can be proved from the delay of a debt promised to men, which no one will deny constitutes grave fault."

Thus Palaus, and, as I said, conjecturing uncertainly, as is clear even from that hesitation alone between two and three years, as though the difference of one year were something light.

But to the argument of Palaus another can respond: 1. I deny parity with a human creditor; for he can need and suffer harm from delay; not so God.

2. I deny that grave injury is done to a man in the case. For if you did not determine a time, and in promising said to Peter: "This ring, this watch, this palace will be yours from me," you bring him no injury at all, neither grave nor light, even if you defer the execution to the hour of your death.

3. I deny that the delay occurs against the will of God the creditor. For God, as creditor, demands nothing except what is owed by the vow. But nothing is owed from a vow beyond that to which someone obligated himself by his own will, because a vow is a law which someone imposes on himself. But by the very fact that the one vowing does not determine a time, he does not wish to bind himself to some determined time, but only to furnishing the thing finally at some time. Therefore God, as creditor, does not demand this or that time.

Besides, no one has added anything further to this furniture of Palaus.

328. **Resolves.** 1. Real vows must be fulfilled from one's own property; but he who cannot fulfill from his own is not bound to beg from another so that he can satisfy. Nevertheless he satisfies if another, either when asked or spontaneously, wishes to fulfill for him, although he himself may be able to satisfy; because what the other gives becomes his own when the consent or ratification of the one vowing accedes. Make an exception if the matter of the real vow was determined; for then that individual thing is to be bestowed [5]. - St. Alphonsus, n. 217, with Busembaum.

[5] Understand this when a special reason moved him to vow this thing as an individual. Otherwise the vow will be satisfied if either the one vowing himself or another gives an equal or equivalent thing.

2. Personal vows can be fulfilled only by the one vowing himself, nor do they pass to heirs. Hence he who has vowed a pilgrimage does not satisfy by inducing another to it [6].

[6] By this very fact he is not bound to substitute another for himself; unless, however, from the vow he assumed some burden in itself so entirely that grave inconvenience would follow if he did not fulfill it either by himself or through another.

3. A vow indeterminate as to cessation of time, for example of saying the rosary daily or fasting every Saturday, obliges perpetually, unless something else is gathered from the circumstances.

In doubt whether the vow is temporary or perpetual, or for a month or year, the minimum must be held. - St. Alphonsus, n. 221.

4. He who vowed something without a certain quantity, for example alms, money, etc., satisfies by giving what he wills, provided he does not bestow so little that he seems rather to mock God than to fulfill the vow.

5. He who vowed to hear Mass for a month or year, more probably is not bound on feasts to hear two Masses, unless he explicitly vowed this; because the end of the vow is that on individual days he gather the fruit of the sacrifice. Likewise he is not bound to fast on Sunday who has vowed to fast for a month, a year, or his whole life, unless he expressly obligated himself to this; because he is judged to vow fasting according to the custom of the Church. - St. Alphonsus, n. 224 [7].

[7] ** St. Alphonsus in the same n. 224, lib. 3, has a resolution taken compendiously from the Salamancans, which perhaps will now seem difficult to admit. For he writes: "If one vowing a fast eats meat, he is not bound to the fast; unlike the fast prescribed by the Church, which by a twofold precept imposes both the fast and abstinence from meat according to the Salamancans (c. 1, n. 137, tr. 17) with Sanchez, Azor, Sylvester, etc., and as the reigning Pontiff Benedict XIV declared. See lib. 3, n. 1013." Indeed this most compendious brevity brought it about that the holy Doctor did not even present the opinion of the Salamancans clearly enough.

For the Salamancans (l.c.) establish as a certain principle that he who promised a fast by vow is held to observe it in that mode in which other fasts are prescribed by the Church. Then, according to an opinion sufficiently received at that time, that the essence of a fast consists indivisibly in one eating and abstinence from meats in such a way that if either is removed, the substance of the fast is in no way preserved, they add this resolution: "He who has already broken the fast promised by vow, by eating meat or by repeated eating, is no longer held to it, and can eat more, because it is now impossible for him to observe the fast." Laymann, Palaus. And from this indeed St. Alphonsus drew that opinion of his, saying: "If one vowing a fast eats meat, he is not bound to the fast."

But what St. Alphonsus adds about the twofold precept, etc., pertains to an entirely diverse resolution, which the Salamancans took from Laymann and Sanchez, but less clearly and exactly. "Indeed," they say, "he who once broke the fast by eating meat does not sin afterward by eating meat, but only in that first eating of meat; because in a fast promised by vow, abstinence from meats is accessory; and thus, when the fast has been broken, it no longer obliges, because when the principal fails, the accessory fails." But soon after they add: "There is a different reason in ecclesiastical law, in which the fast and abstinence from meats are prescribed by a twofold precept; and thus one can be separated from the other; and therefore he who broke the fast is held to abstain from meats, because when one precept has been broken, the other remains; which does not happen in the present case," namely in a fast promised by vow. I have said that these things are proposed less clearly there. Namely, they ought to have said with Laymann and Sanchez: on the day on which the Church prescribes fasting, she at the same time prescribes abstinence from meats both to those fasting and to those not fasting; therefore if on that day someone broke the fast by eating meat, although it is impossible for him to observe the fast, nevertheless he sins if he eats meats again, because the Church prescribes abstinence from eating meats even to those not fasting. Now it is too difficult to discern this resolution and these meanings in the words of St. Alphonsus which have been described above.

But whatever the case may be about this, that prior resolution of St. Alphonsus could hardly be admitted at all now, namely: "If one vowing a fast eats meat, he is not bound to the fast." For with that principle established, which is common to all, that votive fasts, unless the one vowing has otherwise restricted his promise, are to be observed in that manner in which fasts prescribed by the Church are observed, certainly after Benedict XIV, alleged by St. Alphonsus himself, declared that the matter or substance of fasting is divisible, so that those too who in any way, whether culpably or inculpably, have eaten meats are held to one eating, it can no longer be sustained that he who has vowed a fast, if he has eaten meats, is in no way held to the fast. Better after the declarations of the Apostolic See it must be said that one vowing in this way, if indeed the obligation of the vow ended on that day, is held at least to observing one eating; but if the obligation was not affixed to that day, and therefore was not ending on that day, he remains obligated to fast on another day.

6. He who vowed a fast on the vigil of some Saint, if this falls on a Sunday, can fulfill the vow on Saturday, according to the custom of the Church. - St. Alphonsus, ibid. - See *Cases*, n. 312 and following.

Article III. On the Cessation of a Vow

329. The obligation of a vow can cease:

1. Because of intrinsic causes, namely by cessation of the end or motive cause, substantial change of matter, and impossibility, whether physical or moral, as was said above concerning laws, n. 121.

2. Because of extrinsic causes, namely by irritation, dispensation, and commutation, concerning which we must speak individually.

§ I. On the Irritation of Vows

Definition. Irritation of a vow is its annulment or suspension made by him to whose power the will of the one vowing, or the matter of the vow, is subject.

Division. It is 1. direct, if it falls directly upon the person or upon the will of the one vowing; 2. indirect, if it falls only upon the matter of the vow [1].

[1] In this latter case you have a mere suspension of the vow, but in the former an annihilation of the vow.

330. **Principles.** I. Every superior endowed with dominative power over the will of another, such as a religious superior by force of the vow of obedience, can directly irritate all the vows of subjects; and once irritated, they never revive. Therefore the vows of inferiors whose will, by force of their state, is perfectly subject to the superior, always involve this tacit condition: unless the superior has resisted.

Hence the particular vows of religious men and nuns can be irritated: 1. by the Supreme Pontiff as supreme prelate of all religious; 2. by the superiors of the order or house [2]; 3. by the proper bishop, if the orders are not exempt from his jurisdiction. - St. Alphonsus, n. 227.

[2] Suarez proves (*De Relig.*, tr. 6, lib. 6, c. 7, n. 10) that abbesses too are included in this reckoning, namely by force of the obedience by which nuns are subjected to them from vow.

Besides, all the doctors here except the vow of passing to a stricter religion, which they deny can be irritated by a religious prelate, from c. *Licet* 18, *De Regularibus*. Indeed St. Alphonsus judges (lib. 3, n. 233) that such a vow cannot be irritated even by the Supreme Pontiff himself, insofar as he is supreme prelate of a religious order, although not only the Pope, but also the regular prelate, can dispense from it.

** Here the doctors ask whether the superior can irritate vows if it is doubtful whether the subject emitted them before profession or after. St. Alphonsus (lib. 3, n. 237) embraces the negative opinion against Suarez, Sanchez, Bonacina, etc., who hold the affirmative. And indeed the question can seem useless, since by force of profession prior vows are extinguished by the fact itself, as is said in c. *Scripturae* 4, *De Voto*: "He is not held guilty of a broken vow who is known to commute temporary service into the perpetual observance of religion." But the question is in reality not useless, because someone can fall away from the religious state, and therefore prior vows can revive. And certainly in the Constitutions of the Society of Jesus it is provided that if a scholastic is dismissed, and therefore by authority of the General Provost the simple vows by which he had bound himself in religion are removed, it is at the same time declared to him that thence the obligations of vows revive, if he had any when he entered religion or emitted the vows of religion. What, then, to the

proposed question? Resp. Since Suarez, Sanchez, and others anticipated the reason alleged by St. Alphonsus for the opposite opinion and sufficiently solved it, their opinion seems able to be safely held.

II. Every superior or master can indirectly irritate all vows of subjects in those things in which his power is harmed; because each one has the right not to be harmed in matters subject to his dominion. But these vows revive when they can be fulfilled without prejudice to another. - See *Cases*, n. 328.

Hence 1. A husband can irritate the vows of his wife which prejudice conjugal right, the education of children, or the governance of the house.

2. A wife can irritate the vows of her husband which harm the rights of marriage, such as a vow of chastity, of a long pilgrimage, of putting on the habit of a hermit, etc.

3. A master can irritate or suspend the vows of servants which impede or lessen the service owed, such as a vow of hearing Mass daily. - St. Alphonsus, n. 241 and following.

III. All the vows of those before puberty, even of chastity and religion, can be directly irritated by paternal power. This is clear from canon law, c. *Puella*, caus. 20, qu. 2, c. 2 [3].

[3] Nevertheless the faculty of directly irritating the vows of those over whose will someone has dominative power is to be derived not from positive law alone, but also from natural law, as St. Alphonsus observes (lib. 3, n. 227). See on these matters Suarez (*De Relig.*, tr. 6, lib. 6, c. 6-7), where with regard to the vows of children he observes that it is owed to positive law that this paternal power extends itself to all and only the vows emitted before puberty.

Hence the vows of those before puberty can be directly irritated by the father, and in defect of the father, by the paternal grandfather, by the tutor, and, when these are lacking, by the mother, and probably even when the father [4] or tutor is present. - St. Alphonsus, n. 229, 230. - See *Cases*, n. 330.

[4] Nevertheless St. Alphonsus limits this, that the father can irritate the vows of children when the mother contradicts; but the mother cannot do so in the same way when the father contradicts.

The same faculty, where others are lacking, is customarily attributed to a master with a disciple, and to a master with a small servant. See Suarez, *De Relig.*, tr. 6, lib. 6, c. 6, n. 23.

331. **Questions. Q. 1. Whether a husband can irritate all the vows of his wife?**

Resp. **It is disputed.** Some deny it, and say that the husband can only indirectly irritate those vows which stand in the way of his rights. For as to other matters the wife is not subject. - Thus Voit, n. 600; Laymann, etc. - Better, however, others with St. Thomas [5] and St. Alphonsus, n. 234, attribute to the husband the right of irritating also directly the vows emitted while the marriage stands.

[5] St. Thomas (2. 2, q. 88, art. 8 ad 3): "No vow of a religious is firm except by consent of the prelate, just as neither is the vow of a girl existing in the house, unless it is by consent of the father, nor of a wife, unless it is by consent of the husband."

Q. 2. Whether a father can directly irritate the vows of pubescent children emitted before puberty?

Resp. **It is affirmed**, provided the children, after reaching puberty, have not confirmed them; indeed probably even if they have ratified them, not knowing that they were irritatable. - St. Alphonsus, n. 238, with others [6].

[6] This question must be extended more broadly to any vows emitted at the time of subjection, whatever finally may be the reason of the subjection. To solve it, a twofold general rule proposed by Sanchez is useful (*In Decal.*, lib. 4, c. 30, n. 7-8). The former is: When the power of the superior during whose time the vow was emitted is not wholly extinguished or wholly suspended, but remains with respect to some things, he can irritate a vow emitted during the time of his subjection, even if that time has now passed, provided that, when it had passed, it was not again confirmed; understand, confirmed with knowledge of the infirmity of the vow emitted during the time of subjection, as the author also indicates. The latter rule is: When that power of the superior is wholly extinguished or wholly suspended, he cannot irritate those vows. Many questions solved by the help of both rules can be seen in the same Sanchez, both in the cited chapter and in *De Matrimonio*, lib. 9, disp. 41, n. 3.

Q. 3. Whether irritation can be made without cause?

Resp. **It is affirmed** as to validity, because a master validly disposes of his own thing; but **denied** as to lawfulness, because the spiritual progress of the subject is irrationally impeded, etc. Yet this commonly [7] does not exceed venial sin. - St. Alphonsus and others commonly.

[7] It is said *commonly*: 1. because he would sin gravely who irritated vows either from an evil intention or with grave harm to the subject, as Suarez notes (*De Relig.*, tr. 6, lib. 6, c. 1, n. 10); thus, for example, if a father did this from hatred or envy of the spiritual progress of his children, or from contempt of religion; 2. because, as St. Alphonsus says (lib. 3, n. 228), speaking of itself, it is truer that there is no sin, "because the vows of subjects are emitted under the condition of the consent of superiors; whence obedience suffices as a cause... I said, speaking of itself; because from elsewhere it will be difficult to excuse from venial sin, either because one performs an idle act, or because he irrationally impedes the progress of another... Any reasonable cause suffices to excuse from venial sin."

On this matter Suarez says well (l.c.): "It must be considered whether the power of irritating has been given for the good of the one vowing, as to a religious prelate; or for the convenience of the one irritating, as to a master with respect to a servant; or with a view to both, as to a father with respect to a son. If the first, for the irritation to be made lawfully, it is necessary that it be judged useful either to the one vowing, or to religion, or that, with all things weighed, greater service of God be judged... If the second, there will be no sin in doing it with a view to one's own convenience, because the master uses a thing wholly his own... and it is only necessary that an honorable end be present, and moreover that it not be done against charity, which is owed even to a servant... If the third, say the same as in the second, except that by a greater obligation the father is bound to consult the good of the children, or the husband that of the wife, so that he uses his power well."

Q. 4. Whether a superior can irritate vows ratified by himself?

Resp. **It is affirmed**, because he cannot take away from himself the power which he has over subjects. - St. Alphonsus, n. 239 [8]. - See *Cases*, n. 326 and following to 334.

[8] Therefore he irritates vows of this sort not only validly, but also lawfully, if some reasonable cause is present. On this matter Suarez warns (*De Relig.*, tr. 6, lib. 6, c. 7, n. 16) that a lesser cause suffices for irritating than for dispensing. Hence from the opinion of all he infers that a subject who asks from his prelate the irritation of a vow, when he does not have a cause which suffices for a just dispensation, does not sin, because, he says, he uses his own right. Likewise, because the vow was not absolute but conditioned, and by it he did not obligate himself to take care that the condition not be impeded, or not to take precaution so that it would not be placed, as is clear from the common mode of vowing... Likewise it is not a sin to show oneself inclined to irritation, because this is neither against the vow nor against another precept... Finally, he who feels the burdens of religion can without sin enjoy its advantages. Therefore he who has subjected himself to the power of the superior, so that he may receive burdens from him, does not sin by procuring, through lawful means, some relief through the same power. Therefore just as the prelate does not sin by irritating, so neither does the subject by asking.

But if no reasonable cause is present, it is the common opinion that the subject is not without sin. But more probably the fault must be held light (see St. Alphonsus, lib. 5, n. 239), and inspect the reasons in Suarez, l.c., c. 4, n. 22, where he treats of a husband irritating the vows of his wife.

But from the principles laid down beforehand, namely: 1. concerning the power of the husband directly to irritate the vows of the wife; 2. concerning the power of the wife indirectly to irritate the vows of the husband; 3. concerning the power of

irritating vows even approved or ratified by oneself, it is easily concluded that spouses can mutually irritate even a vow of continence emitted by mutual consent. For 1. nothing forbids the wife from asking from the husband the irritation of the vow emitted by herself, and the husband furnishing this; 2. likewise nothing prohibits the wife, once released from the vow, from indirectly irritating the vow of the husband; 3. finally nothing prevents both, released from the vow, from mutually restoring to themselves again the right to the other's body which they had mutually yielded by agreement. And from this it is clear why St. Alphonsus (lib. 3, n. 239) said that he did not find a certain reason why he should condemn this opinion, although he adhered to the opposite as more common. But since most of these authors came into that opinion led by principles which not even St. Alphonsus admits, it is clear that this external authority cannot stand in the way of someone's safely following the preceding opinion.

On the contrary, as Busembaum rightly has, he who once irritated a vow, if afterward he is unwilling, the vow is not for that reason revalidated. See Sa (v. *Irritatio voti*) [9]. - But the reason is that by irritation the vow is extinguished. But for the extinguished vow to revive, the repentance of the superior who irritated it contributes nothing; rather, there is required the will of the subject, who again obliges himself by vow.

[9] ** In the text of Busembaum in St. Alphonsus (lib. 3, n. 236), it is not read, "See Sa," but, "as Sa wills"; this insinuates that Emmanuel Sa thought with those few whom the Salamancans, alleged by St. Alphonsus, say stand against the doctrine set forth in the text. But the matter does not stand thus. For Sa (l.c., n. 4) teaches thus: "One irritating a vow, if afterward he consents, does not thereby revalidate it." And again (n. 3): "The vow of one before puberty about doing something in the time of liberty, once irritated, does not revive."

St. Alphonsus subjoins to the words of Busembaum (l.c.): "Thus the Salamancans, c. 3, n. 70, with Soto, etc., against some." But the Salamancans have something entirely singular in this place. "We establish this assertion," they say, "against some who, with respect to this, place a distinction between vows which are irritated by a father or prelate, and those which are irritated by a husband with respect to a wife, or by a master with respect to a servant." Now the doctrine concerning the power of a master with respect to a servant, as the Salamancans hand it down (ibid., n. 62), as though he can directly irritate the vows of a pubescent servant, no one has admitted up to now. Wherefore they wrongly (ibid., n. 70) allege for themselves Sanchez and others, who teach this not concerning the vows of a servant, but certainly of a wife.

§ II. On the Dispensation of Vows

Dispensation of a vow is its absolute condonation made in the name of God by a legitimate superior.

332. **Principles.** I. The Church has true power of dispensing in vows, just as also in oaths. This is clear from the words of Christ, Matthew 16. 19: "Whatever you shall loose," etc.; and from the constant practice of the Church. - Common.

II. Only prelates to whom jurisdiction in the external forum has been given [1] can dispense from vows, because this power pertains to the external governance of the Church, just as the power of making laws and censures. Hence only the Pope can dispense from vows for the whole Church [2]; but bishops or regular prelates only for their respective subjects [3], and only in vows not reserved to the Pope. - St. Alphonsus, n. 256.

[1] Understand: by proper and ordinary right; for others also, although they possess no jurisdiction in the external forum, have this power from privilege, as for example the mendicant regulars.

[2] Even from solemn vows. See St. Alphonsus, lib. 3, n. 256.

[3] Can a bishop dispense in vows even with travelers? St. Alphonsus (lib. 3, n. 158) brings forth four opinions. The reason for this disagreement seems to be: 1. that the doctors do not agree whether a traveler becomes a subject; 2. and again they disagree whence some power of dispensing with travelers must be derived; and to this disagreement there accedes another inconvenience, namely of citations heaped together without relation to the matter, which can be found even in St. Alphonsus.

Besides, those four opinions are easily reduced to two. For the first attributes this faculty absolutely to bishops; the remaining three agree in denying it unless the traveler becomes a subject by domicile or quasi-domicile, that is, unless the traveler ceases to be a traveler. Pontius defends the first, although with empty reasons, and Tanner is wrongly joined to him; most all defend the other; from among these, however, Suarez (*De Relig.*, tr. 6, lib. 6, c. 11, n. 11) judges that a bishop, when grave spiritual necessity urges, can, if not dispense, at least suspend the obligation of the vow for several days, until the travelers can be consulted by their own judge.

Concerning these matters two things occur to be noted. 1. Since regulars by special privilege can dispense in vows and oaths of those whose confessions they can hear, therefore where there is need, travelers also could safely have recourse to them. Thus, from the common opinion, also Barbosa (*De Offic. Episc.*, part 2, alleg. 36, n. 15). 2. Nothing certain and solid will ever be concluded concerning questions of this sort unless it is inquired more diligently whether and how far some jurisdiction can be exercised over those who are not subjects, and therefore over those concerning whom there is no ordinary power. On this matter it is surely astonishing how much certain theologians, especially more recent ones, wandering from the beaten path of the older writers, have entangled this whole matter in inextricable knots. But these things are more conveniently reserved to the tract on Penance, where the power of absolving travelers is treated.

III. For the validity of dispensation, a just cause is always required, because since vows are made to God alone, man cannot dispense from them except as delegate; but a delegate cannot dispense validly without just cause, as was said concerning laws. - Thus commonly. - St. Alphonsus, n. 250.

333. **Questions. Q. 1. What are the just causes of this dispensation?**

Resp. The good of the Church, of society, of the family, and even of him who is bound by the vow; for example, if because of the vow he is oppressed by scruples or by grave temptations; if he experiences notable difficulty in fulfilling the vow; if the act of vowing was not perfectly deliberate [4], etc. - St. Alphonsus, n. 252.

[4] On this matter St. Alphonsus says (lib. 3, n. 253): "Even if danger of transgression and great difficulty in execution are absent, it suffices as cause that the vow was emitted immaturely, namely with too much facility, or from imperfect deliberation, or without perfect liberty... Because of this reason, the vows of those before puberty can be absolutely dispensed without any commutation... The same must be said if the vow was emitted because of light fear inflicted from without... The same, when imperfect deliberation or liberty in vowing proceeded from sadness, or anger, or intrinsic fear of shipwreck, death, or another evil, because then vows are usually made immaturely, and therefore can be dispensed without commutation. But if it were clear that mature deliberation was then present, then some commutation should be mixed with the dispensation.

But to the question which St. Alphonsus raises (l.c., n. 251), whether a dispensation is valid if in good faith it is believed that a just cause is present which in reality is not present, respond by distinguishing according to the things handed down in the tract *On Laws*: namely, it will be valid if the error occurred concerning the sufficiency of a cause which in reality is present in some measure; it will not be valid if the error is concerning the existence of some cause, when none exists.

Q. 2. Whether a superior can dispense in vows made for the utility of a neighbor?

Resp. **It is affirmed**, if the vow has not been accepted by the neighbor. Otherwise **no**, because then the obligation of a contract intervenes. - St. Alphonsus, n. 254 [5].

[5] Understand this if the promise was made only or chiefly in favor of a third party. For if the promise is gratuitous, and the vow is made principally in honor of God, according to the probable opinion of many (in St. Alphonsus, lib. 3, n. 255), it could be commuted or dispensed even without the consent of the third party who accepted it. The reason is that, as St. Alphonsus says, "although the promise is made to a particular person, nevertheless it is made on account of God. Therefore God is the whole cause of the promise, and it is accidental that it was accepted by that third party, who, if he acquired any right, nevertheless did not acquire it except dependently on the good pleasure of God, to whom the promise is to be kept."

I have said: **if the promise is gratuitous**; for if it is onerous, of which sort is, for example, the vow of perseverance in certain congregations of regulars, which, by accepting the vow, obligate themselves mutually to sustain, instruct, and not

dismiss novices without just cause, this cannot be commuted or dispensed without the consent of those whom it concerns, as Benedict XIV also sanctioned in the constitution *Convocatis*, 25 Nov. 1749, §32, and in the constitution *Inter praeteritos*, 3 Dec. 1749, §66.

Q. 3. What vows are reserved to the Pope?

Resp. Besides vows emitted in a religious community, these are reserved to the Pope: 1. the vow of perfect and perpetual chastity, but not the vow of virginity alone [6]; 2. the vow of entering a religion approved by the Church; 3. the vow of a pilgrimage to Jerusalem, to the sepulcher of Christ; 4. the vow of a Roman pilgrimage to the thresholds of the Apostles; 5. the vow of a Compostellan pilgrimage to St. James. But these are not reserved unless they are absolute, determined, and perfect by reason of matter and liberty. Hence disjunctive, penal, and conditioned vows are not reserved, even, more probably, when the condition has been fulfilled; because a vow, in order to be reserved, must proceed from a sole and perfect affection for the promised matter. - St. Alphonsus, n. 258 [7].

[6] Namely, if mere integrity of the flesh is understood; otherwise, if abstinence from every venereal act, and also from every internal act against the same virtue, is understood, as the faithful more commonly are accustomed to take a vow of this sort.

[7] Although the faculty of dispensing from an oath is customarily equated with, indeed and associated with, the faculty of dispensing from a vow, nevertheless, as St. Alphonsus observes (lib. 3, n. 259), a mere oath of chastity, of religion, etc., is not reserved. I have said: **a mere oath**, namely one which someone emits to confirm a purpose, but not to confirm a vow; although even in the latter hypothesis the vow would indeed be reserved, but not the added oath.

Q. 4. Whether a bishop can dispense a spouse from a vow of perpetual chastity emitted both before and after marriage, in order to asking the debt?

Resp. **It is affirmed**, according to the common opinion, against some; because he can dispense from every impediment that impedes the exercise of the conjugal act. - St. Alphonsus, n. 258, and lib. 6, n. 986, 987 [8]. - See *Cases*, n. 332 and following.

[8] St. Alphonsus teaches, in each place alleged by the author, that mendicant confessors also can do this, and indeed both within and outside confession, as the same St. Alphonsus has according to the common opinion, l.c., n. 257.

§ III. On the Commutation of Vows

334. Commutation of a vow is the substitution of some work in place of the promised one. It can be made in a threefold way, namely into a better good, into an equal good, or into a lesser good.

Principles. I. Whoever has power, even simply delegated, of dispensing from vows, has by that very fact the faculty of commuting them; for he who can do more can also do less in the same genus. - But not conversely, because the greater power is not contained in the lesser. - St. Alphonsus, n. 246.

II. Anyone can, by private authority and without special cause, commute his vow into an evidently better work, provided the Church has not prohibited this in the particular case; because when someone performs a work more perfect than the thing promised, by that very fact he keeps what he had promised, since the perfect is included in the more perfect. This is clear also from canon law, c. 3, *De Iureiurando*. But that is judged better which conduces to the greater spiritual utility of the one vowing and to greater service of God. Nevertheless except vows reserved to the Pope, unless the change is made into the religious state. - St. Alphonsus, n. 243.

III. He who has emitted a vow cannot by his own authority commute it into a lesser good; for he must give God whatever he promised. - Thus all. - But whether he can change his vow into an equal good is disputed. Nevertheless the doctors commonly agree that this is lawful if the change is made into a certainly equal good, or probably a better good, although to avoid the danger of illusion it is always expedient that these things be done by the counsel of the confessor.

IV. A priest delegated merely to commute vows cannot commute them into a notably lesser work; because otherwise in great part he would dispense, and thus would exceed the faculty received. Yet the faculty of commuting vows is not to be interpreted so strictly that it is narrowed to an entirely equal work, but must be taken in a broader sense, so that it extends itself to a work somewhat lesser; otherwise it would be liable to innumerable difficulties and scruples, since it is very difficult to find equality in matters wholly disparate. Moreover commutation ought generally to be made for the relief of him who bound himself by vow. - St. Alphonsus, ibid., etc.

335. **Questions. Q. 1. Whether some cause is required for commuting a vow into an equal work, or a somewhat lesser one?**

Resp. 1. **It is affirmed** as to lawfulness, because otherwise the delegate would commute prodigally, using the power of commuting in vain.

Resp. 2. **Probably it is also affirmed** as to validity, because a delegate commuting without cause seems to exceed the limits of his power. Nevertheless St. Alphonsus, n. 245, says the opposite opinion is equally probable. Yet a lesser cause is required for commuting than for dispensing; and again, a lesser cause is required for commuting into an equal work than into a lesser one; for a greater inclination of the person, or less danger of transgressing the vow, suffices. - St. Alphonsus, n. 244.

Q. 2. Whether, after commutation has been made, it is lawful to return to the first work?

Resp. 1. **It is affirmed**, if the commutation was made into a lesser or equal work, because the first work is equally pleasing to God, indeed it seems even more pleasing. - Thus commonly.

Resp. 2. **It is affirmed more probably**, even if the commutation was made into a better work, because commutation is made in favor of the one vowing. - St. Alphonsus, n. 248.

336. **Q. 3. Whether you must return to the first work if the second becomes impossible?**

Resp. 1. **No**, if the change was made by the authority of another, even if it became impossible by your fault; because the prior obligation has been dissolved by the commutation itself.

Resp. 2. **It is affirmed**, if you made the commutation at your own discretion, because then the prior obligation is not dissolved, but is only supposed to be supplied by an equal or better work. - Thus most commonly. - St. Alphonsus, n. 249.

Q. 4. Whether, when a reserved vow has been commuted, the substituted matter also remains reserved?

Resp. **More probably no**, because that matter which is substituted is not per se reserved, although it has the same bond of vow. - St. Alphonsus, n. 260, and others commonly. - See *Cases*, n. 337 and following.

Besides, the faithful, especially women and adolescents, are to be carefully exhorted never to emit vows except by the counsel or approval of the confessor, especially if the matter is a vow of chastity. But the confessor should grant permission or counsel for emitting a vow of perpetual chastity only with the greatest difficulty and to persons long proved and mature in age.

On the Third Precept of the Decalogue

"*Remember that you sanctify the Sabbath day.*" Exod. 20. 8.

337. The third precept of the Decalogue is natural insofar as it commands that some time be dedicated to public divine worship; but insofar as it determinately designates the Sabbath day, it is ceremonial, and abrogated in the new law, since in place of the Sabbath day the Church has substituted the Lord's day, in memory of the resurrection of our Lord Jesus Christ.

Besides Sunday, the Church instituted other feast days for recalling the benefits of our redemption, or the merits and examples of the Saints, and commands that they, no otherwise than Sunday, be sanctified.

This precept, insofar as it is affirmative, prescribes certain works, and insofar as it is negative, prohibits certain other things [1]; hence a twofold chapter.

[1] To the question whether this precept is affirmative or negative, St. Alphonsus (lib. 3, n. 264), after the Salamancans (tr. 23, c. 1, n. 14-15), responds that it is affirmative, since it does not oblige always and for always. Suarez, Sanchez, Palaus, Leander, Fagnanus with the Salamancans, n. 15, against Cajetan and Filiucci, etc., who maintain that it is negative, since in it nothing positive was prescribed to the Jews; but this is denied. See Roman Catechism, n. 11.

But in this doctrine the Salamancans thrust forward three things sufficiently incongruous. The first is in the reason for defining an affirmative precept, because it does not oblige for always, or, as they say, because many causes are given which excuse from this precept. But even negative precepts admit excusing causes, for example the precept of abstinence.

The second is that they mingle those things which the doctors disputed concerning this precept as it belonged to the Jews, and from this oppose doctors to doctors who can easily be reconciled. Thus they oppose Cajetan to Suarez, when Suarez alleges him on his own behalf and reconciles him excellently by saying (*De Relig.*, tr. 1, lib. 2, c. 1, n. 7): "Formally nothing is prescribed there except a certain dedication of that time to the worship of God, which is called sanctification of it... But this dedication is made formally by cessation from work, which pertains to external worship declared by a negative sign."

The third is that to doctors affirming that this precept, insofar as it was proposed to the Jews, is negative, they oppose the Roman Catechism, where it speaks of the faithful of Christ.

Chapter I. On Those Things Which Are Prescribed on Feast Days

Article I. On Those Things Which Generally Must Be Furnished on Feast Days

338. **Principles.** I. All the faithful having the use of reason are bound under grave obligation on each Sunday and feast day to be present at Mass, unless they are excused by a just cause. This is clear: 1. from various places of canon law, especially from c. *Missas* 64, *De Consecrat.*, dist. 1; likewise from c. *Omnes* 63, *De Consecrat.*, dist. 1; 2. from all catechisms, in which the undoubted precept concerning Mass to be heard on these days is declared.

I said **under grave obligation**; for the matter is grave both in itself and according to the common estimation of the faithful and the unanimous consent of theologians.

339. II. Besides this, the faithful are bound to furnish nothing else by force of the precept, at least under grave obligation. The reason is that nothing else is found certainly prescribed. This is the common doctrine of theologians.

I said **at least under grave obligation.** For most theologians add that not even under light obligation per se. For although servile works are prohibited for this reason, that the faithful may more easily be free for divine things, nevertheless these are prescribed by no law; but otherwise the end of the precept does not fall under the precept. - Thus Suarez, *De Relig.*, tom. 1, lib. 2, c. 16, n. 4; Elbel, n. 385 and following, and many others, as even Concina confesses, who calls this opinion common.

Hence one excused on Sunday from Mass is not bound by reason of the precept to pay at home the prayers which he would have recited during the Mass, or which he is accustomed to recite. - Suarez, ibid.

III. Nevertheless by accident the faithful can be held to something else, not indeed by force of this precept, but because it can be necessary for fulfilling another obligation. For they are bound to assist at sermons or catechesis on feast days if the sermon is necessary for Christian instruction or the ordering of morals; because he who is held to the end is also held to the means necessary for this end. - Billuart, and others commonly. Besides, the faithful must be strongly induced to exercise other pious works besides Mass, to pour out more abundant prayers, etc.

340. **Q. Whether, or of what sort, is the obligation of assisting at the evening Office, or Vespers, on Sundays and feast days?**

Resp. 1. There is no obligation urging under grave obligation; for theologians commonly acknowledge that no other grave obligation is given besides hearing Mass and abstinence from servile works.

Resp. 2. Nor, more probably, under light obligation, per se and directly. For if there existed a certain obligation from a universal law of the Church, it could not be unknown to so many theologians who have examined questions of this sort. Recall the authors just cited, namely Suarez, Bonacina, etc.

In practice, however, the faithful must be carefully urged that they diligently take part in the evening Office or in other public exercises of divine worship.

Article II. On the Hearing of Mass in Particular

We must treat: 1. of those things required for hearing Mass rightly; 2. of the causes excusing from it.

§ I. On Those Things Which Are Required for Hearing Mass Rightly

Three things are required: 1. presence of body; 2. attention of mind; 3. due place.

Point I. Presence of Body

Moral and continuous presence of the body is required.

341. I. **Moral**, namely a person must be so present where Mass is being celebrated that he can be called one of the number of those assisting and offering the Sacrifice; for this it is enough that he be in a place from which he can follow the Mass with respect to its principal parts, whether by seeing, or by hearing, or by attending to the signs of the other assistants.

II. **Continuous**, that is, persevering from the beginning to the end of Mass, so that he sins gravely who omits a notable part of it, and venially who omits a slight part, unless he is excused by a just cause.

Resolves. 1. He validly assists at Mass who, although he does not see the priest nor hear the words, distinguishes the parts of the Mass by the sound of the bell, the singing of the choir, or the movements of the assistants, to whom he is morally joined, although he is outside the church, in which the crowd cannot be contained. Likewise he who stands behind the altar, behind a column, or behind a wall, provided he can advert to the principal parts of the Mass.

2. Likewise, more probably, he who is in a nearby house, from which through a window or door he sees the altar or the assistants, or distinguishes the parts of the Mass, provided there is a small space between the church and the place in which he is. It is otherwise if a great space or a street intervenes, as is more commonly taught. - St. Alphonsus, n. 312.

3. He does not assist at Mass who remains far away, even if he sees the church, the altar, and the crowd, because in common usage he cannot be said to hear and to be morally present. According to Lugo and others, a space of thirty paces from the crowd of assistants does not seem so great that it prevents someone from being present at Mass [1].

[1] Understand this resolution, like the preceding one, concerning one who looks out from a house, etc., but with a long space, for example of a street, interposed. For if someone in the corner or chapel of an immense basilica can advert to what the priest celebrating in the opposite part, however distant, is doing, he certainly satisfies; for whoever is within the church is sufficiently present at Mass.

** Concerning the opinion of Cardinal de Lugo about a distance of thirty paces, St. Alphonsus (lib. 3, n. 312) writes that Tamburini in Croix (lib. 3, p. 1, n. 643) does not admit it. But Tamburini (*Decal.*, lib. 4, c. 2, §1, n. 14) has it thus: "I infer secondly that from the window of your house, if there is a small distance to the altar of the church, you can satisfy the precept by hearing Mass from there, even if a public way is between. Thus de Lugo, *De Euch.*, disp. 22, n. 21, because in this way you are truly morally present at the Mass. It will be otherwise at a great distance according to the judgment of a prudent person, on account of the opposite reason." Now de Lugo does not indicate there generically a small distance, but only one which extends to thirty paces. Thus he says (l.c.): "It can happen that a window is so near the altar that it does not impede moral presence; as in fact in this our Roman College we have a private chapel whose altar is no more than thirty paces distant from the windows of the opposite house, and for that reason Mass can be heard or perceived from that window, although a public way intervenes." Therefore Tamburini plainly embraces the opinion of de Lugo.

342. **Questions. Q. 1. What omission is to be regarded as grave or light in Mass?**

Resp. It cannot easily be determined [2]; for although according to all a third part of Mass is notable, nevertheless it is not clear what the third part is, since a notable part must not be judged only from duration. Yet the following things seem able to be established according to the common opinion.

[2] As regards the judgment whether the penitent sinned gravely or lightly by these omissions, this question is scarcely of any use. For these omissions generally happen by chance and involuntarily, or from a certain negligence. But in sins of negligence, as Suarez appropriately observes in this matter (*De Euch.*, disp. 88, sect. 2), the gravity is not to be measured by

the event or effect, but by the foresight of these things. Therefore the question serves almost only for this, that it be defined when someone, by force of the precept, is bound again to hear another Mass if he omitted part of one; or whether, when some part has been omitted, whether culpably or inculpably, someone is bound by force of the precept to assist at the part which remains and at which alone he can be present.

Moreover, although by force of the precept we are bound to be present at the whole Mass in such a way that no voluntary omission per se lacks some fault, nevertheless, since not all parts have the same dignity, and since the character of the Mass of the catechumens is one thing and that of the Mass of the faithful another, which extends from the Offertory to the consumption, indeed since in this itself some parts are essential to the Sacrifice, while others have more or less proximity and necessity to the substance of the Sacrifice, hence the reason is clear why the gravity of omission or satisfaction of the precept as to substance must be defined now by the material measure of time, and now by the dignity of the parts.

1. It is grave to omit everything up to and including the Offertory. But it is certainly light to omit everything up to, but excluding, the Epistle, and more probably also including it; indeed probably even, according to St. Alphonsus, n. 310, up to and including the Gospel, although the holy Doctor holds the opposite opinion as more probable. The reason for these things is that the things which precede do not properly pertain to the Sacrifice, but are only, as it were, preparation for it. - Lugo, etc.

2. According to all, it is grave to omit everything before the Gospel and at the same time everything after Communion; but not to omit only those things which follow Communion, indeed not even to omit everything before the Epistle and everything after Communion. - St. Alphonsus, n. 310. - Lacroix, n. 666.

3. The omission of the Canon from the Consecration up to, but excluding, the *Pater* must be held grave; because it is a notable part by duration and dignity. But the omission of the Offertory is regarded as light; likewise the omission of the Creed [3] and of the Preface, even if they are sung, because these do not pertain to the essence of the Mass. - St. Alphonsus, ibid. - The Gospel of St. John at the end probably is not a part of the Mass, because before it the people are already dismissed by the blessing.

[3] St. Alphonsus judges with others that the Creed, whether it is sung or recited, as being a non-regular part, is not to be considered, lib. 3, n. 310.

4. It is grave to omit the Consecration and Communion; indeed also the Consecration alone, because it is the most dignified part, in which, at least chiefly, the notion of Sacrifice consists. Indeed, more probably, it is grave not to be present at even one Consecration alone, because the essence of the Sacrifice more probably consists in each Consecration. - St. Alphonsus, *Homo apostolicus*, n. 33.

But whether to pass over Communion alone is grave is disputed; the affirmative opinion is more probable to St. Alphonsus, because he judges that the essence of the Sacrifice consists also in Communion. Nevertheless the more common opinion places it in the Consecration alone.

343. **Q. 2. Whether one who hears two half Masses from different priests, either simultaneously or successively, satisfies the precept?**

Resp. 1. **No**, if he hears them simultaneously. The reason is drawn from the common interpretation of the law, which is confirmed by proposition 53, condemned by Innocent XI, and reads thus: "He

satisfies the precept of the Church concerning hearing Mass who hears two of its parts, indeed four, simultaneously from diverse celebrants."

Resp. 2. But if successively, distinguish. 1. **No**, if the Consecration and Communion are not in the same part. The reason is that the Church commands the faithful to be present at an integral and perfect Sacrifice. But that is not had unless both the Consecration and Communion come together in the same Mass. - St. Alphonsus, *Homo apostolicus*, n. 34. - 2. But **it is affirmed**, probably, if the Consecration and Communion are found in the same Mass; because then the integral notion of the Sacrifice is had in the same part. - St. Alphonsus, n. 311. - Lugo, Azor, against others.

Q. 3. Whether he ought to hear the remaining parts who arrives after the Consecration?

Resp. **Probably no**, because the essence of the Sacrifice is now lacking; and therefore the obligation of assisting at it ceases, since the precept cannot be fulfilled by this. - Mazzotta, St. Alphonsus, n. 310, and others [4].

[4] Here the VV. (p. 920) object the words of St. Alphonsus (*Hom. Ap.*, tr. 6, n. 33): "We say that the opposite must be held with Continuator Tournely and Fr. Zacharia in Croix. The reason is that, since it is sufficiently probable that the essence of the Sacrifice consists in the consumption, we say that he is indeed obligated." - Resp. 1. It must be held as sufficiently probable that the essence of the Sacrifice consists in the consumption, I deny, or let it pass. It must be held that a foundation which is merely sufficiently probable suffices for inducing an obligation, I deny. - Resp. 2. Collet relies on a reason which, as the same St. Alphonsus says, does not persuade; but Croix (not Zacharia, who does not have even a word about this matter), when he is induced to prefer such an opinion as more probable, is induced by that same reason which St. Alphonsus rejects in Collet. You may conclude that neither Collet nor Croix adds even the smallest weight to that opinion.

The VV. add (l.c.) these other words of St. Alphonsus (lib. 3, n. 310): "This affirmative opinion is very probable, and in practice must be held, as Fr. Zacharia," that is, Croix, "says from another reason, namely that a notable part of the ceremony prescribed by the Church can be heard." - Resp. 1. The Church prescribes that the faithful be present at the Sacrifice and the ceremonies connected with the Sacrifice, I concede. She prescribes that they be present at the ceremonies alone without the Sacrifice, indeed even only at some part of the ceremonies, I deny. - Resp. 2. This affirmative opinion is very probable, let it pass; therefore in practice it must be held, I distinguish: as a matter of good counsel, I concede; as a matter of precept, I deny. St. Alphonsus (lib. 3, n. 132, in the letter to Rev. Abbot Bartholomew De Marco) inculcates that saying (c. *Cum iure* 32, *De Offic. et Potest. iudic. deleg.*): "Unless you shall have been certain of the mandate, you will not be compelled to execute what is mandated." And a little after, the same St. Alphonsus says: "Hence Benedict XIV, most wisely, in his work *On the Synod*, in many chapters warns bishops of nothing else than never to condemn as grave sin those opinions which doctors of each side defend as probable."

Q. 4. Whether he who omits a light part of Mass is bound to supply it, if he can?

Resp. **It is affirmed more probably**, because he is bound to hear a whole Mass; except unless the matter concerns a very slight part. - Thus St. Alphonsus, n. 310. - The Salamancans against others [5]. Besides, a sufficiently light reason can exempt from this obligation of supplying. - See *Cases*, n. 345 and following.

[5] And those others indeed, as is easy to understand, judged their own opinion more probable. Of these, Suarez (*De Euch.*, disp. 88, sect. 2) excuses from supplying the omitted part, whether the defect was involuntary or voluntary; because, he says, "the precept has already been fulfilled substantially... and that mode of supplying it is very imperfect, and does not contribute much to the integrity of the Mass... and because moral matters are not to be weighed so rigorously, especially when they are lighter."

But it is worthwhile here to remember that obligations are proposed or urged in vain whenever the matter is contained within the limits of probability. For a probable, or even more probable, obligation is not an obligation, nor can it lawfully be imposed as a true obligation, when non-obligation is probable, as was handed down above in the tract on conscience.

Therefore mention of probable obligations of this sort will perhaps be able to serve for some erudition, but for practice and for prescribing duties it can contribute nothing.

Point II. Attention of Mind

344. Attention to Mass is distinguished as twofold: 1. **internal**, by which someone actually adverts and applies his mind to those things which are performed by the priest; 2. **external**, which consists in avoiding any external action which impedes application of the mind, for example conversing, painting, etc.

But internal attention is threefold: 1. one kind to the words and actions of the priest; 2. another to the meaning of the words and mysteries; 3. another to God Himself through prayers or pious meditations.

Principles. I. For hearing Mass validly, attention at least external is altogether required; because he who places actions incompatible with internal attention cannot in any way be said to be present at the Mass; indeed, such a person impudently mocks God and the Church. - Thus all.

II. Some internal attention is also required, and at least the will of hearing Mass; because this is wholly required, so that the hearing or presence may be human, moral, and religious from its object. - Suarez, *De Euch.*, disp. 88, sect. 3.

III. But any one of the three internal kinds just set forth suffices, namely whether it is to the words, or to the meaning, or in any way to God. The reason is that by any of them the mind is sufficiently applied to the divine worship which is intended by the Sacrifice.

IV. No vocal prayer is absolutely required; because religious assistance honors God, and nothing else is prescribed. - St. Alphonsus, n. 313. - In practice, however, the faithful, especially the uneducated, are to be advised to recite some prayers, especially the prayers customary for hearing Mass, or the rosary of the Most Blessed Virgin, lest they be exposed to excessive distractions.

345. **Questions. Q. 1. Whether internal attention is required under grave obligation to fulfill this precept?**

Resp. **It is disputed. The first opinion**, according to St. Alphonsus the more common and more probable, affirms it. For the Church prescribes an act by which God is worshiped; but God cannot be worshiped by physical presence alone; therefore... Therefore, by directly prescribing the external act of hearing Mass, the Church seems indirectly to prescribe attention, at least some attention, as a condition without which the formal external act would not consist. - Thus St. Thomas, Billuart, Elbel, the Salamancans, and not a few others.

The second opinion denies it. The reason is that assistance with voluntary attention, even if merely external, is a sufficiently religious act, nor is it clear that anything else is prescribed by the Church. - Thus Lugo, with many others; and St. Alphonsus, n. 313, says this is probable, to whom Gousset assents, n. 555 [1].

[1] St. Alphonsus (lib. 3, n. 313): "The first opinion," which is here placed second, "which Croix (lib. 4, n. 1341) calls more probable when the reason is considered, and (lib. 3, p. 1, n. 658) calls common, cannot be denied to be sufficiently probable... And *a fortiori* with respect to hearing Mass, for which it suffices to furnish moral assistance, as the cited authors say..., without prayer being expressly required. At least," I say, "given the authority of so many and such great doctors

maintaining this opinion, the law supposed by the contrary authors, which would also oblige hearers to internal attention and to prayer, seems sufficiently doubtful, since several grave doctors, such as Lessius, Suarez, Medina, etc., teach that for hearing Mass it is not necessary to pray, but only to intend to worship God."

Besides, in practice there does not appear such great difference between each opinion. For according to the former opinion, attention in a remiss degree is altogether sufficient, namely to the principal parts of the Mass; but according to the latter there is required: 1. a pious movement of the soul, or a true intention of honoring God; 2. such attention that the one assisting at Mass can give an account to himself that he is truly assisting at Mass, and consequently that he advert at least confusedly to its principal parts. Hence the faithful are not easily to be accused of grave fault because of defect of sufficient attention at Mass, but rather are to be lovingly exhorted that they direct their mind piously and carefully to the divine Mysteries. For, St. Alphonsus says, n. 313, after Elbel, Sporer, and Tamburini, no one ought to be anxious on account of a scruple of attention not furnished, because it suffices to have had the general intention of worshiping God.

346. **Q. 2. Whether he satisfies the precept who confesses sins during the time of Mass?**

Resp. Many deny it. But the affirmative opinion is not lacking its probability, and many doctors admit it [2]. In general, the faithful do not seem to be disturbed on this matter, nor should a scruple be cast into them, when in some way they attend to the Mass.

[2] See some authors in St. Alphonsus (lib. 3, n. 314), who nevertheless concludes thus: "This second opinion does not seem entirely destitute of probability, and I myself formerly judged it probable; but because afterward I observed that it is rejected by grave doctors, I now do not dare to call it probable."

But it scarcely appears where there is an excess of external probability for the negative, since for the affirmative also St. Alphonsus himself indicates doctors neither fewer nor less grave, especially because some are brought forward for the negative entirely without relation to the matter, such as, for example, Suarez and Azor, who in reality have nothing on this question, and merely contend that Mass is generally omitted unlawfully so that someone may confess, just as someone would unlawfully omit Mass in order to hear a sermon.

Add that not even St. Alphonsus himself finds any decisive argument for the negative opinion; indeed, he himself observes that the patrons of that opinion, in bringing forward a reason, do not cohere with one another, but that different reasons are brought by different authors; which is an indication that some solid and manifest reason is plainly lacking.

The VV. attack the three things which are indicated in this little note through sixteen columns (pp. 275-283). But many words are not needed to satisfy them.

The first is that in the Note it is said that St. Alphonsus (lib. 3, n. 314) brings forward doctors neither fewer nor less grave for the affirmative opinion than for his opposite negative. But whoever has eyes sees this in the holy Doctor (l.c.); for is any grave author seen to be alleged there by the holy Doctor besides Lugo? And since St. Alphonsus rightly judges invalid the reason by which Bonacina says he was moved to change his opinion, does not even his vote collapse in itself? But even the VV. themselves finally produce only two on their side whom they dare call grave doctors, namely Suarez and Lugo; and in reality they would with sufficient difficulty sell as grave doctors Collet, Pontas, Holzmann, Antoine, and certain other writers of some compendium, who by their vote of itself perhaps contribute nothing even to increasing the number of those voting for some opinion. Now since Suarez, as we shall soon say, is wrongly invoked for the negative opinion, therefore one grave doctor remains, Lugo. But opposed to him in St. Alphonsus (l.c.) you will see Lessius, Palaus, and Reginald. But, as can be seen in the catalogue of writers prefixed to this volume, St. Alphonsus, according to the testimony of the very distinguished Fr. Haringer, holds Palaus as an altogether grave author, but Lessius and Reginald as classic authors. Therefore not undeservedly was it said in the Note that St. Alphonsus brings forward doctors neither fewer nor less grave for the affirmative opinion than for his opposite opinion. But as regards the number of writers of whatever sort, if someone wishes to see more even for the affirmative opinion besides St. Alphonsus, let him go to Pellizzarius (*Man. Regul.*, tr. 5, c. 4, sect. 2, n. 50).

Let us come to the second point: whether rightly or wrongly it is said in the Note that Suarez and Azor are brought forward without relation to the matter for the negative opinion. So that the matter may appear briefly and clearly, let two questions be distinguished with Pasqualigo. One is (quest. 1319): Whether he satisfies the precept who, hearing Mass, at the same time confesses his sins; and this is the question of which we are treating at present. The other is (quest. 1343): Whether greater spiritual utility excuses from hearing Mass; and this, as is clear, is very diverse and has nothing in common with the preceding question. But both Azor and Suarez treat of this latter question, not of the first. And indeed, to persuade of this, the titles of the chapters where they propose the question are sufficient. For in Azor it is (part 1, lib. 7, c. 7): "On the causes by which those are excused who do not hear Mass." And in Suarez (*In 3 Part.*, disp. 88, sect. 6): "By what modes someone can be excused from hearing Mass on a day on which it is prescribed." Therefore their question is not concerning him who stands present at Mass, yet in such a way that it is doubted whether he assists rightly and validly, but concerning him who for some cause omits Mass, or does not assist at Mass. Accordingly Suarez adds other examples of one omitting Mass, both in him who omits Mass for the sake of hearing a sermon, and in him who omits Mass so that he may be free in his room for contemplation of God. Therefore it is no wonder that Pellizzarius (l.c.) warns that neither Suarez nor Azor is opposed to the author's opinion; and concerning the opposite opinion Leander (*De Audit. Miss.*, tr. 2, disp. 1, q. 71) wrote: "These authors cite Suarez and Azor for this side; but certainly badly"; likewise Escobar (lib. 42, c. 9, dub. 35, n. 182): "Suarez and Azor are cited for this opinion; but undeservedly." - The VV. seize for themselves those words of Suarez: "He who during the time of Mass confesses his sins." Very fine indeed! But when Suarez wishes to bring forward an example of one who is excused from hearing Mass because of greater spiritual utility or necessity, could he have proposed the hypothesis of a confession which could be made either before or after the celebration of Mass, so that someone could conveniently furnish each, namely both hear Mass and then confess sins? But this can deservedly displease more: that where Suarez (l.c.) writes that the work of the precept, namely Mass, must not be omitted on account of voluntary works of this sort, even if they are imagined to be more useful, the VV., in order to bend the opinion of Suarez to themselves, almost feign these words for him: "not to be excused from transgression of the precept." Nowhere is it to be found that St. Alphonsus ever used arts of this sort.

The third thing said in the Note is this: that St. Alphonsus did not find a decisive argument for his opinion, indeed that he himself observed that the patrons of that opinion are not in agreement in bringing forward a reason. Against this the VV. (p. 281) oppose that the reasons on which the negative opinion of St. Alphonsus rests are most solid. - But plainly even the judgment of St. Alphonsus stands in the way of these things. For after weighing the reasons, he himself had judged each opinion probable. But if afterward he said that he did not dare to call the affirmative opinion probable, he indeed confesses that he was moved to this by some external authority, of what sort we saw above, but not by force of reasons, which he brings forward in the final edition entirely the same as he had brought forward in the first, and which the VV. finally gathered for him from other authors. Therefore, with St. Alphonsus as judge, that immense weight of reasons is sought in vain, unless perhaps the VV. wish to hold the holy Doctor as less sharp-sighted.

And to inspect these reasons a little: Collet, with Cabassut and Pontas, whom St. Alphonsus added in later editions to those first alleged, uses (tom. 3, n. 351) the reason that attention ought to be by way of prayer, which is not present in examining faults and their circumstances. But St. Alphonsus (l.c.) thus judges concerning this reason: "Bonacina and Bassaeus deny it, because he would not pray; but this is opposed by what Suarez, Lessius, etc., teach, that it suffices to hear Mass by worshiping God, for which worship prayer is not absolutely necessary." Do the VV. acquiesce in this judgment of the holy Doctor? Therefore that reason is not very valid.

The holy Doctor brings forth another reason, into which also the reason alleged by Lugo falls back, namely because the one confessing would then be present as the accused, not now as offering the Sacrifice with the priest. But what is the reason that St. Alphonsus does not reject those who say, with the more common or with the common opinion, that the priest satisfies the precept of hearing Mass while he receives confessions? Does the person of judge fit more with the person of one co-offering the Sacrifice than the person of the accused? Or does the confessor exhibit greater external attention than the penitent? Or can the one have less internal attention or virtual intention, as they say, than the other? Why will he satisfy the precept, as they concede, who, kneeling at the grate of the confessional while he waits for the priest, is wholly engaged in examining faults and their circumstances and number, and in fixing these in memory in order, but will not satisfy when confessing these to God in the person of the minister? Why does he sufficiently hear Mass, as they concede, who, suffering ecstasy, exhibits scarcely material presence, or also a priest who hears the Mass of another while he himself celebrates Mass? Where do you find, apart from virtual intention, the moral presence or the attention, internal or external, which they require? What is the reason that most also who stand for the negative opinion concede that one confessing

sacramentally can satisfy the precept if in some way he can also attend to the Mass? Where has the argument taken from the necessity of moral presence, by which he is shown as offering with the priest, now gone?

Let us conclude: where very valid reasons are present, there is not usually labor in finding them nor disagreement among approved authors in estimating and employing them; and again, where reasons are very valid, it does not happen that in very similar cases they now have force and now do not have force. But it is clear, from the things said, more than enough, that these two things happen with respect to the reasons drawn out for the negative opinion. Therefore.

Q. 3. Whether a cleric reciting the Breviary during the time of Mass satisfies the precept of the Church?

Resp. **It is affirmed.** The reason is that recitation of the divine Office does not prevent someone from being able to be present at the Sacrifice of the Mass and to exhibit moral presence to it. - Thus commonly with St. Alphonsus, n. 309. - See *On Laws*, 106.

347. **Resolves.** 1. Those serving Mass satisfy the precept; for they attend sufficiently by exhibiting their ministry, by which they actually cooperate with the Sacrifice. The same is to be said of sacristans, musicians, organists, drummers, etc.; because their acts are referred to the worship of God and do not impede the necessary attention to those things which are performed at the altar. - St. Alphonsus, n. 317 [3].

[3] When St. Alphonsus (lib. 3, n. 309) agrees that those serving Mass satisfy the precept, even if they depart for bringing the necessary things, he limits it thus: "Thus must be held with Elbel, Palaus, and Bonacina, if it is for a short time, OR one does not go out of the church" (but in the edition of the year 1748: "if it is for a short time AND one does not go out of the church") against Dic., Leander, and Diana in the Salamancans. But the alleged authors do not have it thus. For Bonacina (*De Sacr.*, disp. 4, q. ult., p. 11, n. 18), and Palaus (tr. 22, disp. un., p. 16, n. 7), and Elbel (conf. 12, in 3 Praec., n. 356) say: "Provided you have not withdrawn from the church, except for a short time," as the Salamancans (tr. 5, c. 6, n. 21), alleged by St. Alphonsus, also report.

2. Those who collect alms satisfy, provided at least they attend confusedly. - St. Alphonsus, ibid. [4]; but if they foresee that they cannot furnish this attention, let them hear another Mass, if they conveniently can.

[4] Truly, says St. Alphonsus, n. 317, such distraction does not seem to be incompatible, namely with attention which is sufficient.

3. They satisfy who, during the time of Mass, examine their conscience in order to confess, perform a sacramental penance, or even make a prayer owed by any title; because by these things the mind is directed to God, and on the other hand satisfaction can be made to two precepts at the same time, if the things prescribed can be performed at the same time. - Thus commonly. - Likewise those who read some spiritual book, but not sacred histories with the mind of learning style. - St. Alphonsus, n. 314.

4. They satisfy also who are involuntarily distracted, even during the whole time of the Sacrifice, unless they are so carried away by alien thoughts that they in no way attend; for then they satisfy no more than those involuntarily sleeping through a notable part of Mass, although they are excused from sin. Thus commonly. But one dozing sometimes during the Sacrifice satisfies, or at least does not gravely offend, provided he in some way adverts to that which is being done. - St. Alphonsus, n. 316.

5. They satisfy, also as to the substance, or are excused from grave fault, who are voluntarily distracted even during the whole time of the Sacrifice, provided they attend at the same time; for this can sometimes happen, if the distractions are not so vehement, since a man can think of several things at the same time. - Reuter, n. 284. [5].

[5] This precept requires nothing else except that someone begin to hear Mass "with the intention of attending," or, insofar as lies in him, "of being free for God, and that this mind not be changed to the contrary... Hence as often as the aforesaid person does not deliberately turn his mind away from the said intention, although while hearing the Sacrifice he is distracted, he satisfies the precept... And, what is more, and is especially to be noted for removing the scruples of many, although one who began to hear Mass in the aforesaid manner... afterward, while he hears it, of his own accord and advertently wanders in mind about other things, if he does not advert that by this he is distracted from Mass..., he satisfies the said precept, because here he is not voluntarily distracted from Mass, and therefore the first attention remains virtually." Thus the Salamancans, with many authorities alleged (*De Sacrif. Missae*, cap. 6, n. 41-42).

6. But they by no means satisfy who converse about a serious matter through a notable part of Mass, or attentively consider images, scan with their eyes the furnishings of the church, read inscriptions or other profane things, meditate on the sciences, paint, or perform other similar things, unless these are done intermittently, or in such a way that they do not altogether impede attention [6]. - St. Alphonsus, n. 317. - See *Cases*, n. 345 and following.

[6] Yet attention of this sort, which is sufficient, is not easily accustomed to be impeded by conversation; because, as the Author notes in the preceding resolution, a man can attend to several things at the same time, though somewhat more remissly. Hence the Salamancans (*De Sacrif. Missae*, cap. 6, n. 50) excuse from mortal sin if the conversation is discontinuous and through a small part of Mass, or is not about a serious matter, but about a light one, which does not impede necessary attention but only makes it more remiss; whence they conclude that in this way one indeed sins by irreverence, but satisfies the precept.

It must be noted besides, as Suarez has (*De Eucharist.*, disp. 88, sect. 3), namely that a depraved intention joined to the will of hearing Mass is not contrary to the fulfillment of this precept, if on the other hand it does not exclude sufficient attention. And so, although someone goes to church from a lustful intention of seeing a woman, or even if he assists at the office of Mass with the same intention, nevertheless, if he does not exclude the will of fulfilling this ecclesiastical precept, and is sufficiently attentive, he fulfills it. You have the same in Lugo (*De Euch.*, disp. 22, n. 23).

Point III. On the Due Place

There is a twofold question concerning the place of hearing Mass: 1. Whether satisfaction can be made to the precept in private oratories? - 2. Whether there is an obligation of assisting at Mass in the parish, or at the parochial Mass?

I. As Regards Private Oratories

348. ○ Private oratories are chapels erected in a private house from a privilege granted by the Supreme Pontiff, so that the divine Mysteries may be performed there. - But those oratories are not reckoned private, but are to be held public, which have been legitimately erected in seminaries, monasteries, or houses of Religious or of Nuns, or of other communities, as in conservatories, prisons, hospitals, and also in the houses of Bishops. Indeed sometimes an oratory in the houses of private persons can be held as public. But for this it is required: 1. that the entrance open onto a public way; 2. that it be subject to no servitude reproved by canon law; 3. that it be devoted in perpetuity to

divine worship; 4. that revenues sufficient for the divine Offices be established. - See St. Alphonsus, n. 319, etc.

It is certain that all who are comprehended in the Indult satisfy the precept of hearing Mass in a private oratory, namely the master of the oratory with his own and his familiars who are devoted to his service [1]. Excepted are the days of the principal feasts, namely Easter, Pentecost, the Nativity of the Lord, Epiphany, Ascension, Assumption, the feast of St. Peter, and All Saints; likewise the Annunciation, Thursday in the Supper of the Lord (Decr. S. Rit. C. 17 Nov. 1607), and the titular Saint of the Church (Decr. S. C. Conc. in Derthon., 17 Febr. 1685); - and indeed on these days it is altogether forbidden to celebrate in oratories of this sort. - St. Alphonsus, *de Euch.*, n. 359. - Gardellini. - Nevertheless no day is excepted when the oratory is granted by the Pontiff by reason of infirmity.

[1] Understand this not of all familiars, but only of those whose presence in the oratory during the time of Mass is necessary; for this is clearly drawn from the formulas of the Indult, which can be seen in Gatticus (*De Orat. Priv.*, cap. 25, n. 23-24). Yet in defining of what sort this necessity ought to be, or who are to be called necessary familiars at that time, it is better to define from Gatticus himself, who wrote expressly on this argument, and whose work was several times printed at Rome, than from St. Alphonsus, who may seem a little more severe.

But outsiders do not satisfy according to the common opinion with St. Alphonsus, n. 319. For it is clear from the words of the Indult, which ordinarily sounds thus: We will that those who are not of the family are not to be reckoned free from the obligation of hearing Mass in a church.

Q. Whether the master is bound to use the privilege if he cannot go to the church?

Resp. **It is affirmed** according to St. Alphonsus, if he is able conveniently to have a Priest; because, he says, he is bound to see that a Priest is present for celebrating, namely so that both he himself and others who by force of the privilege can satisfy the precept in the oratory may not be deprived of the sacrifice of the Mass. Yet others deny this from that principle that no one is bound to use a privilege [2]. - For several other things about private oratories, see in the Treatise on the Eucharist, where the place of celebrating Mass is treated.

[2] ** Gatticus himself, although in some way he adheres to the first opinion, nevertheless confesses (cap. 20, n. 36) that if the matter is to be defined by the votes of more Doctors, this second opinion prevails. But otherwise he has nothing solid by which he may respond to the reason of these Doctors, namely that merely personal privileges can be set aside or used at pleasure. And this reason of the Doctors is valid *a fortiori* in the present case, since there is question of a privilege odious in itself, contrary to common law, and little conformable to reverence for the Sacrament, which no one is compelled to use, as the Salamancans say (tr. 5, c. 6, n. 61) after Suarez (*De Euch.*, disp. 88, sect. 6, § *Secundum caput*), and Gobat observes (tr. 5, n. 350), since to celebrate in a non-sacred place is opposed to many Canons. And hence an easy response offers itself to Cardinal de Lugo, who (*De Euchar.*, disp. 22, n. 14) tries to argue from a comparison of this privilege with the privilege of the Bull of the Crusade, by force of which someone can assist at Mass during the time of an Interdict. Diana excellently observes (tom. 4, tr. 2, res. 35, coord. ed.) that there is a disparity of reason between case and case. For in the case of an Interdict, the impediment being removed, no dispensation is made in common law; for Mass is both said and celebrated as it ought and is accustomed: but in this case, the impediment being removed, Mass is not celebrated as it is regularly and ordinarily celebrated, because it is said outside the church.

St. Alphonsus (lib. 3, n. 319), to the question, Whether sometimes the master is bound to use the privilege of the oratory, etc., responds: "Rightly Pasqualigo, Gatticus, and Fr. Fortunatus of Brescia affirm that the master is bound, if he can conveniently have a priest.... Hence, as Fr. of Brescia also rightly says with Nunez, Pasqualigo, and Gatticus, the privileged person is bound, if he conveniently can, to provide concerning a priest not only for himself, but also for others of the family, if any of them cannot approach the church."

But the holy Doctor better explains his mind (ibid., n. 324), where he writes: "But Busembaum rightly teaches, and it is common..., that one having the privilege of an oratory is not bound to hire a priest so that he himself may hear Mass." Therefore what he had said before (n. 319), "if he conveniently can," seems to be understood, unless he must hire a priest. But a little below he writes: "The same," that is, that he is more probably bound, "I think must be said with Collet, if you can hire a priest with a modest stipend." These things might seem not sufficiently consonant with what he had previously said was rightly taught and was common.

Whatever may be the case concerning this, when the question has been posed (ibid.) what if Mass is already said gratuitously, or can easily be had gratuitously, he responds: "Collet, and Croix with Lugo, Tamburini, and the more common opinion, as he asserts, say that he is more probably bound." And the holy Doctor aptly adds that phrase, "as he asserts," namely Croix (lib. 3, p. 1, n. 756); for on what foundation Croix wrote thus is not sufficiently apparent, unless perhaps he drew hither what others say concerning one having the Bull of the Crusade during a time of interdict.

But this must be held as certain, that against the most common opinion it is affirmed that any obligation is present of hiring a priest. And indeed to whom has it ever come into mind, if the discussion is not indeed of a privileged oratory, but of a church to which alone someone can approach, in which nevertheless he does not have Mass unless he himself gives a stipend to the celebrant - to whom, I say, has it come into mind that this person is bound to find a priest in such a way, so that he himself or someone else of the family may hear Mass? Tamburini rightly says of this (lib. 4, c. 2, §2, n. 4): "This precept obliges only to hearing Mass, but not to procuring it by a special stipend." Indeed Gobat (l.c., n. 552) does not hesitate to affirm that someone is not even bound "to induce by prayers a priest that he read the Sacrifice for you, whereby you may be able to satisfy the law."

But even if we abstract from the circumstance of some stipend to be paid, this must be diligently considered, that the opinion which imposes the obligation, even according to its patrons, is contained within the limits of mere probability. Indeed Cardinal de Lugo (l.c.), although he was treating of one having the Bull of the Crusade, was content to affirm that his opinion could not, even practically, be marked with improbability. But from the principle which St. Alphonsus so greatly defends and inculcates, mere probability in no way suffices for asserting and imposing obligations on the faithful. And these things may satisfy the VV., who (p. 921) oppose the opinion of St. Alphonsus to the opinion of the Author.

II. As Regards the Parochial Mass

349. ◦ I. It is certain that formerly there existed an obligation of assisting at the parochial Mass, at least once on three continuous Sundays; it is clear from the most ancient and universal custom of the Church, confirmed by innumerable decrees of particular Councils, especially of the Council of Elvira, can. 21, an. 343; of Sardica, can. 14 and 15, an. 347; likewise from Benedict XIV, *de Syn.*, lib. 11, c. 14, n. 7.

II. It is certain that the ancient law was partially derogated by privileges granted to Regulars, even after the Council of Trent. It is clear especially from the Constitution of Pius V (*Etsi mendicantium*, an. 1567), where it is said: The faithful of Christ, by hearing Mass and the other divine Offices in the churches of brothers of this sort, that is, mendicants, on Sundays and feast days, are to be reckoned to have satisfied the precept of the Church.

III. But it is certain that the same ancient law has universally been derogated by a general contrary custom long since legitimately prescribed. It is clear: 1. from the testimony of most theologians; 2. especially from Benedict XIV, *de Synod. dioces.*, l. 11, c. 14, where he asserts that the decrees of Councils and of Supreme Pontiffs establishing the obligation were derogated by contrary custom; indeed that a Bishop cannot compel subjects by penalties to hear Mass or a sermon in the parish, but that they are only to be exhorted, and that therefore the Constitutions of the Bishop of Meath issued about this matter were reformed according to the sentence of the sacred Congregation of the Council of Trent.

350. ○ **Q. Whether in France the aforesaid obligation still urges?**

Resp. **No.** The reason is that the ancient law has been completely abrogated by universal custom, which constitutes a certain common law, against which Bishops cannot rise, as Benedict XIV declared, ibid.; and consequently, if they rise against it by their own authority, they act illicitly and invalidly, since they exceed the power handed over to them by the Canons. - Thus Gousset, *Justification de S. Lig.*, n. 355, and in *Theolog.*, n. 555. - Bouvier, *de 3 Praec.*, art. 3. - Ritual of Belley, etc. And thus the Council of Reims, celebrated in the year 1850, t. 3, c. 6, declared, with which several other more recent Councils of France agreed in this.

Indeed the faithful are to be greatly exhorted to be frequently present at the parochial Mass and sermons; but they are not to be compelled to this under obligation. Yet the faithful of whatever region or nation, who lack necessary Christian instruction and are destitute of other means for procuring it, cannot be excused from fault if they always or for the most part neglect to be present at the parochial Mass, in which alone they can be instructed.

§ II. On the Causes Excusing from Mass

351. ○ Any moderately grave cause excuses from hearing Mass, or one which involves a certain moderate inconvenience or damage in the goods of soul or body, either one's own or a neighbor's. This is clear from common interpretation and custom, which is the best interpreter of laws. - Thus commonly. - St. Alphonsus, n. 324.

Resolves. - 1. The sick, the infirm, the convalescent, for whom it is harmful to go outside, are excused. Likewise those who must guard the sick. - St. Alphonsus, n. 325.

2. Travelers are excused, for whom no place occurs where they may be present at the Sacrifice, or who cannot interrupt the journey because public coachmen, or companions of the road without whom the journey would not be free from inconveniences or danger, refuse to stop.

3. Those are excused who guard a flock or a house, or who must prepare food, or perform similar necessary things; if nevertheless several Sacrifices are held, all, insofar as it can be done, ought to hear Mass successively. - St. Alphonsus, n. 326.

4. Mothers and nurses are excused, who have no one to whom they may leave little children, nor can they lead them to church without great disturbance of those present. If there are only two spouses, they will conveniently be able to be present at the Sacrifice by alternate turns. - St. Alphonsus, ibid. [1].

[1] ** St. Alphonsus adds (lib. 3, n. 330): "Widows are excused by reason of mourning, and also daughters and sisters." As regards the space of time, he adds that it is not to be extended up to a month, since St. Charles permitted only a month. Yet he adds that if there were another custom in some place, it would not be condemned as a grave sin. And rightly; for if the reason of excusing is custom, this ought to be valid in the same way for a month as for a longer time. This one thing is obscure: why he restricts the excuse to the limits of grave sin. For if such a custom truly flourishes, it does not appear why it would not excuse even from light fault.

5. Often those are excused who are distant far from the church, so that they cannot approach it without great difficulty, especially in the wintertime.

6. Servants are excused if they cannot omit their service without grave detriment to the master, or if they are prohibited by him and cannot easily find another master. Yet they ought diligently to take care that they remove the impediments, if they can. - Thus commonly. - St. Alphonsus, n. 327. - Reuter, n. 288.

352. **Questions. - Q. 1. What distance excuses from Mass?**

Resp. It cannot be assigned absolutely, but must be determined from the circumstances of persons, places, and times. But regularly a distance of three miles excuses, or a walking journey of one hour and a quarter, and even something less, if it were raining or snowing, or if another cause were present. - St. Alphonsus, n. 329; *Hom. apost.*, n. 41.

353. ○ **Q. 2. Whether a sick person is excused from Mass in doubt whether the inconvenience is grave enough?**

Resp. In this case one must stand by the counsel of a doctor, Superior, Pastor, Confessor, or another prudent man. Indeed a sick person can also acquiesce in his own judgment, if he judges prudently in this way. But what if, after counsel has been sought, he still remains doubtful? - Absolutely he is not bound to Mass, because, while the danger of grave damage stands, it must be judged that mother Church does not oblige. - Thus St. Alphonsus says very probably, n. 325. - In practice it is safer that a dispensation be sought, if it can easily be sought.

Q. 3. Whether the occasion of making a notable profit excuses?

Resp. **It is affirmed probably**, because the precepts of the Church do not oblige with a very grave inconvenience, as is clear from what was said in the Treatise on Laws, n. 100. But profit of this sort ought to be extraordinary. - St. Alphonsus, n. 332. - Elbel, n. 368. - See *Cases*, n. 347 and following.

Chapter II. On Those Things Which Are Prohibited on Sundays and Feast Days

We must treat: 1. of works prohibited on feast days; 2. of the causes on account of which they are sometimes licitly exercised.

Article I. On the Works Which Are Prohibited on Feast Days

354. ○ Three kinds of works must be distinguished: 1. servile works, or works of the body [1], which are accustomed to be done by servants or hirelings; 2. liberal works, or works of the mind, which are ordinarily exercised by free persons; 3. common or natural works, which are done indiscriminately by all. Forensic works also are distinguished, which pertain to the judicial forum or to the market. - St. Alphonsus, n. 272.

[1] Understand by works of the body those which both serve the utility of the body and are exercised by the powers of the body rather than of the mind. But works of the mind are those which are performed rather by the powers of the mind and tend rather to cultivating the mind. Yet this distinction does not contribute very much to defining what is lawful or not lawful. For in this matter much must be deferred to custom, by which it also happens that things which are lawfully performed in one place are not without reproach and offense in another.

Meanwhile this must generally be laid down in advance, that the character of a servile work must be drawn neither from the intention, nor from the profit received, nor indeed from the fatigue of the body. Thus to plow another's field will be servile, although it is done from mere charity and entirely gratuitously; on the contrary, playing the organ or dancing will not be servile, however long and laborious, nor transcription prolonged for the whole day for the sake of profit.

355. **Principles.** - I. Properly so-called servile works are prohibited per se under grave obligation to all the faithful on whole feast days, that is, through the whole natural day, from midnight to midnight. This is clear from canon law, c. 3, *de Feriis*, from custom and the perpetual practice of the Church [2].

[2] Nevertheless the Church, as a benign mother, that she might reconcile divine worship with the temporal utility of the faithful, has from time to time indulged in some places that on certain feast days servile works could be exercised after Mass had been heard. - See St. Alphonsus (lib. 3, n. 268).

II. Forensic works also are prohibited, namely forensic actions which are held with judicial apparatus, such as to interrogate the parties, to hear witnesses and advocates, to render sentence, etc. Thus from canon law, ibid. [3]. Yet except if sometimes a criminal cause already begun cannot be interrupted without grave inconvenience or damage. - St. Alphonsus, n. 284.

[3] Indeed from canon law (c. *Conquestus* 5, *De Feriis*) judicial acts held on a feast day are declared void.

Moreover, both the cause of necessity, as the Author adds, and also that of piety excuses. Causes of necessity are had: 1. if a thing or action would perish with time; 2. when the debtor is suspected of flight, squandering, or deterioration of the thing concerning which he is to be sued; 3. if the litigating parties, as poor and rustic men generally are, cannot appear or be called into court on other days without notable inconvenience; 4. if proceedings must be taken against robbers, and there is danger in delay (from L. *Provinciarum* 10, C. *De Feriis*), lest the "betrayal of the counsels" of criminals, as the law has it, be delayed; 5. if, on account of the atrocity of the crime, for the example and terror of others, it would be of public interest that the delinquent be publicly punished in a great concourse of people; 6. when there is danger of public or private damage, spiritual or corporal; because damage of this sort imposes moral necessity, and necessity has no law.

But by reason of piety and mercy, on feast days there can be expedited: 1. causes concerning food, prisoners, wards, widows, the poor, and the miserable; because in works of mercy a distinction of days is not to be had, as the gloss has at the final chapter, h.t., v. *Pietas;* 2. when otherwise, if cognizance of the cause were deferred, a pious cause would suffer inconvenience; because the highest reason is that which acts on behalf of Religion; 3. when piety and observance toward one's homeland requires this; 4. if the cause is matrimonial, and danger of incontinence is present unless judgment is made on feast days concerning the validity of the marriage and of the impediment; 5. on any holiday whatsoever, those things can be expedited which pertain to peace and concord; whence at the same time transactions and pacts can also be made. - Thus Schmalzgrueber (lib. 2, tit. 9, n. 52-55).

III. By the same law markets, fairs, public sales, and other similar things which are done with noise are prohibited. Nevertheless fairs appointed for a certain day are excepted, by reason of generally received custom, if they fall on a feast day. - Thus Benedict XIV declared, Const. *Ab eo tempore*, etc. - See St. Alphonsus, n. 286.

IV. Liberal works, common works, and some works which seem servile but are required for daily use, sustenance, necessity, and the disposition of the body, clothing, or house, are lawful; such as to cook foods, make beds, sweep the house, and other things which either cannot conveniently be deferred or anticipated, or are not accustomed to be so [4]. Thus from common practice and the sense of all.

[4] Here a subtle inquiry must be avoided, whether in matters of this sort something perhaps can be anticipated or deferred, lest we decline to empty observances of Judaism.

356. **Resolves.** - 1. Rural works are prohibited on feast days, such as to plow, dig up the earth, sow, reap, tend vines, etc. Likewise the works of mechanical arts, for example masonry, smithing, carpentry, tailoring, shoemaking, roofing, etc. Likewise most works which serve the typographic art. They probably except the setting of characters. - Elbel, n. 401. - Laymann. - Sporer. - Tamburini. - St. Alphonsus, n. 282.

2. Likewise it is not lawful to make certain things which require light labor and which are accustomed to be made by Nuns, for example rosaries, scapulars, wax images, artificial flowers, etc.; because these in common usage are numbered among servile works. Yet since these labors and other similar ones are rather light, and do not greatly occupy the mind nor greatly fatigue the body, according to several authors they can be permitted, provided they are not prolonged beyond two hours. Similarly the same Doctors excuse maidservants who are occupied in plucking roses or peeling apples, even when urgent necessity is excluded. - Thus Elbel, n. 408, Bonacina, Filiucci, etc. - But it seems rather that it must be said that in these works a greater space of time is required for lethal fault to be present. Thus St. Alphonsus opines, n. 282. - Yet they are not to be charged with any fault who spend a short time in such occupations [5].

[5] Here you have examples of opinions which, not without reason, you may think can scarcely, or not even scarcely, be reduced to common and received principles. For what does the fatigue of the body or the occupation of the mind contribute to the question of servile work? Is it that because the body is very lightly fatigued and the mind is occupied in nothing while spinning or knitting stockings with the hands, the work will be called less servile? Besides, if the work is not servile, why will it be permitted for only two hours? But if it is servile, why will it be free from fault to spend two hours on it? Therefore these things are better explained by reason of custom, which teaches the practice of observing precepts, and indeed legitimately establishes it.

But as regards scapulars or rosaries, another element enters besides, namely piety, if these labors are undertaken gratuitously and in a manner directed to fostering piety. In this matter custom and the sense of the faithful contradict the principle which we touched on above, namely that it makes no difference whether something is done gratuitously or for the sake of profit. For here there holds what, according to the sense of the faithful, must also be admitted concerning sacred vestments or certain ornaments of the Church to be made on a feast day: that these things are lawful if done gratuitously and for the honor of God; not lawful if they are done by an artisan for pay. And the reason is that in the one case a mere work of piety appears, but in the other by no means.

3. By received custom, foods, drinks, shoes, candles, cloth for making clothes, and other things of this sort are lawfully sold and bought in public shops. Yet merchants ought to close their shops [6], so that they may show that they distinguish the Lord's day from other days.

[6] In these things also custom claims very much for itself, and there is varied necessity according to varied places, and from this also varied diocesan laws congruent with the necessities of the place.

4. Houses, horses, cattle, and other merchandise, whether present or absent, whether in small or in great quantity, are lawfully sold and bought, even if notable time is spent on this, provided these things are done among private persons [7].

[7] The precept of not celebrating contracts, concerning which St. Alphonsus, lib. 3, n. 286, mentions a decree of St. Pius V and of the Congregation of Rites, has been derogated by custom, as Schmalzgrueber well observes (lib. 2, tit. 9, n. 23). Indeed St. Alphonsus notes (l.c.) that custom allows contracts not only to be celebrated privately, but also by instruments, provided they do not require judicial noise, for example testaments, instruments of betrothals, of sales, etc.; although he observes that in some places Notaries are accustomed to seek a general license for this, which otherwise is commonly granted. But again, also in these matters the customs of each place will have to be considered.

5. Public sales under the spear, after the divine Offices have been performed, are also tolerated in some places; because on other days there would be fewer persons coming together, etc. Likewise it is tolerated that merchants of things of small moment, in French *petits merciers*, carry goods from one place to another, show them, and sell them. - Bouvier.

357. **Questions. - Q. 1. Whether it is lawful to write or transcribe on a feast day?**

Resp. to the first. **It is affirmed**, because this work is wholly liberal, since in it the mind chiefly acts. - Thus all.

Resp. to the second. **It is affirmed**, also more probably, because to transcribe, like to write, is ordered to instructing the mind. - Thus commonly with St. Alphonsus, n. 279, against Billuart and others.

Hence 1. it is also lawful to sketch out the designs of craftsmen and builders, and to form musical notes. - Elbel, n. 400, and others.

2. Likewise it is also permitted to correct books, whether this is done by deleting lines, or by placing glued paper over them. For although this may seem servile, nevertheless it is accessory, since it is done accidentally by the one correcting. - Elbel, n. 401, etc.

Q. 2. Whether it is lawful to sculpt or to paint?

Resp. to the first. **No**, per se, because sculpture is commonly held among the mechanical arts. - St. Alphonsus, n. 281; *Hom. apost.*, n. 10. - Yet probably an exception must be made if there is question only of the perfection of the work.

Resp. to the second. It is disputed.

The first opinion affirms, because painting is a liberal art, or at least midway between liberal and servile arts; for it is something very similar to writing, provided nevertheless that the painting is done without great labor, such as would be had by mixing colors, preparing panels, etc. - Thus Laymann, Azor, Sporer, etc.

The second opinion denies, because it cannot be called a liberal action, since it is not directed, as writing is, to cultivating the mind, and because to paint is almost the same as to sculpt, which is a servile work. - Thus the Salamancans, Sanchez, Suarez, etc. - St. Alphonsus, n. 280, rightly calls each opinion probable [8].

[8] The probability of the first opinion, which affirms, is freely conceded even by those authors who followed the negative opinion: and therefore it is certain that it is not clear that that work is servile and prohibited.

Yet something in this matter also seems to have to be deferred to common sense, which exhibits custom, the best interpreter of laws. Now the common sense of the faithful, while it generally does not condemn the work of painting as servile, nevertheless abhors that apparatus which displays the hired labor of an artisan, especially in decorating walls with some ornament, as they say.

358. ○ **Q. 3. Whether it is lawful to paint images with a needle?**

Resp. It is disputed. Many excuse it: for this is referred more to exercising ingenuity than to laboring. - St. Alphonsus, n. 281. - Sporer, n. 45, etc.

Q. 4. Whether it is lawful to hunt and to fish?

Resp. **It is affirmed.** Because these are not servile works, and they are tolerated by custom, provided they are not done with great labor, exertion, noise, or apparatus. - St. Alphonsus, n. 283, and others commonly against a few.

Q. 5. Whether it is lawful to make a journey on foot, by horse, by carriage? - Likewise whether it is lawful to lead a carriage or laden beasts?

Resp. to the first. **It is affirmed**, as is plainly clear from universal practice. The opposite opinion must be left behind as antiquated, says St. Alphonsus, n. 275, after Roncaglia. Likewise it is lawful to use a litter carried by men, where such a custom flourishes. - St. Alphonsus, ibid.

Resp. to the second. It is disputed, outside the case of necessity. The opinion now more probable affirms that it is lawful, not only for continuing a journey begun, but also for beginning it, provided that for loading the carriage an immense and long labor is not required; yet from this labor there easily excuses either the cause of avoiding grave damage, or of procuring public utility, or custom, which perhaps has prevailed in a contrary direction in some place. - St. Alphonsus, n. 276.

Q. 6. Whether it is lawful to grind on a feast day?

Resp. **It is affirmed more probably**, if the mill is turned by water or wind, because little or almost no labor of men is required. But otherwise if it is driven by beasts, unless the cooperation of the man is slight. - St. Alphonsus, n. 277. - Lacroix, n. 578. - Tamburini, etc.

359. ○ **Q. 7. Whether it is lawful for barbers to shave the beard on a feast day?**

Resp. **It is affirmed.** The reason is drawn: 1. from general custom [9]; 2. because for the most part only on feast days do workmen, and especially rustics, seek the shops so that their beard may be shaved. Therefore if barbers did not furnish their work to those requesting it, these men would be left to their great detriment. - Thus Viva, Tamburini, Gousset, Bouvier, etc.

[9] ** Here what St. Alphonsus (lib. 3, n. 290) has concerning these customs is not to be omitted. "It must be noted," he says, "concerning custom, what Viva says, namely that a probable custom suffices for excusing; for, as the Salamancans say with Salas, Granada, etc., the saying of one distinguished doctor, even a modern one, who adduces a custom, suffices. But Mazzotta well observes that in doubt concerning custom the precept possesses, whence a dispensation must be sought; otherwise, if it is probable that the custom is present." Therefore in this place he seems to depart from that principle which they call of possession, concerning which see also the observations of the VV. above in the note to Q. 5, n. 79.

Q. 8. What matter is grave in a work performed on feast days?

Resp. Many require at least three hours. St. Alphonsus, n. 305, after bringing forward several opinions, inclines more to the opinion of Lacroix, generally concluding that the more common and more probable opinion now is that it is not mortal unless one works at least much beyond two hours, say two and a half hours. - And in *Homo apostolicus*, n. 25, he adds with Mazzotta that even a greater space of time is excused by some necessity. He adds, n. 307, that in forensic and judicial matters the quantity of matter is not drawn from the quantity of time, but from the quality of the work.

Q. 9. Whether he sins gravely who on a feast day commands six servants to work for an hour?

Resp. **No, more probably per se**, whether the servants work simultaneously or successively, because the works of the servants are not united into one, and each sins only venially; therefore the master

inducing them to a work forbidden under venial fault sins only venially. - St. Alphonsus, n. 306, and others more commonly.

Article II. On the Causes on Account of Which Servile Works Can Be Permitted on a Feast Day

Three principal causes are numbered, namely charity, piety, necessity.

360. ○ I. **Charity toward neighbor.** Hence on a feast day it is lawful: 1. to do what is necessary for relieving the sick; 2. to dig a grave for burying the dead; 3. to labor for some determinate poor person, to whom by reason of grave necessity it would be lawful to labor [1]; yet, according to grave theologians, not for the poor in general, unless there is question of making clothes or other things of this sort which ought to serve the use of the poor, but not for gaining money which is to be distributed to the poor [2]. - St. Alphonsus, n. 294; *Hom. apost.*, n. 17.

[1] Thus, for example, since it is lawful for a poor person to mend his clothes or clean them, it will be lawful also for others to furnish these services to him gratuitously.

[2] ** By this distinction the Doctors who seem at first glance to dissent are reconciled, as if some required an extreme or certainly grave necessity of the poor person for undertaking certain works for the poor (see St. Alphonsus, lib. 3, n. 293), while others judge that a common necessity suffices. These latter, namely, are treating of things, for example clothes, to be granted for their use; but the former of making a work, the payment for which may be given to them as alms. Consequently St. Alphonsus writes less to the matter (l.c.) to the question, Whether on feast days it is lawful to make clothes for the poor: "Viva, Tamburini, Sporer, Roncaglia, and the Salamancans say that it is then only lawful to labor when the poor person is actually in grave need." But these Doctors do not raise the question about making or mending a garment for a poor person, but about him who labors so that afterward he may distribute alms from the profit.

II. **Piety toward God.** On account of piety it is lawful: 1. to do all works closely serving the worship of God, such as to adorn the church, the altar, etc.; 2. to sweep the Church, and to prepare other things which pertain to its cleanliness. But it is not lawful to build a Church, repair it, cut stones for this, make ornaments, etc.; because these serve divine service more remotely. - St. Alphonsus, n. 292-293; *Hom. apost.*, n. 17. [3].

[3] Among works of the former kind St. Alphonsus, from the opinion of others, which he reports without censure (lib. 3, n. 293), also reckons making ornaments for a needy Church, namely one which does not have revenues equal to these things, as, for example, to arrange silk flowers, to sew carpets, altar cloths, purificators, corporals, chasubles, and other things of this sort, etc.

But as regards the latter things, although he judges as more probable the opinion which denies that these are lawful, nevertheless he admits (l.c.) that labors of this sort are lawful if the church is poor. Then from the opinion of the Salamancans and others he adds: "Because nearly all churches and monasteries in these times labor under want, therefore for these, and for hospitals, confraternities, and similar places, men can lawfully labor by building churches, reaping crops, cultivating fields, etc."

Yet note two things as regards practice: 1. in reality these labors are not accustomed to be undertaken unless pious places truly labor under poverty; 2. faculty from the Ordinary has been accustomed to be sought also for avoiding the scandal of the people.

361. ○ III. **Necessity**, either one's own or another's, both of soul and of body. Hence:

1. The poor are excused who otherwise cannot support themselves and their own, provided they labor privately and with scandal excluded.

2. All are excused whose works already begun cannot be interrupted without great damage, such as those pouring iron, etc.

3. Bakers likewise are excused, who must have fresh bread so that they may satisfy buyers.

4. Likewise tailors who make funeral or nuptial garments, which neither by themselves nor through others are they able to complete before the feast.

5. Likewise farmers who, on account of past or imminent rain, turn, bind, or carry hay or crops.

6. Likewise servants compelled to labor, if they cannot easily and quickly find another master without great inconvenience.

7. Smiths are excused who shoe horses on the road or brought by rustics, or repair plowshares necessary for farmers on the following day; and also those who repair carriages accidentally broken, bridges, or public roads, if the work cannot be deferred without loss of the public good.

8. Those also are excused who labor for public utility while some necessity urges, for example if there is question of celebrating a victory, of preparing a feast for the arrival of a Prince, or for the sake of some other public rejoicing.

9. Those also are probably excused who labor on account of the circumstance of notable and extraordinary profit, because for them to omit such a profit is the same as to suffer grave damage [4]. - St. Alphonsus as regards all these things, from n. 296 to n. 304.

[4] The reason from St. Alphonsus (lib. 3, n. 301) is that those who sustain themselves by labors have rare occasions of acquiring such great profit, and judge that they sustain great damage when they lose a great profit; for to lose something and to be prohibited from acquiring what cannot be acquired further coincide in the same thing.

But although as many as have been enumerated thus far do not need a dispensation, nevertheless the faithful are to be advised that, if they conveniently can, they should ask leave from the ecclesiastical Superior, lest, namely, deceived by cupidity, they labor without a cause sufficient for excusing and with the scandal of others. But here the Superior is understood especially as the Bishop; although he cannot give a general dispensation for all his subjects, much less a permanent one, since that would be equivalent to the suppression of feast days, yet as regards some acts with particular persons he can dispense from a reasonable cause; indeed custom grants this faculty even to the parish priest.

10. But they are not to be excused, indeed they are severely to be rebuked, who more often extend labor begun after midnight into the feast day even under the pretext of necessity; because for the most part that necessity is voluntary for them, since very often they cast themselves into it, either by assuming more works to be completed by a certain day than they can fulfill, or by not applying that number of workers which the work would require, or by wasting time during the week on useless things. You would more easily excuse those to whom a work to be completed for the following feast day had been handed over on the preceding day.

362. ◦ **Q. Whether the reason of avoiding idleness excuses?**

Resp. **No**, speaking commonly. For that reason is altogether insufficient for setting aside so grave a law of the Church. Laymann, Mazzotta, etc., make an exception if the idleness induces a probable danger of sinning; because, they say, if danger of temporal damage excuses, *a fortiori* danger of spiritual damage ought to excuse. But St. Alphonsus, n. 362, more willingly restricts this to the case in which a temptation would urge, which could not be overcome otherwise, which rarely happens. - See *Cases*, n. 354 and following.

On the Fourth Precept of the Decalogue

"*Honor thy father and thy mother.*" Exod. 20. 12.

This precept primarily and directly regards the obligations of children toward parents; but secondarily and implicitly it looks to the obligations of parents toward children, and also to the mutual obligations of other Superiors and inferiors.

Chapter I. On the Obligations of Children toward Parents

363. ○ Children are bound toward parents by a most special obligation. But three offices must be shown by children to parents under the title of piety, namely love, reverence, and obedience [1]. For parents have a threefold relation to children, namely by reason of cause, by reason of preeminence, and by reason of governance. Consequently children must love them as the authors of their existence, reverence them as Superiors, and obey them as rulers delegated by God.

[1] Love, obedience, and service or reverence, which are owed to other men from the virtue of charity, or of observance, etc., insofar as they are shown to parents, pertain to another virtue; because offices of this sort are specially owed to them as the authors, after God, of our life and education; and therefore the adequation of this debt pertains to the special virtue which is called piety. Yet this piety toward parents differs from piety toward God, which consists in the pursuit of interior devotion and pertains to the virtue of Religion. See St. Thomas (2. 2, q. 101, art. 1 and 3, and q. 102, art. 1).

I. Love

Children must love parents with love both internal, following them with a pious and benevolent affection of heart, and external, warding off every notable evil and injury from them, and also showing them signs of external benevolence, and assisting them according to ability when they are placed in necessity. This is clear from natural law. Therefore, although our progenitors may have defects however grave, and in whatever way they may have conducted themselves toward us, nevertheless we owe them life and preservation, which is indeed the greatest of all benefits. Hence Ecclus. 7. 29, 30: *Honor thy father, and forget not the groanings of thy mother. Remember that unless through them thou hadst not been born; and repay them, as they also did to thee.*

364. **Resolves.** - 1. Children sin gravely against the virtue of piety if inwardly they hold their parents in hatred, or outwardly show them signs of hatred; if they treat them harshly, or look upon them with fierce eyes, just as if they held them in hatred.

2. A fortiori, if they wish evil to them, even death itself, so that they may live more freely, or be able to obtain their inheritance, or so that they may be freed from care and custody of them; if

before others they seriously detract from them; if by force, deceit, or other unjust means they impede them from making a testament, etc.

3. Likewise, if they provoke them to anger and bring grave sadness upon them without a just and grave cause, especially if they sadden them even to tears. For thus in Prov. 19. 26: *He who afflicts his father and drives away his mother is shameful and unhappy.* And Ecclus. 3. 18: *He is cursed by God who exasperates his mother.*

4. If they do not supply food and other necessaries to parents gravely in need, compelling them to beg or to exercise an art unbecoming their state; if they do not visit them when sick, afflicted, or worn out by old age, or do not sympathize with them and refuse to bring help to them; but especially if they do not assist them in spiritual necessities, namely so that the Sacraments may be administered to them at the article of death, etc. Finally, if when they have departed this life they do not take care that the funeral rites and ceremonies of the Church be paid in a manner congruent with their condition. - St. Alphonsus, n. 333.

II. Reverence

365. ○ Children must show reverence to parents, both internal, namely so that they acknowledge them as Superiors and therefore also have reverential fear toward them, and external, which is situated in words and deeds. Hence Ecclus. 3. 9: *In work and word, and in all patience, honor thy father.* And ibid. 8: *He who fears the Lord honors parents, and will serve as masters those who begot him.* - Deut. 27. 16: *Cursed is he who does not honor his father and mother, and all the people shall say: Amen.*

366. **Resolves.** 1. Children sin gravely if they strike their parents, even lightly, but injuriously. This crime even in ancient times seemed so atrocious that formerly among the Hebrews whoever had admitted it was punished with death, Exod. 21. 15: *He who strikes his father or mother shall die the death.* - Likewise if they show the will of striking, for example by raising the hand against them, or by seizing a stick or other instrument for striking. Likewise if in any way they direct threats of this sort against them, etc.

2. They sin gravely if they curse their parents, as is clear from the words of Exod. 21. 17: *He who curses his father or mother shall die the death*; or if they cast insults against them, and affect them with injuries or contumelious words by which they know that they are to be gravely offended; if they gravely mock them by laughter, derisions, gestures, reproaches, mockeries, a fierce look, etc., provided nevertheless that these things are done from contempt, and not from levity or simple rusticity. For thus Prov. 30. 17: *The eye that mocks a father... let the ravens of the torrents pluck it out, and let the young of the eagle eat it.*

3. They sin gravely, speaking per se, if they reprehend them very proudly and bitterly, exasperate them by contradictions, or address them with harsh words, or without cause affect them with grave sorrow; and *a fortiori* if by these things they provoke them even to grave anger; if they studiously refuse them signs of reverence according to the custom of their country or of their condition, for example if they do not rise when they come, or do not uncover the head, or do

not greet them, provided nevertheless that from these things the parents judge themselves gravely offended.

4. Likewise if they despise them as poor, wretched, badly clothed, or blush for them, or refuse to acknowledge them, or hold them as unknown and strangers. Yet except if, with contempt and pride excluded, for a just cause they pretend that they do not know them, for example to avoid some inconvenience which the son would incur if his parents were known, etc.

Q. Whether children sin gravely by striking, or by treating badly and irreverently, parents who are dull, insane, delirious from old age, drunk, etc.?

Resp. **It is affirmed**, if they act from malice or contempt. This is clear from the example of the unhappy Ham, son of the patriarch Noah, who was cursed by his father and by the Lord Himself because he had acted irreverently toward his father seized by drunkenness. Yet otherwise, if a rebuke or some treatment a little more severe is necessary for restraining parents lacking reason.

III. Obedience

367. ○ Children must furnish obedience to parents in all lawful and honorable things pertaining to their care, while they are under their power. This is clear from natural law and from Scripture, Ephes. 6. 1: *Children, obey your parents in the Lord; for this is just.* - Coloss. 3. 20: *Children, obey your parents in all things; for this is pleasing to the Lord.*

368. **Resolves.** - 1. Children sin more or less if in a matter looking to morals, the salvation of the soul, and the governance of the house they are unwilling to hear their parents, although thoughtlessness or defect of age excuses them in part.

2. Likewise, if notwithstanding a serious prohibition of the parents they frequent depraved company, dice or other games of this sort, or dangerous places, such as taverns, dances, theaters, or other similar places; daughters sin especially who, against the will or even without the knowledge of the parents, converse with suitors, or go out from the house at night, or speak alone with lovers.

3. Likewise if, with the mandate of the parents neglected, they notably omit the Sacraments or other offices of religion; if they are unwilling to give effort to letters or arts congruent with their state, and so consume time and render useless the expenses made for them.

4. Likewise, if they refuse to execute things which greatly pertain to good government and the peace of the family, or if they wish to administer all things according to their own will, with the authority of the parents despised, especially if they respond arrogantly and proudly: I will not do it; attend to your own affairs. - I wish nothing be commanded me. - You bring me weariness and disgust, etc.

5. Nevertheless, in practice, the disobedience of children can not rarely be excused from grave sin on account of levity of mind, inadvertence, or on account of a certain human negligence, and very often on account of smallness of matter. Indeed often they must be judged immune from all fault on account of defect of a rigorous precept on the part of the parents. For in order that

sin, especially grave sin, be committed against obedience, it is required that the parents seem strictly to command, and not merely to advise, solicit, or signify their mind. But a true precept is discerned to be imposed from the serious or severe manner in which the thing is commanded, and from other circumstances, for example from the necessity and greatness of the thing prescribed, from an added penalty, etc.

6. But in depraved things, children neither ought nor are able to obey. This is clear from natural law. Likewise from sacred Scripture. For thus Acts 5. 29: *It is necessary to obey God rather than men.* - Matt. 10. 37: *He who loves father or mother more than Me is not worthy of Me.*

369. **Questions. - Q. 1. Whether children are bound to obey parents in the choice of state?**

Resp. **No, per se**, because every man, as regards the manner of tending to God as his ultimate end, is altogether independent of other men [2]; and therefore parents sin gravely who force unwilling children, either directly or even indirectly, to choose a state, whether religious, or clerical, or conjugal; or contrariwise, if they impede them, altogether unwilling, from choosing some state of life without a just cause.

[2] Understand the manner of tending to God as regards the state of life. For to tend to God as the ultimate end is through any acts whatsoever; yet we are not so independent from other men in any acts whatsoever that we are not bound not only by ecclesiastical and civil laws, but also by the precepts of parents even in those things which look to the worship of God, as in fact the Author himself noted above, n. 368, res. 3.

Two principles which St. Thomas uses bear more on the matter, namely: 1. that God calling is to be obeyed more than men contradicting; 2. that in those things which pertain to the nature of the body, man is not bound to obey man, but only God, because all men are equal by nature: "Whence children are not bound... to obey parents concerning contracting marriage, or preserving virginity, or some other such thing." See 2. 2, q. 101, art. 4, and q. 104, art. 5.

I said **per se**. For it must be said otherwise if parents contradict children for grave and reasonable causes, for example if, being placed in grave necessity, they need the assistance of a son, and he cannot help them in another way except by remaining with them. - St. Alphonsus, n. 335. - Elbel.

Q. 2. Whether children can embrace the religious state without the knowledge of the parents?

Resp. **Per se it is affirmed.** Indeed sometimes a son will act more prudently if, feeling himself divinely called to the religious or clerical state, and observing that access will be unjustly closed to him by his parents, he conceals the matter from them and executes the divine will. Yet this is not to be advised to children who are minors, as often as the matter does not urge so much, or it is not sufficiently clear concerning the divine vocation. - St. Alphonsus, l. 4, n. 68. Especially in France, and where the same disposition of the laws flourishes, one must beware of furnishing such counsel to minor children, since by the aid of the secular arm parents can take them away from any place whatever and recall them to themselves.

370. ◦ **Q. 3. Whether children can enter marriage without consulting the parents?**

Resp. **No**, speaking generally, as regards lawfulness. See what is to be said in the Treatise on Matrimony, c. 3.

Q. 4. Whether a minor son can give his name to the army against the will of the parents?

Resp. He can, from the French civil Code, art. 374, provided he has reached the age of eighteen years; yet this seems to be valid only for the external forum; except unless sufficient causes are present, for example if the son is treated entirely badly in the paternal home, etc. - Thus commonly. - See *Cases*, n. 359 and following.

Chapter II. On the Obligations of Parents toward Children

Parents owe children: 1. love; 2. education.

The reason of this obligation is founded in the very bowels of nature and in the title of generation. For nature teaches each, indeed even brute animals themselves, which love their offspring and seek out necessary things for preserving their life.

I. Love

371. ○ Parents must follow children with an internal love, efficacious and ordered, so that they not only put off every hatred and malevolence of soul, but love them from the heart, and, as much as lies in them, care for their good and provide for them in every matter. For just as each one ought to love himself, so parents are bound to love children sincerely, as something of themselves, flesh from their flesh, so that after God they have nothing dearer than them.

Hence parents sin more or less against the special virtue of piety:

1. Who are inflamed with a depraved affection and unjust hatred against their children, disdain them by their look, or seriously imprecate grave evils upon them, and do not assist them when there is need.

2. Who call them by gravely contumelious names. For thus they provide an occasion of anger to them, and make them morose and contumacious, contrary to that saying of the Apostle, Ephes. 6. 4: *And you, fathers, do not provoke your children to anger.*

3. Who manifest their hidden delicts to outsiders without just cause. Yet parents can reveal these things to each other, because they communicate in the power of punishing, and it is often expedient that they be known to each for forestalling the perversion of the children, etc.

4. Who love them with an inordinate affection, so that they grant or permit all things to them, lest they sadden them; or who, using untimely goodness, act too remissly toward them, and whether from sluggishness or from cruel benignity, neglect to draw them back from vices by serious precepts or other efficacious means.

5. Who favor one more than the others without just reason, and look upon the rest indifferently, or even hold them as adulterine; for this love of one before the rest is a source and occasion of quarrels, disputes, divisions, and infinite evils in families.

II. Education

The education of children, both corporal and spiritual, must be procured by parents.

I. Corporal Education

372. ○ Corporal education requires a threefold providence from parents, namely by reason: 1. of life; 2. of sustenance; 3. of state.

I. **By reason of life.** Parents are bound to bear diligent care for offspring from the very conception, to avert all things which can be harmful to it, and to keep watch lest it be exposed to any danger of life.

Hence per se they sin gravely: 1. women who do not take care lest the fetus in the womb be destroyed by inordinate wantonness, dances, heavier burdens, running or a long journey, excessive anger, or more vehement sorrow; 2. husbands who treat pregnant wives harshly, affect them with grave blows, or impose immense labors on them; 3. spouses who do not take care lest little children be suffocated, placing them still very tender in bed with themselves without any barrier, or do not take care lest any evil in whatever way happen to them from water, fire, beasts, iron instruments, etc.

II. **By reason of sustenance.** Parents are bound to procure for children whatever things are necessary for sustenance, dwelling, and clothing congruent with their state and condition. Hence parents sin: 1. who do not assist children suffering necessity [1], until they themselves are able to provide for themselves by labor or industry; 2. who cast children out of the house while they are not yet able to look after themselves, or who compel them to beg or to exercise a base art alien to their condition.

[1] As regards the obligation of supplying corporal helps, St. Thomas beautifully notes the difference between the obligation of parents toward children, and conversely of children toward parents. "The father," he says, "has the character of a principle; but the son has the character of one existing from a principle. Therefore per se it belongs to the father to assist the son, and on this account he must assist him not only for the present hour, but for his whole life," which is to treasure up. "But that the son confer something on the father, this is by accident by reason of some pressing necessity, in which he is bound to assist him, but not to treasure up, as it were, for the long term" (2. 2, q. 101, art. 2, ad 2).

Q. Whether a mother ought to nourish little children with her own milk?

Resp. **It is affirmed**, with the common opinion, because natural law seems to demand this. Yet this obligation does not urge under grave obligation, because otherwise a grave disorder does not appear. But necessity, notable utility, or a custom flourishing among noble families, etc., excuses from all fault; but then under grave obligation the mother must substitute for herself a nurse good as regards morals and health. - St. Alphonsus, n. 336. - Collet, etc., and others commonly against others more lax or more rigorous.

373. ○ III. **By reason of state.** Finally, parents are bound to procure for children a state in which at some time they may live honorably according to their condition. - Hence they sin:

1. Who do not apply at least moderate diligence so that they may acquire goods from which they may suitably sustain their children and provide for their future state, according to that saying of the Apostle, 2 Cor. 12. 14: *For children ought not to treasure up for parents, but parents for children.*

2. Who do not teach their children an art congruent with their state or another kind of living decently, nor take care that they be taught.

3. A fortiori, those who by laziness, negligence, drinking, feasting, games, imprudent business, dissipate the family estate.

4. Who, without legitimate cause, obstinately deny a daughter a suitable dowry for entering marriage or entrance into religion. - St. Alphonsus, n. 335.

II. Spiritual Education

374. ○ Parents are especially bound to procure spiritual education for children. The reason is that man, besides material or corporal existence, which he has in common with the other animals, is endowed by God with a rational and most noble soul, created to the image of the Divinity Himself; and he has been founded so that he may tend to God as the supernatural ultimate end. Therefore he must especially be instructed and directed to this end by parents; for matrimony has been raised to the dignity of a Sacrament for this reason, that the offspring born may be reborn in Christ and be prepared for eternal life. Hence the Apostle, 1 Tim. 5. 8: *If anyone does not have care of his own, and especially of those of his household, he has denied the faith and is worse than an infidel.* - But for this education there is required: 1. doctrine; 2. correction; 3. example.

I. **Doctrine.** Parents are bound, per se or through suitable instructors, to teach children in good morals, in the observance of the commandments of God, in faith, and in all things necessary for salvation, because they must teach them in the way by which they may come to God. Hence Deut. 11. 49: *Teach your children* (my words) *that they may meditate on them.* - Ecclus. 7. 25: *Are children yours? Instruct them from their childhood.*

Therefore parents must diligently take care: 1. that children be regenerated by the grace of Baptism as soon as possible; 2. that from most tender childhood they teach them the principal heads of Christian doctrine and incline their hearts to God; 3. that from the first years they accustom them to morning and evening prayers, to the Offices of the Church and Catechisms, and also turn them away from the deceptive allurements, pomps, and pleasures of the world; 4. that they set over them teachers conspicuous in doctrine and especially in gravity of morals; 5. that they watch day and night lest they be corrupted by depraved companions, conversations, and readings.

375. ○ II. **Correction.** Parents are bound to correct delinquent children. Hence Prov. 13. 24: *He who spares the rod hates his son.* - And 23. 13: *Do not withdraw discipline from the boy; for if you strike him with the rod, he will not die.* - Ibid. 14: *You will strike him with the rod, and will free his soul from hell.* - Ephes. 6. 4: *And you, fathers, do not provoke your children to anger, but educate them in the discipline and correction of the Lord.*

But correction, in order to be useful, must be moderate and prudent. For immoderate chastisement is known to harm more than to profit, since it renders children morose, stupid, pusillanimous, and sometimes affected with desperation; indeed, in place of the love owed to parents, it is accustomed to beget contempt or even deadly hatred.

III. **Example.** Parents owe good example to children, because: 1. examples draw in some way more efficaciously than words to following, especially if they are furnished by Superiors; 2. because if parents themselves are known to be imbued with evil morals, their words will move children little to

follow good morals. - Hence St. Jerome, epist. 7 to Laeta, says: *Remember that you, parents of a virgin, can teach her more by examples than by voice.*

376. **Resolves.** - 1. Parents sin gravely who, spending all care only on temporal things, so forget spiritual things that not even they themselves know the things which are necessary for obtaining salvation, much less instruct their children or take care that they be instructed.

2. Parents sin gravely who, so that they may spare expenses, altogether neglect the spiritual education of their children.

3. Parents sin gravely per se who, by excessive indulgence, notably neglect to correct children when otherwise this would be necessary; but no less do they sin who proceed against children with too grave penalties, for example if they mutilate them, or inflict on them a grave wound or blows and beatings so grave that their life or health receives notable detriment.

4. Parents likewise perpetrate a twofold sin when they utter filthy words and obscene speeches while the children are listening, spew out curses and imprecations, belch forth oaths and blasphemies. For by these depraved examples they bring it about that the children learn all these things and imitate the same.

5. Parents sin gravely, at least generally, who send children to heretical or impious schools, or commit them to a heretical or impious teacher, or one ruined in morals, so that they may learn the human sciences. But how many incautious and cruel progenitors in our times bind themselves by so unspeakable a crime! From them the most just Judge will require soul for soul in the tremendous judgment. - See *Cases*, n. 368 and following.

377. **Questions. - Q. 1. What are the obligations of other blood-relations ascending and descending?**

Resp. They are generally the same with due proportion as those of parents with respect to children, and vice versa; for all these, by reason of the generation of some by others, are bound to one another by a strict bond of piety, especially if, when parents are lacking, ascendants assume the care of grandchildren. - Thus all.

Q. 2. What are the mutual obligations of brothers and sisters?

Resp. 1. They ought to follow one another with mutual love, not only with common affection, as other men, but with a peculiar love on account of the close bond of blood.

Resp. 2. They ought also to assist one another as regards the necessities of life, not only in extreme necessity, but also in grave necessity. - Thus all. - See St. Alphonsus, n. 340.

Chapter III. On the Obligations of Spouses

378. ◦ I. Spouses are bound:

1. To mutual love. For since they are one flesh, they must also be one heart. Thus Ephes. 5. 25: *Husbands, love your wives, just as Christ also loved the Church.* - Tit. 2. 4: (Wives) *are to love their*

husbands.

2. To conjugal society and cohabitation. This is clear from the nature and ends of matrimony, and from the words of Christ, Matt. 19. 5: *A man shall leave father and mother, and shall cleave to his wife, and the two shall be in one flesh.*

3. To food and whatever pertains to the honorable sustaining of their condition, to be furnished to one another: *For now they are not two, but one flesh*, Matt. 19. 6. - *For no one ever hated his own flesh, but nourishes and cherishes it*, Ephes. 5. 29.

4. To rendering the conjugal debt to one another, when it is seriously sought and no legitimate cause of denying it is present; because they bound themselves to this. Hence the Apostle, 1 Cor. 7. 4: *The woman does not have power over her own body, but the man; and likewise also the man does not have power over his own body, but the woman* (namely in order to generation).

379. ○ II. The husband is bound in particular:

1. Studiously to manage the family estate, and to administer with due diligence both common goods and the proper goods of the wife.

2. To take care that the wife fulfill the duties of the Christian profession and execute the precepts of both divine and ecclesiastical law. For the man is the head of the woman and the ruler of the whole family; and therefore the right governance both of the wife and of the other members of the family pertains to him.

3. To correct a delinquent wife, where this work is needed for her amendment and for forestalling scandal. But correction must proceed from charity or love of justice or zeal for procuring the right governance of the family, and be much lighter than the fault deserves, because the wife is the companion of the man, not a slave. Care must besides be taken lest peace and love perish between them.

380. ○ III. The wife, on her part, is bound:

1. To reverence the husband, because he is her Superior, as is clear from what has been said and from the words of Gen. 3. 16: *Thou shalt be under the power of the man, and he shall rule over thee.*

2. To furnish obedience to him; because obedience is owed to a Superior in those things which pertain to governance; and the Apostle to the Colossians 3. 18 says: *Women, be subject to your husbands, as it is fitting in the Lord.*

3. To bear care of the house in the family estate, and therefore to perform the offices of the family, such as to prepare foods, sweep the house, wash linens, mend torn clothes, and furnish other things of this sort. Yet a noble wife can fulfill the lower offices through servants or maids, provided she watches over them and takes care that the domestic matter is well managed.

381. **Resolves.** - 1. A husband can sin gravely if he pursues his wife with insults, for example by calling her an adulteress, a witch, etc.; if without just cause he impedes her from fulfilling

divine or ecclesiastical precepts, or from very useful devotions, for example from discreet frequency of the Sacraments; if he treats her in a tyrannical manner like a vile slave; if he does not cohabit with her; if he neglects the governance of the family, etc. - St. Alphonsus, n. 356.

2. A wife likewise can sin gravely if she is accustomed to deride and mock her husband; if by harsh words, contumacious disobedience, or excessive moroseness she provokes him to anger and blasphemies, etc.

3. The husband ordinarily ought to begin correction of the wife by words gentler words, and if these do not profit, to come down to graver correction. Sometimes he must dissemble the defects of the wife, when he can do this without sin, and not be excessive in correcting; but sometimes he should defer correction for a time, lest correction seem to proceed from the heat of anger and lack fruit, while the wife is less disposed to receive it.

4. Let the confessor not immediately believe a spouse complaining against a spouse, especially if the wife inveighs against the husband; because women generally are prone to lying. Wherefore it is better, with the matter dissembled, to commend to them prayer, patience, mildness, and greater solicitude for furnishing services to the husband.

5. Let the wife be silent while the husband is angry or drunk; if an admonition seems likely to profit, let her admonish while the husband is well disposed; if an angry man must be answered, let her answer gently: for a soft answer breaks anger, and a hard one arouses fury. If these obtain nothing, let her take care that the husband be admonished through the Parish Priest or another prudent man.

Chapter IV. On the Obligations of Other Superiors and Inferiors

The obligations which regard other Superiors or inferiors, with due proportion observed, are generally the same as the obligations of parents and children. Hence we shall say only a few things: 1. concerning the obligations of masters and servants; 2. of teachers and disciples; 3. of citizens toward temporal authority.

But concerning the offices of Parish Priests and other ecclesiastical Superiors in the Treatise on particular states, where the clerical state will be treated.

Article I. On the Obligations of Masters and Servants

§ I. On the Obligations of Masters

382. ○ Masters are bound: 1. to treat their servants benignly; 2. to instruct and correct them; 3. to pay them a just price.

I. **To treat benignly**, that is, by addressing them and commanding them decently and humanely, furnishing good and sufficient food, not burdening them with excessive works, and conveniently caring for the sick. This is clear from natural law and from sacred Scripture, Ecclus. 33. 31: *If thou hast a faithful servant, let him be to thee as thy soul; treat him as a brother.* - Ephes. 6. 9: *And you, masters, do the*

same things to them (servants), *forbearing threats, knowing that both their Lord and yours is in heaven, and there is no acceptance of persons with Him.*

II. **To instruct and correct**; for the master is the head of the servant, as of the whole family; but it belongs to the head to direct where there is need. It also seems to be clear from the words of Paul, 1 Tim. 5. 8: *But if anyone does not have care of his own, and especially of those of his household, he has denied the faith and is worse than an infidel.* But servants are reckoned among domestics. - Elbel, n. 590, and others commonly.

III. **To pay a just price**; for there is question of an obligation of justice and natural equity; whence the defrauding of such wages is numbered among the sins crying to heaven.

Resolves. - Masters can sin, and indeed even gravely:

1. If they do not grant servants time for learning the rudiments of the Christian Faith, or do not send them to catechism and sermon; if they do not take care that they confess and communicate at the due time.

2. If they hire, or retain in the house, servants who are irreligious, impious, blaspheming, or speaking filthy things; if they do not admonish and correct those sinning gravely, or do not dismiss those unwilling to promise amendment, unless perhaps they especially need their work and cannot find others.

3. If they do not have care, as much as lies in them, that servants abstain from sins; if they permit them an occasion of sinning; if by depraved example or solicitations they induce or entice them into sin.

4. If they do not pay the promised or just stipend, or delay too much; if they do not care for sick servants and immediately cast them out, or dismiss them without just cause before the appointed time.

§ II. On the Obligations of Servants

383. ○ Servants are bound to furnish to masters:

1. **Reverence**; for thus the Apostle, 1 Tim. 6. 1: *Let servants reckon their masters worthy of all honor.* From this they can sin even gravely who deride their masters, scorn them, or manifest their hidden defects.

2. **Service and obedience** in all those things to which they have bound themselves by force of the contract, and in those things which look to good morals; thus Ephes. 6. 5: *Servants, obey carnal masters with fear and trembling in the simplicity of your heart, as Christ.* - And 1 Pet. 2. 18: *Servants, be subject in all fear to masters, not only to the good and modest, but also to the froward.*

Hence by reason of the matter they sin more or less who, when something is commanded to them, murmur, answer insolently, waste time uselessly, neglect to perform the prescribed labor, or work for themselves with damage to the master; and in one word, all those who do not furnish such service as ordinarily is accustomed to be demanded and furnished by such persons.

3. **Fidelity**; according to the words of Paul to Titus 2. 9: *That servants be subject to their masters..., not defrauding, but showing good faith in all things.* Hence they sin, and often gravely, against justice who do not have care of things entrusted to them, who through their own fault allow them to become worse, who steal costly victuals, or those not accustomed to be given to them, whether for eating or for giving or selling to outsiders.

Article II. On the Obligations of Teachers and Disciples

384. ○ I. Teachers and preceptors owe disciples: 1. love; 2. example; 3. correction; 4. doctrine. The reason is both because in a certain way they conduct themselves after the manner of parents, and because they are instituted to teach disciples in sound doctrine of morals and letters.

Therefore they must: 1. perfect themselves in the science which they teach, for duly instructing others; 2. promote the progress of the disciples in letters as much as lies in them; 3. turn them away, as much as they can, from others who are disgraced by depraved morals, and whom they ought in no way to admit in their schools.

Hence preceptors can offend even gravely when they neglect the instruction of disciples, or punish them unjustly or indiscreetly; but especially if they seduce the same, by impelling them to sins, for example carnal sins; if they do not teach good morals; if on purpose they teach false things as true, or things harmful to salvation; if they admit or retain pupils imbued with evil morals, who may be pernicious to others, etc.

385. ○ II. Disciples are bound to show teachers:

1. Love and reverence, on account of the superiority and care of the same.

2. Obedience, while they are taught by them in good morals and arts. The reason is clear: for this is implied by the reciprocal obligation of disciples toward teachers, who would plainly be bound in vain to instruct them or imbue them with good morals unless the disciples were likewise bound to follow the admonitions and precepts of the teachers.

Hence disciples sin if, far from studying diligently, they wear away time in idleness, play, or other foolishness against the will of their teachers; but much more gravely if they detract from the teachers, deride them, mock them, or affect them with curses, calumnies, annoyances, etc.

Article III. On the Obedience and Reverence of Citizens toward Temporal Authority

386. ○ From natural law and positive divine law we are bound, under the title of piety, to furnish reverence and obedience to our civil Superiors. For they hold the place of God Himself in the temporal order toward us. For thus the Apostle to the Romans 13. 1 and following: *Let every soul be subject to higher powers, FOR THERE IS NO POWER EXCEPT FROM GOD; and those which are, are ordained by God. Therefore he who resists power resists the ordinance of God. But those who resist acquire damnation for themselves... For he* (the Prince) *is*

the minister of God, an avenger unto wrath for him who does evil. Therefore be subject by necessity, not only because of wrath, but also because of conscience.

Wherefore the Catechism of the Council of Trent compares and joins an obligation of this sort with that by which we are bound toward paternal and ecclesiastical authority. For in part III, on the fourth commandment, §15, after it taught that parents and ecclesiastical Superiors are to be honored with due honor, it adds: "Likewise the same must be said of Kings, Princes, Magistrates, and the rest to whose power we are subject." But it explains this thus: "For if we render some honor to them, this is referred to God; for the excellent grade of dignity has the veneration of men, because it is in the likeness of divine power: in which also we venerate the providence of God, who attributed to them the administration of public office and uses them as ministers of His power." It is also clear from sacred Scripture, especially 1 Pet. 2. 13, where it is said: *Be subject therefore to every human creature on account of God; whether to the King as excelling, or to governors as sent by him...* And ibid. 17: *Honor the King.* - See also St. Justin, *Apol.* 1. 47. - St. Theophilus of Antioch, *ad Autol.*, lib. 1, c. 11. - St. Clement, *Const.*, c. 12. - Tertullian, *ad Scap.*, c. 2. - St. Gregory Nazianzen, Or. 17. - St. Chrysostom, Hom. 6 *ad Ant.* - St. Irenaeus, *adv. Haeres.*, l. V. 24. - St. Augustine on Ps. 124, n. 7, and *De Civit. Dei*, l. V. 10, 11, 14, 15. - Confer also the Encyclical Letters of Gregory XVI and Pius IX.

387. ○ **Q. Whether it is sometimes lawful not to obey temporal authority, and whether it is sometimes lawful to rebel?**

Resp. The doctrine of sacred Scripture, of the Fathers, of Councils, of the Supreme Pontiffs, of the Catechism of the Council of Trent, of St. Liguori, *Hom. apost.*, tr. 8, §13, and also of the Encyclical of Gregory XVI, 15 Aug. 1832, which expresses the whole Catholic tradition, can be resumed in a few words concerning this question thus.

To the first. Just as it is evident that human authority is never to be obeyed in those things which are evidently against the law of God, so in those things which are licit per se, Princes are altogether to be obeyed, EVEN THE FROWARD, and also those who abuse their authority. From these most pure sources, namely Scripture and tradition, Gregory XVI says in the Brief of 9 June 1832, we are most plainly taught that the obedience which men are bound to furnish to the powers constituted by God is an absolute precept which no one can oppose.

To the second. It is never altogether lawful to rebel. "Too pernicious in this matter," says St. Liguori, "was the principle of John Gerson, who dared to assert that a monarch can legitimately be judged by the whole nation if he governs the kingdom unjustly...: a principle, I say, not only false, but most pernicious... But what remedy is present if the governance of the Prince were excessively tyrannical? The remedy which is available," says St. Thomas, "is to recur to God, that He may furnish aid." - *Hom. apost.*, tract. 8, n. 13.

But, says St. Thomas, in order that the people may merit obtaining this benefit from God, they must cease from sins, because in vengeance for sin, by divine permission, the impious receive power. *De Reg. princ.*, lib. 1, c. 6. - See especially the Encyclical Letter of Gregory XVI, 15 Aug. 1832 [1].

[1] These things are confirmed from article LXIII of the *Syllabus of the principal errors of our age*, proscribed by our Most Holy Lord Pope Pius IX, which reads thus: It is lawful to refuse obedience to legitimate princes, and indeed to rebel.

On the Fifth Precept of the Decalogue

"*Thou shalt not kill.*" Exod. 20. 13.

388. ○ This precept, insofar as it is negative, prohibits primarily homicide, that is, the unjust killing of a man; but secondarily and consequently every unjust injury, wounding, or mutilation of the body, whether one's own or another's [1]. But insofar as it is virtually positive, it commands the preservation of life.

[1] Certain divisions of homicide are accustomed to be handed down here, as that one is casual, and another voluntary, and this latter either direct or indirect. But especially homicide simple is to be distinguished from qualified, namely having another species of sin adjoined. Of this sort is: 1. sacrilege, either by reason of the person killed or by reason of the place in which the killing is done; 2. parricide, namely the slaughter either of parents or of children, or of brother or sister, or of a spouse, or even of a Prince; 3. robbery, namely killing or wounding from the will of plundering; 4. magical poisoning, namely when by the aid of the demon bodily evil or even death is brought upon someone.

Also numbered among qualified homicides are customarily: 1. treacherous homicide, namely perpetrated under the appearance of friendship; 2. assassination, both on the part of the hirer to kill and on the part of the one hired; 3. simple poisoning. Yet these distinctions, which some have incautiously transferred as if to diverse moral species, merely serve to measure the gravity of the crime in the external forum; for as regards the forum of conscience, they constitute a merely aggravating circumstance.

Moreover, those things which will be established concerning killing, whether licit or illicit, will have to be applied, with due proportion observed, to mutilation or any injury of the body.

We must treat: 1. of killing oneself; 2. of killing the neighbor; 3. of duel; 4. of war.

Chapter I. On the Killing of Oneself, or on Suicide

389. **Principles.** - I. It is never lawful for anyone to kill himself directly, that is, from intention and by his own authority [1]. This is clear: 1. from the divine precept: *Thou shalt not kill.* Exod. 20. 13. - *I will kill, and I will make alive.* Deut. 32. 39. - *For Thou art, O Lord, who hast power of life and death.* Wisd. 16. 13. 2. From natural law. For man does not have direct dominion over his body, nor over his life, but only useful dominion and administration, since he does not have these from himself, but has received them from God [2], and he must return them to God alone when He demands them. Therefore a suicide injures the supreme dominion of God by destroying a thing not his own. He also injures society, of which he is a part, as St. Thomas says, 2. 2, q. 64, art. 5 [3].

[1] Namely, divine authority being excluded. Yet Lessius suggests that this crime can be excused by ignorance according to the sense of the holy Fathers (*De Iust. et Iur.*, lib. 2, cap. 9, n. 23).

[2] Why man, who has received from God both life and extrinsic goods, has dominion of these goods but not likewise of his own life, Molina (*De Iust. et Iur.*, tom. IV, disp. 1, n. 1) and Lugo (*De Iust. et Iur.*, disp. 10, n. 9 and 17) explain excellently.

The reason can be added that the present life is essentially the condition of a man serving God, and therefore subject to His laws and obeying His precepts; from which condition afterward he obtains either reward or punishment in the future life. But: 1. it ought not to be in the power of one serving God to end the time of serving according to his own choice; and 2. much less ought it to be in his power to be able, with impunity and at pleasure, to withdraw himself from the precepts of God perhaps troublesome to him. But each inconvenience of this sort would follow if man were free to place the end of his own life whenever it pleased him. Therefore.

[3] The canons of the Church forbid suicides to be buried in a sacred place. Yet this is not to be understood of those who killed themselves from fury, insanity, or a passion of most grave sadness with imagination disturbed, or who before death truly grieved concerning this (St. Alphonsus, lib. 3, n. 375). The reason is that the pious mother Church is not accustomed to inflict this penalty unless it is clear that someone, while he killed himself, was plainly in possession of himself. But in doubt whether a suicide was endowed with full judgment, one must incline in his favor, although such persons have been accustomed to be buried with less ceremony, for example with only one or another priest accompanying.

But from common civil law, both suicides and those who attempt this crime, even when death has not followed, are punished with the penalty of infamy.

II. Without divine authority it is never right to place an external act tending per se immediately to one's own destruction, unless that act has another good and immediate effect which alone is intended, and a most grave reason urges that this good effect be obtained. The reason is that where a physical act, even one per se indifferent, has no other effect than suicide, it now becomes evil, since no reason is present by which the precept of preserving life and of guarding against danger of death ceases. Therefore in any case whatever it is prohibited.

III. It is lawful to concur indirectly in the killing of oneself, or to place an action from which, besides one's intention, one's own death will certainly follow; provided from that action there follows equally immediately some good which compensates the loss of life, and this alone is intended. The reason is clear from what was said in the Treatise on Human Acts, where voluntary indirect is treated, n. 9.

390. **Questions. - Q. 1. Whether it is lawful to set fire to a ship or tower so that the enemies may suffer grave damage, but with certain loss of one's own life?**

Resp. **It is affirmed**, at least more probably; because it is expedient that public damage be avoided, or the common good be procured, even with the most certain damage of private persons. - Lugo, Lessius... - St. Alphonsus, n. 367 [4].

[4] St. Alphonsus (lib. 3, n. 367, q. II) brings in Doctors on this matter as if dissenting, and for the negative opinion he also alleges St. Thomas (2. 2, q. 64, art. 5). But in reality there is no dissension among the Doctors; they prefer a diverse solution of the question only because they establish a diverse hypothesis or question. And so St. Thomas and others with him deny that this is lawful for avoiding a private inconvenience, or for escaping other miseries of this life, for example captivity or even death to be inflicted on oneself by others. But this does not fight against the common opinion of others, that this is lawful where the cause of the public good or the reason of averting public damage intervenes.

Q. 2. Whether a virgin can expose herself to danger of death for preserving chastity?

Resp. **It is affirmed**, at least if death is not certainly going to follow, and this both on account of love of chastity and on account of the danger of sin which is rather often had in such an occasion. Thus commonly theologians. - Indeed more probably it must still be affirmed, although death is certainly going to follow and there is not a proximate danger of consent; because even the integrity of the body alone is esteemed most highly. - St. Alphonsus, n. 366; *Hom. apost.*, n. 1. - Laymann, etc.

Q. 3. Whether a virgin is bound to permit herself to be killed rather than violated [5]?

[5] Note that the question is posed whether she is bound, not whether it is lawful; for all agree that it is lawful to suffer death rather than the loss of modesty. Moreover, Taberna says that a girl does not sin if, on account of evident danger of death or of immense infamy, she does not apply all means for repelling the ravisher, for example if, when she could, she does not kill him, does not call out to the neighborhood, but merely suffers intercourse, nevertheless with every danger of consent excluded. But although more than fifty Authors hold this proposition in published books..., among whom are St. Antoninus, Sylvester, Soto, Navarre, Toletus, Lessius, Reginald, Gonet, etc.; nevertheless it is not expedient to propose it

publicly..., because it is apt to cause abuses especially among the uneducated. Thus Croix, lib. 5, part. 1, n. 916, where Fr. Ant. Zacharia added a not useless note.

The opinion of Cornelius a Lapide on Daniel, chap. XIII, v. 23, where he treats of Susanna provoked by the elders to sin, also bears on this: "Yet in such a danger of infamy and death, Susanna could have conducted herself negatively, and permitted their lust upon herself, provided by an internal act she had not consented to it, but had detested and execrated it; because reputation and life are a greater good than modesty, whence it is lawful to expose this for that... But that she cried out... was an act of distinguished and heroic chastity: for such is to prefer to die than to be polluted."

Resp. **No, probably**, at least speaking speculatively, provided she positively resists by the will, and the proximate danger of consent is absent. The reason is that this permission is not formal cooperation in the sin of another, but material only; and a just cause of permission is present, namely danger of death. Yet this practice does not seem to be counseled when a danger of some consent can prudently be feared.

Q. 4. Whether it is lawful for a guilty person to present himself before a judge, although he must certainly be punished by death?

Resp. **It is affirmed.** Because that action per se is indifferent, indeed also honorable; for in the case to will to die is equivalent to willing the order of justice; and just as it is lawful from a just cause to desire death for another, and even to procure it in a legitimate manner, so also for oneself. - Lugo. - Lessius. - St. Alphonsus, *Hom. apost.*, n. 2.

391. **Resolves.** - 1. Each one is bound to preserving life, since no one can cast away the gift of this life without sin, and not to preserve life is equivalent to taking it from oneself [6].

[6] ** Nevertheless, from the most common opinion of the Doctors, it is lawful to yield a plank to a friend in a shipwreck even with certain loss of life; indeed from St. Thomas this would be of the most perfect virtue (see Fagundez, *In Dec.*, lib. V, cap. 12, n. 18). St. Alphonsus also agrees (lib. 3, n. 366), even if the plank has already been taken, and to confirm this he reports the remembered doctrine of St. Thomas. But then he is moved by the scruple of Sylvius, who (In 2. 2, q. 26, a. 1) does not concede this unless on account of skill in swimming the danger of death is absent. Whence St. Alphonsus adds: "But Sylvius rightly observes that he cannot, in order to yield the plank, throw himself into the sea, because no one can positively kill himself." But these things are with difficulty reconciled with the preceding; for if he has already taken the plank, the lowering or throwing of himself into the sea is a necessary consequence of the plank yielded, even according to Sylvius, who says: "If he has already begun to use the plank, he does not seem able to relinquish it unless he throws himself into the sea."

Moreover, as Fagundez (l.c.) observes, you can indeed lawfully yield the plank then, but you are not bound, other things being equal. Other things being equal, I say; for you could be bound if the public good required that the life of the other be preserved; and on the contrary it would not be lawful if from the loss of your life grave damage were threatening others, for example a family necessarily to be supported.

2. It is never lawful to place, with the intention of killing oneself, an action from which death is going to follow, although only by accident; because [7] it is never lawful to will a forbidden thing and to reduce this will to act.

[7] The reason is sought from the preceding resolution, or also from principle II above, n. 389, of which here you have a repetition.

3. Someone is not bound to preserve life by extraordinary remedies, or those which bring the greatest pain. The reason is that there is no obligation of preserving life except by ordinary means, namely those which neither bring great inconveniences, nor demand expenses

immense according to the varied condition of each person, nor cause very bitter pains, etc. Thus, for example, you are not bound for the sake of preserving life to suffer the amputation of a leg or arm, or an incision of the belly for extracting a stone. - St. Alphonsus, n. 372.

4. A virgin is not bound to suffer an operation by the hands of a physician, even if life is in danger, when on account of shame this befalls her as something most grave and brings upon her a greater horror than death itself. - St. Alphonsus, ibid.; *Hom. apost.*, n. 2.

5. It is never lawful to macerate the body for shortening life, nor, even with such an end excluded, gravely to ruin health by immoderate and altogether indiscreet penances. Yet it is lawful from virtue to use penances ordinarily grave with a certain shortening of life, because from the common opinion of the Doctors, on account of merit or the mortification of depraved nature, some loss of a longer life can be contemned. - St. Alphonsus, n. 371; *Hom. apost.*, n. 2.

6. Craftsmen do not sin who climb upon the roofs of buildings and expose themselves to various dangers where there is need; nor blacksmiths who daily lessen their life by handling fire; the reason is that they do this from a reasonable cause. On the contrary, bold men sin gravely who from a rash wager and vain glory cast themselves without cause into grave dangers by climbing high, letting themselves down, carrying heavier burdens, etc., etc.

7. It is not lawful to mutilate oneself unless it is necessary for the preservation of the whole body, because man is not the master of his members, but only the custodian, and whatever man is, the whole is God's, nor does he have any other dominion over his body except useful or indirect dominion. Yet St. Alphonsus does not reject as improbable the opinion affirming that this is lawful for the preservation of the voice, if other conditions are present [8]. - St. Alphonsus, l. 3, n. 374.

[8] The conditions from St. Alphonsus are that moral danger of life be absent, and that it not be done to boys unwilling. The reason of this opinion is, says St. Alphonsus, both because eunuchs are useful to the common good for singing divine praises in churches more sweetly, and because the preservation of the voice must be said to be a good of no small moment in them, since through it they notably change their condition for the better..., and therefore so great a good seems to be a just cause that with it such a harm of the body can lawfully be compensated; so much the more because this is daily brought into use and is tolerated by the Church, as Elbel says. Benedict XIV, although he inclined to the opinion which he called more common, that voluntary emasculation is not to be excused from sin, nevertheless advises Bishops not to wish to prepare troubles and offenses for themselves without cause by eliminating singers of this sort from musical choirs. *De Synod.*, lib. 2, cap. 7, n. 3-6.

8. It is not lawful to mutilate oneself for a spiritual good, or for avoiding any sin whatever. For as St. Thomas says, "spiritual safety can always be assisted otherwise than by the cutting off of a member, because sin is subject to the will. And therefore in no case is it lawful to cut off a member for avoiding whatever sin" (2. 2, q. 65, art. 1, ad 3) [9].

[9] Add that mutilation of this sort indeed renders someone impotent for generating, yet it does not exempt from carnal temptations. But the discipline of the Church brands with the mark of irregularity the eunuch who, outside the necessity of saving life, has furnished consent to his mutilation. Benedict XIV, *De Syn.*, lib. 2, cap. 7, n. 5.

9. More probably it is lawful for one to cut off for himself a hand bound by a chain, for avoiding death threatening from a beast, or a tyrant, or a fire, because the part must yield to the good of

the whole man. - Lugo, *de Iustitia*, disp. 10, n. 22. - Lacroix, n. 786. - Billuart, against others. - See *Cases*, n. 376 and following.

Chapter II. On the Killing of the Neighbor

Namely: 1. of the killing of a guilty person; 2. of an aggressor; 3. of an innocent person.

Article I. On the Killing of a Guilty Person or Malefactor

392. **Principles.** - I. It is lawful to kill malefactors by public authority. The reason is that this is a necessary means for procuring the common good of the whole society, indeed for preserving society itself; and this, for the most part, can be obtained only by the death of criminal men. But God must be said to have conferred the power without which society could not stand. It is also clear from the practice of every legislation, from sacred Scripture, and from the universal consent of all.

II. But it is not lawful to kill malefactors by private authority. Because no one can kill another without power; but private persons have received no power of this sort from God, for, lest all things be filled with slaughters, this power has been given only to the Superior of the whole civil society. Therefore [1].

[1] It is in no way opposed to this doctrine that civil laws have sometimes, with certain conditions observed, given faculty of killing now one adulterer, now both, which laws Cardinal de Lugo mentions (*De Iust. et Iur.*, disp. 10, n. 84). For, as St. Thomas has (In 4, dist. 37, q. 2, art. 1): "The civil law reckons as quasi-lawful that he" (the husband) "kill her in the very act, not as prescribing, but as not inflicting the penalty of homicide on account of the very great incitement which the man has in such a deed to the killing of the wife. But the Church is not bound to human laws, so that it should judge him to be without guilt of eternal punishment or of punishment to be inflicted by ecclesiastical judgment from the fact that he is without guilt of punishment to be inflicted by secular judgment."

Moreover the holy Doctor himself meets the difficulty which could be sought from c. *Si vero* 3, *De Sent. excomm.*, namely that he is immune from the excommunication of the Canon who lays violent hands on a cleric shamefully found with his wife, mother, sister, or own daughter. For St. Thomas responds (ibid., ad 5): "From this it is not proved that" (wife-killing) "is simply lawful, but as regards immunity from some penalty: because excommunication is also a certain penalty."

To these add proposition XIX, condemned under Alexander VII, which reads thus: A husband does not sin by killing on his own authority his wife detected in adultery.

393. **Resolves.** - 1. It is lawful for no one to beat someone not subject to his power, unless there is added at least the tacit consent of him who has power, for example of a father over a son, of a teacher over a disciple; for beating is a punishment, but this supposes governing power. Except unless this is necessary for averting a present injury, as will be said below. - Reuter, n. 369.

2. It is not lawful for a father to mutilate or kill his own children, nor for a master his own servants, for the sake of correction. The reason is that to punish by mutilation and killing, which inflict irreparable damage, surely requires perfect power, which neither father nor master has. - Billuart.

3. An elder brother by birth cannot beat younger brothers unless this has been commanded him by the father, or unless, the father being dead or absent, he himself rules the family; because primogeniture does not confer such a right on him. - Billuart and others.

394. **Questions. - Q. 1. Whether soldiers ordered to seize and guard a malefactor can kill him while fleeing?**

Resp. **No**, even if he has already been condemned to death; because by force of their office, and with a special mandate of the Prince excluded, guards can only restrain the guilty man. - St. Alphonsus, *Hom. apost.*, n. 9.

Q. 2. Whether it is lawful to kill a tyrant?

Resp. 1. It is certain that it is not lawful to kill a tyrant of governance, or a legitimate Prince tyrannically ruling and even oppressing the people; for it is necessary to obey masters even when froward. 1 Pet. 2. 18. - Thus commonly with St. Alphonsus, *Hom. apost.*, n. 13.

Resp. 2. Nor is it lawful to kill a tyrant of usurpation if he has already come into possession of the kingdom. But the opposite opinion must be called improbable and false, because according to St. Thomas a usurper must be held as legitimate, at least in practice, if afterward the subjects acknowledge him as such. Besides, the public good requires that obedience be furnished to him [2] for forestalling disturbances and overthrows of the commonwealth. - St. Alphonsus, ibid. Resp. 3. Nor is it lawful to kill a tyrant or unjust usurper, even if he is not yet in possession of the kingdom, except from the authority of the legitimate Prince, or from just defense, or in an act of war of the Republic against him; for it is never lawful to kill a man by private authority. - Thus commonly, and it is to be held certainly. - St. Alphonsus, ibid. - Recall what was said at the end of the fourth precept, n. 387.

[2] A tyrant surely sins by usurpation of authority, whether while he makes laws, or while he renders judgment, or imposes tributes, etc. For he usurps for himself the authority of a prince, although he is not a prince.

Nor does he sin only by invading the commonwealth or provinces, but afterward both he himself and his heir sin continually by preserving them oppressed and subject to themselves; since they continually oppress and inflict injury, just as one unjustly casting someone into prison not only sins at the beginning, but continually also afterward, as long as he continues this calamity of another.

There is also added this, that while a tyrant sins by retaining usurped power, he has at the same time another obligation, namely of providing for the common good of the usurped province; and therefore he sins still more if, when there is need, he either does not render law, or does not restrain the guilty, etc. The reason is that he harms the citizens still more gravely and inflicts a greater injury; just as someone who retains another's thing and uses it sins by using, and at the same time sins by not using, if the use of the thing is necessary lest it perish or become worse.

And plainly singular is this condition of the unjust usurper of public authority, that on the one hand he is guilty by retaining usurped power, but on the other he binds himself by a new crime if in the meantime he does not sufficiently consult for the society which he holds oppressed.

Yet this necessity of consulting for order or the common good does not excuse the usurper from guilt both of usurpation and of the use of power unjustly obtained; for this necessity is consequent upon the crime of retaining usurped power, by which he prevents order in the society from being provided for through the legitimate prince.

Nevertheless it is lawful for the inhabitants of the usurped province to furnish those things which are necessary for preserving order, without which the society itself could not be preserved. Nor can they only lawfully furnish this, but they are also bound. For the necessity of preserving the community or society itself requires this. And to this pertains what the Doctors commonly have, that laws and sentences issued by a tyrant are to be observed if they are just and honorable per se, although they are not just insofar as they are issued by an illegitimate power. The reason is that society cannot stand unless it is ruled by some power, laws, and judgments. But laws, sentences, etc. of this sort then cannot be had except those which are issued by the tyrant. Therefore these are to be observed.

Nor indeed does this introduce any approval of tyranny. For subjects do not observe those laws as if they had or professed the legitimate power of the usurper, but because the natural law commands that some order be observed; and since that order alone is then possible, the law of nature orders this to be observed. And this plainly has the sense of what the Doctors say, that society to this end confers on the usurper the power of making laws, governing, instituting judgments, etc.; but by no means that any legitimate right is thereby acquired for the usurper.

Article II. On the Killing of an Unjust Aggressor

395. **Principles.** - I. It is lawful for each one to defend his own life even with the killing of an unjust aggressor; for each one has the right of preserving life unjustly attacked. Therefore he can defend it through necessary means, and consequently even by mutilation or killing of the aggressor, if he cannot otherwise snatch himself from death; for by natural law it is lawful to repel force by force. It is also clear from canon law, especially c. *Si vero* 3, *de sent. excomm.*, where it is said: All laws and all rights permit force to be repelled by force. - See St. Alphonsus, n. 380.

II. In just defense against an unjust aggressor the moderation of blameless defense must be observed, or nothing must be done except that which is absolutely necessary for protecting oneself; because what necessity does not excuse is against justice.

396. **Questions. - Q. 1. Whether it is lawful to kill a drunken or insane aggressor [1]?**

[1] This question pertains rather to the following article, where the killing of the innocent indirectly intended is treated. For here anyone is called innocent who attacks you or in any way tries to harm you without crime.

Resp. **It is affirmed more probably**, unless it is clear to you that he is in a state of mortal sin. The reason is that although a drunken or insane man is not your formally unjust aggressor, nevertheless he is materially unjust, and you preserve your right of repelling force by force. But if you certainly know that he is in a state of mortal sin [2], since he is in extreme necessity, charity requires that you prefer his eternal salvation to the preservation of your temporal life. But otherwise, if he were in possession of himself; for his own evil would have to be imputed to him.

[2] Yet Lugo notes (*De Iust. et Iur.*, disp. 10, n. 145) that the case in which this is certainly clear will be very rare. Besides, some prudent hope ought to shine forth that the aggressor, for example one demented, if spared, will obtain salvation. Finally, unless by flight it is lawful to withdraw oneself from the invader, for it is unbecoming to no one to avoid by fleeing the attack even of a drunk or insane man, it is not forbidden to injure the aggressor by striking or wounding him in such a way that both life is preserved for him and at the same time he is then rendered unable to harm.

Q. 2. Whether it is lawful to defend an innocent neighbor by the killing of the aggressor?

Resp. **It is affirmed** in every case in which it is lawful to defend one's own life; and this by reason of charity. - St. Alphonsus, n. 389. Yet a private person rarely seems to be bound to this [3]. - Thus commonly. - St. Alphonsus, n. 390.

[3] Namely the precept of charity does not oblige with grave inconvenience; but in the killing of another great inconvenience can scarcely ever be avoided on account of fear of enmities, of public justice, etc. - Thus St. Alphonsus.

Moreover, St. Ambrose also is authority that this obligation is sometimes present; from him St. Thomas (2. 2, q. 60, art. 6, ad 2) writes out these words: "He who does not repel an injury from his companion, when he can, is as much in fault as he who does it." To this bear also the words of Innocent IV reported in c. *Dilecto* 6, *De Sent. Excomm.*, in VI: "Since it is lawful for anyone to impart his help to his neighbor or proximate for repelling the latter's injury; indeed if he can and neglects, he seems to favor the one inflicting injury, and to be participant in the same fault," etc.

397. ○ **Q. 3. Whether it is lawful to kill an unjust aggressor also for defense of the members?**

Resp. **It is affirmed**, with the common opinion, against a few. The reason is that each one has the right of preserving a good most necessary to himself for life, even with danger of the life of another, provided another means is lacking and the death of the aggressor is not intended. - St. Alphonsus, n. 380.

Q. 4. Whether it is lawful to defend goods of fortune of great moment by killing the thief, if otherwise they cannot be retained?

Resp. **It is affirmed**, at least more probably. The reason is drawn from what was said in the preceding question; for each one has the right of preserving goods of great moment according to his condition, and by that very fact of applying means absolutely necessary for this. On the other hand, the precept of charity does not oblige one to prefer the goods of the neighbor, although of a higher order, unless the neighbor is in extreme necessity; but otherwise when he spontaneously exposes himself to danger of death. - St. Alphonsus, n. 382.

398. ○ **Q. 5. Whether it is lawful for a woman to kill an invader of chastity?**

Resp. **It is affirmed more probably.** The reason is that chastity is a good more excellent than riches; therefore if it is lawful to kill an unjust aggressor of goods of fortune, this will be lawful *a fortiori* for preserving chastity. - St. Alphonsus, n. 386, and others commonly [4].

[4] Add: 1. that neither striking, nor mutilation, nor killing for defending chastity induces irregularity or the penalty of excommunication, even if the invader is a cleric.

Add: 2. that it is right to kill an invader of another's chastity, just as it is lawful for the one herself suffering force. Thus St. Alphonsus (lib. 3, n. 391), who nevertheless limits this: unless the woman consents, or at least if she positively does not resist. These latter words of St. Alphonsus are plainly to be understood of a woman who does not resist when she can, and therefore by conducting herself negatively is reckoned to consent interpretatively, as in fact the Salamancans understand them (*De Praec. V.*, cap. 1, n. 97), from whom St. Alphonsus took these things. For if the woman in reality suffers force, and according to what was said above (note to q. 3, n. 390) conducts herself only passively so that she may avoid a greater evil, this limitation has no place.

Q. 6. Whether it is lawful to kill another for the preservation of honor?

Resp. **No**, at least speaking practically; because honor can generally be preserved by other means, and therefore an assault upon honor cannot be compared with an assault upon life and other goods. Besides, otherwise an approach would be opened to innumerable slaughters [5].

[5] St. Alphonsus (lib. 3, n. 381 and 391) aptly distinguishes whether the assault upon honor is made by words only, or also by deeds. For if there is question of words, and, for example, it is said contumeliously to an honorable man, "you lie," the injury can, ought, and is accustomed to be repelled otherwise; and striking or wounding would have the character not of defense but of vengeance.

But if honor is attacked by deeds, the matter is to be judged differently after the deed than before the deed. For an injury to the aggressor after the deed, unless there is question of correction to be applied with boys and others of this sort, would be vengeance, not defense; and to this pertains the second part of proposition 50 proscribed by Innocent XI. But if the matter concerns him who is going to try to injure honor by deeds, then the things which the Author adds in the fifth resolution are valid. For an obligation of conducting himself passively cannot be imposed on anyone while another in contempt tries, for example, to pluck his beard, or to strike him with a slap, or to soil his clothes, etc.; but surely it will be lawful for him, with the moderation of blameless defense observed, to repel the injury; and if indeed the obstinate aggressor applies force to

inflict the predetermined injury, and when repelled also seizes arms, it will certainly be right for the other to repel force by force, and to oppose arms with arms. See Croix, lib. 3, p. 1, n. 803.

For this reason Alexander VII rightly condemned the following proposition, number 18: It is lawful to kill a false accuser, false witnesses, and even the judge from whom an unjust sentence threatens, if by another way an innocent person cannot avoid damage [6]. Attend besides to proposition 30 condemned by Innocent XI: It is right for an honorable man to kill an assailant who strives to bring in calumny, if this calumny cannot otherwise be avoided: the same also must be said if someone strikes a slap or beats with a stick, and after the inflicted slap or stroke of the stick flees. - See St. Alphonsus, n. 381.

[6] Proposition XVII, condemned by Alexander VII, bears rather on this, which has thus: It is lawful for a Religious and Cleric to kill a calumniator threatening to scatter grave crimes concerning himself or his Religion, when another manner of defending is not available, as it does not seem to be available if the calumniator is prepared to fasten the aforesaid things either upon the religious himself or upon his religion publicly and before most grave men, unless he is killed. For proposition XVIII treats not only of loss of honor, but of other damages.

Moreover some seem to have brought Religious and clerics into the middle because in these the loss which can be feared from calumny was more evident. And hence others had taken occasion to affirm that this indeed was forbidden to Religious and clerics, but not to laymen (see Croix, lib. 3, p. 1, n. 800); to this evasion an opening was afterward closed through proposition XXX condemned by Innocent XI.

Moreover, the reason for the condemnation is hardly obscure, namely the danger of abuses threatening from this doctrine; since this is intrinsic to the doctrine itself, this is enough that it be judged to be reproved. For as Lugo observes concerning a similar case (*De Iust. et Iur.*, disp. 10, n. 189): "If these inconveniences per se follow from that opinion, certainly it will not be probable even speculatively; for for the speculative probability of a moral matter it is necessary that the matter be such that in human circumstances it does not bring inconveniences which render it illicit; but if of itself it brings such inconveniences, by that very fact it is intrinsically illicit even speaking speculatively." But thus the matter stands in the present material. For: 1. it will never be evident that grave infamy cannot be declined otherwise than through the killing of the calumniator, or judge, etc. (see Viva on proposition XVII of Alex. VII, n. 4). 2. Since men easily hallucinate through passion, slaughters would be multiplied without cause from mere suspicions. And so a remedy of this sort against calumnies, to which such grave inconveniences are necessarily connected, had to be forbidden by the very law of nature.

399. **Resolves.** - 1. It is not lawful to kill a thief carrying away a thing of lesser moment, even with the resistance of the owner; because although such taking happens with a special injury to him on account of violence, nevertheless an injury of this sort is not judged grave according to the estimation of men. - St. Alphonsus, n. 383 [7]. Yet the owner is not bound to let the thing go, and, with the moderation of blameless defense observed, can defend himself if the other brings force against his person for taking it away.

[7] So that this question may be turned over more clearly and exactly, a threefold case must be distinguished.

The first is when not so much the value of the thing is attended to as the injury inflicted on the owner of the thing, because with him present, and in vain forbidding, shouting, threatening, and retaining the thing, the thief withdraws it. And to this pertains the opinion of St. Alphonsus (lib. 3, n. 383) that by reason of such contempt and dishonoring it is not lawful to kill the thief.

The second is when rather the damage is considered which the owner suffers by the thing taken. And then another doctrine of the same St. Alphonsus (l.c.) is valid: "It is certain that two things are required for killing a thief: first, that the thing cannot be recovered by another way; second, that the thing be of great moment." Where he wisely notes with other Doctors that the gravity of the damage is to be understood relatively, and generally that loss suffices which would bring notable damage to the owner according to the quality of the person; although neither is it to be denied that, as in the quantity of theft, so also in the present matter, some absolute gravity of damage must be admitted, which, namely, with respect to all can and ought to be judged and called of great moment. Yet that this is not to be restricted to the value of one gold coin or

scudo is clear from this proposition 31, condemned by Innocent XI: "Regularly I can kill a thief for the preservation of one gold coin"; although even the value of one gold coin can sometimes be held of great moment in a very poor person.

Finally, the third case is when there is question neither of honor, as in the first case, nor of gravity of damage, as in the second, but the force brought upon the owner guarding his own thing is considered. And then the question returns which was raised above at Q. 6 concerning him who tries by deeds to injure the honor of another. For when a thief brings force so that he may enter, for example, a house or henhouse, or snatch a watch or stick from your hands, surely you are not bound to conduct yourself passively and permit the thing to him, but you can lawfully resist the unjust aggressor and repel force by force; although the moderation of blameless defense requires that you not apply greater force than that which suffices to repel force. The reason is, as Molina says (tom. 4, tr. 3, disp. 16, n. 4), that when someone thus defends his own things, regularly he also defends his own person, which he exposes to danger for the defense of his things. Laymann brings another reason (lib. 3, tr. 3, cap. 3, part. 3, n. 4), namely of the public good. For otherwise impunity of crimes would render the wicked more daring to harm.

** The defect of these distinctions makes St. Alphonsus' resolution (l.c.) become very obscure. For to the question whether it is lawful to kill a thief carrying off a thing of moderate value with the resistance of the owner or of its guardian, after bringing forward the affirmative opinion, which he attributes to Molina, Bonacina, Lugo, Sporer, Viva, and Roncaglia, he adds: "But the contrary opinion pleases me much more, which the Salamancans hold (tr. 25, c. 1, n. 85) after Diana, not admitting this. The reason is that although such taking happens with special injury of the owner by reason of violence, nevertheless since not every injury brings dishonoring, here it seems to me that through that taking honor is not properly or gravely injured according to the estimation of men. For who will be judged gravely dishonored because a thief violently snatched some thing from him?" In these things Molina is wrongly attacked with others, who, as is clear from what has been said and from the following note, treats another hypothesis; nor is the cause of defending honor distinguished from the right of resisting a thief trying to snatch a thing. But it is no wonder if sometimes the Salamancans are taken as guides in handling grave questions.

2. Generally it is not lawful to kill him who merely threatens an assault; because there can be a great and frequent danger of hallucination in this. But otherwise if it is certainly clear concerning the depraved will of the aggressor, and the danger cannot be met in another way.

3. It is not lawful to kill an aggressor after the deed, because it would be vengeance, not defense. Exception is made [8] when, as they say, the aggression would endure effectively in the flight of the aggressor carrying away the stolen thing. - Thus commonly.

[8] In this case there is question not of honor or of person, but only of damage. In this hypothesis Molina (tom. 4, tr. 5, disp. 16, n. 6) denies that the thief is lawfully killed when the thing would not be of great value, as if it were only three, four, or five ducats; which things indeed are to be taken of the absolute quantity of damage, not of the relative, as we observed in the preceding note. And from these things it is clear that some have attributed by mere calumny to Molina the doctrine contained in proposition 31 proscribed by Innocent XI. For Molina did not bring forward the value of one gold coin in the present matter as the absolute measure of damage, but while handling the question (see l.c., n. 7) proposed by us in the third case of the preceding note, namely when there is question not so much of the defense of things as of the defense of person against an unjust aggressor.

4. It is not lawful for a girl to kill the aggressor of her honor after oppression; yet she can strike him and treat him badly and most harshly, especially because unless in such a manner she shows her constancy and displeasure, the wicked man will not easily depart, or he will easily be able to return to solicitation. - St. Alphonsus, n. 386.

5. It is not lawful, at least speaking practically, even for an honorable man to anticipate by killing an aggressor wishing to strike a slap; for he can always consult for his own honor by flight or another way. Yet it is lawful to ward off the aggressor even with drawn sword, and to show himself ready for his own defense. - St. Alphonsus, n. 381. - See *Cases*, n. 390 and following.

Article III. On the Killing of the Innocent

§ I. On the Killing of the Innocent in General

400. **Principles.** - I. It is never lawful directly to kill an innocent person, whether by private or public authority, even for procuring the public good; for it is an intrinsically evil action and expressly prohibited by divine law. Exod. 23. 7: *Thou shalt not kill the innocent and just.* - St. Alphonsus, n. 393.

II. It is lawful on account of a grave cause to place an action good in itself from which, besides the intention, the death of an innocent person follows, according to the principle of St. Thomas set forth above.

III. He is not guilty of homicide who, even without cause, but with diligence applied, places an action which does not bring death per se, from which nevertheless by accident homicide follows; because that homicide is altogether fortuitous and involuntary. But otherwise if he places an action which brings death per se, or is very dangerous, and from which death often follows, even if diligence is applied for forestalling damage. - St. Alphonsus, n. 398.

401. **Resolves.** - 1. It is not lawful to kill those lethally wounded, nor any other dying persons, lest they suffer longer; nor mad persons, lest they harm others, provided they can be restrained from harming otherwise. The reason is that, according to the well-known saying, evils are not to be done in order that good may be obtained.

2. It is not lawful to kill an innocent person for satisfying a tyrant demanding his death, even under penalty of the city to be overthrown, and even if he consented to his own death; the reason is that he does not have dominion over his own life. Yet more probably he could be compelled to hand himself over to the tyrant for the public good, and probably, if he were unwilling, even be handed over. - St. Alphonsus, n. 393, with others.

3. In war it is lawful to direct cannons against enemy positions, although from this some innocents also are going to suffer death; because their death follows besides the intention. - St. Alphonsus, ibid.

4. It is not lawful to kill legates or hostages, even if the enemies who sent them have not kept the given faith and have unjustly killed the hostages or legates sent to them; because they are innocent. - Busembaum and others commonly with St. Alphonsus, ibid.

5. Physicians, midwives, and guardians of infants and the infirm sin gravely if from grave negligence they either do not impede their death, or cause it, or hasten it. Likewise if from gravely culpable ignorance they furnish harmful things to the sick.

§ II. On the Procuring of Abortion

Abortion is the premature ejection of a fetus from the womb of the mother.

[1] *On the title above.* In order that questions on this argument may be aptly instituted and solved, the principles indeed of the older Theologians must be retained; but their application must also depend on the theories which the more accurate study of medical art has brought in over the passage of time.

And 1. indeed as regards the causes of abortion, with those things passed over which the older authors disputed concerning medicines killing the offspring in the womb, for medical science now admits no medicines of this sort, those causes can be recalled to these heads. 1. Cutting or rather rupture of the uterus, or of the membrane by which the fetus is enclosed, by the aid of an instrument; by which it happens that, the humor in which the fetus swims being withdrawn, it cannot long live there, but is necessarily ejected, although it can come forth into the light even alive. - 2. Force brought from without through blows or compressions, which would strike the infant born and deprive it of life. - 3. Violent shakings, which can have a cause both extrinsic and also intrinsic, for example convulsions. - 4. Finally, relaxation of the fibers, by which it happens that the fetus, pressed by its own weight, is born prematurely; which relaxation or acceleration of birth can have either natural causes or be obtained by art, for example by baths, medicated drinks, etc.

2. But it will be very useful to distinguish both causes which directly and positively injure the fetus, of which sort, for example, would be a violent blow, or even a wound inflicted by the aid of an instrument on the fetus itself still hidden in the womb, and causes which merely bring it about that preservation of the life of the offspring ceases; of this sort is acceleration of birth before the seventh month of gestation, whether this happens through mere relaxation or through cutting of the membrane containing the fetus.

3. Already from his own age St. Alphonsus wrote (lib. 6, n. 124): "Since today the opinion flourishes, received not without applause by experts, that the fetus from the beginning of conception, or at least after some days, is informed by a soul," etc.; which "some days" in the edition of the year 1748 he says are three or four. Moreover this opinion, insofar as it admits no inanimate fetus, since it is now more commonly received, especially after more accurate observations instituted by physiologists, and is defended as more consonant not only with philosophical, but also with theological principles, it follows that there is scarcely any cause why a special question be made concerning the hypothesis of an inanimate fetus.

4. Since surgical art has now found an instrument by which the membranes enveloping the fetus are cut in such a way that water injected by the aid of a little siphon can certainly touch the fetus immediately, and therefore since according to those things which St. Alphonsus (lib. 6, n. 107), after Benedict XIV, discusses, we can be altogether certain of the validity of baptism thus conferred on infants enclosed in the womb, consequently the difficulties and questions raised by the older Doctors concerning the dangers which the mother would be bound to undergo so that the eternal salvation of the offspring may be provided for almost cease.

5. Since there can be no doubt as regards those causes by which there is a direct tendency positively to injure and kill the fetus, since a direct intention of killing, concerning the indirect see above, n. 396, can never be lawful from any cause; therefore the principal hinge of the controversy will reside in this: whether and when it is lawful to accelerate birth, and indeed through that time of gestation in which the offspring, however alive it may come forth into the light, must nevertheless soon succumb to death.

6. But this acceleration of birth, as doctors are accustomed to speak both concerning abortion and generally concerning the killing of the neighbor, can be considered as excited or promoted either directly or indirectly. It will be called indirectly excited when, for curing the disease of the mother, those remedies must be applied from which, besides the intention, that relaxation of the fibers follows on account of which premature birth follows. But directly, when means are used which per se are directed not to healing the mother's disease, but merely to unloading her of the fetus by accelerated birth. This indeed could happen from a twofold cause, namely either only on account of preserving the temporal life of the mother, or on account of procuring the spiritual salvation of the offspring through baptism, or also on account of each of these ends at the same time.

Besides, even when the remedy per se does not tend to curing the disease of the mother, but only to obtaining birth more maturely, nevertheless the abortion in another sense can be held as directly or indirectly sought, namely when one considers not the material reason of accelerating birth, but the will or intention of the one operating. For what the Doctors commonly have with St. Thomas, that the death of an unjust aggressor in just defense follows only indirectly, for the reason that the direct intention of the killer is borne only toward his own defense, but the other effect, namely the death of the aggressor, is besides the intention and by accident; this very thing can have place in the acceleration of birth, namely when the will tends directly not to the temporal damage of the offspring, which follows by accident and besides the intention, but to another end.

7. Finally, for the easier solution of the proposed question, it will be very useful to advert to that which we suggested above: that the controversy about acceleration of birth, whether this happens through relaxation of the fibers or through cutting of the membranes containing the fetus, does not regard whether it is lawful to deprive the offspring of life, but rather how far

the mother is bound to guard and preserve life for the offspring. In this matter, account must indeed be taken not only of the general obligation which charity requires from all regarding the protection of others' life, nor only of the special obligation of parents toward children, but also of the singular office which binds the mother, since nature has especially committed this care to her. Nevertheless it remains to be inquired how far this obligation extends itself, just as it can be inquired how far the obligation of a mother can be urged not to let the infant whom she carries in her arms fall from her hands into waves or into some abyss, which indeed comes back to the same thing as if it were asked whether and what sort of just cause there can be on account of which the mother may lawfully cease from guarding the life of the offspring.

Moreover, for solving this question generally, those things bear which Cardinal de Lugo establishes as a certain principle (*De Iust. et Iur.*, disp. 10, n. 133), where he writes: "A mother is not bound with so great danger and detriment of her own life to procure and preserve the fetus; just as she is not bound to feed and retain with danger of life a son already born, nor even, in order to nurse him, to preserve milk in the breasts when, for protecting her own life, it would be necessary for her to dry the breasts." And plainly that also pertains here which Lugo adds in the same place, diligently distinguishing the mere cessation of guarding life from damage positively inflicted on the offspring, although that hypothesis of poison infecting the offspring is not admitted now. "Yet the moderation pleases," he says, "which Vasquez afterward added to this doctrine..., saying that this is understood of bloodletting, a bath, and remedies of this sort, which do not tend to the killing of the fetus except negatively, through subtraction of the humor necessary for its sustenance, but not of remedies which would positively concur to the death of the fetus, such as would be a drink which through positive alteration would kill the fetus: for this would be to give poison positively to an innocent, so that you may free yourself from death, which is never lawful."

8. These things having been set down beforehand, the various questions will not with difficulty be solved according to the various hypotheses.

And I. Where the death of one or the other is certain, namely either of the mother or of the offspring, but the life of the other is certain, and the question is only of temporal death, because, for example, baptism could have been conferred on the offspring not yet born according to the aforesaid things; the mother is not bound to die so that she may preserve temporal life for the son. See Lugo, l.c.

But this case is altogether very rare; since, as St. Alphonsus says, lib. 3, n. 394, it is morally impossible, so that it would almost be a miracle, that when the mother perishes the offspring survives... And he adds: "Several experts of medical art whom I consulted confirmed this to me."

And this indeed is valid even if there is question of a caesarean operation; which besides, since it requires most skilled physicians and a robust mother, rarely has place, especially since this remedy is customarily required then, when other remedies have been applied in vain, and therefore when both mother and offspring have their strength prostrated by a long struggle.

II. Indeed St. Alphonsus (lib. 6, n. 106), having before his eyes that saying of St. Thomas (3, q. 68, art. 11, ad 3): "Evils are not to be done that goods may come; and therefore a man ought not to kill the mother in order to baptize the child," concludes that the mother, when danger of death is proximate or probable, is not bound to undergo that danger so that the offspring may be baptized, nor can the surgeon lead her into this danger.

III. If the mother, seized by disease, labors under grave danger of death unless the fetus is expelled by accelerating birth, but there is probable hope that by the aid of medicine it can be brought about that the fetus comes forth alive into the light, and therefore is going to obtain, if not temporal, at least eternal life; then an expulsion of this sort seems not only lawful, but prescribed. The reason is that the danger and death of the mother would profit nothing for the temporal life of the offspring, and besides would cast the offspring itself into most grave peril of eternal salvation.

Nor ought it to obstruct that perhaps the death of the offspring is accelerated a little. For first indeed, from what has been said with Lugo, the mother is not bound with such danger to preserve the life of the offspring further. And then in that case, as St. Alphonsus says (lib. 6, n. 106, at the end), "that small loss of life can be disregarded, so that the infant may attain eternal life."

IV. When, the mother being sick, the danger of abortion is equally imminent whether she takes a remedy for curing the disease or does not take it, because the very force of the disease, as sometimes happens, brings on abortion, it is lawful for the medicine to be taken; for abstinence from remedies would not profit the offspring, and therefore the mother consults for her own life without greater detriment of the offspring. But if without greater detriment of the offspring the mother can

consult for her own life, not only lawfully can she she can, but because of the obligation which each one has of preserving his own life through ordinary remedies, she altogether ought to use medicines.

V. If from the force of the disease a probable danger of abortion is imminent, but at the same time danger is imminent that, if the abortion in reality follows from the disease, the offspring may die in the womb; but, on the contrary, probable hope shines forth that, through birth accelerated by medicines, the offspring may come forth alive into the light, and thus its eternal salvation can be provided for; an uncertain hope of temporal life does not seem to be preferred to the more probable hope of eternal salvation, and therefore it would be lawful to accelerate birth. This indeed must be said to be valid even if the disease brings no danger to the life of the mother, but there is question only of the better good of the offspring.

VI. When, with account taken both of the physical and moral state of the mother, namely that she does not so dread the incision that even this horror alone could gravely harm the offspring, and at the same time after considering both the state of the offspring and the skill of the physician, it can prudently be judged that through a caesarean operation the mother will not be brought into grave danger, but that the offspring can be consulted for not only in temporal but also eternal life, it must be said that the mother is bound to suffer the incision, although the eternal salvation of the offspring could be provided for otherwise. Yet it is required that the hope of the salvation of the offspring and of the mother at the same time be much more probable; for otherwise, for the uncertain hope of the temporal life of the son, since the eternal can be cared for otherwise, as we said, the mother is not bound to undergo a probable danger of her own life (St. Alphonsus, lib. 6, n. 106).

402. **Principles.** - I. It is never lawful directly to procure abortion, even if the fetus were supposed still inanimate. The reason is that if the fetus is animated, it is homicide properly so called; but if it is not animated, it is anticipated homicide. For a fetus even not animated is ordered to forming a man; therefore its ejection is anticipated homicide. - St. Alphonsus, n. 394. - Lacroix, n. 825. per se directed to curing the disease; 3. that there be no hope of procuring eternal life for that fetus through Baptism. But hope of this sort can be absent in a twofold case: namely where it is morally certain that the fetus is not yet animated, as in the first days of conception; or that it, when the mother dies, will die at the same time or before. - St. Alphonsus, ibid. - Lacroix, n. 826 and following. - Billuart.

III. It is lawful to give to a pregnant woman who is sick remedies suitable for curing diseases, even if sometimes abortion could follow. The reason is that experience establishes that abortion very rarely follows from ordinary remedies, at least most of them. - Thus commonly.

403. **Resolves.** - 1. It is not lawful for a pregnant girl to take a drug for expelling the fetus, lest she lose her reputation, or lest she be killed by a furious father, because abortion would be procured directly [2]. This is also clear from proposition 34 condemned by Innocent XI.

[2] In order that you may lawfully place a cause of death, say the same of any damage of another, it is also necessary that you intend the killing neither as the end, nor assume it as a means to another end, for in either manner you would will it directly; but that you bring it about only indirectly, namely by placing the cause of that death not on account of the connection which that same cause has with that effect or death of the innocent, but only on account of the connection which it has equally immediately with another effect. For thus you do and intend it insofar as it is joined with an effect lawfully desirable, not insofar as by accident it is connected with another effect which you cannot intend, although you can permit it from a just cause. Moreover, in the hypothesis of the Author, abortion is assumed as a means directly chosen for obtaining another end, to which moreover abortion has no order per se at all as to its own effect. In these things a twofold reason shines forth on account of which the proposition was condemned by Innocent XI, n. 34: "It is lawful to procure abortion before the animation of the fetus, lest a girl detected as pregnant be killed or made infamous."

2. It is not lawful, when a woman is pregnant, to kill the fetus [3] for freeing the mother from death. - St. Alphonsus, n. 394.

[3] Take this resolution also in the sense set forth in the preceding note, namely that it is not lawful directly to will the death of the offspring. For if otherwise the death both of the mother and of the offspring is certainly imminent, the mother is in no way bound to undergo a death which does not save the offspring from simultaneous death. And to this surely pertains what the Salamancans (tr. XIII, cap. 2, n. 60) attribute to more than twenty Doctors, that in certain circumstances the fetus conducts itself after the manner of an innocent aggressor, whose death according to the doctrine of St. Thomas remembered above, in the note to n. 402, follows only indirectly.

3. It is not lawful for a pregnant mother, even in certain danger of death, to take, or even for medicine to be furnished to her, from an intention directly ordered to the ejection of the fetus. Yet if death is certainly or almost certainly going to happen if the medicine is not applied, and on the contrary the mother is certainly or probably to be saved if it is applied, this does not seem illicit, especially since either from the acceleration of birth or in some other way the eternal salvation of the offspring, otherwise going to be endangered, can be provided for through Baptism [4].

[4] You may rightly say that the two parts of this resolution conflict with each other. You will reconcile them if in the first part, rather than saying *from an intention directly ordered*, you substitute *directly ordered of itself*; for so room is left for the sense in which the second part also must be understood, namely that the death of the offspring only follows indirectly, and is permitted.

4. It is lawful for a physician to furnish a remedy of itself ordered to curing the disease of the mother, if it is certain that, the remedy not being given, the mother otherwise is going to die, and the fetus will perish without Baptism; for thus both the mother and the fetus are helped in the better way in which they can be; but very rarely will there be certainty about each. But if there is equal danger of abortion whether the remedy is taken or not, it is lawful to apply it; because the life of the mother is consulted for without greater danger to the offspring. - St. Alphonsus, n. 394.

5. They are homicides who strike a pregnant woman, or terrify her, so that abortion follows. Likewise pregnant women who with grave imprudence place in various ways the proximate cause of abortion, for example by devoting themselves to excessive labors, carrying heavy burdens, washing the feet in cold water, etc.

6. A fortiori girls pregnant from fornication are guilty of homicide who apply repeated efforts to attempt abortion by potions, jumps, burdens, strong striking and compression of the belly, etc. When women of this sort confess, they must be questioned diligently, but not abruptly, about abortion desired or attempted.

Concerning the penalties against those procuring abortion, it will be said in the Treatise on Censures. - See *Cases*, n. 399 and following.

Chapter III. On Duel

Duel in general is the fight of two or of a few among themselves. In the stricter sense it is a dangerous fight of two from a preceding agreement concerning place, time, and arms.

Duel is: 1. public or private, according as it is done by public authority or not; 2. solemn or simple, according as it is done before witnesses or with these omitted.

404. **Principles.** - I. A duel undertaken by public authority is lawful if it is done for the common good, for example so that war may be ended [1]; otherwise, if it is commanded or permitted for other causes [2]. The reason of each is manifest.

[1] Sanchez (In Dec., lib. 2, c. 39, n. 13-14) indicates another end, namely for preserving estimation among enemies, and lest the army fall in spirit. Bonacina (*De Cens. in spec.*, disp. 2, q. 3, p. 58, n. 4) calls duels of this sort a part of war.

[2] Thus, for example, if it is done for the sake of spectacle and pleasure, or for vainly showing off the strength of soldiers (Sanchez, In Dec., lib. 2, c. 39, n. 12).

II. A duel undertaken by private authority can never be lawful. The reason is that it is opposed: 1. to natural law, since God has given dominion over one's own or another's life, nor over the members, to no man outside the case of defense against an actual aggressor; 2. to canon law, as is clear from Trent, sess. 25, cap. 19, where duel is called: "A detestable usage, introduced by the devil as fabricator." - St. Alphonsus, n. 399, 400.

405. **Resolves.** - 1. It is not lawful to accept a duel even for averting ignominy; because it is repugnant to reason to apply that cruel means with evident danger of one's own life or that of the neighbor, indeed even of eternal salvation, on account of a non-necessary or even useless end. True esteem, praise, and honor are not placed in the vain opinion of this world, whose wisdom before God is foolishness. - St. Alphonsus, *Hom. apost.*, n. 27.

2. It is not lawful for a military man to accept a duel, even if for that reason he must yield his office necessary for the sustenance of himself and his own. The reason follows from what was said: for the killing of another by private authority is never lawful except against an actual aggressor with the moderation of blameless defense; but one provoking to a duel is not an actual aggressor.

3. It is not lawful to undertake a duel under this law, that when one has been wounded or a certain number of blows has been completed, the fight ceases; 1. because even in this there is the greatest danger of a lethal wound; 2. because Clement VIII prohibited even non-fatal duels; 3. because that kind of duel creates scandal and provides occasion for fatal duels.

4. It is not lawful to undertake a duel, even with public authority acceding, for knowing the truth, for proving innocence, or for ending a private lawsuit; because it is not a means ordered to these ends. Nor can the guilty be compelled to duel, even with hope of life given to the future victor. - St. Alphonsus, *Hom. apost.*, ibid. [3].

[3] St. Alphonsus in the cited place speaks only of the first part of this resolution. But as regards the last part (*Theol. moral.*, lib. 3, n. 400), he reports the opposite opinion without any censure; but Laymann (lib. 3, tr. 3, p. 3, c. 5, §2), with other Doctors alleged, has these things as regards the judge: "Although, estimating the matter according to itself and speculatively, this does not seem alien to natural law, since it is nothing other than to decree each guilty person a minister of justice against the other, so that he may execute a just sentence of death; but to him who shall have prevailed, life is remitted; nevertheless on account of the adjoined circumstances it is not free from danger of scandal; wherefore it is neither expedient nor lawful." But as regards the guilty, he adds: "After the prince has conceded to the guilty a faculty of this sort of contending by duel, it seems lawful to accept it, not from hatred, but both from zeal for public justice and for the cause of saving one's own life."

5. But it is lawful to fight in a duel for mere defense, even by accepting arms from an adversary, if death is intended by him, or loss of goods is going to follow unless the fight is accepted, and there is no other way of escaping this danger; but it is not lawful to betake oneself to another place [4], or to appoint another determinate time for defense; because then a duel properly so called would be had.

[4] Yet if death is intended against you unless you go immediately to another place where you can defend yourself, this circumstance does not seem to change the reason of the preceding resolution.

St. Alphonsus (lib. 3, n. 400), after he reported the opinion of several Doctors concerning the cause of loss of goods, adds that this opinion is no longer probable because of the first and fourth of the propositions proscribed by Benedict XIV and reported by the Author a little later. But it is not clear that this case is comprehended in them. For those propositions speak of a duel even to be offered; but here there is question only of acceptance for the necessary defense of goods of great moment from actual invasion. Moreover, everyone knows that the condemnation of a complex proposition by no means requires that all its members be judged false, but it is enough if either is found false; indeed the former would of itself lead to absurdity. For if, for example, you say: "The head was cut off from the holy Apostles Peter and Paul," from the condemnation it would have to be concluded that not even Paul's head was cut off, which is plainly false. Therefore that rule of logicians is to be kept religiously: of a condemned and therefore false proposition, what is to be held true is not indeed the contrary, but only the contradictory. Moreover, of a copulative proposition, of which sort are the first and fourth objected, the contradictory will be of this sort: Either to offer, or to accept a duel, etc., is illicit. But by force of that disjunctive thesis you would absurdly infer that each member of it at the same time is illicit. Therefore from the condemnation of those propositions nothing certainly can be drawn against that opinion, so that it can be called condemned.

Perhaps the condemnation of proposition 3 could more plausibly be objected, which establishes that the penalties issued against duelists are not incurred if a military commander or official accepts a duel from grave fear of loss of reputation or office. For mention of the one accepting only is made in it. But, to pass over other things for the moment, another reason, and indeed a twofold one, offers itself, on account of which the force of the objection is plainly blunted. The first is that nothing in that Proposition is said concerning actual invasion of goods; for this reason it pertains nothing to the present question. The other is that the Proposition could rightly have been condemned for this one thing alone, because it most falsely supposes that he who refuses a duel is gravely endangered in reputation. Therefore this Proposition also is objected in vain. And in reality Marcus Struggl, an eminent theologian from the Order of Servants of the Blessed Virgin Mary, after he most diligently weighed these Propositions also proscribed by Benedict XIV, nevertheless establishes (*Th. Mor.*, tr. 7, q. 3, art. 6, n. 65) that "a duel can become lawful..., if against an unjust aggressor it must necessarily be undertaken for the defense of life or immense goods; as if someone were actually to intend certain death, plundering of goods, or burning of a house, unless you actually enter a duel with him; for it is lawful to defend oneself against an unjust aggressor of life and of immense goods irrecoverable by another way." From these things it appears that this doctrine scarcely, or not even scarcely, differs from that which the Author also proposes in the fifth and sixth resolutions, if indeed the question treated above (n. 397, Q. 4) concerning the defense of immense goods even with the killing of an unjust aggressor is recalled hither.

Therefore it must be concluded that it is certainly right for each one to inquire into reasons by which he may attack that opinion or whatever probability it has; but reasons of this sort ought plainly to be sought from elsewhere than from those proscribed Propositions.

6. They do not enter a duel properly so called, and consequently do not incur the excommunication reserved to the Pope and the other penalties inflicted by the Council of Trent on duelists, who, blazing up in sudden anger on account of an injury and challenging each other to a fight, immediately come together; because it is more truly a brawl, not a duel, which ought to happen from an agreement of place and time. And for the same cause, on account of an unforeseen encounter of this sort, the aforesaid penalties are not incurred, although the fighters from the same impulse of the brawl immediately betake themselves together to some

suitable place. - S. Congr. 5 Octob. 1744. - Scavini. - St. Alphonsus, n. 401. - See *Cases*, n. 403 and following.

406. ○ Here it is useful to report the five propositions concerning duel condemned by Benedict XIV in the year 1752 in the Bull *Detestabilem* [5]. They are the following:

[5] Benedict XIV, §10 of this Constitution, earnestly beseeches princes and all magistrates that with every effort and constancy they vehemently oppose the license of duels. Then he warns the same persons that they should not think it enough that the horrendous crime has been proscribed by laws and most grave penalties added, unless they actively urge the execution of them and show themselves inexorable avengers of the crime. "For if they bear with delinquents either sluggishly, or punish them softly, they will pollute themselves with the crime of another and will constitute themselves guilty of all that blood."

Thus, with wisdom plainly divine, did the Roman Pontiff speak through that age in which this wicked crime was restrained in the whole Christian commonwealth by most just laws. But that in the course of time among certain nations the laws against this crime have been scraped from the codes, and indeed somewhere one is punished who, by refusing a duel, was unwilling to pollute himself with this crime, this openly makes clear that those nations, while with proud foolishness they think that they have attained the summit of civil perfection, have already fallen into that savage barbarity from which the Christian religion had led them out, and are moreover being plunged more deeply.

1. A military man who, unless he offers and accepts a duel, would be held as fearful, timid, abject, and unfit for military offices, and thereby would be deprived of the office by which he sustains himself and his own, or would have to lack perpetually the hope of a promotion otherwise owed and merited by him, would be free from fault and penalty, whether he offers or accepts the duel.

2. Those accepting a duel, or provoking to it, can be excused, even for the sake of protecting honor or avoiding human contempt, when they know certainly that the fight is not going to follow, as being prevented by others.

3. A commander or official of the military accepting a duel from grave fear of loss of reputation or office does not incur the ecclesiastical penalties issued against duelists.

4. It is lawful in the state of natural man to accept and offer a duel for preserving fortunes with honor, when by another remedy their loss cannot be driven away.

5. The asserted license for the state of nature can also be applied to the state of an ill-ordered commonwealth, in which, namely, either by negligence or by malice of the magistrate, justice is openly denied.

Chapter IV. On War

407. ○ War is a fight of a multitude against a multitude foreign to the Republic, for the cause of defending or vindicating the Republic.

Hence it differs: 1. from a brawl, which is the fight of a few against a few; 2. from sedition, which is a tumult or conflict of a multitude against the political society to which it pertains.

War is distinguished as: 1. offensive, if it is done for vindicating an injury; 2. defensive, if it is sustained for repelling force.

Principles. - I. War per se is lawful, whether for repelling an injury, or for vindicating one's own right. The reason is that any society independent from another society must have a means of protecting itself against injury and vindicating its own right; but sometimes no other means is available for obtaining this end except war. Indeed, since higher tribunals are lacking to which Nations or Princes can have recourse, it remains only that they use war for obtaining satisfaction from another society. - St. Thomas, 2. 2, q. 40, art. 1, and others.

II. For a just and lawful war, the following are necessarily required:

1. **Legitimate authority**, that is, supreme, acknowledging no other Superior in civil matters. The reason is that where a greater authority is had, this must judge concerning the dispute.

2. **A just and grave cause**, which is preponderant over the inconveniences going to follow from the war; for example, a kingdom or province to be recovered, or a grave injury to the Republic to be driven away, or a rebellion of subjects to be repressed, etc.

3. **The due manner of waging war**, namely that before war fitting satisfaction be demanded from the adverse party; if this is offered, it must be accepted from justice; for where war ceases to be necessary, it also ceases to be just. - St. Thomas, ibid. - Billuart, etc.

408. **Questions. - Q. 1. Whether it is lawful to wage war with probability of one's own right?**

Resp. It is disputed. But the negative part is far more probable, at least intrinsically and practically. The reason is: 1. because a possessor in good faith cannot be despoiled of the thing possessed unless it is clear that he unjustly retains it; 2. because for placing the cause of most grave evils, such as slaughters, injustices, corruptions of morals, and other things of this sort which ordinarily follow war, moral certitude of one's own right seems to be required. - St. Alphonsus, n. 404; Tamburini; Billuart, against several, of whom some think that only greater probability suffices, but others that equal probability does.

Q. 2. Whether soldiers can wage war with doubt concerning the justice of the war?

Resp. 1. If there is question of a soldier who is a subject, he is bound to obey where the war is not evidently unjust, because it does not pertain to him to examine the reasons of Superiors [1].

[1] What some have said, that the authority of the prince suffices for a probable judgment of the justice of a war, Lugo rightly observes (*De Iust.*, disp. 18, n. 21) is not always and universally true. *For when* (he says) *I know from elsewhere that the prince commonly commands shameful things at his pleasure, and... without any attention at all to what is lawful, how can I believe from the mere command of the prince that what he commands is just?* And a little after, as regards princes whom we know to be destitute of the Christian faith: *Since the soldier cannot prudently trust to their conscience, inasmuch as they care little about the justice of war, he ought attentively to consider and examine the justice and the cause of the war, so that he may be able to form that probable judgment.*

2. If there is question of a soldier hired before the war was declared, he can obey; for he is hired for this. Whence he must conduct himself almost as if he were a subject.

3. If there is question of a soldier not yet hired, he is bound to inquire concerning the justice of the war, nor in doubt concerning the justice can he hire himself out. The reason is that no one can cooperate toward despoiling another of a thing which he possesses, unless he is certain that it is possessed by him unjustly. - St. Alphonsus, n. 408.

Q. 3. Whether it is lawful for Catholic Princes in a just war to call heretics and infidels to their aid?

Resp. **It is affirmed per se**, at least speaking speculatively, provided scandal and danger of the Faith are absent. But, says St. Alphonsus, n. 406, for the most part by accident it is illicit on account of damages threatening Religion.

Q. 4. Whether guilty or innocent persons can be killed by the victor?

Resp. 1. Guilty persons can sometimes be killed, or soldiers who have fought, if this is necessary for establishing peace and security or vindicating injury, unless they have surrendered themselves with an agreement that life be preserved. But this is altogether alien to the customs of our time.

2. But innocents, that is, women, the old, pilgrims, Clerics, Religious, etc., cannot be killed directly unless it is clear that they were associates in the war. Yet they can be killed indirectly, while the battle is not yet completed, if they are mixed with the guilty, so that, with these preserved, the remaining crowd of the guilty which must be destroyed cannot be killed. - St. Alphonsus, n. 409.

409. **Resolves.** - 1. Soldiers in an unjust war cannot lawfully kill enemies even for the sake of defense; if they cannot flee, they must take care lest they strike with their blows. For they themselves are unjust aggressors, and contrary rights cannot be given in the same matter. - Lacroix, and others commonly [2].

[2] Understand that saying, that a war cannot be just on both sides, unless by accident it is judged just on both sides on account of some invincible ignorance; which in soldiers, to whom in doubt it does not pertain to define the cause, can often happen.

And as regards the resolution, what Molina has with Soto must not be neglected. "If someone," he says, "in a war which in good faith he had thought just, nevertheless in the conflict itself recognized its injustice, and while he flees sees an adversary pursuing, whom he cannot escape unless he kills him, he could kill him in defense of himself, because since he is really innocent, he is not worthy of the death which the adversary wishes to inflict on him, who, if the truth were clear to him, would have to leave him." In Lugo (*De Iust.*, disp. 10, n. 144), to whom nevertheless these things are less pleasing (ibid., n. 176). But the inconveniences can be avoided without difficulty: for in flight the soldier can surrender himself to those pursuing, and in this way escape death.

2. The Prince, after the injustice of the war has been ascertained, must propose it to the adverse party, nor can he begin the war if competent satisfaction is offered to him; indeed even after war has begun, adequate satisfaction being offered, he is bound to leave it, if not from the rigor of justice, at least for the most part from charity, provided the other party is willing to compensate all expenses already made, and it is not necessary for the public good that his insolence be beaten back.

3. It is lawful in war to prepare ambushes and apply stratagems, so that enemies may be deceived by fallacies and cast into dangers. For these are not reputed lies, because the adversaries are deceived by their own fault, since those means are customarily applied in war. Thus it is lawful to feign flight, to use the flags of enemies, etc. But frauds are illicit which can be forestalled by no prudence, for example to infect wells and springs with poison, etc.; for these, by the common sense, fight against the rights of war. - St. Alphonsus, n. 410.

4. In a just war it is lawful to besiege cities and fortresses, to discharge cannons against them, indeed sometimes to destroy or burn monasteries and Churches, to plunder and kill in them, if, for example, the enemies use a Church as a fortress for defending themselves. - Likewise it is sometimes lawful to give a captured city over to plunder, but only for most grave reasons. - St. Alphonsus, ibid.

5. Commanders of the army and soldiers must take the greatest precaution lest they exceed after victory in punishing the vanquished; for they are ministers of legitimate vengeance, but not robbers and assassins. They must especially avoid whatever smacks of cruelty or a spirit of harming.

6. Commanders and soldiers cannot injure legates of the adverse party, because by the law of Nations they are everywhere inviolable; nor can they send spies who may secretly butcher the Prince or Commander of the army or other Nobles of the kingdom, because by the consent of all this pertains to treachery.

On the Sixth and Ninth Precepts of the Decalogue

You shall not commit adultery. - You shall not desire his (your neighbor's) wife. Exod. 20. 14.

410. ◦ It is useful, first of all, to report and make our own the words of St. Liguori at the beginning of the Treatise on the sixth Precept:

Now with difficulty we approach the treatment of that matter, the very name alone of which infects the minds of men... Would that I had been able to explain myself more briefly or more obscurely! But since this is the more frequent and more abundant matter of confessions, on account of which the greater number of souls slips down to hell, hence it was necessary for me, for the instruction of those who desire to learn moral science, to explain myself clearly (although as chastely as could be done), and to discuss very many particulars. Yet I beg students who are preparing themselves for the office of hearing confessions that they read this treatise, as also the other concerning the conjugal debt..., for this one end alone, casting aside altogether every curiosity, and at that time often raising the mind to God, and commending themselves to the Immaculate Virgin, lest, while they strive to acquire the souls of others for God, they themselves suffer detriment of their own.

411. ◦ The sixth precept of the Decalogue prohibits any external lust, that is, lust committed by deed. - But the ninth precept prohibits also merely internal lust, namely immodest delights and desires.

Lust is the disordered appetite of a venereal thing, and consists in venereal delight voluntarily admitted outside marriage. But venereal delight is a delight arisen from the commotion of the spirits serving generation. Therefore it is not to be confused with delight merely sensible, which arises from the proportion of a sensible object to some sense, for example of a visible object to sight, of an audible object to hearing, etc. Therefore the matter or object of lust is one thing, that of sensuality another. Sensible delight either is free from fault, or does not exceed venial fault, at least for the most part and per se [1].

[1] In this matter different distinctions are found among different Authors. For besides the distinction of venereal delight into sensible venereal and spiritual venereal, which Roncaglia (tr. 12, q. 3, p. 295), after the Salamancans (tr. 26, c. 3, n. 31), admitted with some others (in the preceding edition it was erroneously read: "which St. Alphonsus admitted after Roncaglia"; which error the VV. usefully noted, p. 286), some again distinguish venereal delight into venereal simply, and sensible venereal (see Sanchez, *De Matr.*, lib. 9, disp. 46, n. 4); some seem to take carnal venereal and sensitive venereal as one and the same (see Laymann, lib. 1, tr. 3, cap. 6, n. 6-8); others, distinguishing sensitive and sensible altogether from venereal, again divide that into purely sensible and carnal sensible (see Croix, lib. 5, n. 93); finally others, as also the Author, use a simpler two-membered distinction into venereal and sensible delight, which they also call natural. While some pay little attention to these various distinctions, and therefore to the various definitions of the same among different Authors, they have fallen into the inconvenience that they ascribed to some Authors those opinions which those Authors had not even thought of in a dream.

Meanwhile, as regards sensible or natural delight, as it is taken by the Author and others, namely that which arises from the proportion of the object with the organs of the senses, the question about its guilt is easily solved. For it is the same thing as to ask what guilt there can be in a delight which is perceived, for example, from smelling a flower, from looking at the sky, or from a draft of cold water. Therefore deservedly La Croix (lib. 5, n. 94), to whom Viva subscribes (on proposition 40 condemned by Alexander VII, n. 20), after saying that it is not evil in itself, nor can any other malice be found in it except that which is found generically in an act which is not referred to a reasonable end, sends the reader to n. 210 of the same book, where he treats generically of the end which renders human acts honorable; which argument, however, he handles unhappily, namely not wholly avoiding the confusions introduced into this matter by the Jansenists. See above n. 32 and note a, p. 26.

Moreover, since sensible delight has the character which we have described, it will indeed seem strange that St. Alphonsus (lib. 3, n. 416) sets up the question: Whether smallness of matter is given in sensible or natural delight; and that he adds that the negative opinion must be held, calling in favor of it the suffrage of several authors, whom he says were alleged by the Salamancans (*De VI Praec.*, cap. 3, n. 40).

But one will scarcely grasp the true sense of St. Alphonsus unless he goes to the Salamancans, whose doctrine he exhibits in compendium. Therefore the Salamancans do not treat of any sensible delight whatsoever, but expressly handle the question about that which is sought and perceived from kisses, touches, and embraces even of an adult person and of a different sex (see l. c., n. 34). And although (ibid., n. 41) they assert that speculatively the true and probable opinion is that acts of this sort, if they are done precisely on account of natural and purely sensitive delight, which corresponds to the sense of touch because of proportion with its sensible object, such as is given in the touch of a smooth and pleasant thing, stopping there and with the further danger of carnal and venereal delight removed, are free from mortal fault; because such delight of itself is not morally evil, but indifferent, just as the touch itself, which according to itself names an indifferent act, as St. Thomas teaches, 2. 2, q. 154, art. 4, and the Theologians commonly, and thus it can be done for some honorable end; nevertheless they deservedly add (ibid., n. 48) that, because of the corruption of human nature, acts of this sort can hardly be reduced to practice on account of sensitive delight without carnal and venereal delight being joined; therefore there will almost always be an occasion and danger of mortal sin, unless these things are done from a just cause, as will be said in the following note. And indeed (ibid., n. 40) they expressly warn that the authors who condemn these acts as grave fault (whom namely St. Alphonsus later alleged, as it were, for the guilt of sensible delight) speak not of merely sensible delight, but of carnal and venereal delight, and therefore are alleged altogether beside the point in the question concerning purely sensible delight.

Therefore the doctrine proposed by St. Alphonsus is to be called back hither; who besides skillfully warns in the same place that it is one thing to act on account of delight, another to act with delight. For the hypothesis concerning kisses, embraces, and touches which are had on account of merely sensible delight arising precisely from them, seems scarcely to have place in practice. Indeed, both that precision is too difficult, and in reality he who studiously seeks delights from touches of this sort, etc., will certainly be carried further both by the interior mind and often also by exterior acts. But if delights of this sort are not sought, for the most part the question will return to acts which are done not on account of delight (at least one advertently and expressly sought), but with delight. Then judgment concerning guilt will have to be formed after looking both at the nature of the cause which induces these acts and at the danger of consent in the effects, as will be said in the next note.

** Through twenty-six columns (pp. 283-296) the VV. are occupied with this Note, yet in such a way that it is hardly apparent what they wanted for themselves, unless perhaps to place before the eyes of readers some appearance or shadow

of refutation. For after so many circuits, they finally concede the things which are suggested in the Note, while they seem to reprehend and deny the same things. Therefore it will be enough to have responded briefly to some of their complaints.

Therefore they reprehend, 1. that in the Note it is said to be strange that St. Alphonsus proposes such a question, and they add (p. 287) that in this way a foolish opinion is attributed to the holy Doctor.

Resp. The Salamancans (tr. 25, cap. 3, n. 34), from whom St. Alphonsus took these things in compendious form, expressly set up the question concerning sensitive and natural delight which is taken from touches, embraces, and kisses. On the contrary, St. Alphonsus (lib. 3, n. 416), asking nothing concerning kisses, etc., asks in the most generic words, which are extended most broadly: Whether smallness of matter is given in sensible or natural delight, namely if someone is delighted by the contact of a woman's hand, as by the contact of a smooth thing, say of a rose, of silken cloth, and the like. Therefore it is added in the Note that, to grasp the sense of St. Alphonsus, the Salamancans must be gone to, whose doctrine he exhibits in compendium. Moreover, does it not of itself present something strange that, when the question is proposed so generically, it is added that smallness of matter is not given?

2. Contrary to what is said in the Note, the VV. (p. 287) state that the holy Doctor most rightly cites the authors alleged for his opinion.

Resp. The Salamancans, after they had brought forward (l. c., n. 34-37) both reasons and authorities for the opinion which maintains that sensitive and natural delight is free from grave fault, then (n. 38-40) set forth both reasons and authors condemning delight of this sort as grave fault; nearly all of which they themselves transcribed from Sanchez (*De Matr.*, lib. 9, disp. 46, n. 7). But truly the Salamancans themselves (n. 34) expressly warn that Sanchez (l. c.) speaks of venereal delight, not of natural; and again (n. 40) they warn that, except for Abulensis, the rest (of the authors) speak of touches on account of venereal delight. Now St. Alphonsus alleges the same n. 40, and the authors there reported, who speak of venereal delight, so that he may condemn as grave sin a delight not indeed venereal, of which they treat, but delight merely sensible and natural. How then do the VV. wish to persuade us that St. Alphonsus most rightly alleged those authors?

3. The VV. note (pp. 293-294) that in the last part of the Note a rule not to be admitted is proposed. For there it is said that, if those delights are not sought, for the most part the question will return to acts, etc. But, they say, sensitive delight arising from kisses, embraces, and touches is regularly joined with proximate danger of falling into libidinous delight. Hence they conclude that judgment concerning guilt must not be taken from danger, which must always be supposed to be present, but from the nature alone of the cause, which, if it is grave, can render licit the act by which one exposes himself to danger of lethal fault, and by which otherwise he would sin gravely. If, for example, a physician touches a woman for the sake of healing, etc. And to that matter they bring forward the things which St. Alphonsus has (lib. 5, n. 63) concerning the danger of a surgeon in healing women.

Resp. Therefore the rule sins because it is said "for the most part," when it should have been said "regularly" or "commonly." Truly, let it be committed to the judgment of others whether this question is fit to furnish serious matter of disputing through four columns. It ought rather to be answered, 1. I deny the supposition. The particle "for the most part," in that most general question, removes cases concerning which no controversy is usually set up as to guilt, for example concerning kisses which a mother imprints on a little son; therefore all those things heaped together through four columns are beside the matter. But it can be answered, 2. I deny that in every occasion of some sensible delight not sought there is danger of falling (add also, and of consenting) into libidinous delight. 3. Let it be known from the VV. whether they approve or not this reasoning: Danger is present as regards surgeons in healing women (it would have to be added, on account of merely sensible delight not sought); therefore every merely sensible delight, even from taking hold of a boy's hand, introduces danger which we are bound to avoid under grave sin?

4. Finally the VV. reprehend (p. 287) that it is said in the Note that La Croix treated unhappily of the relation of works to an end; and they refer to those things which they themselves had written on pp. 133 and 146.

Resp. The things which the VV. wrote on p. 146 pertain nothing hither. But the things which they had written on p. 133 have their response in those things which are had above, note b, p. 29.

The species of lust are various, according as its objects are diverse. Thus immodest touches and looks differ in species; solitary acts, and acts exercised with others; consummated acts, and non-consummated acts; likewise consummated acts according to nature, and consummated acts against nature. These species, moreover, also contain under themselves other subordinated or inferior

species, as will be evident from what is to be said. Lust is one thing when directly sought, another when indirectly. The former is had when carnal pleasure is intended precisely in itself; the latter, when something else is intended from which carnal pleasure arises besides the intention, as happens in less chaste looks or readings had from curiosity or another end.

412. **General Principles.** - I. Lust of any kind or species is per se a grave sin. The reason is, 1. because it fights gravely against nature. For the use of the venereal thing by its nature was instituted and is necessary for the sole preservation and propagation of the human race; therefore it cannot be usurped outside marriage (indeed not even in marriage except in the due manner) without grave disturbance of the right order; 2. because it is prohibited under grave sin by God, the Author of nature, as is clear from innumerable places of Sacred Scripture; thus Gal. 5. 19: The works of the flesh, which are fornication, uncleanness, immodesty, lust..., concerning which I foretell you, as I have foretold; because those who do such things shall not obtain the kingdom of God.

II. Lust directly voluntary in any kind never admits smallness of matter. The reason is that any delight directly sought necessarily brings in the subversion of the natural order established by the Creator. This is also clear from proposition 40 condemned by Alexander VII, which lies thus: The opinion is probable which says that a kiss had on account of carnal and sensible delight which arises from the kiss, with danger of further consent and pollution removed, is only venial.

III. But lust indirectly voluntary admits smallness of matter; because then there is no consent or direct intention into venereal pleasure, but only into the cause, which is lightly or gravely sinful according as it lightly or gravely influences the delight [2]. - Thus all.

[2] Concerning the causes of carnal motions and of the connected delight (which motions indeed can reach even to the ultimate effect of pollution), for the sake of clarity a threefold hypothesis must be made.

The first will be when someone aptly and deliberately, intending these motions, places their causes so that he may enjoy the proper delight of them. And then already you have lust directly voluntary, concerning whose guilt nothing is to be doubted.

The second, plainly opposite hypothesis will be when motions of this sort are stirred up spontaneously and naturally, with no voluntary cause given to them by him who then merely suffers them. And then there is no reason why we should seek guilt in the will as their cause.

Finally, the third, middle between the preceding, will be when some action is voluntarily placed which furnishes some cause, proximate or remote, for stirring up those motions; and yet one does not place the action for this end or intention, that he may stir up such motions in himself, or enjoy them. But then the principle is valid which from St. Alphonsus we reported elsewhere (note to n. 176), namely that in these effects, since they are voluntary only in the cause, there is only so much guilt as there is in the cause itself. Hence St. Alphonsus concludes (lib. 3, n. 484): "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.... The reason is that since pollution is not willed except in the cause, it will be evil in that degree in which the cause itself is evil." And indeed he says watchfully, "from a cause per se mortal in the genus of lust"; for if the cause, although gravely culpable in itself, is outside the genus of lust, as for example drunkenness or eating meat on Friday, or indeed is in the genus of lust but lightly culpable, as for example curious reading venially base, then the efficacy of causality is lacking, and (as St. Alphonsus says, l. c.) "since the cause concurs lightly toward pollution, there is no grave obligation of avoiding that cause on account of pollution which happens besides the intention."

Indeed, since not all actions which bring grave fault in the genus of lust have of themselves that efficacy, nor even have equal efficacy as to all men, but one plainly diverse according to the diverse weakness of persons; hence, by reason of the effect, grave fault can be absent even when grave fault was present in the act which furnished occasion for the motions, which for that reason are then judged to follow per accidens. Hence the Salamancans conclude (tr. 26, cap. 7, n. 41): "If in

some body, by reason of weakness... or of another cause, there is a positive indisposition to Venus, although causes be applied to him which otherwise of themselves gravely influence pollution or carnal delight with respect to others...; nevertheless with respect to him... they will not be gravely influencing, but only lightly or even in no way, or they will be causes materially only in the genus of lust; wherefore commonly... by reason of their influence on pollution he will not sin mortally."

But all fault can be absent when the action is per se licit and honorable, although wicked motions to follow are foreseen, which nevertheless one in no way wills or intends. Hence St. Alphonsus (lib. 3, n. 483): "If the aforesaid actions" (which otherwise in n. 482 he had said were causes gravely influencing) "are placed from a cause necessary, or useful, or suitable to soul or body, then... pollutions proceeding from them, even foreseen, are not sins, provided danger of consent is absent. Thus commonly Sylvius, Croix, and others with the common opinion and St. Thomas." And in reality the Angelic Doctor says thus (3, q. 80, art. 7): "Previous lascivious thoughts sometimes can be wholly without sin, for example when someone, for the sake of reading or disputation, is compelled to think of such things. And if this is without concupiscence and delight, they will not be unclean thoughts, but honorable; from which, however, pollution can follow, as is clear from the authority of Augustine..." But the words of Augustine (*De Gen. ad litt.*, lib. 12, cap. 15) are: "since this happens as much without sin as it is said without sin by those who are awake."

But of acts which, by reason of necessity, are without fault, St. Alphonsus adds these examples (lib. 3, n. 483): "Hence, even when involuntary pollution is foreseen (and a fortiori these things ought to be valid concerning wicked motions of lesser moment), it is lawful for pastors and also other confessors to hear the confessions of women, and to read treatises on base matters; for surgeons to look at and touch the parts of a sick woman, and to study medical matters... to serve in baths.... It is lawful for someone who suffers great itching in the private parts to drive it away by touch, even if pollution follows." But examples of actions free from fault by reason of a certain propriety he has these (ibid.): "It is lawful for others to address, kiss, or embrace women according to the custom of the country... and the like." Finally (ibid.), as regards actions which, notwithstanding pollution foreseen, are lawfully exercised as suitable to soul or body, he adds these three examples: namely, that it is lawful, 1. to ride a horse not only for the sake of necessity and utility, but also recreation; 2. to lie down in a certain position of the body for resting more conveniently; 3. to take hot foods or drink moderately, and to lead honorable dances. - And indeed to all and each of these things St. Alphonsus observes that opinions of this sort pertain to the doctrine commonly received.

Nevertheless, the limitation must be kept before the eyes which St. Alphonsus (l. c.) appends from the common opinion: "provided danger of consent is absent," namely into wicked motions and the delight that has arisen. Indeed the obligation of avoiding the danger of sinning is sufficient for an action to become illicit which otherwise would be dishonorable neither by reason of itself nor precisely by reason of the motions which it induces.

But if it is asked of what sort the danger ought to be which renders the cause of motions gravely illicit, let it suffice for the present to have suggested that the norm can be taken from those things which are customarily handed down in the Treatise on Penance concerning the proximate occasion of sinning, since this must therefore be removed or fled because it induces the danger of sinning. Therefore that frequency of falls, and the other adjuncts which according to the common doctrine constitute a proximate occasion, necessarily to be removed, will constitute this same danger on account of which someone is obliged to abstain from placing the cause of carnal motions.

Sins of this genus are kisses, touches, looks, base conversations, and readings.

Here we must treat only of external sins; for concerning internal sins, or concerning lingering delight and wicked desire, it has already been said in the Treatise on Sins, n. 167 and following. Hence we shall speak, 1. of sins not consummated; 2. of consummated sins.

Chapter I. On Sins of Lust Not Consummated

Article I. On Immodest Kisses and Touches

413. **Things To Be Established.** - I. Truly immodest kisses [1] and touches, that is, those had without cause on the dishonorable parts of another, can scarcely ever be excused from mortal sin, even when venereal affection is removed, because of the grave indecency and the imminent

danger of lust which they induce. Yet they are more easily excused from mortal sin if they are done on a person of the same sex than if on a person of a different sex. - St. Lig., n. 419, 420.

[1] In this place the Author denotes kisses which are imprinted on dishonorable parts. But there is this difference between kisses and touches of this sort: that sometimes a just cause can underlie the employment of those touches, for example for healing; but not likewise for kissing.

II. Kisses and touches on honorable or less honorable parts [2] constitute mortal sins if they are done from venereal delight; they are venial if they are done from levity, jest, curiosity, etc.; but they lack all fault if they are done according to the custom of the country, for the sake of civility or honorable benevolence [3]. The reason of these things is clear per se. - St. Lig., n. 417.

[2] Carefully note the distinction between the parts of the body which are less honorable and those which are dishonorable. The genital parts and those proximate to them are called dishonorable, or also base or obscene; but the breast, arms, legs, etc., are called less honorable and not base. Thus St. Alphonsus (lib. 3, n. 422). But what the Author says about those things which have venial fault if they are done about less honorable parts from levity, jest, curiosity, etc., can be taken of some touch, but is not truly to be transferred to kisses, as the thing itself speaks per se, which the Author also notes below in the third Resolution.

Likewise, what the Author says lack all fault if they are done according to the custom of the country, or for the sake of civility, etc., must be taken of honorable parts, but must not be extended to less honorable parts.

[3] ** [N. B. These things, and the Note which immediately follows, furnished matter for the VV. to write through seventy-six columns (pp. 296-334). All of them present themselves as of altogether the same weight as those which we have already seen them object many times in advance. Rather than subjoin something at the bottom of these Notes, if anything should seem worthy of some response, it has seemed opportune to insert it enclosed in brackets in the course of the Notes. Let the Reader patiently bear that, for this reason, the broken context of the discourse requires a little more labor for retaining the connection of things.]

To this pertains the common opinion of the Doctors that for the sake of civility and benevolence and for showing love, chaste touches are lawful for betrothed persons for the future, for example taking the hand, embraces, and kisses. [After the VV. (p. 297) said that in the Note the state of the question is rather darkened than clarified, they accuse it because it is said that chaste touches are lawful, not only for the sake of civility, but also for the sake of benevolence and for showing love; which (p. 299) they say was subtly added in the Note; and they continue (ibid.): "this opinion, namely that chaste touches are lawful for betrothed persons FOR SHOWING BENEVOLENCE AND LOVE APART FROM THE CUSTOM OF THE COUNTRY, is neither common, nor do the witnesses adduced testify to it." Thus they. - Resp. 1. Let the Reader see with his own eyes in the texts placed below whether the words "for the sake of benevolence" and "for showing love" are a subtle addition of P. B., or are the words of the alleged Authors. - Resp. 2. Let the Reader again see whether that phrase "APART FROM CUSTOM" is found in the words of P. B. And nevertheless against this fantastic shadow, namely that in the Note kisses, touches, etc., apart from the custom of the country, are asserted and defended as licit, the VV. seriously continue to fight also on pp. 300 and 301. - Moreover, by those words of the Doctors, "according to custom," "according to the custom of the country," a twofold sense, each right, can be understood: one, so that the custom of exhibiting those signs of benevolence after betrothals is indicated; the other, so that in the manner of exhibiting those signs the custom of the country is observed; and the words of St. Alphonsus have this sense also, that they are permitted in no other way than they are permitted to unmarried persons, where the usage flourishes.] I said, "common"; for thus Lucius Ferraris (*V. Luxuria*, n. 90): "All touches, kisses, embraces..., which are done between betrothed persons..., if they are done chastely, from a right end, according to the custom of the country, are licit. COMMON." - Thus also Giribaldi of the Clerics Regular of St. Paul (the Barnabites) (*De Matrim.*, cap. 19, dub. 15, n. 114): "You will ask, 5. whether kisses, touches, and embraces are lawful for betrothed persons for the future? The COMMON opinion denies that dishonorable touches on immodest and hidden parts are lawful.... But it concedes that otherwise honorable touches, embraces, kisses..., are lawful; and these indeed will be venial sin if they are done only for delight to be captured; and without any fault if they are done as a sign of love and benevolence according to the accustomed manner." - Nor otherwise Reiffenstuel (*Th. mor.*, tr. IX, dist. 4, q. 7, n. 77): "But whether touches and kisses are lawful between betrothed persons for the future is another difficulty. And indeed the Doctors everywhere confess that immodest touches between betrothed persons are not excused from mortal sin.... But if kisses and embraces are not of themselves immodest, and at the same time are done... with a view to honorable love and

benevolence, they are free from fault." [Reiffenstuel, say the VV. (p. 299), alleges Navarrus; but he recommends that mothers not allow daughters to be alone and in secret with betrothed persons. - Resp. They themselves could have seen that this also is recommended below in this Note. - The VV. add (p. 300) that in the newest edition of Reiffenstuel's Theology Flavianus Ricci adds the opinion of Pontas, that the opinion condemning kisses, etc., in betrothed persons as grave sin is to be preferred, because this opinion is safe. - Resp. Let Pontas have for himself the theory of condemning something as grave fault because this is safe. St. Antoninus, to whom St. Alphonsus subscribes, says this is the same as building for Gehenna.] - And the Salamancans (*De Matrim.*, cap. 15, n. 91): "The last difficulty is whether kisses, embraces, touches... are licit between betrothed persons for the future? It is answered that if such acts are done for capturing pleasure, they will be venial sins.... If as a sign of love, there will be no sin." [Here the VV. object (p. 299) that the Salamancans retracted these things (tract. 26, c. 3, n. 56-61). - Resp. Yet this difference intervenes between each place: that in the former, reported here, the Salamancans follow the common opinion and confirm it by authorities which have some worth; but in the latter they fortify a new opinion (l. c., n. 60) with a heap of false allegations, so that they do not hesitate to allege for it Busembaum and Cajetan, whom, forgetful of themselves, they had alleged (ibid., n. 56) also for the opposite, and whom the VV. themselves (p. 304) traduce as if excusing venereal delights! And indeed even in this place the Salamancans merely conclude that this newest opinion seems to them more probable in practice! If any seize suffrages of this sort, we willingly leave them to them.]

And that St. Alphonsus did not reject this doctrine is clear from this, that after these things were reported from Busembaum (lib. 6, n. 854): "Touches that are immodest are not lawful for betrothed persons, although embraces and kisses as a sign of love may be lawful," he finds nothing to reprehend. [Here the VV. subjoin (p. 301): "The illustrious Professor" (that is, P. Ballerini) "seems here to have labored either from a hallucination of the eyes or from distraction of mind." - Resp. Behold the words of St. Alphonsus (lib. 6, n. 584), which the VV. themselves also transcribe (p. 297): "Croix and Viva, with other authors adduced by them, concede that kisses and embraces according to the custom of the country can sometimes be permitted to betrothed persons, but in no other way than they are permitted to unmarried persons. And THIS IS PROBABLE, provided such acts are not pressed and prolonged for some time, as Roncaglia well warns, who also admits them FOR A DEMONSTRATION OF BENEVOLENCE; but I would not admit them except where such a usage flourished, as Mazzotta also says." Does St. Alphonsus differ even a little from the opinion of the Authors who are reported above in the Note? Does he not concede that, where this usage flourishes, kisses and embraces are lawful even for a demonstration of benevolence, which nevertheless the VV. just before were traducing as a subtle addition of P. B.?]

This one thing can move some, that acts of this sort contribute to stirring up carnal and wicked motions. But here the general rule must be valid which we touched on above (note to n. 412), namely that then only are these motions culpable when either the cause is evil, or there is danger of consenting. Therefore it pertains to the Confessor in the case to inspect, not indeed whether the cause is guilty, for since it is just, by that very fact it is honorable, but whether there is danger of consent into evil, and according to his prudence to furnish remedies to the penitent. In this matter he must indeed take care that the desire of removing one from danger of sin does not drive him so far that he condemns those things as sin, especially grave sin, which according to the common opinion of the Doctors have either no guilt or only light guilt. For zeal of this sort, not indeed according to knowledge, must finally obtain this one effect: that perhaps it may deter very few from those acts, but in reality drive very many, through a false conscience thrown in, into the snares of sin; whence it will easily happen besides that, once the fear of God has been trampled because of the imprudence of the Confessor, and the horror of sin lost, they may then slip into true and graver basenesses.

The very same thing also must be observed concerning looks and conversations between betrothed persons, when from these also those motions, and sometimes even to pollution, follow. For there is a just cause why a betrothed man should visit his betrothed, and have conversations with her. Therefore the whole question will turn on that danger of consenting about which it was said above in the note to n. 412.

In this matter a difficulty not light will indeed seem to offer itself, when from the frequency of falls the danger of consenting appears to be of such a kind that it ought to be considered as a proximate occasion of sinning. Nevertheless here in reality there is no greater difficulty than if there is question of a necessary proximate occasion: necessary, I say; for, considering all the adjuncts, the Confessor would require something morally impossible if he wished to keep a betrothed man from approaching and speaking with his betrothed, or (as after Sanchez, *De Matrim.*, lib. 9, disp. 46, n. 48-50, and many others alleged by the same, Diana notes, tom. 1, tr. 4, res. 37; and tom. 2, tr. 6, res. 37) from exhibiting the customary signs of benevolence. Therefore he must use other means for removing the danger. If the penitent does not refuse these, what Giribaldi has according to the commonly received principles will be valid (*De Poenit.*, cap. 10, dub. 3, n. 31). To the question,

Whether a betrothed man can be absolved who frequently visits his betrothed, on which occasion he sins, he responds that he can be absolved when the visits are according to the custom of the country, from which he cannot abstain without mark and disgrace, because the betrothed woman would think herself despised because he did not visit her as other betrothed men do; and the same is valid concerning a betrothed woman who from speech and the sight of the betrothed man suffers distillation and pollution; for she is not bound to flee the sight of the betrothed man if otherwise she does not have a just cause and excuse, since the sight and words are honorable and according to the custom of the country, and cannot be avoided without mark and disgrace. But the Confessor will suggest means not only general but special to the matter; and according to his prudence it is necessary that he deter, as he can, from exhibiting those signs of benevolence by which the tinder of concupiscence can more easily be stirred up, or at least propose that manner and frequency which does not exceed necessity. But the manner and measure which can easily be understood by all is this: that no more be provided than what can be provided in this matter before others, for example parents, without offense to anyone. Then especially it must be required that one never remain alone with one alone, especially in a secret place. And this indeed pertains most especially also to those who have care of them. Therefore with parents, and especially with mothers, one must deal most severely, and the grave obligation of this watchful custody and caution must be urged; to which they ought to be impelled not only by conscience, but also by fear lest daughters, once corrupted, grow old dishonored in the paternal home.

But if the remedies proposed by the Confessor do not obtain the desired fruit, this one thing remains, that these persons be dealt with no otherwise than it is handed down in the Treatise on Penance that one must deal with relapsing persons.

414. ○ III. Touches and kisses even on honorable parts will sometimes not be free from grave fault, especially if they are exercised more often or lingeringly by young persons of a different sex without any necessity or other just cause, although on account of merely organic pleasure. The reason is that from acts of this sort, repeated or lingering, carnal commotion and venereal delight will rarely be absent. - St. Lig., n. 416 [4].

[4] ** By "organic pleasure" here the Author calls that which above (note to n. 411) we called purely sensible; where we also suggested that in practice, if there is question of adults who aptly seek it, it scarcely has place precisely as such.

But that the Author seems to except from the rule which he hands down the case of necessity or of a just cause, this must not be extended to more lingering and more pressed kisses, from which even betrothed persons themselves are to be deterred, since scarcely any just cause can be thought up as regards those. (The VV. (p. 304), at these words of the Note: "this is not to be extended to more lingering and more pressed kisses," argue thus: P. B. says that betrothed persons are to be deterred from more lingering and more pressed kisses; therefore not altogether from simply lingering and pressed ones. - Resp. I deny the consequence. It is well known that among the Latins the comparative form, where a term of comparison is lacking, sometimes signifies less than the positive form; it is, namely, an elliptical locution, and there is understood "than is fitting," or "than the thing, or person, or time, or other circumstance bears or requires," etc.)

Yet the Doctors have moved another question concerning betrothed persons, namely whether some delight is lawful for them which they voluntarily take from kisses or embraces or chaste touches. I said, 1. "some delight"; for here venereal delight properly so called and proper to the genital parts is altogether excluded. I said, 2. "which they voluntarily take"; for concerning one arisen besides the intention and admitted by no consent, there is no controversy, even if it were venereal.

St. Alphonsus also treats the question thus proposed (lib. 6, n. 854), yet in such a way (for it will be useful to have touched this one thing concerning this matter in a merely historical way) that from the things disputed there it can scarcely be understood in what place the matter truly stands. And indeed for the opinion which holds that this delight is either licit for betrothed persons or not more than lightly evil (which nevertheless he does not seem to set forth accurately enough), he himself brings forward only five authors, namely Sanchez, the Salamancans, Aversa, Diana, and Azor. [The VV. complain (p. 305) that here it is said that with St. Alphonsus it can scarcely be understood in what place the matter stands. - Resp. 1. St. Alphonsus (lib. 6, n. 854) poses the question thus: "It is asked whether between betrothed persons chaste kisses and touches are mortal sins, if they are done for capturing pleasure"; but it is passed over in silence of what pleasure there is question; 2. For those standing for the first opinion St. Alphonsus alleges only five, while very many others stand for it, indicated here, to whom also three others are added by Diana (l. c. below, res. 38). But when the question is proposed thus, it is certainly not easy to understand in what place the matter stands. Therefore. - The VV. subsume (l. c.) that, if the thirteen Authors whom the holy Doctor alleges for his opinion (l. c.) are counted, and to these are added seven others with

Sanchez, fifteen others with Diana, and sixteen others with the Salamancans, now a number rises up which equals the sum of those cited in this Note. - Resp. 1. The seven with Sanchez were transcribed by the Salamancans; therefore lest they be counted twice, they must be taken away. 2. The fifteen with Diana are against the opinion of St. Alphonsus, not for it; nevertheless four are alleged also for it (l. c. below, n. 1); but since these are found repeated by the Salamancans, they cannot be counted. 3. We have already said that the allegations of the Salamancans are false, and we see some of these also with St. Alphonsus. Of what strength the allegations reported with St. Alphonsus are is shown in the following things. Therefore.] But Sanchez (*De Matr.*, lib. 9, disp. 46, n. 48) had alleged for the same opinion seventeen others; but Diana (tom. 2, tract. 6, res. 36, n. 2, 3) had added nine others to these, so that now we have thirty-one, among whom you may see the names of Soto, Cajetan, Toletus, Navarrus, Valencia, Sayrus, Reginaldus, etc.; and to these could be joined Laymann (lib. 3, sect. 4, n. 11), Palaus (*De Sponsalibus*, disp. 3, punct. 4, §2, n. 7), Sporer (*Theol. Sacram.*, p. 4, c. 2, sect. 4, n. 430), Escobar (lib. 26, sect. 2, dub. 26), Filliuccius (tr. 10, part 1, cap. IX, n. 357), Tamburini (*In Decal.*, lib. 7, cap. 3, §5, n. 61), Joann. Henriquez (in Mendo, disp. 5, q. 12, n. 4), and Giribaldi, who (*De Matrim.*, cap. 19, dub. 15, n. 114) asserts that it is the common doctrine.

But for the opinion which contends that this delight is gravely illicit for betrothed persons, you will see alleged with the same St. Alphonsus (l. c.) Lessius, Mazzotta, Roncaglia, Concina, Bonacina with Henriquez and Rebellus, Croix with Mendo, and Viva with Suarez, Perez, and Hurtado; which allegations indeed seem to have been gathered almost from Croix, Mazzotta, and Viva. But, 1. Lessius (*De Iust. et Iur.*, lib. 4, cap. 3, n. 59) indeed condemns these acts as grave fault in persons altogether unmarried; but (ibid., n. 58) he had handed down the opposite concerning betrothed persons thus: "To betrothed persons for the future that pleasure is conceded which is perceived precisely from a kiss and from contact of the hand or face, so that they do not sin in it even venially." [The VV. object (p. 313) that these words of Lessius are an argument which adversaries use, and whose opinion Lessius reprobates. - Resp. I concede the antecedent, and deny the consequence. Namely, those are the adversaries who treat not of betrothed persons, but of unmarried persons. Now Lessius reprobates their opinion, but does not deny the antecedent of the argument. And in reality the VV. themselves (l. c.) write: "Lessius concedes that kisses are lawful for betrothed persons by reason of the marriage begun, even on account of the delight which arises precisely from them." - The VV. subsume (ibid.) that Lessius concedes this speaking speculatively, but practically does not judge this opinion probable; and they subjoin these words of Lessius: "Therefore I would not call that opinion probable." - Resp. Those words of Lessius regard the opinion of the adversaries concerning unmarried persons, nor is it easy to understand how the VV. traduce Lessius, a classic author, as contradicting himself in the same place. Those things pertain to betrothed persons by which, at the end of the same n. 59, Lessius responds to the argument which the adversaries took from kisses licit as regards betrothed persons: "It is conceded to betrothed persons because it is a sign of future copula, to which by reason of the marriage begun they can consent." Hence it is clear that Lessius plainly concedes that antecedent of the adversaries.]

2. Say the same thing of Perez, who, while (*De Matrim.*, disp. 8, sect. 6, n. 7) he condemns as grave libidinous delight, which is a certain beginning of copula, nevertheless concedes as licit for betrothed persons the delight perceived from kisses (ibid., n. 4). [The VV. contend (p. 314) that Perez teaches that nothing is lawful for betrothed persons except that which would be lawful for others not married. - Resp. I deny altogether. Behold the words of Perez (l. c.) which the VV. also report: "I say first, it is certain among all Doctors that the aforesaid kisses, embraces, and touches not immodest are lawfully done between betrothed persons for the future, when they are done as a sign of benevolence according to the custom of the country, for reconciling and fostering mutual love in order to contracting marriage.... Hence with the aforesaid Doctors I gather that the delight following from them is licit and honorable." Indeed (which the VV. omit) Perez (ibid., n. 5) adds: "Add that the aforesaid kisses, embraces, and touches are also licit on account of the aforesaid end, even if danger of pollution is present, provided danger of consent into sensual and venereal delight is not present." But the objection premised by the VV. distorts Perez into a sense not his own. Perez (n. 8) responds to those objecting that betrothals give no right to those things which are opposed to chastity. But he responds by conceding this freely. And when (n. 7) he had premised that sin is committed through kisses and touches even not immodest, if they are done for the sake of libidinous delight, he infers (n. 8) that betrothals do not excuse in betrothed persons for the future from mortal or venial fault kisses, embraces, and touches even not immodest, which in them, if they were unmarried, would truly be mortal or venial, that is, which would be done for the sake of sensual and libidinous delight.]

3. Bonacina (*De Matr.*, q. 4, punct. 9, n. 6) and Mazzotta (tr. VII, disp. II, q. 2, cap. 2, q. 1) say each opinion is probable. [The VV. object (p. 315) that Bonacina said the opposite opinion was safer and more probable. - Resp. That he concedes the other to be probable is sufficient for a judgment about the liceity of the act. But that he says the opposite is more probable is not sufficient for injecting into the faithful a conscience of grave sin. These things follow from common principles

approved and inculcated by St. Alphonsus. As regards Mazzotta, the VV. object that he said the opposite was far more probable. - Resp. Mazzotta said that of carnal and (as he then explains) venereal delight, I concede, and he spoke very benignly thus concerning that; that he said it of the delight about which there is now question, I deny. Behold the words of Mazzotta (l. c.), which the VV. too much truncate here and there: "I respond with Perez and others that then they are lawful, when they are done as a sign of benevolence according to the custom of the country, for reconciling and fostering mutual love in order to contracting marriage; because thus not only does baseness not appear, but indeed an honorable end is present. Which is true, says Perez, even if in the case, besides the intention, commotion of the spirits or even pollution follows, provided danger of consent into that is not present. But if they are done on account of carnal delight... which sounds like venereal delight..., far more probably they contradict," etc.]

4. Suarez (*De Pecc.*, disp. 5, sect. 7, n. 12) and Henr. Henriquez (lib. XI, cap. 19, n. 4) have altogether nothing which makes to the matter. [The VV. confess (pp. 315-316) that Suarez has nothing about betrothed persons. But it could better have been noted that that allegation of Suarez regards another Suarez, of whom mention is made in Diana (tom. 2, tr. 6, reg. 38, n. 1), and about him nothing is to be cared for. But as regards Henriquez, he merely says (l. c.) that honorable embraces and kisses for benevolence were conceded by learned men; but they ought not to be permitted, since now betrothals do not pass over into marriage by copula with marital affection. I ask: why does he not say "ought," but "would ought"? The reason is rendered there in the note thus: "for danger of copula is present, while without arbiters they touch one another immodestly." Therefore he says this merely for forestalling dangers; which is consonant with that paragraph, where he treats of the office of the mother in the custody of daughters. But those whom he alleges in the Note, Cajetan, Navarrus, Angelus, and Silvester, are known not to forbid these signs of benevolence to betrothed persons, although Silvester (*V. Matrim.*, 5, §8) distinguishes a twofold genus of kisses: one, which would irreprehensibly be done only with wives and betrothed persons for the present, and which would suffice so that betrothals pass over into marriage; the other, which are customarily exhibited even to betrothed persons for the future in some places, etc. From these allegations it is permissible to judge the opinion of the VV., where they say (p. 305) that up to the sixteenth century no one is found who conceded this to betrothed persons.]

5. Rebellus (*De oblig. Iust.*, part 2, lib. 3, q. XIX, sect. 2) and Gaspar Hurtado (*De Matr.*, disp. 10, diffic. 10, n. 48) discuss, the one indeed libidinous delight, or kisses through which venereal pleasure is begun; the other, libidinous touches and the delight perceived therefrom; which likewise are not to the matter. [The VV. concede (p. 316) that Rebellus and Hurtado treat of libidinous or venereal delight; but they deny that they are alleged beside the matter, because some Authors in reality do not condemn at least as mortal some such delight. - Resp. Whether some author has excused at least from mortal sin venereal delight is of no interest now. It is of interest in this way: that St. Alphonsus alleges the authors of the second opinion as contradicting the authors of the first. But none of the five whom he brings forward for the first opinion speaks of venereal delight; therefore Rebellus and Hurtado, who attack merely venereal delight, are alleged against them beside the matter.]

6. Croix (lib. 6, p. 3, n. 151) merely opposes to the common opinion the false allegations of Lessius, Suarez, Henriquez, and Hurtado, to which he adds Comitolus; but also this one wrongly, because Paulus Comitolus, although a man of anomalous talent and of zeal inclined to stricter things, nevertheless did not depart from the common opinion in this matter, as is clear from these things (*Resp. mor.*, lib. 4, q. 20, n. 4): "Wherefore girls and virgins who, either from kisses and embraces of chaste young men whom they love, take honorable pleasure, whether when they think of those touches or also admit them bodily; either do not sin, or sin lightly, as Sylvester says, *V. Delectatio*, n. 7. Rosella, *V. Cogitatio morosa*, n. 4, affirms that they do not sin mortally. It must be said otherwise if they drew in obscene pleasure in mind or base pleasure in body." [The VV. note (p. 317) that, even if the force of the allegations which Croix puts forth wavers, nevertheless the suffrage of Croix himself is present. - Resp. A suffrage of this sort has as much force as the consequence which is drawn from false premises, that is, none. But the reason brought by Croix (lib. 3, p. 1, n. 894), namely that this sensible delight, especially if it is sought, could be followed by venereal delight; and if perhaps venereal delight should approach, danger could be present of consenting to it - this reason, I say, proves too much, nor does Logic consent that from a probable particular case an argument be taken for asserting grave sin for any cases whatsoever. - Concerning Comitolus the VV. (pp. 318-319) dispute through three columns, and ask whether he could rightly allege Paludanus and the Summas of Silvester and Rosella. - Resp. Those things make nothing to the matter. This is the question: whether Croix rightly and justly alleged Comitolus against those twenty authors who (as he himself says, lib. 3, p. 1, n. 894) say that delight only sensible, which arises in kisses or touches, is not mortal. Let anyone who shall have read with his own eyes the premised words of Comitolus judge.]

7. Finally Viva (*De Matr.*, q. 1, art. 7, n. 6), although he seems to fight against the common opinion of Sanchez, nevertheless speaks ambiguously of delight, now sensible, now carnal; and he entangles the matter more when in this place he says that he follows the more common doctrine against Sanchez, while elsewhere (on proposition 40 condemned by Alexander VII, n. 23) he attributes the opinion of Sanchez to very many; which two things would plainly be contradictory. [The VV. contend through three columns (pp. 319-320) that Viva is altogether to be exempted from every note both of confusion and contradiction. Resp. Viva (l. c.) attacks not only Sanchez, Cajetan, and Navarrus, as the VV. feign, but also Toletus, Fagundez, Bonacina, Salas, Valencia, and others with Diana; namely he attacks those fifteen whom the VV., as we have seen, wished to cite for the opinion of St. Alphonsus! But Viva attacks these because they excuse betrothed persons from mortal sin even if they intend sensitive and carnal delight. Now let us ask: of what sort is the delight which Viva reproves? For if it is merely sensitive or sensible, such as Sanchez asserts (lib. 9, disp. 46, n. 49), calling it "sensitive delight which arises from kisses," how does he subjoin that it is more commonly condemned as mortal sin? How does he object against those authors Rebellus and Hurtado, who fight only, as we have seen, against venereal delight? Indeed, how with these does he oppose Perez also, who, as we saw above, admits this sensible delight as licit? But if Viva wishes to fight against venereal delight, how does he attribute this opinion to those fifteen Writers with Diana, who follows them? How does he attribute it to those very many whose cause (on prop. 40 of Alex. VII, n. 23) he makes common with Sanchez? I ask: is this the most suitable way of treating questions clearly, distinctly, and coherently?]

Therefore, from those alleged, there will remain Mendo, Concina, and Roncaglia, of whom the last (tract. XII, cap. 1, q. 6) says that he marvels that some admit kisses as licit between betrothed persons, and that he never sufficiently perceived how it can be said that betrothals bestow on betrothed persons a right to mutual kisses. To these things others perhaps would reply that the reason which did not shine before Roncaglia's eyes nevertheless did shine commonly before the understanding of the other Doctors whom we have suggested; for no other sufficient cause of so common an opinion can be assigned except some reason sufficiently considerable, which compels very diverse talents into one opinion. The same must be replied to Mendo, who (*Statera Opin.*, diss. V, q. 12, n. 118) feared to follow the doctrine of so many and so grave Authors, as he says, because he did not see through the foundation of the same.

[The VV. note (p. 323) that the testimony of Concina is left untouched in the Note. - Resp. Do they not themselves (p. 324) expressly confess that Concina is called most rigid by the holy Doctor Alphonsus? Now the suffrage of a rigid author indeed is worth more than moderately when he absolves; not likewise when he condemns. Therefore in the case let them have him for themselves. - The VV. reply (p. 324): St. Alphonsus reproves very many opinions of Concina because they are more rigid than is just, or most rigid; but in this question... he does not think him rigid. - Resp. If it is so, then the force of the suffrage is not taken from Concina's authority, but from St. Alphonsus's. Now a suffrage which has no force except from the authority of the same person alleging the suffrage can be omitted without damage to the cause, since it contributes no help to the cause by itself. - The VV. add (pp. 321-323) that Roncaglia and Mendo do not stop in mere admiration, but overthrow the adverse opinion with very grave (!) arguments. - Resp. The reasons brought by Mendo are so valid that they condemn even that which St. Alphonsus approves as licit (see preceding note) in that general thesis of Sanchez (l. c., n. 47): "Kisses and embraces and other touches not immodest are excused from mortal fault between betrothed persons for the future." Nor truly is this strange; for Mendo is from those whose name scarcely appears elsewhere among allegations, except where some anomalous opinion is produced. - But as regards Roncaglia, it must be noted first that the question is restricted by him not only to kisses pressed and prolonged for some time, but moreover to those done for capturing sensible delight. Now Logic does not permit that from this a conclusion be drawn concerning all kisses, with St. Alphonsus's distinction set aside between one acting on account of delight and one acting with delight. But the argument already produced by Rebellus, and then repeated by the rest also wholly beside the matter, namely that betrothals do not give a right over the body of the other, with examples then added for illustrating the matter both of one buying a vineyard, who does not yet have a right in the thing, and of a man destined for the office of judge, which nevertheless he has not yet received - this argument, I say, is nothing but a pure sophism. And indeed do we assign a right over the body of another when we say that friendship gives a right of embracing or kissing a friend, or that the same right is present in parents toward children, etc.? It is indicated, namely, that the condition of friend to friend, of parents to children, etc., and also of betrothed persons mutually, is such that demonstrations of affection and benevolence of this kind cannot be condemned as incongruous to their state. Indeed, since that love is legitimate and honorable to such a degree that St. Thomas (see above, note to q. 7, n. 32) holds that a woman fittingly adorns herself to please the man whom she ought to receive as an act of virtue and meritorious of eternal life, it is likewise honorable to foster that love by signs of this sort.]

But another sophism must not be omitted here, against which some do not take enough caution in treating this question. Namely, they so distinguish merely sensible delight, which for example is drawn from touching silken cloth, from venereal

delight, that if indeed the delight perceived from an embrace is not that merely sensible delight, it must already be held as venereal and gravely damnable, just as if there were question of brute animals. But in a rational man another element must not be neglected, whence there is delight which can neither be called back to that merely sensible delight, nor again be condemned as venereal. And in truth, does the delight which a mother experiences in the embrace of a son returned from war have anything in common with the touch of a flower? This delight indeed so inheres in an embrace of this sort that she kisses the son a hundred times, nor for a long time allows him to be torn away from her arms. Therefore, if that delight is not sensible, will it be venereal? Namely, a pleasure and delight of its own and of an altogether diverse character is present when an ardent affection of the heart pours itself out through signs or demonstrations of this sort, and seems to satisfy itself and as it were rest in them. But as often as this affection is legitimate and honorable, and in pouring itself out keeps the limits of honesty and decency, what is there in which it may be condemned, or to what purpose is that theory concerning merely sensible delight and delight proper to the touch of silken cloth summoned hither? But from this it is understood why Authors, for rendering honorable embraces and kisses of this sort, bring forward the demonstration of love and benevolence, and the fostering of the same, as an end in some way intrinsic to the work; but add the question concerning delight, which either accompanies the act or perhaps even is intended, as it were concerning a thing which accrues to the act per accidens. And indeed perhaps someone would have thought not altogether absurdly that the graver Authors, when they here name sensible or sensitive delight, by no means wished to indicate merely the sense arising from the touch of a smooth thing. For there is another affection of the sensitive appetite, and that now pleasant, now unpleasant, which almost accompanies the affection of the rational appetite from which it arises, and has joined to it also some bodily change, and especially a change of the motions of the heart, now pleasant, now unpleasant; whence commonly the heart is said to be dilated or pressed. Yet this affection and bodily change of itself has nothing common with venereal delight, to such a degree that indeed it accompanies even the most pious affections toward God; and on that account we are warned not to cling too much to this sensible delight among spiritual exercises. Now by what more apt name than that of sensitive delight would Authors designate this sensitive affection, which arises spontaneously and accompanies those acts by which, in the case, it is brought forth and is shown by some effect? And from here indeed the sense of certain locutions can be drawn out, which the VV. try wholly to drag over to signifying venereal delight; whence they accuse both Navarrus and Cajetan and also Sanchez, as if they had asserted that venereal delight is licit for betrothed persons, or at least not gravely culpable in the case. But even in these matters they have against them the rigid Mendo, whose words they themselves report (p. 322). The VV. take the occasion of accusing Navarrus from those words of Navarrus (*Man.*, c. 16, n. 12): "For betrothals, which are the beginning of marriage, make a faculty of enjoying pleasure preambulatory to matrimonial pleasure, which is the singular determination of the same Cajetan on 2. 2, q. 154, art. 4." But these words rather persuade the opposite. For if according to Navarrus the pleasure conceded to betrothed persons is related to matrimonial pleasure as betrothals are related to marriage, it must be concluded that that preambulatory pleasure is nothing other than a certain disposition prior to another. Wherefore, just as betrothals are a disposition to marriage in such a way that nevertheless they participate nothing of the nature of marriage, so also that preambulatory pleasure must be understood as wholly without the nature of that pleasure which is exclusively marital. And from here it is given to know better what those locutions of Cajetan alleged by Navarrus mean, where (l. c.) he writes: "But it seems that just as betrothal is a certain beginning of marriage, so also an act of this sort" (namely a kiss) "is a certain beginning of carnal copula"; or (as he has in the *Summa*, V. Sponsalitia): "Just as a betrothed woman belongs to the betrothed man inchoatively, so the venereal delight of carnal joining between them is permitted inchoatively between the same; but it is clear that kisses... import only the beginning of venereal delight." Now the same argument as above returns. For the delight of kissing is the beginning of venereal delight just as betrothal is the beginning of marriage. But betrothal is a mere prior disposition to marriage. Filliuccius (tr. 10, c. 9, n. 357), aptly rendering the sense of these Authors, has it thus: "If they are not immodest, that is, if they are on honorable parts, as kisses, embraces, touches of hands, and the like, they are lawful, even if they" (the betrothed) "intend to capture from them sensitive delight, but not venereal. The reason is that, as marriage in the present renders copula honorable, so betrothals, which are a certain remote beginning of marriage, render honorable those touches which are a remote beginning toward copula. Cajet., Navarr., Lopez, and others with Sanchez." From these things it appears that they are indeed called a beginning, yet in such a way that venereal delight itself is excluded.]

This also must not be omitted here, that St. Alphonsus in this question in no way objected proposition XL from those proscribed by Alexander VII, which sounds thus: "The opinion is probable which says that a kiss had on account of carnal and sensible delight which arises from the kiss, with danger of further consent and pollution removed, is only venial." But it seems this must be repeated from a twofold cause. For first indeed that proposition speaks of carnal or venereal delight, of which there is no question (see Duarte on this proposition, n. 489, and Viva on the same prop., n. 3); hence St. Alphonsus (lib. 3, n. 415) uses that proposition to prove that smallness of matter is not given in a venereal thing. But then (even

abstracting from the species of delight), this proposition admits exceptions, as is clear from married persons. But exceptions are not to be sought from the proposition itself, since it presents none, but from the sense of the Catholic schools. But the Catholic schools did not even suspect that the question concerning betrothed persons about which we are treating was contained in that proposition.

And these things indeed, as was premised, have been said merely historically. To these it will be useful to have added only this, that in questions of this sort the distinction which St. Alphonsus also elsewhere (lib. 3, n. 416) uses is very useful, namely that it is one thing to act on account of delight, another to act with delight. For, as we warned above (note to n. 411), the former manner of acting will most easily lead on to further things.

Here the VV. ask (p. 331): What do those words mean: "And these things indeed have been said merely historically"? Resp. They signify that the things which have been said hold the place of premises, from which others can elicit a suitable conclusion. The VV. themselves sometimes close their discourse with those words: "Let the Reader judge."

Indeed it is useful here also, merely historically, to subjoin in what way the VV. themselves gathered other Authors for the thesis of St. Alphonsus (pp. 324-330).

1. They allege Potestas thus (p. 327): "Kisses and embraces on account of natural and sensible delight... are mortal sins for betrothed persons for the future" (tom. 1, n. 2237); but they omit this explanation of the same Potestas (ibid., n. 2203): "Natural sensible delight is formally and intrinsically venereal."

2. They bring forward these things from Antoine (*De Pecc.*, c. 7, q. 13): "Since betrothals are only a promise of future marriage, not a handing over of bodies, they bestow no present right over the body of the other in order to copula to be exercised here and now, nor therefore to acts which are ordered to it." But they omit what acts those are concerning which Antoine treats; but he expresses them thus in the thesis itself: "Every venereal delight, look, and base touch or touch of the pudenda, and any act of lust, are mortal."

3. They report these words from Candidus (disp. 11, art. 1, dub. 5): "Yet it seems to me truer and more probable that kisses and touches of this sort between betrothed persons for the future, if the end is only SENSUAL delight, are not licit, but mortal." But they omit to note that these things are not opposed to the preceding thesis of the same Candidus, where he treats not of sensual but of only sensitive delight, between which words nevertheless even Potestas (l. c.) notes that there is much difference. I said, the thesis of Candidus; for thus he begins: "I say seventh," etc.; therefore the VV. do not well feign that there the opinion of others is reported. But the thesis has itself thus: "If the end of these kisses," etc., "between betrothed persons for the future is delight only sensitive, they will be venial fault, because as such" (namely on account of defect of a right end) "even between spouses they are of similar fault."

4. The VV. bring forward these words of Cardenas (tr. 5, disp. 45, n. 205): "And thus I deny that opinion to be probable intrinsically, and after the condemnation of Alex. VII I think it is not even probable extrinsically." But the VV. wish these things to contain a response to those objecting: "Between betrothed persons for the future kisses and the delight arising precisely from them are not illicit mortally." But they omit those things which make clear that that response regards only venereal delight. For Cardenas premises these things in the same n. 205: "I respond secondly and chiefly, according to my opinion, ... that chaste embraces and kisses are licit for betrothed persons for the future, but not libidinous embraces and kisses; that embraces and kisses are licit, provided they resist the venereal delight and commotion arising from them. For... it is not lawful for them to provide consent to venereal delight, which is ordered to copula, not yet licit for them."

5. The VV. allege Mastrius; who nevertheless merely reports diverse opinions; but the suffrage for the cause of the VV. is worth as much as it is worth with Mastrius to have opposed the three false allegations of Lessius, Rebellus, and Henriquez to more, as Mastrius himself confesses, Doctors.

6. They allege Joannes Conradus, Ant. Fernandez de Moure, and Babenstuber. But in the texts which the VV. themselves allege, you discern that those authors are disputing there about venereal, carnal, libidinous delight. And from these indeed let the Reader judge also concerning some other allegations of the same weight.

IV. Kisses, touches, and embraces exercised on account of venereal delight contract malice diverse in species according to the various circumstances of the persons; for they are judged to be of the same nature as the consummated act toward which by their nature they tend. Hence in confession it must

be explained whether they were had with the same or a different sex, with a married person, etc. - Thus commonly. - St. Lig., n. 417. - Lessius, etc.

415. **Resolves.** - 1. Kisses which mothers or nurses are accustomed to imprint on infants are free from fault. Say the same, at least ordinarily, of others who kiss infants of tender age, even of a different sex, with every wicked affection removed.

2. Young persons of either sex who in some games decently and without wicked intention embrace one another are not immediately to be accused of sin, and much less of grave sin, although they are to be turned away from games of this sort because of the danger joined to them.

3. But kisses impressed on less customary parts of the body, especially between persons of a different sex, for example on the breast, etc., or also if they are done lingeringly, especially with the tongue introduced into the mouth, likewise if they are long-lasting, repeated, etc., almost must be held as mortal. - St. Lig., n. 417.

416. ○ 4. They do not sin per se who touch themselves for wiping away bodily filth, or for calming itching, or for curing infirmities; yet if the itching is tolerable, it must be suggested that, insofar as they can without grave trouble, they abstain from touches. It is necessary, however, that the Confessor use great discretion in these things. For doubts of this sort are accustomed to vex especially persons of timorous conscience. But persuasions, if they are a little more vehement and are not seasoned with an open declaration about the otherwise absence of any guilt, will often and easily entangle consciences in most troublesome scruples. - St. Lig., *Hom. apost.*, n. 3. - But if touches of one's own body are done without cause, they do not exceed venial sin when, venereal affection being removed, they are had only in passing, and from mere levity or curiosity, because they are not very much incentives of lust. - St. Lig., n. 419.

5. Touches on the private parts of the same sex or on neighboring parts, even over clothes, ordinarily are not excused from grave sin, unless perhaps they are done from petulance, jest, levity, and in passing. - St. Lig., n. 420.

6. A fortiori, with the case of necessity excluded, touches on the private parts of a different sex, even had for a brief time, cannot be excused from mortal sin; since they can scarcely proceed from any cause other than lust, and, besides that they are most indecent, they create per se a proximate danger of pollution or venereal delight. - St. Lig., n. 420. Yet probably maids are not to be accused of grave sin who perhaps touch the pudenda of infants while they clothe them, unless they do this with delay or carnal delight. - Lacroix, n. 902. - St. Lig., ibid.

7. It does not exceed venial sin, speaking per se, lightly and without delay to touch the fingers, hands, face of a person of a different sex, a wicked end being removed, and every affection and danger of lust, if these things are done, for example, from mere levity, and do not have a special danger joined by reason of one's own fragility or that of another.

Moreover, since in so slippery a matter it is not always easily clear what is venial or mortal, and on the other hand since not rarely there is present a proximate danger of gravely offending even in those things which per se do not exceed light sin, for example if they are done often and with delay between persons inclined to lusts, the Confessor must take the greatest pains to remove penitents, especially younger ones, from any touches with a different sex.

Article II. On Obscene Looks

417. **Things To Be Established.** - I. Base looks without sufficient cause are gravely or lightly sinful according to the intention of the one acting, the degree of baseness, and the danger of venereal consent. They are more easily excused from grave guilt in oneself than in others, because one's own things move less than others' things. Likewise they are more easily excused if there is question of a person of the same sex than of a different sex, because they provoke less to lust.

II. Gravely immodest looks without grave cause, especially as regards persons of a different sex, are not per se to be excused from mortal sin, although venereal affection is absent; because they almost always generate a proximate danger of lust, as was said above concerning wicked touches. - St. Lig., n. 421. - Yet generally looks are more easily excused from grave sin than base touches, because they influence lust less.

It is asked: Whether looks, not otherwise than touches, put on the malice of the circumstances of the person who is looked upon basely?

Resp. It is denied, more probably, if they are done without any desire. The reason is that they are not judged properly by their nature to tend into the consummated act. - St. Lig., ibid. - Lacroix, ibid. - Hence a look at a consanguineous, married, or sacred person does not put on the malice of incest, adultery, or sacrilege.

418. **Resolves.** - 1. Persons of the same sex who lightly look at themselves naked while swimming together or washing themselves are excused per se from mortal sin, especially if they are prepubescent. - Thus commonly.

2. Looks upon the private parts of a different sex or on neighboring parts are ordinarily mortal sins, unless perhaps the sight happens from afar and for a very brief time; because a look of this sort either arises from lust or certainly induces a proximate danger of sinning. Nor are you excused from grave sin if you look at base parts through a very thin and translucent veil, because almost always such a look increases lust rather than diminishes it. - Thus commonly. - St. Lig., n. 421. - They except, 1. if the one looking is a boy or very old or very cold, because these are moved little; 2. if the eyes are fixed on a little infant, because this moves little. Hence maids and nurses who look in this way at boys entrusted to them are not judged to sin gravely, unless they do it lingeringly or by repeated times and with wicked affection.

3. Looks upon the honorable parts of a person of a different sex, even a beautiful person, per se are not sins; but if they are done from curiosity or with some lingering, they will ordinarily be venial sins; but lengthy looks will not be excused from mortal sin if they involve proximate danger of base concupiscence or lingering delight, especially if commotion of the spirits rises

up, and a fortiori if the person is loved with disordered love. - Thus commonly. - St. Lig., n. 422.

4. Looks upon the less honorable but not base parts of a woman, namely the breast, arms, legs, are not per se mortal sins, yet with proximate danger of wicked consent removed, which otherwise will easily be present if the look is lengthy. - St. Lig., n. 423. - Nor do they sin gravely who, with special danger removed, look at mothers or nurses nursing infants, or fix their eyes on the exposed breast of an old woman or of a younger woman not yet formed.

5. Looks at obscene pictures from mere curiosity are not held as mortal sins, if base delight or proximate danger of it is absent. - Yet in practice a man looking at the pudenda of a depicted woman could scarcely be excused from mortal sin, because he will be able only with difficulty to avoid base delight, unless perhaps it happens for a very brief time or at a great distance, or unless the age of the picture has diminished the force of the art. - St. Lig., n. 424. - But Billuart with others excuses from mortal sin if the looks are done from levity, in passing, from curiosity, or if the pictures represent only infants, because painted things do not move as natural things do; and this does not seem improbable, unless perhaps because of the fragility of the one looking it must be judged otherwise.

Article III. On Immodest Conversations and Readings

419. **Principles.** - I. To speak, sing, write, or hear base things for the sake of venereal delight or with proximate danger of consent into it is a grave sin. But if wicked intention and danger of consent are absent, and at the same time a legitimate cause is present of uttering, writing, or hearing such things, there is no sin.

II. To read books altogether obscene without a just cause is a mortal sin, even if this seems to be done from curiosity or for the sake of recreation; because per se this reading very much provokes to lust. Except perhaps unless those reading, from curiosity alone, on account of advanced age and cold temperament or the custom of treating venereal matters, do not incur grave danger of lust. - St. Lig., n. 426.

III. To read amorous and lightly obscene books per se is not mortal, although in practice it is very dangerous especially for younger persons. But to read books in some measure obscene, otherwise treating of the sciences, from the sole view of science or one's own or another's utility, per se is not a sin, yet with danger of venereal consent removed, which otherwise in younger persons will rarely be absent.

420. **Resolves.** - 1. Generally they sin gravely who mix in conversations, even from levity, concerning the conjugal act, concerning things licit and illicit between spouses, concerning ways of impeding generation, of procuring pollution..., especially if this happens among young persons of different sex.

2. They sin gravely who utter even only base words, if they do this on account of delight taken from the very thought of base things. Nor are they excused from grave sin who, under the

pretext of joking, express the same things on account of that delight by equivocal but sufficiently known words. - St. Lig., n. 426.

3. They also sin gravely who because of boastfulness narrate their own base sins, and indeed ordinarily in a threefold way: namely by the sin of complacency, of scandal, and of boastfulness concerning a sin committed.

4. It is not per se mortal to utter things indeed base, but not gravely obscene, if it is done briefly, through joke or vain solace, unless those hearing are so weak in spirit that they suffer grave scandal. Hence commonly base witticisms which are uttered by harvesters, grape-gatherers, muleteers are not grave, because ordinarily they are said and heard for mere joke. - St. Lig., n. 426.

5. Tender conversations with persons of a different sex are not always to be held as mortal sins, although they are full of dangers, especially if they are lengthy, often repeated, or happen in solitary places. - St. Lig., n. 422, 426. What therefore must be judged concerning loves, as they call them, especially among younger persons? - Not all indiscriminately are faults, mortal to be condemned; although often the proximate occasion of sinning lethally will with difficulty be absent, at least in the progress and when certain adjuncts approach, as if lovers meet wholly alone, especially for a longer time or at night, etc. - St. Lig., *Praxis Conf.*, n. 63.

6. They do not sin gravely who from mere curiosity read witty books, because they do not gravely excite to lust, nor expose to great danger, such as many comedies or poems. - But if they do this on account of a legitimate cause, for example for learning or for acquiring eloquence, they do not sin in any way.

Chapter II. On Consummated Sins of Lust

Article I. On Sins Consummated According to Nature

§ I. On Fornication

421. ○ Fornication is the copula of an unmarried man with an unmarried woman from mutual consent.

Fornication is gravely prohibited by natural law and positive divine law, so that it can never be excused from grave sin. This is clear, 1. from Scripture, 1 Cor. 6. 9: "Nor shall fornicators possess the kingdom of God." - Ephes. 5. 5: "Every fornicator or unclean person... does not have inheritance in the kingdom of Christ." - 2. From reason: for if fornication were permitted, men for the most part would withdraw from contracting marriage, and offspring received from fornication would be left without any education, whence also the subversion of the social order would necessarily follow.

To fornication are referred, 1. concubinage, which is the habitual commerce of an unmarried man with an unmarried woman; - 2. prostitution, which is the state of a woman prostituted to all.

The circumstance of concubinage or prostitution is not necessarily to be declared in confession, since per se it does not change the species of the sin. But per accidens it is often to be explained in order to

manifest the state and kind of occasions, and always must be opened to the Confessor when he asks. - St. Lig., n. 432.

§ II. On Adultery

422. ○ 1. Adultery is copula with the spouse of another, or it is access to a bed not one's own.

2. Adultery, besides sin against chastity, includes another against justice. It is evident from reason, and clear from various places of Sacred Scripture.

3. Adultery is committed even if the other spouse consents, because in every case the rights of the Sacrament and of the indissoluble contract are violated; which rights indeed nature itself requires to be altogether inalienable.

4. Adultery between two married persons is double, and is a violation of a double bed; and therefore this circumstance is to be set forth in confession. - St. Lig., n. 445.

§ III. On Incest

423. ○ Incest is intercourse with consanguineous persons or affines within the degrees prohibited by the Church for marriage.

Incest differs in species from other sins of lust, because it gravely conflicts with the natural reverence owed to parents, and consequently to persons who are bound to them by proximate conjunction of blood or affinity. - St. Lig., n. 448.

Whether incest with consanguineous persons and incest with affines differ in species, and again whether incest differs in species according to the varied degree of affinity and consanguinity, and therefore whether the degree must necessarily be expressed in confession, we shall say in the Treatise on Penance, where there is question of circumstances aggravating sins.

§ IV. On Sacrilege

424. ○ Sacrilege, insofar as it is a sin of lust, is the violation of a sacred person or place through a venereal act.

Sacrilege, besides sin against chastity, also embraces sin against Religion or against the reverence owed to God, and therefore also to sacred places.

Resolves. - 1. A person consecrated to God who sins with another of the same condition commits double sacrilege, because he offends Religion doubly. - St. Lig., n. 456.

2. A priest who is also a Religious, who sins against chastity, more probably does not commit double sacrilege; because although from a double title he remains bound by the vow of chastity, nevertheless he sins against the same formal precept, or one imposed from the same motive. - St. Lig., n. 455.

3. He is sacrilegious who by counsel induces a sacred person to a sin of lust, although he himself does not sin with that person; because he cooperates in that person's sin.

4. Voluntary pollution in a Church is sacrilege, although it is secret, and although the Church does not need reconciliation, as it does need it in notorious pollution.

5. Touches lightly base in a Church, according to the more common opinion, are not grave [1], because from them there does not result great irreverence toward the sacred place. But otherwise, if they are enormously grave. - But if they are simply grave, a double opinion is given: as St. Lig. affirms as absolutely more probable, because dishonorable touches have the same malice as copula itself, and although by these acts the Church is not violated, nevertheless grave irreverence is inflicted on it. The holy Author says the same about gravely obscene words and looks, n. 459-461, and *Hom. apost.*, n. 22. - But internal acts, or thoughts, or wicked desires had in a Church are not grave sacrileges, if you except desires of sinning externally in the Church itself. - St. Alph., n. 462, and *Hom. apost.*, ibid.

[1] It is said that they are not grave sacrileges, because some malice of sacrilege, if sin is committed in a church, is never not present; nevertheless this is not always grave and to be expressed in confession. See the things noted above at n. 286, q. 2, resp. 2.

§ V. On Stuprum

425. ○ Stuprum is the violation or oppression of a woman against her will. Thus commonly [1]. - According to others, under the name of stuprum comes only the deflowering of a virgin who does not consent. Any illicit intercourse is also called stuprum in a broad sense.

[1] In this place the Author takes stuprum not in the theological sense, but rather from the norm of civil law, indeed also in a certain broader signification. For civil law, by the name of stuprum, insofar as it is a crime distinct from others and to be punished by a special penalty, understands the violent oppression of a virgin or widow living honorably; but the Author comprehends the oppression of any woman whatsoever, even one not honorable, or even one joined in marriage, as is clear from the second resolution; namely he extends stuprum to all cases in which force is brought upon a woman, and therefore the crime of injustice accedes to the sin of immodesty.

But Theologians and Canonists do not so take it; although they note that stuprum in a certain broad sense is taken for any illicit intercourse, nevertheless in the proper and strict sense they take it for the illicit violation of a virgin according to c. *Lex illa*, 2, § fin., caus. 36, q. 1, where it is said: "Stuprum properly is the illicit deflowering of virgins"; and they find that the species of stuprum to be expressed in confession is only in the unjust deflowering of a virgin. Yet they distinguish this very thing as twofold, namely violent and voluntary. Violent, indeed, when she is subjected and oppressed by force and physical violence. But voluntary, not indeed when the virgin consents freely and of her own accord (in which case according to the more common opinion of the Doctors, as regards the species to be expressed in confession, it is judged mere fornication), but when a virgin, induced by deceit or another unjust reason, consents to deflowering, as happens 1. through reverential fear, 2. through fear falling upon a constant girl, 3. through a fraudulent promise of marriage or of a great dowry for another marriage, 4. through repeated importunate prayers, at least if threats are joined to these. See Struggl, *Th. moral.*, tr. 7, q. 4, n. 28.

Now when there is question either of reservation of cases or of penalties to be inflicted on a violator by the sacred canons, stuprum is always taken in that strict sense which we have said was received by Theologians, nor does St. Alphonsus, alleged here by the Author, have anything else.

Stuprum, besides grave sin against chastity, also involves grave fault against justice, necessarily to be opened in confession. - St. Lig., n. 443.

426. **Resolves.** - 1. It is stuprum to fornicate with a woman who is insane, drunk, or sleeping, because she is violated without her consent, and therefore grave injury is brought upon her.

2. It is stuprum to bring force even upon a woman already corrupted or upon a widow; because it consists in the violence and injury which is brought upon a woman by oppressing her against her will. Consequently if someone oppresses a married woman, he commits adultery and stuprum at the same time.

3. It is not stuprum to fornicate with a virgin plainly consenting, even if she is corrupted for the first time; because she is mistress of her own body and freely yields her right.

4. The circumstance of the virginity of a girl who has been violated, if she herself consented to the matter, is not necessarily per se to be declared in confession, because stuprum more probably consists only in violence brought upon a woman, not in the violation of virginal integrity.

§ VI. On Raptus

427. ○ Raptus is the abduction of a person for the sake of lust from a safe place to an unsafe place by force or grave fear brought upon that person or upon those under whose power that person is. - St. Lig., n. 443.

As regards raptus, hold these things:

1. Raptus is a special sin, although the wicked act of lust does not follow [1]; because it consists chiefly in the injury which is brought in violent abduction for the sake of lust.

[1] Nevertheless in raptus itself there is a double sin; for on the part of the end and intention it is a sin of lust, and on the part of the action there is a sin of injustice.

2. If after the raptus the desire of lust is fulfilled, it constitutes a diverse species of lust, which must be declared in confession [2].

[2] Namely, the crime of raptus must also be declared at the same time.

3. It is not to be judged raptus if a woman fully consenting is abducted, unless nevertheless she is a minor, and at the same time her parents or tutors or curators suffer this against their will [3]. - See the things to be said in the Treatise on Marriage [4]. - St. Lig., n. 444.

[3] Namely, the crime of raptus is had whether force is brought upon the abducted person alone, or only upon those under whose power the person is, or upon both.

[4] Yet in the treatise on Marriage there is not treatment of raptus insofar as it is a species of lust, which namely is done for the sake of lust, but insofar as it is an impediment of marriage, and the person is abducted not for the sake of exercising lust, but for the sake of contracting marriage.

But concerning raptus the recent declaration of the S. Congregation of the Council must be noted, from which it must be established that it is to be called back to the crime of raptus not only if a person is abducted by force and fear, but also if by deceit and fraud.

Article II. On Sins Consummated Against Nature

A threefold species of them is given: 1. pollution; 2. sodomy; 3. bestiality. To these is also to be numbered onanism, or the sin of Onan, which is copula begun, but consummated externally for the sake of avoiding generation, whether this happens between married persons or between others. But concerning this nefarious sin we shall speak in the Treatise on Marriage, where there is question of the conjugal debt.

§ I. On Pollution

428. ○ Pollution is the effusion of semen without intercourse with another. Voluntary pollution, of which alone we treat, is either directly or indirectly sought. It is also called mollities. But it differs from distillation, which is the light effusion of another more subtle humor. In pollution semen is ordinarily ejaculated with vehement delight and great commotion; but distillation is had ordinarily with no delight and commotion, or with very slight.

429. **Principles.** - I. Pollution directly and perfectly voluntary is always a mortal sin, so that it is never lawful to procure it. The reason is, 1. because pollution has intrinsic repugnance with nature, which has ordered the effusion of semen solely to generation [1]; 2. because if it were ever permitted, or prohibited only under venial sin, a habit of pollution would most easily be contracted because of the great proclivity of corrupted nature into lust, and therefore the order of nature would shortly be subverted; 3. it is clear from various texts of Sacred Scripture, for example 1 Cor. 6. 10: "Nor the effeminate... shall possess the kingdom of God"; 4. it is also clear from proposition 49 condemned by Innocent XI, which has itself thus: "Mollities is not prohibited by the law of nature; hence if God had not forbidden it, it would often be good..." - See St. Lig., n. 476.

[1] ** It is certainly important to know accurately in what the special malice of this sin resides, so that from this the Confessor may take some norm by which, concerning the questioning of penitents, he may more easily free himself from troublesome scruples. Therefore the proper notion of this sin ought to be sought from the character of a sin against nature. Concerning this, Filliuccius says generally thus (tr. 30, n. 137): "This sin is called against nature, because it is not only repugnant to the rational order - for this is common to any sin of lust, which is against reason and is repugnant to the rational order - but also because it is repugnant to the natural order of the venereal act in the human species; for the natural order of such an act ought to be of such a kind that from it the generation of a human being can follow; for this is its end. Therefore if it cannot follow, such an act will be against the natural order, and therefore will be called a sin against nature." But more briefly and more distinctly Elbel (part 4, conf. 9, n. 254) says of the special malice of this sin: "The reason is that human seed is ordered by nature to generation; therefore to pour it forth for another end (pleasure) is repugnant to the order of nature." Therefore, since this special malice consists in the vain effusion of semen against the order of nature, now it is clear why this sin differs in species from any immodest act which venereal pleasure indeed follows, but no effusion of semen; and therefore why the Confessor (with those cautions indeed which all the Doctors deservedly require) not imprudently asks about this as an object of a peculiar species.

But again, since this special disorder is placed in the vain effusion of semen, which was instituted by nature solely for conjugal copula so that offspring might be received from it, now the reason is clear why the Doctors judge differently about this baseness as regards those who either can emit no semen, or certainly not true semen. Hence what Sporer has (*Theol. Sacr.*, p. 4, c. 2, n. 39) concerning the prepubescent: "If boys or girls, who cannot yet sow seed, touch themselves basely..., it is indeed a mortal sin; ... yet it seems to differ in species from true pollution, through which seed is sown, and in proper species it must be reduced to the immodesty of touch." Likewise Holzmann (part 2, tr. 2, n. 686): "If the prepubescent, whether boys or girls, try by immodest motion to elicit seed, when they cannot yet do so, they commit a sin diverse in species from true pollution, in reality pertaining to the immodesty of touch.... The reason is that... since they do not pour

forth semen, they do not commit the sin of true pollution, but another diverse in species." Think the same thing of eunuchs deprived of seed apt for generation. Nor otherwise Babenstuber (tr. 5, disp. 7, art. 2, n. 71): "The prepubescent..., who try by immodest motion to pour forth seed, when they cannot yet do so, do indeed sin mortally...; nevertheless that sin of theirs differs in species from true and properly so-called pollution. The reason is that it belongs to the nature of true pollution to pour forth seed against the end of human generation; but in persons of this sort there is no effusion of seed. Therefore this sin in reality and properly pertains to the immodesty of touch.... What has been said of the prepubescent must also be understood of eunuchs. For in these there is no seed useful for generation." And Tamburini had gone before (*De 2. Eccl. Praec.*, c. 17, n. 13), saying: "Those who from defect of age, or from another cause (such as the prepubescent, as also eunuchs), cannot by immodest motion pour forth seed, or pour forth useless seed, sin mortally...; but certainly this species of sin differs from true pollution, to which it belongs to throw forth seed against the end of generation; this throwing forth is not in the aforesaid persons of this sort; therefore the sin in the prepubescent is reduced in reality to immodest touch." From this, moreover, to the reasons which Doctors are accustomed wisely to bring forward why the Confessor must be most cautious in questioning penitents of this sort about this argument, this peremptory reason accedes: that as soon as they shall prudently have searched sufficiently whether these things were maliciously carried out, no place remains for further questions.

But from these things arises an occasion of almost the same question concerning the same sin, if there is question of women. For however theologians may introduce speech concerning female seed, and indeed for many causes, nevertheless when they then ask about its nature, they commonly have nothing except what is altogether uncertain. Let Bonacina stand for all (*De Matr.*, q. 4, p. 6, n. 13), who writes: "According to the most probable opinion the seed of a woman concurs neither actively nor passively toward generation." And Sanchez (lib. 9, disp. 17, n. 9): "That female seed is not necessary, nor concurs actively toward generation, Galen, contrary to himself, Aristotle, Avicenna, Albertus M., Hugo Senensis, and many others teach, and the whole school of theologians with St. Thomas, 3, q. 31, art. 4, ad 3. This is clear from this, that, experience testifying, women wholly unwilling... conceive when receiving male seed; but then they by no means emit seed. Therefore since without that seed... generation follows," etc. But although the old followers of Scotus, as Sanchez suggests (l. c.), and then Elbel (part 4, conf. 9, n. 252), after Hippocrates thought that the seed of a woman concurs actively toward generation, nevertheless Elbel himself (ibid., n. 253) then confesses that today it is commonly denied by learned Physicians that true seed, or true testicles, are given in women, but rather ovaries filled with certain little things (by others they are called vesicles). Thus Georgius Francus in Paulus Zacchia, *Quaest. medic. legal.* From this, as from a hypothesis, the same one (l. c.) rightly concludes from the premised principles: "Whatever nevertheless may be about this matter, among theologians it remains certain and undoubted that it is as little permitted to women as to the prepubescent or eunuchs to provoke themselves to venery by their own touch or that of another." Now since the matter is now no longer uncertain or hypothetical, but certain and most thoroughly investigated among Physicians or those skilled in physiology, namely that what has been customarily called female seed is wholly diverse from the nature of true seed, and that no other end has been established by nature for humors of this sort than that they may make the work of marriage easier; from the principles posited before, a reason is supplied for gravely doubting whether as regards this matter one must now judge otherwise about women than we have already seen to be judged about the prepubescent or eunuchs. Whence it would follow that, since the Doctors have already been accustomed to bring forward other causes on account of which questions about any such female pollution are to be spared, much more now it would seem that they are to be spared, while it is now sufficiently clear that in women, however gravely they may sin, nevertheless there is not present the reason of that special malice which is proper to true and strictly so-called pollution. But concerning this whole matter let the more skilled judge.

II. Pollution indirectly, or voluntary only in the cause, is a grave sin whenever the proximate cause, that is, one per se directly and by its nature tending to pollution, for example lingering thoughts concerning very libidinous things, etc., is placed without just reason (Scav. - St. Lig., n. 482); but it is venial whenever the cause which is placed is only remote, or such that danger is joined to it per accidens or rarely. - Thus commonly. - The reason of each is evident. - St. Lig., n. 484.

III. Pollution indirectly voluntary lacks every sin whenever there is sufficient reason for placing its cause, consent or affection of the will into the consequent pleasure being removed. The reason is that where two effects follow from the same cause indifferent in itself, one evil and the other good or equivalent, it is lawful to place the cause by intending the good and permitting the evil [2]. But a

greater reason is required for a greater danger. - Recall the things said concerning Human Acts, n. 9. - See St. Lig., n. 483.

[2] In these adjuncts neither ought the evil effect in reality to be called voluntary, nor will the agent properly be called its cause. For when there is question merely of the obligation of abstaining from some action by reason of an effect which follows besides the intention, the reason of causality is taken not from physical influence, but from moral influence, and therefore there is question of causality which induces the moral imputation of the effect that followed, so that causality sounds almost the same as something culpable. Therefore then someone will properly be said to be in the cause, when for this reason he was bound to abstain from the action, lest that effect should follow; but he will not be judged to be in the cause when he was not bound for this reason to abstain from the work, but exercised it licitly and according to his right. And in altogether this sense the effect is said to follow per accidens, not as if namely the effect itself does not spontaneously follow from some action, but because it cannot be imputed to the agent as to a moral cause; and by this very fact, when we say that the effect follows besides the intention, we already say that the effect is not voluntary, namely by that will to which it ought morally to be imputed.

430. **Resolves.** - 1. Pollution altogether involuntary is in no way sinful, as is clear. Hence pollution which a physician, surgeon, or Confessor can suffer in carrying out the duties of his office is free from every fault, provided that he acts with pure intention [3], and provides no consent at all to the delight.

[3] That is, he does not intend that effect.

2. Likewise nocturnal pollution is free from fault, because it does not arise from a free will, nor is any assent provided to it, as is supposed; but neither does it always denote a libidinous mind, since it can come from many natural causes, for example from the superfluity of nature, from weakness of organs, or from the disposition of nerves. But it will be mortal or venial if before sleep it was caused and foreseen according to greater or lesser advertence and influence of the cause. Thus voluntary wicked thoughts, wicked conversations, and other things of this sort preceding sleep will easily render it mortal. But intemperance in food or drink, etc., ordinarily will make it only venial. Likewise nocturnal pollution which happens with imperfect will and liberty must not be judged mortal, as sometimes happens in those half-asleep; but it must be judged that no consent was present, or at most a very imperfect one, when it ordinarily displeases in the state of wakefulness; because judgment must be made from things ordinarily occurring. Hold the same thing also concerning nocturnal touches.

431. ○ 3. Pollution which follows from touch, look, or gravely base reading is a mortal sin even when actual consent is removed, unless a just cause excuses. The reason is that then pollution is voluntary at least in the cause, since these things per se induce grave danger of pollution. But it will be only a venial sin if these things are lightly base, provided the pollution follows besides the intention of the agent and against his at least direct will; because then in these things there is not given a proximate danger of consent either into pollution or into venereal delight. Yet danger remote in itself can become proximate per accidens for someone by reason of his own weakness. - St. Lig., n. 482-485.

4. Every deliberate effusion of seed, however small, is pollution and therefore a mortal sin. - Lacroix, *de Poenit.*, n. 1034. - Likewise it is mortal to acquiesce in the delight of pollution even

for the briefest time, and even if it happens besides the intention and spontaneously from whatever cause. - St. Lig., n. 477. A fortiori if pollution begun is promoted by some effort.

5. He who caused pollution in another must explain in confession whether this person is sacred, related by blood, etc.; because he contracted the malice of sacrilege, or incest, etc. - St. Lig., n. 476.

6. It is not a sin per se to ride a horse for the sake of reasonable recreation, to lie in bed in a certain position, to take heating foods temperately, to speak with the other sex from an honorable cause, to serve the sick, to help them in baths, to exercise the surgical art, and similar things, although it is foreseen that pollution is going to follow per accidens, provided it is not intended, and there is a firm purpose of not assenting to it if it happens, and proximate danger of consent is absent. - St. Lig., n. 483.

432. ○ 7. Voluntary distillation, even only indirectly voluntary, if it is notable or happens with notable commotion of the genital spirits, can be a mortal sin [4]; because it is grave disorder, and induces proximate danger of pollution. But if it is small and without notable commotion, one must distinguish: 1. If it is directly voluntary, it cannot be excused from mortal sin; because any distillation whatever always, or for the most part, brings with itself commotion and some effusion of semen. 2. If it is only indirectly voluntary, it will easily even be excused from every sin; because no more care is to be taken concerning such flow than concerning the emission of any other excrement by which nature is accustomed to unload itself. - Thus expressly St. Lig., n. 477.

[4] It has often already been noted what is here called indirectly voluntary: that which happens besides the intention; and therefore that those things are valid also concerning indirectly voluntary distillation which in the note to n. 412 were said about wicked motions, and by the Author in n. 429 about indirectly voluntary pollution; which indeed the Author also suggests a little later.

8. Disordered motions with venereal delight, whether grave or light, are mortal sins whenever they are directly voluntary, or also whenever the will adheres to them after they arise spontaneously; because then venereal delight sought in itself is present, which never admits smallness of matter. - But if they do not depend on the will either in themselves or in the cause, as often happens, and no consent is provided to them, they are immune from every sin. - Finally, if their cause is freely placed without their being intended, concerning them it must be said as concerning pollution indirectly voluntary, with due proportion nevertheless being given. Hence a light cause of motions will easily excuse from grave sin, since the Doctors commonly assert this concerning pollution itself with St. Lig., n. 484. - For a cause of such motions can be placed more easily than a cause of pollution, as is clear.

9. It is lawful for someone suffering great itching in the private parts to drive it away by touch, even if pollution follows, provided that itching proceeds from acrimony of the blood, as ordinarily happens, but not from the ardor of lust. For if pollution happens, with danger of consent removed, it happens per accidens and therefore inculpably. Moreover, penitents are to

be exhorted that, insofar as it can be done without grave trouble, they restrain themselves from touches of this sort. - St. Lig., n. 483.

§ II. On Sodomy

433. ○ The horrendous crime of sodomy is intercourse with a person of the same sex or of a different sex, but in an undue vessel.

Hence a twofold sodomy is distinguished: 1. perfect, which is intercourse with a person of the same sex; 2. imperfect, which is intercourse with a person of a different sex outside the natural vessel, or with affection toward an unnatural vessel.

Sodomy is a crime much graver than simple pollution. This is clear from the horror which it excites among all, and also from the unheard-of punishments inflicted by God on Sodom and the other cities polluted by this sin.

434. **Resolves.** - 1. Perfect sodomy differs in species from imperfect sodomy, because through the former a man is borne inordinately into both sex and undue vessel [1], while on the contrary through the latter he is borne inordinately only into an undue vessel.

[1] Most commonly Theologians (see St. Alph., lib. 3, n. 466), and also Canonists (see Reiffenstuel, lib. 5, tit. 16, n. 88; Schmalzgrueber, same title, n. 112; and Pirhing, same title, n. 69), constitute the perfect nature of this crime in the disorder of undue sex alone, contrary to what certain interpreters of civil law seem to affirm (see St. Alph., l. c.), while they place it especially in the disorder of the undue vessel; nevertheless these in this matter seem rather to have had regard to the penalties which they judged should be inflicted in the same civil forum also on this latter disorder. Therefore the Author could seem to have departed from each opinion, while he requires each disorder for it. But the matter is not so; for in reality he added the latter disorder not as if the essence of this crime resides in it, but because it pertains to the nature of the act or consummated intercourse; from which it has also happened that among persons of the inferior sex (as some noted in St. Alph., l. c.) only improper sodomy is given, because that consummation has no place in these.

Moreover, these things had to be noted on account of the reservation of cases. For when sodomy is reserved absolutely and simply, according to general principles the perfect crime and one consummated in its own genus must be understood. Therefore it is necessary to have designated what act is required for perfect and consummated sodomy.

2. Coitus of a man in the undue vessel of a woman is imperfect sodomy, yet distinct in species from perfect sodomy.

3. Nevertheless it would not be called sodomy if there were only an application of the hand or foot to the genital parts of another, because there would be no intercourse.

4. More probably per se it need not be declared who was the agent or the patient, because the species of the sin is the same. - Billuart, with others. - Yet the circumstance of pollution, if it was present, which happens more easily in the agent, must altogether be opened. - St. Lig., n. 468.

§ III. On Bestiality

435. ○ The unspeakable and execrable crime of bestiality is intercourse with a beast. It is the gravest among sins of lust, because it is most repugnant to rational nature. It was punished by death in the Mosaic law: "He who shall lie with a beast or cattle, let him be

put to death; kill the beast also." Exod. 22. 19. That sin is also more horrible than sodomy itself, and its special deformity consists in access to a diverse species. - St. Lig., n. 474.

436. ○ Immodest touches with beasts, although they are not sins of bestiality properly so called, are nevertheless to be declared when some venereal delight is sought from them. But the circumstance does not seem necessarily to be declared if someone, by means of the tongue of a beast of burden or of another beast, excites venereal pleasure or pollution in himself. Nor is it necessary to explain in confession of what species the beast was, nor whether it was male or female. - Thus commonly. - St. Lig., n. 474.

But here note that the Confessor ought to be very cautious, prudent, and sparing in questioning penitents about sins of lust, especially about those which seem more horrendous and unusual. See the rules to be handed down below in the Treatise on Penance, where there is question of the duties of the Confessor.

On the Seventh and Tenth Precepts of the Decalogue

You shall not steal. - You shall not covet your neighbor's house, nor servant, nor maidservant, nor ox, nor ass, nor anything that is his. Exod. 20. 15, 17.

The seventh precept of the Decalogue prohibits every external injustice in the goods of fortune of the neighbor. - But the tenth also forbids internal sins of concupiscence, that is, of desire for the goods of the neighbor and for unjust action. Concerning the various sins of injustice about the goods of fortune we shall speak in the particular Treatise on Justice and Right.

On the Eighth Precept of the Decalogue

You shall not speak false testimony against your neighbor. Exod. 20. 16. - You shall not say false testimony. Matth. 18. 19.

437. ○ This precept, insofar as it is negative, prohibits, 1. chiefly and primarily, lest false testimony be said both in judgment and outside judgment; 2. indirectly and secondarily, lest the reputation and honor of the neighbor be injured.

But insofar as it is affirmative, it commands that, every simulation and fallacy being removed, simple and naked truth be said [1].

[1] Thus the Roman Catechism (*De VIII Praec.*, n. 2): "In this precept... two laws are to be noted, one prohibiting lest false testimony be said; the other commanding that, simulations and fallacies being removed, our words and deeds be measured by simple truth." But this part is drawn over to the affirmative precept so that that may be suggested which is common to all affirmative precepts, namely that they bind always, but not for always, since on the contrary it is often necessary to hide the truth.

Hence it prohibits, 1. perjury against the neighbor; 2. lying; 3. detraction; 4. contumely; 5. rash judgment and injurious suspicion. We must speak about each, except perjury, concerning which enough was said in the second precept.

Chapter I. On Lying

Article I. On Lying in General

438. ○ A lie is speech or signification against the mind, with the will of deceiving. If it is done by nods or by some deed, it is called simulation. Scav. - A threefold genus of lie is distinguished: 1. harmful, by means of which unjust damage is brought upon someone; 2. officious, which is put forth for the sake of one's own or another's utility; 3. jocose, which is done from joke and only for the sake of trifling.

439. **Principles.** - I. A lie properly so called is always intrinsically evil. The reason is, 1. because it is repugnant to right reason to use words against their natural end and institution; 2. because if it were lawful to deceive others in speaking, the order of society, which rests on the mutual commerce of men, would be altogether subverted. Hence, Coloss. 2. 9: "Do not lie to one another." - St. Thom., 2. 2, q. 110, art. 3. - St. Aug., book *On Lying* and *Against Lying*.

II. A harmful lie is grave according to the measure of the damage which is brought upon the neighbor; therefore the obligation of repairing the damage follows from it. - Thus all. - St. Thom., ibid., art. 4.

III. An officious lie is per se a venial sin, because grave disorder is not apprehended in it. - Thus all. - A fortiori a jocose lie per se does not exceed venial sin. Indeed, sometimes that which is called a jocose lie is free from altogether every fault; because it is not a lie properly so called, but a joke used for the sake of recreation without any intention of deceiving another, and therefore our definition does not fit it. But this can be admitted only when the adjuncts of things are such that hearers can easily understand that the speaker wishes only to joke. - Thus commonly.

440. **Resolves.** - 1. They do not lie who assert as false what they believe true, but only err. On the contrary, they lie who say what is true, which they think false, because they speak against the mind.

2. Tropic, ironic, and hyperbolic expressions are not lies, when they can and customarily are easily taken as such by hearers. Much less parables, which Christ himself used so frequently. Nor are equivocations lies, if they do not prevent the sense of the speaker from being able to be known.

3. They do not lie who write fables, or from joke say openly false things, as is manifest.

4. To lying are referred simulation, hypocrisy, flattery, and empty boasting, which per se do not exceed venial sin; yet they can become mortal, or rather mortal sin can accede to them on account of another species of sin which supervenes.

Article II. On Mental Restriction

441. ○ Mental restriction is an act of the mind twisting or restricting the words of some proposition to another sense than the natural and obvious one.

Mental restriction is, 1. purely or strictly mental, if the sense of the speaker can in no way be perceived, and this is called properly mental; 2. broadly or improperly mental, if the sense of the proposition can be gathered from the adjuncts.

To mental restriction are called back equivocations or amphibologies, which are locutions having a double sense, but one more obvious and the other literal.

442. **Principles.** - I. It is never lawful to use a purely or properly mental restriction, nor an amphibology not perceptible in a human way; a fortiori it is not lawful to swear with the same, because it is simply a lie. This is also clear from propositions 26, 27, and 28 condemned by Innocent XI. - St. Lig., on the second precept, n. 152.

443. ○ II. It is sometimes lawful from a just cause to use a broadly, that is, improperly, mental restriction, and equivocal words, when the sense intended by the speaker can be understood. The reason is that this is not evil in itself, since the neighbor is not properly deceived, but from a just cause his deception is only permitted; on the other hand, for the good of society it is required that a means be present of licitly hiding a secret; but sometimes no other means is at hand besides equivocation or a broadly or improperly mental restriction. - I said, from a just cause; because if the use of such restrictions were permitted without a proportionate cause, no one could or would wish to believe another; but this would fall to the greatest damage of human society. - Thus most commonly the theologians. - St. Lig., on the second precept, n. 151-152. - Lacroix, lib. 3, n. 287. - Suarez, Lugo, Laymann, Sporer, Elbel, and innumerable others, as St. Lig. testifies, ibid.

But it is lawful to use a broad restriction of this sort even with an oath; although then a greater cause is required, since divine testimony must not be used without judgment. - St. Lig., n. 151.

444. **Resolves.** - 1. He is not free from fault who uses a restriction, even not purely mental, or an equivocation in some way perceptible, 1. if he does this without reason, but from the sole intention of deceiving, because it is an abuse of signs; 2. if the one asking has a right of inquiring or of commanding confession of the truth, because to that right there regularly corresponds in the subject the obligation of confessing the truth without ambiguity. - St. Lig., n. 154. Add, 3. if damage to the neighbor would emerge from it against the precept of charity; 4. when mutual contracts are celebrated; in which case justice demands that words be put forth nakedly according to the mind of the contracting party. - Scav., *de Actib. relig. extern.*, c. 2, art. 2.

2. A Confessor asked by a tyrant whether Titius confessed homicide can and must respond: I do not know; because the Confessor does not know this by communicable knowledge. Indeed, even if the tyrant insisted and said: Do you not know this by communicable knowledge? he could still respond: I do not know. The reason is that the tyrant well knows that he has no right to ask about this, nor does the Confessor as a man understand himself to know it, but as the vicar of God and therefore by incommunicable knowledge.

3. An accused person questioned by a judge not juridically or not legitimately can respond that he did not commit the crime, understanding under it, that concerning which inquiry can be made,

or which he is bound to confess. - St. Lig., lib. 3, n. 154.

4. All public persons questioned about matters committed to their trust can use a restriction of this sort, such as secretaries, legates of princes, commanders of armies, magistrates, advocates, physicians, surgeons, midwives, and whoever has an office and reason for concealing some truth. For if secrets committed to these persons were violated, very grave inconveniences would follow from this in society.

5. A servant can by order of his master deny that he is at home, although he is present; because such a locution is generally received by usage to signify that he is not at home insofar as he can be seen or visited. Yet attend to the custom of places. - St. Lig., n. 165. - See *Cases*, n. 114 and following.

Chapter II. On Detraction

1. On the vice of detraction; 2. on restoration of reputation.

Article I. On the Vice of Detraction

445. ○ Detraction is a hidden and unjust violation of another's reputation, or the unjust blackening of the reputation of an absent neighbor. But reputation is the good estimation which others have concerning the life and morals of someone [1].

[1] Perhaps the Author narrows too much the matter of detraction. Indeed the excellence whose estimation can be injured is not only virtue and honesty, but also wisdom, learning, talent, eloquence, distinguished character, etc.; indeed there are also goods of body or of fortune, such as strength, beauty (by which women are commended), health, nobility, wealth, legitimate birth, etc. The Author touches on these and things of this sort below, n. 456, res. 9.

Detraction is called such simply if the reputation of the neighbor is violated by revelation of a true crime; but it is denominated calumny if the violation of reputation follows from the attribution of a false crime.

Detraction can happen in various ways: 1. directly, if a false crime is imposed, if a true one is amplified, if a hidden one is manifested, if a good work is taken in a sinister way; 2. indirectly, namely by denying the good works of the neighbor, or by diminishing them, or even sometimes by being silent when others praise, or by praising coldly.

446. **Principles.** - I. Every direct detraction, whether it is calumny or detraction simply, is mortal from its genus, because it is against justice; and indeed it is a graver sin than theft, because it unjustly deprives the neighbor of a greater good, as is clear from the common sense and from Sacred Scripture, Prov. 22. 1, where it is said: "A good name is better than many riches"; and ibid., 24. 9: "The detractor is an abomination of men."

II. The gravity or lightness of detraction is to be taken chiefly from the gravity or lightness of the damage which the neighbor can suffer from it, and not only from the gravity of the defect or crime which is narrated concerning the neighbor. Hence, to know in a particular case the gravity of detraction, one must attend to the quality, 1. of the person detracting, namely whether he is grave and discreet, or garrulous and light; 2. of the person injured, whether he is of good or bad reputation,

etc. The reason is that greater faith will be given according to the greater or lesser authority of the speaker; likewise greater or lesser detriment of reputation will follow according to the measure of the greater or lesser estimation which the injured person enjoys. - St. Lig., n. 967.

447. ○ III. It is never lawful to attribute a false crime to another, as is clear from proposition 44 condemned by Innocent XI. Yet it is lawful from a just cause to manifest a hidden crime of another, even with loss of that person's reputation; because sometimes public or private good requires this, and then the right of the neighbor to preserving reputation is overthrown by a stronger right. - St. Lig., n. 972.

IV. But the causes on account of which the crime of another can lawfully be revealed are the following: 1. notable utility of the revealer himself, for example for asking counsel or help in a grave matter, with nevertheless any affection toward detraction removed; 2. utility of the delinquent, namely for his instruction or correction, etc.; 3. public utility, as for preventing evils threatening the Republic or Religion or some Community; - 4. grave utility, even private, whether of the hearers or of others, for example so that they may be freed from evils, damages, or inconveniences certainly or probably going to happen. The reason of these things is that then the one manifesting another's sins injures neither justice nor charity. 1. He does not injure justice, because the neighbor does not have a right so strict to his reputation that others are obliged to cover the truth when its manifestation is necessary for avoiding grave damage, whether one's own or that of others; 2. He does not injure charity, because charity does not oblige with grave inconvenience; and just as you are not bound to impede the damage of your neighbor, however great, with grave damage to yourself, so neither are you bound in the case to conceal the hidden crime of the neighbor [2]. - St. Lig., n. 968.

[2] Indeed, charity in these adjuncts demands that the truth not be hidden. For charity ought to be ordered; but ordered charity requires that the innocent be favored rather than the guilty. Therefore he acts most perversely who, lest something evil should happen to a robber or thief, wicked companions, or one laying snares for honesty, etc., by his silence commits it that the life, fortunes, innocence, or honesty of others are endangered.

448. **Questions. - Q. 1. Whether he sins gravely who reveals the single mortal sin of another?**

Resp. 1. It is not always a grave sin to reveal another's sin, even if it is manifested to several. Therefore one must attend to the adjuncts of things and persons, from which you will gather whether someone suffers a grave loss of reputation from the revelation of the sin.

Resp. 2. If the sin gravely dishonors either in itself or relative to the one defamed, certainly the detractor gravely offends whenever he manifests a sin of this sort, although single, to several, because grave damage of reputation is brought upon the neighbor.

Resp. 3. But whether it is mortal to reveal such a sin to one prudent and discreet man, with special malice removed, is disputed.

The first opinion, more common and more probable, says that grave sin is committed unless inadvertence or great levity excuses. The reason is, 1. because injury to reputation even with one grave person is judged grave, as is clear from rash judgment, which per se is grave; 2. because often men bear it more bitterly that they are injured with one grave person than with three or four others.

The second opinion, sufficiently probable, denies it. The reason is that since reputation consists in the common estimation of men, he who has lost a good name among only one or another is not judged absolutely defamed. - St. Lig. has it as probable, n. 973 [3].

[3] ** To this matter St. Alphonsus brings (l. c.) these words of St. Thomas (*Quodlib.*, 11, art. 13, ad 3): "If someone reports the fault of a neighbor to a prelate, intending either caution for the future, or something of this sort which he would see to be expedient for the amendment of the neighbor, he does not sin. But if he reports this, whether to a prelate or to some friend of his, from malice, then he sins mortally. But if from incaution he has said this to someone, yet in such a way that nothing else results from it, either infamy or reproach to the delinquent neighbor, then he does not sin mortally, although he acts incautiously." To these last words St. Alphonsus subjoins this commentary: "Nor should you say that that word, 'from incaution,' is understood for inadvertence; for from this one never sins mortally; but it is altogether understood as imprudence or levity of mind, which is only venial; and then only will it be mortal when from it there results infamy or reproach to the delinquent." But a commentary of this sort is a little obscure.

Indeed, so that its own sense may be attributed to the words of St. Thomas, a twofold hypothesis can be established: the first is that he who reveals the crime knows that no other damage is going to come from it; nevertheless he does not have a reasonable cause for revealing the crime; and then there is place for what St. Alphonsus says, that one sins venially by levity of mind, whence the defamation which follows is probably light. Another hypothesis is that he who reveals the crime does not have before his eyes the damage to the neighbor which can follow from it; and then what can excuse him from mortal fault except inadvertence? For it is plain that we cannot ascribe to St. Thomas a sense of this sort, that detraction is judged venial or mortal only from the event, about which the one revealing the crime thought nothing. Therefore the words of St. Alphonsus must also be understood in this way.

449. ○ **Q. 2. Whether detractions in matters diverse in species differ in species?**

Resp. A twofold probable opinion is given.

The first opinion affirms. The reason is that the reputation which someone possesses, for example concerning chastity, is one, and another is that which he has concerning justice; since he is not defamed in fornication, although he is dishonored in theft.

The second opinion denies it. The reason is that, although such detractions are distinguished in species materially, nevertheless morally they injure one reputation of a man, because they tend toward one formal object, just as contumelies are of the same species because of the unity of honor against which they tend. - Lugo, *de Poenit.*, d. 16, n. 265, etc. [4].

[4] Therefore the Confessor would imprudently require from a penitent that he express the matter of detraction; both because he would unjustly impose a certain obligation which, since it is uncertain, the penitent does not have; and also because not rarely the confession itself would not be immune from the vice of detraction, since from this both persons and the crimes of persons could become known to the Confessor.

** The VV. here note two things (p. 921) concerning this question and Note. And first they say that Gury agrees with St. Alphonsus in this, that those contumelies do not differ in species; but differs in this, that he recognizes one sin in number there, while the holy Doctor teaches that several are present. - Resp. Gury says neither one nor several sins. But if the VV. argue that one sin is asserted by Gury from this as a necessary consequence, because he says there is one species, how could the holy Doctor have affirmed one species and at the same time that there are several sins?

2. The VV. carp at the Note because it says that the Confessor would imprudently require from the penitent that he express the matter of detraction; and they subjoin that the confessor acts most prudently by inquiring from the penitent how many diverse crimes of the neighbor he revealed. - Resp. 1. Even if it were granted that it must be expressed how many diverse crimes someone revealed, it would not follow from this that the matter of these crimes must necessarily be expressed; therefore what remains is that the Confessor would imprudently require this from the penitent. - Resp. 2. The obligation which the VV. defend of expressing that number of crimes is finally, even they confessing it, only probable. But, St.

Alphonsus teaching, it is unjust to impose an obligation which is not certain, especially when there is danger present of injuring the neighbor's reputation with the confessor. Therefore.

Moreover, it certainly would have been more opportune that the VV. in no way touched this question. For that paragraph which Holzmann and Concina, and then St. Alphonsus, afterwards copied from Croix (lib. 5, n. 161), certainly presents nothing except confusion of ideas. And indeed, if you inspect the authors against whom he fights, you will find them contending that these contumelies agree in one lowest species, and therefore (as Croix himself reports from their opinion) that they make up one greater infamy. In like manner, if you inspect those whom Croix opposes to them, you will discern that, on the contrary, they stand for multiple species. Thus, for example, Navarrus (*Sum.*, cap. 6, n. 18) holds that several sins are present, because those injurious words are not of one species; nor otherwise Azor (p. 1, lib. 4, cap. 4, q. 5): "I respond that many come to be in species and are increased in number when speech is referred to objects diverse in species, as if Titius contumeliously calls Caius a heretic, robber, adulterer; he commits three sins diverse in species." But after these things Croix, as if he were disputing from the sense of the authors alleged, first uses equivocal phrases concerning diversities either of reputation or of objects; and he then concludes that these reputations can no more make up one reputation in number than three fasts one fast, as if moreover a triple transgression of a fast were to be compared with several contumelies brought forth by one act, as the question proposed by him bears, or doubt could be moved whether three fasts differ in species. And thus indeed it is wrapped in shadows both why he alleged the authors and on what principles relying he draws forth that resolution.

But perhaps this question does not become clearer with St. Alphonsus (lib. 5, n. 48). For the authors from whom he departs you discern to be the same as with Croix, except that he joins Azor with Lugo, although nevertheless Azor, as is clear from his words alleged above, holds the opposite opinion from Lugo. But to these he opposes those whom Croix also opposed. Now the dispute between them is, as we have seen, whether those multiple contumelies are of one and the same species, or of multiple and diverse species. To the authors alleged by Croix the holy Doctor adds Collet, Holzmann, and Concina. But Holzmann and Concina, not otherwise than Croix, use equivocal formulas; but Collet asserts multiple sin in those contumelies because, he says (*De Pecc.*, p. 1, c. 3, art. 2), "they are sins diverse in species." Therefore does St. Alphonsus defend that multiple sin is present because the contumelies differ in species? But the VV. contradict this, who, as we saw above, affirm that Gury here agrees with St. Alphonsus in asserting unity of species. What reason, therefore, remains on account of which St. Alphonsus teaches that there are several sins there? Indeed, the holy Doctor from Holzmann (p. 1, n. 674) brings the reason that diverse rights to reputation or honor are injured; "for by this, that someone is defamed in one crime, he is not therefore defamed in another." But this argument would rather prove that those contumelies are diverse in species, as in reality the patrons of multiple species were arguing thus. Against these Lugo argues thus (*De Poenit.*, d. 16, n. 265): "Molina gives the best reason, namely that all contumelies receive malice from this, that they injure honor, just as thefts injure fortunes; therefore just as thefts are of the same species in the reason of theft, whether they are done in this way or that; so it must be said concerning the removal of honor. Hence the same must be said of detraction, that it is not varied in species according to the diversity of the matter in which reputation is taken away; because reputation is always of the same species in the genus of morals. Similarly in rash judgment it is not necessary to explain the matter in which judgment is made, but it is enough to say: so many times in grave matter I rashly judged concerning some persons; because good estimation also, which is taken away through rash judgment, is of the same species in the genus of morals."

And from here an obvious response is made to those things which Croix has (l. c.), namely that there are three sins because rights to three diverse reputations are injured; for by this, that someone is praiseworthy in the virtue of justice, he does not become praiseworthy in the virtue of chastity, and by this, that he is known to be a thief, he is not therefore known to be immodest, but retains a right to this reputation; therefore these reputations are diverse objects. For another could easily reply: there are three sins because rights to three diverse fortunes are injured (imagine an ox, a horse, and a cart); for by this, that someone is a just possessor of an ox, he does not therefore become a just possessor of a horse or cart; and by this, that he possesses a horse badly, he is not therefore an unjust possessor of an ox, but retains his right to this; therefore these fortunes or substances are diverse objects. This indeed neither Croix nor his followers can or wish to admit; but what disparity can be assigned? St. Alphonsus, so that he might meet the difficulty, wrote (l. c.): "Nor does it stand in the way that he who takes away several diverse things commits a single theft; for then one right of his to his goods is injured; but when he is defamed in several matters, several of his rights are injured according to several respects which reputation has toward diverse virtues." But another in the same way will be able to reason thus, so that he may prove that there are several thefts there. Nor does it stand in the way that he who defames in several diverse matters commits a single detraction; for then one right of his to his reputation is injured. Since (as Molina says, tom. 5, disp. 19, n. 3) "the injustice of detraction

does not consist in that by which, as by a means and instrument, prejudice is unjustly done to the neighbor's reputation..., but consists in the prejudice inflicted on the reputation of the neighbor; wherefore, since the object of detraction broadly taken is reputation as to prejudice which is inflicted unjustly on it, not the diverse means by which that prejudice is inflicted, and since the prejudice unjustly inflicted is always of the same reason, by whatever means that prejudice is inflicted..., it follows that one right of another to reputation is injured. But when someone is injured in several diverse goods of fortune, several of his rights are injured according to several respects which the right of property has toward diverse goods of fortune." But does this reasoning have less strength than the preceding one of St. Alphonsus? Namely, diverse contumelies or detractions, not otherwise than diverse objects of theft, have diversity only in physical being, not in moral being. Wherefore Bonacina rightly concludes (*De Pecc.*, disp. 2, q. 4, p. 2, n. 13) that the opinion which contends that the diversity of several injuries is to be expressed in confession is to be held in the same place as that which holds that the altogether determinate quantity of theft is to be opened in confession.

Q. 3. Whether a public crime can be revealed to those ignorant of it?

Resp. It is affirmed, because this seems to be neither against justice nor against charity, whether it is public by publicity of law or by publicity of fact. - St. Lig., n. 974.

450. ○ **Q. 4. Whether a crime public in one place can be revealed in another place where it is unknown?**

Resp. 1. It is affirmed as more probable per se, at least without grave sin, if there is question of a nearby place, or of a place where it is easily and shortly going to be made public. The reason is that reputation to be lost shortly and necessarily is of no or certainly not of great estimation, and morally speaking has already been cast away.

Resp. 2. If there is question of places to which the divulgation is not going to come, or not except after a long time, one must distinguish:

1. As regards notoriety of law, 1. It is not against justice, because the judge, when he publicly condemns someone, intends to despoil the guilty person of reputation, so that he may be an example everywhere to the rest. Thus commonly. - 2. Nor more probably is it against charity, at least gravely, because it contributes greatly to the common good for the sentence to be made known everywhere, so that the penalty may be more efficacious and the guilty person may be known even by inhabitants of a remote region, who could have business to transact with him. - Thus more commonly with Lugo, the Salamancans, St. Lig., n. 974.

2. As regards notoriety of fact, it is disputed among theologians.

The first opinion, very probable, says that it is not per se illicit, because neither is there sin against justice nor against charity, at least gravely, provided there is question of crimes which render a man pernicious. The reason is that it conduces to the public good that criminal men be known, so that all can beware of them. - St. Lig., n. 964; *Hom. apost.*, n. 12; in *Retr.*, n. 12. The second opinion on the contrary says that it is a sin both against justice and against charity: 1. against justice indeed, because one defamed in one place has not lost the right to reputation in another remote place to which the reputation of the crime is not shortly going to arrive; therefore he who defames him there does injury to him; 2. against charity, because one defaming harms the neighbor in a grave matter, or in reputation, which elsewhere he continues to possess without injury to him. - Billuart, Antoine.

451. ○ **Q. 5. When can a crime or fact be called public or notorious?**

Resp. 1. It is called altogether public or famous when it has become known to the greater part of the community, or city, town, village, etc.

Resp. 2. It is called simply public or notorious when it has become known to so many persons that it can be hidden by no tergiversation, and it is morally impossible that it should not come into the knowledge of the community. But it is very difficult to determine the knowledge of how many persons is required for a crime to be able to be judged public. Theologians have assigned various rules according to the varied number of persons who compose the community. According to the more common opinion, a crime can be called public if fifteen know it from a community of one hundred persons; or twenty of diverse families in a community of one thousand persons; or forty persons dispersed in a town of five thousand persons. - Thus St. Lig., n. 975. But, as Billuart says better, *de Iustitia*, diss. 15, art. 2, §5, this is remitted to the judgment of a prudent man, who, after attending to the number of the community, the garrulity of men, and other circumstances, may judge whether it is possible for the matter to remain secret.

452. ○ **Q. 6. Whether one sins gravely who only reports grave sins of another as heard from others, for example if he says: It is reported, they narrate, I heard this or that about such a one?**

Resp. 1. He sins gravely against charity and justice if he reports in such a way that others are more likely and deservedly to believe it, for example if he asserts that he heard the things which he narrates from a person worthy of trust, because then he furnishes sufficient cause for believing evil; otherwise, if probably faith is not given to the words, because no infamy will arise from it. But much more easily he will sin gravely who reports, even as merely doubtful, the enormous sin of another, for example heresy, sodomy, etc.

Resp. 2. He sins gravely against charity if he reports things heard before those who probably will believe them from levity or their own malice; because under grave sin each one is bound from charity to remove the occasion of damage to another when he easily can. Yet he does not seem to sin against justice, because he is not an efficacious cause of damage. - St. Lig., n. 978. - Billuart, ibid., art. 2, §4, and others commonly.

453. ○ **Q. 7. In what way does one hearing detraction sin?**

Resp. 1. He certainly sins gravely against justice who efficaciously induces another to detract.

Resp. 2. He sins gravely against charity who rejoices over grave detraction done by another, because he rejoices over the grave damage of the neighbor. Except if he rejoiced only over the hearing of a new or curious thing, but not over the detraction itself.

Resp. 3. A Superior sins against charity if he does not impede detraction insofar as he conveniently can, even if he does not rejoice over it; because upon him there rests a special obligation of correcting the detractor, or of obviating the damage of the defamed subject. But more probably he does not sin against justice, 1. if he is the Superior of the detractor, because he is not bound to watch over the good of another who is not his subject; 2. if he is the Superior of the defamed person, because it does not fall upon him from justice to attend to the temporal good of the subject. - St. Lig., n. 979.

Resp. 4. A private person is for the most part excused either altogether or at least from grave sin if he does not impede detraction, whether from shame or fear or even negligence, even if he conveniently can, provided he does not rejoice over it, and no other damage besides infamy is added. The reason is that in this matter it often cannot be established that correction will be of profit; indeed often it is dangerous, and one can deservedly fear lest the detraction rather be increased or prolonged. Yet he will not lack some fault if he can easily apply efficacious correction. - St. Lig., n. 979.

But they are also excused from venial sin who, when they notice detraction, depart, wipe out the conversation, or turn away the face and show themselves sad, according to that saying of Prov. 25. 23: "A sad face scatters the detracting tongue."

454. **Q. 8. Whether it is lawful to defame oneself?**

Resp. It is affirmed per se, if it is done with a right intention, scandal and the damage of others being removed. The reason is that it is not against justice, since each one is master of his own reputation; nor is it against charity, because this does not oblige one to preserve external goods except insofar as one's own salvation or that of the neighbor requires it.

But per accidens you will sin, and even gravely, if your reputation is necessary for your office, or if damage to life for you, or infamy for others, can arise from this. - St. Lig., n. 985.

455. **Resolves.** - 1. It is a grave sin to detract even from the dead in a grave matter; for they are not despoiled of the right to reputation, although they have departed from among the living. Hence historians who brand the memory of the dead with a mark of disgrace without sufficient cause, by manifesting hidden things, exaggerating known things, and not reporting the penance performed, can sin gravely. - St. Lig., n. 978.

2. It can be mortal to reveal so many things, even if the individual things are not grave, about someone placed in conspicuous dignity, that his reputation is notably injured, although this is done over a long time.

3. It is mortal if you say that someone is an adulterer, although you have probable indications of this, because you bring grave harm upon his reputation. Indeed, the same must be held even if you should say that it is probable that he is such.

4. It is grave to say of a Priest that he committed a duel, or that he is a lover of girls, and other things of that sort. But often it is not lethal to assert this of a soldier, or even of a young man of middling reputation; nor to say of a girl that she is talkative, proud, etc. - St. Lig., n. 967.

5. It is not mortal to speak badly of someone unknown or indeterminate, for example, that in such a place there are many wicked, drunken, immodest persons; because grave injury is inflicted on no one. Likewise it is not grave to recount some crime about someone whom the hearers do not know and are never going to recognize, even if he is named. Indeed this per se is free from every fault.

6. Yet it is lethal, at least commonly speaking, to detract gravely from some Monastery, although no Religious is named, for example, if it is said that in it a depraved life is led, that a grave sin

was perpetrated. The reason is that the Religious of the same Community are so joined together among themselves that before outsiders they are considered as if solidary, one for the others. Hence the whole Community is accustomed to be stained among the imprudent and simple. - St. Lig., n. 979.

456. ○ 7. It is not mortal to say of a public drunkard that he was drunk on this day, even if he did it secretly; indeed sometimes no sin is present, if someone has lost all reputation with regard to something, for example, if you say of a prostitute that she committed fornication. Nor is it mortal to dishonor an infamous person in one crime by another very closely related crime, for example, if concerning an adulterer you say that he sent love letters, or concerning a drunkard, that he quarreled with his wife; because such a revelation is not a new infamy, or at least not grave. But to defame someone by a disparate and unconnected crime can be mortal, because he who is dishonorable in one genus of vice has not for that reason lost the right of reputation with regard to the others. - St. Lig., *Hom. apost.*, n. 14, and others commonly.

8. He does not sin, at least gravely, who, only for the sake of consolation, the intention of detracting being excluded, narrates to some friend an injury done to himself by another, even if some infamy comes from this to the author. Hence probably they are excused, at least from mortal sin, servants revealing injuries inflicted on themselves by masters, wives by husbands, sons by a father, Religious by a Prelate, etc.; because the author of the injury cannot reasonably be unwilling, and demand a thing so difficult, that the injured person should lack necessary consolation or counsel. Yet care must be taken lest it be said to many, and lest the person be named more openly than is necessary for counsel or consolation. - St. Lig., n. 973.

9. He does not sin gravely, generally speaking, who reveals the natural defects of mind or body of another, by saying, for example, that he is stupid, ignorant, etc.; because such defects are not moral, nor do they notably lessen reputation. Except unless grave damage is going to follow from this. But this depends especially upon the circumstances. - St. Lig., n. 967. - See *Cases*, n. 420 and following.

Article II. On Restitution of Reputation

457. **Principles.** - I. A detractor is bound from justice, insofar as it can be done, 1. to repair the reputation unjustly taken away; 2. to compensate all temporal damages arising from the defamation and in some way foreseen.

The reason for the first is that by the taking away of reputation a damaging injury has been inflicted; for the right which each one has to reputation cannot be taken away by private authority: therefore, since restitution of a good unjustly taken away is necessary, that injury must consequently be repaired. - Thus all. - St. Lig., n. 991; and lib. 3, n. 613.

The reason for the second is that all damages arising from detraction must be attributed to the detractor, as to their efficacious cause, whether the crime revealed was false or true, since in either case the detractor has injured reputation unjustly. - Thus commonly. - St. Lig., n. 996.

The obligation of restoring reputation is personal. But the obligation of repairing damages which have arisen from defamation is real, and therefore passes to the heirs.

458. ○ II. Restitution of reputation must be made in one way by a calumniator, and in another by a simple detractor. Hence:

1. The calumniator is bound to retract the things said, and indeed per se even with loss of his own reputation, if otherwise reparation cannot be made: the reason is that the condition of the innocent person is better than that of the guilty one, and he must impute to his own malice whatever he is going to suffer on that account.

2. A simple detractor cannot retract the things said, because thus he would lie; but in another way, insofar as it is in him, he must restore reputation, by saying, for example, that he spoke badly, that he erred, or something similar; for not only those err who recede from truth, but also those who recede from rectitude, according to that saying of Prov. 14. 22: "They err who work evil." - St. Lig., n. 992. But often that manner does not suffice among intelligent and astute persons, who rather conjecture from these formulas that the crime is true, which is not asserted openly to be false. Therefore then the detractor, keeping silence about the things said, when occasion has been given, with dexterity and truth must praise and honor him from whom he detracted.

459. **Resolves.** - 1. He who unjustly defamed another by manifesting a true crime is bound to repair the whole damage arising from this, because that unjust revelation is the true and sole cause of the damage. - St. Lig., n. 994.

2. He who detracted by a defamatory pamphlet is bound, so that restitution may be efficacious, to make it by contrary writings or by public revocation. Likewise the reparation must become known if it is known that the defamation has spread to many, but it is unknown to whom it has come. - St. Lig., n. 995.

3. Likewise, in default of the defamer, those are bound to reparation of reputation who cooperated in propagating the defamation; and all these are equally bound concerning damages of fortune, if any have occurred.

The defamer is not bound to asking pardon, if he cannot repair reputation, unless he has injured reputation and honor at the same time; because lost reputation is not restored by asking pardon; nor is he urged more by the obligation of asking pardon than one who cannot restore goods of fortune in which he has injured someone. - Thus commonly.

460. **Questions. - Q. 1. What are the causes excusing from restitution of reputation?**

Resp. The following are commonly admitted:

1. If the crime which you revealed to one or several has become public by another way, or if reputation has been repaired in another way, for example, by the sentence of a judge, etc.

2. If it is prudently judged that the memory of the crime has been destroyed by oblivion through the passage of time.

3. If restitution of reputation cannot be made without danger to life; because life is a good of a higher order than reputation. Likewise, if the restitution of reputation is of much less value than the loss which the defamer would have to suffer, for example, if he were an honored man and especially very useful to the public good or to Religion.

4. If reparation is morally impossible on account of too great a distance of places, or other special difficulties, which are found especially in the reparation of simple detraction; for example, if those who heard the detractor cannot be recalled from a preoccupied opinion.

5. If it is judged that faith was not given to the detraction by the hearers, as happens rather often when detraction is made in the heat of anger.

6. If the defamed person has expressly or tacitly remitted the obligation, provided he can remit it; indeed sometimes presumed condonation suffices. - St. Lig., n. 1005. But he cannot remit it when scandal follows from his infamy, or damage either common or to his own people, etc.; for example, if there is question of the infamy of a Priest, magistrate, etc. - St. Lig., n. 997 and following.

Q. 2. Whether there is given an obligation of restoring reputation injured without formal injustice, for example, if someone detracts through inadvertence?

Resp. It is affirmed, because each one is bound to repair damage arising from his action, if he conveniently can, as we shall say in the Treatise on Justice and Right. - St. Lig., n. 994.

461. ○ **Q. 3. Whether one defaming is bound to restore reputation also before those who have received mediately the crime revealed by him?**

Resp. It is affirmed more probably, indeed also more truly, if you violated reputation among hearers whom you foresaw would easily spread the infamy abroad; because then you are the true cause of the damage; otherwise you are not bound. - St. Lig., n. 991.

Q. 4. Whether you are excused from restitution of reputation, if the injured person also has violated your reputation and does not wish to restore?

Resp. Navarrus, Sporer, and certain others deny; but more probably it must be affirmed with St. Alph., n. 999; because you are not bound to render his right to another, if he refuses to render yours to you.

Q. 5. Whether you are bound to compensate reputation with money, if you cannot restore it?

Resp. It is denied, at least more probably, because justice obliges only to rendering back what was taken away, or an equivalent; but money was not taken away by detraction, nor is it itself equivalent to reputation, since it is of another order. - St. Lig., n. 4000, etc.

Chapter III. On Contumely

462. ○ Contumely is the unjust injury of honor inflicted on one present and knowing it. But honor is the external testimony of esteem, which is held internally concerning someone's excellence. Now someone can be present either personally or physically, or morally through an image, and through something else in which he is represented in some measure.

But contumely can be done, 1. negatively, by omission of the honor due here and now; 2. positively, both by words and by deeds or signs of contempt.

To contumely are referred, 1. mockery, by which someone is contemned by words and laughter; 2. derision, by which someone is ridiculed by ridiculous gestures; 3. reproach, by which poverty, defects, or obscurity of birth are cast up to someone.

463. ○ I say I. Contumely is a mortal sin from its genus. For it is something graver than detraction, which per se is grave. It is clear besides from the words of Scripture, Matth. 5. 22: "But he who shall say to his brother, Raca, shall be guilty before the council; but he who shall say: Fool, shall be guilty of hell fire."

I say II. Contumely per se brings in a strict obligation of restoring honor and of repairing damages, if any have followed, at least if they were foreseen in general, as is clear from the things said concerning restitution of reputation. - St. Lig., n. 966.

Although we are bound to tolerate contumelies by casting away the spirit of vengeance, yet sometimes it will be expedient to repel contumelies, namely when tolerance could harm the common good; for example, if a Prelate by tolerating would be rendered contemptible, and thus the insolence of subjects would be increased, etc. - St. Lig., n. 966.

464. **Resolves.** - 1. Honor publicly taken away by contumely must be restored publicly before those who were witnesses of the dishonoring, or at least in such a way that the satisfaction can come to their knowledge. But it suffices that satisfaction be made through another person, who in the name of the dishonorer asks pardon. - St. Lig., n. 984.

2. Honor injured by hidden contumely must likewise be restored, because true damage of honor was inflicted on the neighbor; yet reparation can be made secretly. - St. Lig., n. 985.

3. That restitution of honor is required which is considered sufficient for manifesting esteem according to the condition of the person offended. For if he who dishonored was a Superior, it will suffice if he salutes the dishonored person, visits him at home, or shows him benevolence. But if he was an equal, or a fortiori an inferior, greater satisfaction is required, namely that he anticipate him in saluting, yield place, ask pardon, etc., if he cannot satisfy sufficiently in another way. - St. Lig., n. 986.

4. If the one dishonored took vengeance, for example, by beating another, wounding him..., for the most part further satisfaction is not required for honor; because he seems to accept vengeance as satisfaction, and the other by not resisting seems to confess his own fault and his esteem concerning the other. - St. Lig., n. 989. - Likewise peasants are exempted from

restitution of honor if equal insults or reproaches have been hurled mutually among them, because by that very fact compensation is made.

5. In practice it is often expedient that the Confessor omit admonishing a penitent existing in good faith about the obligation of satisfaction, especially if he foresees that the admonition is not going to be of profit; or if he thinks that he who was dishonored will easily condone it, or will refuse reparation, especially public reparation, lest the memory of the injury return among others, or lest he himself be more affected with shame, etc. - St. Lig., n. 988. - See *Cases*, n. 434.

Chapter IV. On Rash Judgment, Suspicion, and Rash Doubt

465. ○ 1. Rash judgment is a firm assent conceived from slight indications concerning some sin or defect of the neighbor: it must be distinguished from opinion, which is a less firm assent and with fear of the opposite.

2. Rash suspicion is a certain inclination to assent concerning the evil of the neighbor from insufficient reason.

3. Doubt is a suspension of the mind determining itself to neither part.

466. **Principles.** - I. Rash judgment concerning the fault of the neighbor is a mortal sin from its genus against justice; for each one has a right to a good estimation of himself among individuals, nor must anyone be presumed evil until he is proved such: therefore he inflicts grave injury on the neighbor who rashly judges against him in a grave matter. Yet rather often it is venial on account of the smallness of the matter or the imperfection of the act.

II. For the gravity of rash judgment there is required, 1. that it be firm, or without doubt; 2. that it be fully deliberate and voluntary; 3. that it be in a grave matter concerning a determinate and known person; 4. that it be based on indications which are known to be slight and inept for judging. The reason for these things is that otherwise it would not be a true judgment, nor truly rash, nor gravely injurious to the neighbor. But often it is light on account of the defect of one of the conditions mentioned. - St. Lig., n. 962.

III. Rash suspicion and doubt about the stain of the neighbor are only venial from their genus. The reason is that, on account of the weak and easily movable adhesion, ordinarily they bring only light damage to the neighbor, since they do not take away reputation, but only diminish it and render it doubtful. - St. Lig., n. 963. - But if someone without reason, but from malevolence, persists in suspicion or doubt about a very grave matter, he will scarcely escape mortal sin. - St. Lig., n. 963.

467. **Resolves.** - 1. He does not sin gravely who judges sinisterly about the neighbor, if the judgment rests upon indications sufficient for prudent probability, because moral certitude and true probability do not differ so much that it should be considered a grave injury to hold as almost certain what is very probable. - St. Lig., n. 962.

2. He does not sin gravely who, in judging, does not attend fully to the insufficiency of the motives, although he notices that he judges less prudently; or if he admits only slight

negligence in repelling the judgment. - St. Lig., ibid.; *Hom. apost.*, n. 1.

3. He does not sin gravely who judges rashly about someone indeterminate among many, for example, of some group or community, or even about someone determinate indeed, but unknown to himself. - St. Lig., ibid.

4. You would not judge rashly if, hearing something from an upright and trustworthy man against the neighbor, you believed it. Much less if you only suspected or doubted, since much less is required for prudent suspicion or doubt than for prudent judgment; but otherwise if you heard something from a perverse man or one badly disposed toward another.

5. Suspicion or even doubt that is plainly rash, namely based on no reason, can be a mortal sin if it is occupied with sins very extraordinary and grave by reason of the condition of the persons whom it regards; because a suspicion or doubt of this sort is a greater injury than even a firm judgment concerning less grave sins. - St. Lig., n. 964.

6. It is lawful to forestall damages from fear that is not altogether imprudent; and thus, for example, you can keep your things under guard lest they be stolen by a stranger staying in your house; because although you cannot positively judge that this or that man is a thief, nevertheless you can most excellently consult for yourself, since you know certainly that there are sometimes thieves among men, although they are considered alien from theft.

Appendix. On the Violation of a Secret

468. ◦ A secret in general is called whatever is hidden: as concerns our matter, we call a secret whatever either from its own nature, or from a special contract, ought to be kept hidden.

A threefold secret is distinguished:

1. Natural, if it is imposed by nature itself, for example, if you know something which you cannot manifest without grave injury to another, whether in estimation, or in goods, etc.

2. Promised, if someone hearing a private matter from another or learning it by chance promises that he will not reveal it.

3. Committed, if someone manifests something to another, and at the same time tacitly or expressly requires silence from him concerning it.

469. **Principles.** - I. A natural secret in a grave matter obliges per se under grave sin, and indeed from justice, unless a just cause excuses. The reason is that from the revelation of a secret there follows per se damage to the neighbor, who has a right not to be injured without a reasonable cause. - St. Lig., n. 970. - Salm., etc.

II. A promised secret obliges per se gravely or lightly according to the quality of the matter and the nature of the obligation undertaken, which for the most part is from fidelity alone. The reason is that a contract is contained in a simple promise, which per se obliges only from fidelity and according to

the intention of the one promising, as was said concerning a vow [1]. - St. Lig., ibid., and others commonly.

[1] When the matter of a promised secret, even apart from any promise, by its own nature requires that it be kept hidden, because evidently it is also the matter of a natural secret, it is easily understood that the law of a promised secret can also oblige gravely. It is not so if you derive the whole obligation of the secret from the promise, and then in general establish that a promise obliges from mere fidelity; since the obligation of fidelity according to common doctrine is light from its genus. Therefore you will settle the matter more clearly when you notice with Card. De Lugo (*De Iust.*, disp. 23, n. 14 and 90-91), that by force of a promise someone can oblige himself either from mere fidelity or from justice, and that it depends on the intention and free will of the promiser in what way he obliges himself; to this can also be recalled the words of the Author saying: and according to the intention of the one promising. Therefore a promise will oblige under light sin if one promises from mere fidelity; but if from justice, according to the measure of the matter it will also be able to oblige under grave sin.

III. A committed or communicated secret, which is also called rigorous, obliges per se under grave sin from justice, and indeed more strictly than a merely natural and also than a promised secret; because besides the natural obligation there also presses an obligation from a contract undertaken expressly or tacitly [2]. - St. Lig., n. 970.

[2] A contract intervenes also in a promised secret; but it differs from the contract of a committed secret, because the former is a gratuitous contract, but the latter is onerous; for another would not commit to you knowledge of the matter unless he received from you the promise of secrecy.

470. **Questions. - Q. 1. What are the just causes of manifesting a secret?**

Resp. 1. The rightly presumed consent of him whose interest it is that the secret be hidden. - 2. The divulgation of the matter proceeding from elsewhere. - 3. Damage to the Republic or to private persons going to follow from the secret. Nevertheless if there is question of damage already inflicted, you cannot lawfully reveal a committed secret, so long as the one causing the damage is not himself bound to betray himself [3]. - St. Lig., n. 971, Lugo, Sanchez, etc.

[3] And in this a committed secret differs from a merely promised one: in this latter the one promising has not received knowledge of the matter by force of his promise, but gratuitously promises secrecy concerning knowledge received in whatever way. Further, when he thereafter promises this, even with an oath added, he cannot by his promise exempt himself from an obligation by which he is already held. Therefore, since each one is bound to open the truth to a judge legitimately interrogating, a promise of secrecy cannot extend to the case of a judge legitimately interrogating. But the contrary happens in a committed secret. For the common good demands that, through fear of revelation, men not be deprived of the advantage of seeking necessary counsel or help, which nevertheless they would never seek unless they were certain that the secret would be kept. Therefore the common good demands that, as long as the one committing the secret can lawfully keep his secret, he retain the right that the other not betray it. Hence the reason why physicians, advocates, midwives, theologians consulted, etc., are not bound, even to a judge interrogating, to open a matter known under a committed secret; indeed why they are bound not to open it.

Q. 2. Whether you can reveal a secret if you have promised to keep it even with loss of life?

Resp. 1. It is affirmed, if the common good requires it, because a promise made against the common good is null.

Resp. 2. It is denied, if there is question of your own damage simply grave, because it is better to keep the secret promised by this special contract. It is also denied more probably, if there is question of your extreme damage, because you have expressly renounced your right, nor is it illicit to omit the preservation of life in order that you may keep a promise [4]. - Thus Lugo, Lacroix, and St. Lig., n. 971. - Nevertheless the Holy Author deservedly says that the opposite is sufficiently probable.

[4] In order that this opinion can be held probable, it would further be necessary that the business to be kept secret be of the gravest moment. For otherwise the promise would be prodigal, which we are not bound to keep.

471. ○ **Q. 3. Whether he sins gravely who reveals a secret to one or another upright man under the same secret?**

Resp. It is denied probably per se; because in this case grave injury toward another does not seem to be committed. Except provided that it is not revealed to a person to whom the one committing the secret to you is deservedly presumed to have especially wished it to be concealed. - St. Lig., n. 971, and others.

I said per se; because in practice, on account of circumstances, the revelation of a secret will easily become grave, namely when you suppose too lightly that the persons to whom you commit a secret received by you are so discreet that they will certainly keep it, especially if there is dealing with women. For the secret was committed to you because you were thought discreet; but if you violate it, do you think that another, to whom you entrust it, will be more discreet than you yourself?

Q. 4. Whether one opening or reading another's letters sins gravely?

Resp. It is affirmed per se, or from its genus. The reason is that by natural right and the law of nations there is present an obligation of leaving the secrets of letters uninjured; otherwise human intercourse would be ruined. - St. Lig., *Hom. apost.*, tr. 11, on the 8th Precept, n. 5; and others commonly.

Except the following cases: 1. if there is present the tacit or presumed consent of the one who writes, or of the one to whom the letters are sent; 2. if it is known or presumed that the letters contain matters of light moment; 3. if it is done for a just cause, for example, to avert public or private damage, provided that in order to ward off that evil one has the right of opening the letters, and reads no more than is necessary for this end [5]; - Scav. - 4. if the letters are opened from levity or from some inadvertence. - St. Lig., l. 5, n. 70.

[5] ** To this can be recalled the question which St. Alphonsus (*Lib.* 3, n. 969) calls great: Whether, in order to avoid your own grave damage, you can reveal the hidden crime of another, if you have received knowledge of it unjustly by force or fraud, suppose by opening letters, etc. But after relating the opinions of others he adds: Among these so various opinions, the opinion of Lugo (*de Iust.*, disp. 14, n. 101) pleases me more. This great theologian teaches that, generally speaking, you cannot use that knowledge unjustly received with the damage of another, for escaping any damage whatever of your own... Lugo rightly admits only then that you can manifest the crime, when it would have been permitted to you even by force and fraud to seek it out and to open the letters. Thus St. Alphonsus.

But Lugo explains this doctrine of his thus by an example (l. c.): In order that this distinction may be explained and proved, we can use that example from goods of fortune, which anyone, as I suppose, can usurp even by deceit and force in order to free himself from extreme danger: wherefore, although you had previously usurped goods of this sort by injury and theft, yet if afterward you are in extreme need of them, you will now be able lawfully to retain and consume them, because you have been reduced to the state in which you could again take and consume them in whatever way. Thus, therefore, although you had unjustly received knowledge of another's crime, yet if you have been reduced to the state in which, on account of necessity, you could procure that knowledge in whatever way, you will be able lawfully to use that knowledge, just as if you had lawfully had it from the beginning.

472. **Resolves.** - 1. A promised secret in no way obliges whenever otherwise you were bound to manifest the matter, for example, if you are interrogated by a Superior or by a judge. - St. Lig., n. 970.

2. A committed secret must be kept by you generally, even if you are interrogated by a Superior or judge, etc.; but you must answer that you know nothing about this, since indeed you have knowledge of this sort in the same way as if you did not have it. - St. Lig., n. 970.

3. A secret only implicitly or tacitly committed must be kept in the same way as if it had been expressly committed. Thus counselors of Princes, generals of war, advocates, physicians, theologians consulted about some question, and absolutely all to whom a secret is committed for the sake of counsel or consolation or help, are strictly bound to secrecy.

4. A religious Superior lawfully opens the letters of his subjects, or of others sent to them, whether from the statute of the Religion, or from custom, or from prudent suspicion that they contain something less right. - St. Lig., l. 5, n. 70.

5. Yet a Superior cannot open and read the letters which subjects send to mediate Superiors and, in turn, those Superiors send to subjects; for right reason of governing demands that supreme Moderators be able to communicate freely with all subjects. - St. Lig., ibid. - See *Cases*, n. 436 and following.

END OF THE TREATISE ON THE PRECEPTS OF THE DECALOGUE

Treatise On the Precepts of the Church

473. ○ The Church enjoys the faculty of establishing precepts obliging the faithful under grave sin. For Christ conferred legislative power upon her, as was said in the Treatise on Laws, n. 83.

There exist many precepts of the Church, as is clear from Canon Law; but the principal ones, which regard all the faithful of whatever state or condition, are reduced to the following six, namely: 1. that the faithful observe the feasts instituted by the authority of the Church; - 2. that at least on Sundays and feasts they be present at the Holy Sacrifice; - 3. that at least once in each year they confess their sins; - 4. that at least in the time of Easter they approach the Sacrament of the Holy Eucharist; - 5. that on certain days they abstain from flesh meat; - 6. that they keep the fasts at the stated times.

On the First and Second Precepts of the Church, or On the Observance of Feasts

474. ○ Holy mother Church enjoys the power of instituting feasts, and of commanding their sanctification under grave sin for all the faithful, inasmuch as she received from Christ every power in order to the spiritual good of her children. No controversy about this is agitated among Catholics.

The precept of celebrating feasts, if you regard the obligation by which we are sometimes held to venerate God by some worship, is certainly divine and natural; but as to what concerns the time and days to be consecrated to this worship, this in the old law is sanctioned by a ceremonial precept, in the new by an ecclesiastical one. - St. Lig., l. 3, n. 263. The Pope alone can appoint feasts for the universal Church, because he alone enjoys jurisdiction over the universal Church. Bishops also can institute feast days in their own diocese; for they have the faculty of making laws in their diocese. Nevertheless, according to the present discipline, lest feast days be multiplied beyond measure through too great facility of Ordinaries, Bishops are forbidden to establish feasts without consulting the Clergy and the faithful. - Thus commonly from c. *Conquestus*, *de Festis*. - St. Lig., n. 266. A vow of celebrating certain feasts of precept with vigil and procession, although confirmed by the Bishop, obliges only those vowing. - S. R. C., 19 Nov. 1650. - Gardellini.

Many feasts were formerly instituted which, in the course of time, when the fervor of the faithful had grown cold [1], went into desuetude, or were abolished by Ecclesiastical authority itself.

[1] While the Author ascribes the diminution of feasts to the cooling of the charity of the faithful, perhaps he had especially before his eyes the most miserable condition of the Gallican regions, when the savage barbarity of certain men who had taken possession of public affairs had advanced to such madness and fury that it both enacted and took care that every worship of God be exterminated: and that a wholly noble nation might emerge from that mire, the wickedness, partly, and partly the sloth, of the times and of the men who seized or held the sceptre there, has not yet allowed.

But the Roman Pontiffs brought forward an entirely different cause for the diminished number of feasts. For Urban VIII (*Const. Universa*, § 1) says that he was moved because "the frequent cry of the poor has ascended to Us, complaining that the same multitude [of feast days], on account of the necessity of acquiring daily sustenance by their labors, is very harmful to them." And Pius VI (*Const. Ex quo divina*, 7 June 1780, § 5): "While we consult the consciences of the peoples, and provide for the need of those who eat bread in the sweat of their face," etc.

475. ○ Urban VIII, Const. *Universa* (13 Sept. 1642), suppressed many feasts, and established a new catalogue of feast days, as follows:

"By Apostolic authority we decree and declare that only the days written below are to be observed as feasts of precept... namely the Sundays of the whole year; - the Nativity of Our Lord Jesus Christ; - the Circumcision; - the Epiphany; - the Resurrection with the two following ferial days; - the Ascension; - Pentecost with the two following ferial days likewise; - the Most Holy Trinity; - the Solemnity of the Body of Christ, and the Invention of the Holy Cross; - and also the festivities of the Purification, - Annunciation, - Assumption, - and Nativity of the Virgin Mother of God; - the Dedication of St. Michael the Archangel; - the Nativity of St. John the Baptist; - Saints Peter and Paul, - St. Andrew, - St. James, - St. John, - St. Thomas, - Saints Philip and James, - St. Bartholomew, - St. Matthew, - Saints Simon and Jude, - and St. Matthias; - likewise St. Stephen Protomartyr; - the Holy Innocents; - St. Lawrence Martyr; - St. Sylvester Pope and Confessor; - also St. Joseph Confessor, - and St. Anne, mother of the Mother of God; - the Solemnity of all Saints; and one of the principal Patrons in any kingdom or province whatever, and likewise another more principal one in any city, town, or village, where it happens that these Patrons are held and venerated."

To this catalogue must be added the feast of the Immaculate Conception of the Blessed Virgin Mary, which Clement XI wished to be held as of precept, through the Constitution *Commissi Nobis* (6 December 1708).

The Patron is in no way to be confused with the Titular. Therefore the feast of some Saint, indeed the Titular of some Church, is not to be observed as of precept, unless it is established that he has been canonically elected as Patron, all the prescriptions of Urban VIII concerning this matter having been observed.

Pius VI, on account of the calamity of the times, condoned for the Roman faithful the obligation of celebrating certain feasts. These, however, are the following, namely, the feasts of the Holy Apostles besides the solemnity of Saints Peter and Paul; the two ferial days which follow Easter and Pentecost; the Invention of the Holy Cross; the feasts of St. Anne, St. Lawrence, St. Stephen, the Holy Innocents, St. Sylvester, the Nativity of St. John the Baptist, St. Michael, and St. Joseph; of which, however, the last three were afterwards restored. Moreover, as to other matters, nothing was changed by this as to the obligation imposed on Pastors of celebrating Mass for the people; and therefore one must still stand by the catalogue of Urban VIII. Thus it was solemnly declared by Pius IX through the Constitution *Amantissimi*, 3 May 1858.

But in France, after the Indult of Card. Caprara, 9 Apr. 1802, from the concession of the Supreme Pontiff Pius VII, only four feasts besides Sundays remain of precept for the faithful, namely: 1. the Feast of the Nativity of the Lord; 2. of His Ascension; 3. of the Assumption of the Blessed Virgin Mary; 4. the Feast of all Saints. From the same Indult, the feasts of the Epiphany of the Lord, of the Most Sacred Body of Christ, of the Holy Apostles Peter and Paul, and of the Holy Patrons of any

diocese and parish are to be transferred to the nearest occurring Sunday. The remaining feasts, formerly prescribed, are now celebrated on the same days as before, but without any obligation for the faithful.

Concerning the things required for observing feast days, namely concerning hearing Mass, etc., see what we said above, where we treated the third precept of the Decalogue.

476. **Questions. - Q. 1. Whether, besides the obligation of abstaining from servile works and also of hearing Mass, the liturgical solemnity of suppressed or transferred feasts was also taken away?**

Resp. It is denied. For the Sacred Congregation of Rites has responded many times: "As to choir and the ecclesiastical functions customarily performed, absolutely nothing is to be innovated in relation to feasts on which the people is released from the precept of hearing the Holy Sacrifice." 18 Oct. 1818, in Alifana, in Aquilana, in Tarentina.

Q. 2. Whether the same decision is to be applied to France?

Resp. It is affirmed. For these words of the Cardinal Legate are clear: "He [Pius VII] nevertheless wished this law to have been added, that on the feast days and vigils which are decreed suppressed, in all Churches nothing be innovated concerning the accustomed order and rite of divine offices and sacred ceremonies, but that all things be performed in precisely that manner in which they had hitherto been accustomed."

Q. 3. Whether the same is to be said concerning feasts whose solemnity was transferred to the next following Sunday, for example, Epiphany, Corpus Christi, etc.?

Resp. It is affirmed. For the Sacred Congregation of Rites, to the question: "Whether on feasts whose solemnity is deferred to the nearest occurring Sunday, the public Office, both morning and evening, is to be performed as before the reduction?" - responded: "Affirmatively." - 23 May 1835, in Namurcen. - The same Sacred Congregation had decreed this in Cenomanen., 29 Nov. 1831.

On the Third Precept of the Church, or On Annual Confession

477. ◦ This precept is contained in Lateran Council IV, held under Innocent III in the year 1218, canon 21, which reads thus: "Every faithful person of either sex, after he has reached the years of discretion, shall faithfully confess all his sins alone, at least once in the year, to his own Priest," namely to the Pope, Bishop, Parish Priest, or Priest approved by the Bishop. - Bened. XIV, *de Syn.*, l. XI, c. 14, n. 2-6.

478. **Questions. - Q. 1. When are children considered to have reached the years of discretion, so that they are bound by the precept of annual confession?**

Resp. When they are capable of mortal sin; and this must be judged not from age alone, but chiefly from the degree of understanding or discretion of good and evil. Sufficient discretion is considered to be present in those who already apprehend that lying or disobedience is evil, or who blush over certain impure actions, etc.

Hence Pastors of souls are bound gradually to prepare even little children of seven years for confession, and to absolve those in whom they notice mortal sin, even doubtful mortal sin [1], at least within the year by force of the Lateran Council. - St. Lig., l. 6, n. 662-666; l. 3, n. 270. In doubt about discretion, let them be absolved under condition. - St. Lig., *de Poenit.*, n. 666.

[1] But someone would think most foolishly also that little children should be dismissed without absolution, although it is established that they are stained by no mortal fault, not even doubtful. For would anyone doubt that the sacrament in these also has its force, and confers grace *ex opere operato?* Or why will the minister of God deprive these souls, very dear to God, of that grace which both makes them dearer to God and gives them very much protection and strength for preserving the state of grace? On this argument Joseph Frassinetti must certainly be seen in the excellent work whose title is *Manuale del Parroco novello*, Part II, Chap. II, § 6, where he opportunely dispels certain anxieties by which some are pressed concerning the sufficient disposition of children for receiving this sacrament.

Therefore Confessors gravely err and cannot be excused who never wish to absolve children committed to them before the age of first Communion. - St. Lig., ibid. **Q. 2. Whether he who is not burdened by mortal sins is bound to confess venial sins by reason of the precept of annual confession?**

Resp. It is denied; because the Church commands only that confession which is from the institution of Christ. But Christ commanded no other confession except that of mortal sins, as the Council of Trent explains, sess. 14. - St. Lig., l. 6, n. 667, and others commonly.

Moreover, as to practice this question is of the least moment; for what faithful person burdened only by venial sins omits to confess at least once in the year, or is accustomed to approach the sacred Synaxis unconfessed from year to year?

Q. 3. Whether he who has not confessed for a whole year is bound to confess as soon as possible?

Resp. It is affirmed. Because the term of the year was not placed by the Church for ending the obligation, but only for urging it. - St. Lig., l. 6, n. 668.

479. ○ **Q. 4. Whether an annual confession which is not made to the Parish Priest or to another with the permission of the Parish Priest is to be considered valid?**

Resp. It is affirmed. - Thus commonly; and today, says St. Liguori, it is certain from universal custom. Compare the things to be said concerning the Sacrament of Penance, c. 2. - See *Cases*, n. 443 and following.

See more concerning confession in the Treatise on the Sacrament of Penance.

On the Fourth Precept of the Church, or On Easter Communion

480. ○ I. The precept of Easter Communion, not otherwise than the precept of annual confession, is divine as to substance, but ecclesiastical as to the determination of time. This precept is established from the perpetual practice of the Church, from innumerable Councils and pontifical Constitutions, and especially from the Council of Trent, sess. 13, can. 9: "If anyone shall have denied that all the faithful are bound every single year, at least at Easter, to communicate, according to the precept of mother Church, let him be

anathema." - The Easter time, from the declaration of Eugene IV, begins from Palm Sunday and is terminated on Low Sunday. Bishops, however, by custom [1], can anticipate this time or also prolong it. The year of obligation, according to common custom, is usually computed from Easter. - St. Lig., l. 6, n. 295.

[1] Namely, the custom is that the Apostolic See grants to petitioning Bishops the faculty of extending the time established in law more or less, according to the varied necessity of different places. For otherwise it is known that by common law Bishops indeed can dispense in particular with these or those subjects of theirs, but not likewise with the whole community.

II. Easter Communion must be received in one's own parish, as is clearly gathered both from various Constitutions of the Supreme Pontiffs and also from the general practice of the Church.

Hence the precept of receiving the Eucharist is threefold: 1. it regards Communion itself; 2. the time; 3. the place: but where either the last or the second cannot be fulfilled, satisfaction must be made to the other two, or at least to the first. - Council of Rheims, year 1850, tit. 7, c. 1.

481. **Questions. - Q. 1. Whether one who omitted Communion at the prescribed time is bound to communicate as soon as he can?**

Resp. It is affirmed. The reason is that the time has by no means been determined for ending the obligation, but for urging it. For from the things said, the precept of communicating is divine in itself: therefore when the Church commands this precept to be fulfilled at Easter time, she is not considered to dispense from it. It is also established from the practice of the Church herself, which in Rome compels the faithful by censures to satisfy the precept after Easter time has elapsed. - St. Lig., l. 6, n. 297, and others more commonly.

But before the Easter time has begun, no one is bound to obey this precept, even if he foresees that afterward he will be impeded; but once that time has begun, he is bound to satisfy this obligation as soon as possible if he foresees an impediment, indeed to remove even grave impediments, since it is a divine and grave precept, and to communicate again, even if he had already anticipated Holy Communion on account of a foreseen future impediment. - St. Lig., n. 297.

Q. 2. Whether the precept of communicating in the parish obliges under grave sin?

Resp. It is affirmed, at least per se. The reason is that the matter seems grave in itself; for to what purpose would there be so many Constitutions and Decrees of the Supreme Pontiffs for establishing a light obligation? - Thus commonly.

482. ○ **Q. 3. Whether the precept of communicating in the parish still urges when Easter time has elapsed and satisfaction has not been made to the precept?**

Resp. It is affirmed with the common opinion. The reason is that the end of the law to be obtained always remains. Besides, Bishops, the interpreters of the law, commonly require that a dispensation be sought in that case, by which Communion can be made in another place. Except, however, unless the permission of the Parish Priest can be presumed.

Q. 4. Whether he sins gravely who defers Communion to the first or second day after Easter time has elapsed?

Resp. It is affirmed per se. The reason is that, although a delay of this sort can seem small in itself, yet with respect to the paschal time it is sufficiently notable. Nor are they to be excused from mortal sin who from grave negligence approach indisposed [2] on the last day of Easter time, so that they must be remitted by the Confessor to another time. Per accidens they are excused who in good faith think it is sufficient if they then approach the Confessor for the sake of beginning confession; but they must be instructed about the obligation of communicating within the Easter time.

[2] These things are true if here by indisposed you understand those who, although they approach the Confessor, nevertheless knowingly adhere to sin, and do not have in any way the will of performing those things which are necessary for reconciliation with God; and these indeed by the fact itself declare that they do not wish to satisfy the precept of receiving Easter Communion; and it is the same whether they approach on the last day of Easter time or before it. But if here you call indisposed those who do not lack good will, yet some cause is present on account of which Communion is remitted to another time, the exception which the law itself expressly adds will avail with regard to these (*c. Omnis utriusque sexus* 12, *De Poenit. et Remiss.*), through these words: "Unless perhaps, by the counsel of his own priest, for some reasonable cause he should judge that abstaining for a time from this reception is necessary."

483. ○ **Q. 5. Whether he satisfies the precept of the Church who communicates in the cathedral Church, or from the hand of the Bishop outside the parish?**

Resp. It is denied, because he has not communicated in his own parish. - Thus commonly. - St. Lig., n. 300. - Salmant. - Gousset, n. 224, against others.

Q. 6. Who can dispense from this precept of communicating in the parish?

Resp. 1. The Bishop with diocesan subjects; 2. Vicars general likewise for the diocese; 3. the Parish Priest himself, since the law was enacted in his favor, and besides it is established from custom. - St. Lig., l. 6, n. 300.

484. ○ **Q. 7. Where can pilgrims, wanderers, soldiers, and servants satisfy the precept of Easter Communion?**

Resp. 1. Pilgrims and wanderers can communicate in any Church, and are not bound to go to the parish of the place where they are staying; because they do not have their own Parish Priest who ought to recognize them. - St. Lig., l. 6, n. 300.

2. Soldiers in station, or having domicile in a city, must communicate in the parish in which they are dwelling; otherwise they can fulfill the precept in any Church.

3. Servants and all others having quasi-domicile are bound by the same law as the inhabitants of the place.

Q. 8. Whether he is bound to communicate again in the parish who sacrilegiously communicated there?

Resp. It is denied, because he fulfilled the end of the precept as to the circumstance of place; therefore it suffices that he communicate somewhere in order to satisfy the precept of Easter Communion, which he did not fulfill through sacrilegious Communion. Nor is one bound to receive Easter Communion in the parish if he received sacred Viaticum during Easter time; for the end of the law was sufficiently fulfilled. - See *Cases*, n. 488.

See more concerning Communion in the Treatise on the Sacrament of the Holy Eucharist.

On the Fifth Precept of the Church, or On Abstinence from Flesh Meat Outside Fasting

485. **Principles.** - I. There exists an Ecclesiastical precept imposed on all the faithful of abstaining from flesh meats on certain days. It is established from various Constitutions of the Supreme Pontiffs, Catechisms, and universal custom, and by the consent of all theologians. Indeed the precept of abstinence is reckoned apostolic, not otherwise than the precept of fasting, from which in the first ages of the Church it was not separated.

II. This precept, besides the time of fasting, urges, 1. on Friday of any week in the whole Christian world, unless the Nativity of the Lord falls on this day; 2. on Saturday, unless legitimate custom somewhere for some time of the year has prescribed otherwise.

But in most dioceses of France, from a peculiar custom, the obligation of abstinence is in force on the three Rogation days and on the vigil of St. Mark. Therefore attend to the special custom of places.

III. The precept of abstinence obliges per se under grave sin, because the matter is per se grave; in it, nevertheless, according to the common opinion of theologians, smallness of matter is admitted. - St. Lig., n. 1030.

But just as from other positive laws, so also from this obligation there are given excusing causes, namely impotence, both physical and moral, or great difficulty, which is found in the observance of the law. - Thus all theologians with St. Lig., ibid.

486. **Questions. - Q. 1. Whether flesh meats can be given to little children on those days on which they are prohibited?**

Resp. It is affirmed if they have not attained the use of reason; otherwise, I deny it. - But if they possess the use of reason before the seventh year, it is disputed; St. Lig., *de Leg.*, n. 155, more probably denies it. Yet it is expedient that children become accustomed to abstinence of this sort even before they are obliged. - Recall the things said in the Treatise on Laws, n. 93.

Q. 2. What quantity of flesh meat is required for grave sin?

Resp. It is greatly disputed. All agree that the matter which notably nourishes is grave; but this can scarcely be determined. According to many, grave matter must exceed half an ounce; but St. Lig., n. 1029, rejects this opinion, where he relates and seems to approve what the Salm. say, that small matter is only an eighth part of an ounce. Yet they say this about days on which, besides, fasting must be observed [1].

[1] Therefore the things brought forward in this place from St. Alphonsus or the Salmanticenses do not bear on the matter, because they discuss the quantity of food which gravely violates the law of fasting, insofar as it forbids several eatings: but on those days on which only abstinence from flesh meats, and not fasting, is prescribed, their reasonings concerning foods which nourish little or much are wholly beside the matter, because the law of abstinence does not prevent anyone from nourishing himself as often and as much as he pleases.

Moreover, even if there is speech about fasting, the opinions related here by the Author will not easily be reconciled with those things which are said below, n. 494, concerning grave matter in food which is taken on a fast day outside the meal

and the small supper. For does half an ounce of meat nourish more than two or three ounces of another food, for example, of bread, nourish?

Q. 3. Whether it is a mortal sin to eat pottage, lettuces, etc., seasoned with flesh meat or fat?

Resp. It is affirmed if that food is notably full of broth or gravy; otherwise it will be only venial. Hence it is mortal if the sauce of the pottage was cooked with a great quantity of flesh meat, and so concerning other things. But the poor are more easily excused from grave, or even light, sin, who, since they cannot buy butter, use a small quantity of fat for seasoning pottage.

487. ○ **Q. 4. Who are considered to be excused from the law of abstinence?**

Resp. 1. Begging poor persons; for they can eat whatever they receive as alms, as theologians commonly think.

2. Poor laborers who have nothing else except a little piece of fat or bacon for seasoning pottage or vegetables. - St. Lig., n. 1008.

3. The sick, for example, those laboring under fever, etc.; also those whose stomach is so weak that they cannot digest lawful foods; but hallucination must be guarded against, and religious and God-fearing physicians are to be consulted if it can easily be done. - St. Lig., ibid.

4. Those who daily give themselves to labors so arduous and wearying to the stomach that after the manner of the sick they do not experience hunger and they reject foods; of this sort are those who live their life in mines, or in glass and iron workshops. In the number of these there also seem to be reckoned drivers who, driving public carriages by day and night over the space of several days, can scarcely swallow one or another little piece of food; but not those who slowly drive carriages, horses, or mules, and spend the night in inns.

5. Travelers who find nothing in inns besides forbidden foods and cannot easily turn aside elsewhere. Yet they are bound seriously and insistently to ask for lawful foods. For the sole reason of a journey in no way exempts from the law of abstinence, even if perhaps it dispenses from fasting on account of too great weariness. Hence travelers cannot be excused on account of human fear, on account of fear of displeasing companions, on account of mockeries and other difficulties of this genus; otherwise almost all those making a journey would be exempted from this law.

6. Finally, soldiers staying in camps or quarters and nourished in common at the expense of the Government are excepted.

On the Sixth Precept of the Church, or On Ecclesiastical Fasting

488. ○ Ecclesiastical fasting is situated in abstinence from foods and from a certain quality of foods, which according to the form prescribed by the Church is to be observed especially in the time of Lent, of the Ember Days, and of certain vigils, namely of Pentecost, of the Holy Apostles Peter and Paul, of the Assumption of the Blessed Virgin Mary, of All Saints, and of the Nativity of Our Lord.

We must treat, 1. of the essence and obligation of fasting; 2. of the causes excusing from fasting.

Chapter I. On the Essence and Obligation of Fasting

489. ○ I. All the faithful, from the completion of the twenty-first year of age, are bound under grave sin to observe the fast on the stated days, unless they are legitimately excused or are dispensed by Superiors. It is a most ancient obligation, which is said to have been handed down by the Apostles themselves. Moreover, concerning this obligation it is established from various Constitutions of the Supreme Pontiffs, and from all the Catechisms of the ecclesiastical Provinces.

I said, 1. under grave sin, because the law regards grave matter, since indeed it very much conduces to the salvation of souls. It is established besides from Proposition 23 condemned by Alexander VII, which lies thus: "One breaking the fast of the Church to which he is bound does not sin mortally, unless he does it from contempt or disobedience, for example, because he does not wish to subject himself to the precept."

I said, 2. from the completion of the twenty-first year; because the Church, as a pious mother, does not wish to impose on boys and adolescents a law surpassing their strength. It is established from universal custom, and from all Catechisms.

II. Ecclesiastical fasting consists of three things as of parts, namely: 1. one meal through the 24 hours of the day, with a little evening refection added; - 2. abstinence from flesh meats and milk products [1]; - 3. a determined time for taking the refection. - Notice, however, that the custom of places and times contributes especially to determining, or modifying, or restricting the nature and obligation of fasting.

[1] This must be restricted according to the things which are to be said below, n. 503.

Article I. On the One Meal and the Little Refection

§ I. On the One Meal

490. **Principles.** - I. One meal is the primary condition of fasting: for in this chiefly its essence is situated; once this indeed is taken away, no one is ever said to fast, while, on the contrary, fasting is conceived without abstinence from flesh meats and milk products.

II. But small eatings which are done besides will be venial sins, taken separately, and if repeated rather often on the same day they can coalesce into grave matter, as is clear from Proposition 29 condemned by Alexander VII, which lies thus: "On a fast day he who rather often eats a little something, even if at the end he will have eaten a notable quantity, does not break the fast"; but this Proposition was deservedly condemned. Otherwise fasting would have been done away with.

III. The fast is not broken by a draught of water, wine, and other drinks which of themselves are ordered and commonly used for quenching thirst, although according to the first discipline of the Church Christians abstained completely from wine and similar liquids. Hence the axiom: Liquid does not break the fast. - Thus St. Lig., n. 1022. But by liquid is understood only that which by common use is taken in the manner of drink, not indeed in the manner of food, as milk, etc. - St. Lig., n. 1021.

491. **Questions. - Q. 1. Whether wine drunk for quieting hunger breaks the fast?**

Resp. It is denied, more probably. The reason is that the law of fasting commands only abstinence from food, not however from drink; and according to St. Thomas, 4, dist. 15, q. 3, a. 4, q. 1, "The statute of a positive law does not attend to the intention of the observer, but to the act itself, because the mode of virtue does not fall under precept, but is the end of the precept." - St. Lig., n. 1022, and others commonly.

Q. 2. Whether the drinking of coffee and tea breaks the fast?

Resp. It is denied, more probably, unless too great a quantity of sugar is mixed in; because these do not have the nature of food, but of drink or medicine. - Thus more commonly. - St. Lig., n. 1022, speaking only of tea, says that, with the restriction just brought forward being posited, it more probably has the character of drink. It seems the same must be held concerning coffee.

492. ○ **Q. 3. Whether the drinking of water mixed with sugar, or made from the juices of oranges or lemons, breaks the fast?**

Resp. It is denied per se, that is, unless you mix in a great quantity of their substance which is considered to have the character of food. - Thus commonly with St. Lig., ibid. - The reason is that all these things, according to common estimation, are held as drinks [1].

[1] St. Alphonsus (n. 1022, q. II) concedes that this same thing is lawful, even if these things are congealed by frost.

Q. 4. Whether a drink of chocolate breaks the fast?

Resp. It is affirmed, if, as is the custom outside the time of fasting, it provides you rich nourishment. - But it is denied if a moderate quantity of chocolate is taken and this is done only once in the day. The reason is drawn from general custom. - Thus St. Lig., n. 1023. - What quantity can be taken? The Holy Author says that not less than an ounce and a half of chocolate is usually put into ordinary cups; for thus, from the usage tolerated by the Church and kept by pious faithful, it is commonly accustomed to be done. But not a few, when the aforesaid quantity of chocolate has been lessened, substitute bread proportionally. But truly the total quantity of that food ought not to exceed the weight of two ounces, the water not being counted.

493. ○ **Q. 5. Whether it is lawful on a fast day to taste some food before drink, lest the latter harm?**

Resp. That certainly is not lawful "as often as," as they say, although Diana, Leander, and others concede this also; for then the law of fasting would be laughable. Therefore it can be permitted only once or twice in the day. - St. Lig., n. 1018.

Q. 6. Whether electuaries break the fast?

Resp. Electuaries are called those things which are made from selected things, for example from sugar and juniper, etc. But they are not considered illicit on fast days if they are taken in the manner of medicine and in moderate quantity. But any reasonable cause suffices for excusing from every fault, for example, for the digestion of foods, strengthening the stomach, taking away bad odor of the mouth, preserving the voice, and similar things. - St. Thom., 2. 2, qu. 147, art. 6. - Sporer. - Elbel. -

St. Lig., n. 1010, adds that probably those also are excused who take something lest their strength fail, when they must defer dinner beyond the common hour. Indeed, there will be an obligation of taking something if this is necessary for keeping the fast [2].

[2] Namely, if by using this aid you can bear the fast which otherwise you would not bear, the obligation of fasting itself requires from you that you use that aid. See Croix, lib. 3, part II, n. 1324. From this it is clear that certain persons act altogether badly toward fasting, while, either under the pretext of a custom which has not yet prevailed in their own province, they forbid the faithful to take anything in the morning, or they restrict this very thing to a mere little drink, biscuits being forbidden. For thus they accomplish only this one thing: that many who otherwise would bear the yoke of fasting cast it off altogether.

494. ○ **Q. 7. What quantity of food is considered grave matter if it is taken outside the meal and the small supper?**

Resp. It is disputed. Without doubt that matter must be considered grave which, added to the evening small supper, would make another meal. But certainly the quantity of two ounces is to be held as light matter [3]. Not a few think the quantity equivalent to half of the small supper, or four ounces, to be grave matter.

[3] Thus St. Alphonsus (lib. 3, n. 1025): "Since the Salmanticenses with Sanchez, etc., consider that two ounces in the little refection are not reputed a grave excess," etc.

Q. 8. Whether he who culpably took a double meal sins gravely if he adds a third?

Resp. It is denied, at least more probably. The reason is that the precept of fasting urges in an indivisible way during the day of the precept; therefore he who has once violated it does not sin again and again by eating. Therefore, once mortal sin has been perpetrated by violation of the fast, the whole law urging on such a day has been violated. Therefore, etc. - St. Lig., n. 1030 [4]. - Mazzotta, Ronc., and others commonly.

[4] ** Thus St. Alphonsus (l. c.): "The second common and more probable opinion denies"; and the Holy Doctor deservedly says this against Croix (lib. 3, p. 2, n. 1265, whom Ferraris afterwards copied, v. *Ieiunium*, art. 1, n. 37), who says more rigorously that mortal sin is committed very probably. Yet from Croix the Holy Doctor took what Ferraris also had taken (l. c.), that it is the most common opinion that at least venial sin is committed. Thus he himself (l. c.): "Lessius, Filliuccius, and Croix with the most common opinion say that this is venial." But scarcely could anyone divine whence and on what foundation Croix came forth into that absolute assertion: "It must be held," he says, "with the most common opinion, that at least venial sin is committed." For Filliuccius (tr. 27, c. 2, n. 24), as Sporer also reports (append. to the 3rd Precept, sect. 1, n. 18), merely says: "it is probable that at least venial sin is committed." And Lessius (lib. 4, c. 2, n. 17): "It is credible that in a third and fourth eating there is some sin, at least venial." But does this equipment furnish a foundation for that absolute opinion, so that, moreover, it may be called most common? Indeed Reiffenstuel (tr. 10, dist. 1, q. 2, n. 20) says that the opposite is the more common, although he concedes that someone can sin against temperance by several eatings, which does not pertain to the matter. Thus also Mazzotta (tr. 2, disp. 1, q. 4, § 2): "Doctors commonly affirm that if after a double eating someone eats a third time, he does not further sin against the law of one eating." You may see the same also in Laymann (lib. 4, tr. 8, c. 1, n. 13). Otherwise, could Croix have suspected that the Doctors are to be thought to have admitted venial sin for this reason, because against certain few they set down the thesis that mortal sin is not committed? But the reasoning of the adverse thesis demanded this antithesis. It was all the less necessary for them to raise a question about at least some light fault, because the arguments brought forward by them excluded every fault. Palaus well concludes (tom. 7, tr. 1, disp. 3, p. 2, § 2, n. 8): "If the law forbids other eatings, there will be just as many grave sins; if it does not forbid them, there is no sin." Therefore sin can be committed against temperance, which does not bear on the matter, but not against fasting.

Yet he who breaks the fast by eating forbidden flesh meats or milk products many times sins as often as he eats. - St. Lig., *Hom. apost.*, n. 20.

495. ○ **Q. 9. Whether he who inculpably took a double meal in the day, when the error has been detected, or the excusing cause removed, is bound under grave sin to abstain from a third?**

Resp. Certain authors affirm. The reason is that he has injured the fast only materially, not formally: wherefore as soon as he attends to the law of fasting, or sees that the excusing cause ceases, he is subjected to the same law and is bound, as the others, to keep it; otherwise he would violate it formally. - Thus probably Reuter, *de Leg.*, n. 176. - St. Lig., *Hom. apost.*, n. 20. Yet others more probably deny, because since the essence of fasting is situated in one meal, after a double meal the fast becomes impossible. - Recall the things said concerning Laws, n. 95.

496. ○ **Q. 10. What if on a fast day you have inadvertently taken breakfast?**

Resp. 1. If you have taken a little something, for example two, three, or four ounces of food, you ought indeed to fast according to custom, without abandoning the meal and the small supper at the accustomed hours; for the fast was not substantially injured [5].

[5] Since the Author (above, q. 7) admits that, according to the opinion of many, which otherwise seems altogether to be held, the quantity of four ounces constitutes grave matter, it scarcely appears, indeed, how the fast is substantially kept by him who has taken four ounces of food; since these two things, namely to sin gravely against the law of fasting and to keep the fast as to substance, seem to cohere little. Perhaps someone would better say that the small supper is also not denied to you by reason of a certain necessity, and not as though these things per se injure the substance of the fast not at all.

2. If you have taken a quantity equivalent to the small supper, you must transfer dinner to the evening time, or abstain from the small supper itself, unless this gives you grave inconvenience.

3. Yet if a quantity of this sort was equal either to nearly a double small supper or to the accustomed meal, you ought, omitting dinner, to take only the evening small supper, yet taking it earlier if you cannot wait without grave difficulty. Besides, you could increase this small supper according to the measure of necessity.

§ II. On the Evening Collation

Besides the accustomed meal it is lawful, from universal custom introduced for many centuries and tolerated by the Church, indeed also tacitly approved, to take toward evening a little refection from lighter foods. - Thus all.

497. **Questions. - Q. 1. What quantity of food can be taken in the small supper?**

Resp. From present-day and common custom, about eight ounces of food can be taken, at least speaking ordinarily. - Thus St. Lig., n. 1025. - But others say that a fourth part of the supper must be permitted [1]. But this doctrine is too vague or liable to scruples. - The quantity of eight ounces seems to be denied to no one, but a greater quantity is to be conceded to those for whom this would not suffice. - St. Lig., ibid. - Elbel, Lacroix. Certainly a completely fixed rule cannot be established, since regard must also be had to constitution, duties to be performed, the duration of the fast, etc. In general it is lawful to take as much as one judges necessary for avoiding indisposition which would

impede him from performing his duties fittingly. - Scav., Gousset. Regard must also be had to one's own region, if in some place a greater quantity of food is necessary.

[1] ** It must be carefully noted here that under the name supper among Authors, where they treat of fasting, there comes dinner, or that one eating which is kept by those fasting. Hence Azor (lib. 7, c. 8, q. 3): "The Church wills that we dine at a certain time and not before, or rather that we sup." And (chap. 21, q. 5): "The fast day consists of a supper, not a dinner." And Struggl (tr., q. 2, art. 2, n. 25) for this reason calls that refection the midday supper; because evidently (ibid., n. 27) formerly the hour of refection in Lent was in the evening; likewise Holzmann (part 3, tr. 1, n. 23) calls it the midday supper. See also Lessius (lib. 4, chap. 2, n. 11), Reiffenstuel (tr. 10, dist. 1, q. 2, n. 27), Ferraris (v. *Ieiunium*, art. 1, n. 46), Sporer (app. to the 3rd Precept, sect. 1, n. 20), Giribaldi (tr. 8, chap. 3, n. 58), Sanchez (consil., lib. 5, c. 1, dub. 25, n. 2), Valentia (tom. 3, disp. 9, q. 2, p. 3), Tamburini (lib. 4, c. 5, § 3, n. 1), Croix (lib. 3, p. 2, n. 1277), etc., etc. From this, what by the Author is called the fourth part of supper is also customarily called the fourth part of dinner, or of eating, or of refection. Thus, for example, Pichler (lib. 3, tit. 46, n. 6): "Very many permit the fourth part of a just dinner or complete and full supper." Thus also Reuter (part 2, tr. 3, q. 3, n. 174): "That it is lawful for anyone to take a fourth or fifth part of dinner, or of a just refection." And Gobat (*Quin.*, tr. 3, chap. 28, n. 208): "Custom permits, at least in Germany, that the doctrine of Filliuccius, Reginaldus, and Laymann be practiced, who hand down that for the evening little refection as much can freely be eaten from permitted things as equals the fourth part of a just dinner."

Moreover, if you listen to Reginaldus (lib. 4, n. 185), the supper or dinner whose fourth part is conceded is understood as the supper or dinner of one fasting. Thus he says: "Let him beware excess, which I would say ordinarily happens when that which is taken is notably greater than a fourth part of those things which would suffice for one fasting for his ordinary supper." Concerning this matter they add generally that account must be taken of regions. For, says Reginaldus (l. c.), some regions are hotter or colder than others; where, adds Wagemann (part 2, tr. 2, chap. 4, n. 51), "from the severity of the air there is a greater appetite for food, and men are more laborious, and there is not so much strength of food and drink." Concerning this also the Salmanticenses (tr. 23, chap. 2, n. 71): "Others concede more to those inhabiting cold provinces than to those dwelling in temperate regions."

But from this, this rule seemed exposed to relaxations to the Salmanticenses themselves (ibid.), and after them also to St. Alphonsus (lib. 3, n. 1025). And in fact, as Tamburini notes (l. c.), from this rule it follows that if you are accustomed to take twenty ounces at supper, you can take five; if forty, ten. But because, he adds, the supper of men is commonly scarcely accustomed to ascend to thirty-two ounces, therefore those who concede eight ounces do not seem to recede far from this rule. Yet Diana also, after he said of this opinion (tom. 4, tr. 6, res. 116, n. 3): "I consider the fifth opinion too lax," renders the reason (ibid., res. 119, n. 1), saying: "Nor is it safe in practice, because by eating it understands the midday supper; and whatever it understands, it is most false, because in these eatings men commonly take so great a quantity that the fourth part is a notable quantity: I call the Spaniards, the Gauls, the Flemings, the Germans as witnesses." Otherwise Diana conceded eight ounces. But indeed Holzmann will reply (l. c.): "I ascend into the opinion of Laymann, Filliuccius, Reginaldus, Sporer, and very many others, who judge that a fourth part of the ordinary supper... is rightly established as a moderate quantity, this being judged not mathematically but morally... for such also it was held by the common consent of theologians in a certain celebrated Academy consulted about the matter, as Filliuccius testifies." And since Gobat at the same time testifies, as we have seen above here, that this is the custom of Germany, Holzmann concludes (l. c.) that the custom which introduced the evening little refection introduced, besides the quantity, also the quality of food lawfully to be taken in it; and therefore those obliged to fast can, and respectively must, accommodate themselves to it. Concerning this matter St. Alphonsus also says (l. c.): "But here before all things it must be noticed that especially in these things the custom of places must be attended to, as Cajetan and others everywhere well notice: for it is certain that where there is question of custom, both concerning fasting and concerning all other laws of the Church, which no one denies can be derogated by custom, the authority of more recent Doctors, although fewer, who alone can testify concerning a later modern custom, must be made more of, and without doubt be preferred to the authority, even though more common, of ancient authors, who could know nothing concerning a custom to be introduced afterward. But when authors testify concerning some custom, one must believe that they did not assert this rashly and without sufficient foundation." But to Diana, Sporer (app. to the 3rd Precept of the Decalogue, sect. 2, n. 26) thus responds: "This is the received opinion of Doctors in Germany: although the Authors cited by Diana, Turrianus and others, proclaim it too lax, improbable, and less safe in practice. Let them send to Germans during the time of fasting their warm sky, rich food and wines, fruits and conserves, etc., and we will fast with them."

498. ○ **Q. 2. What excess is considered grave in the small supper?**

Resp. All agree that an excess of two ounces is light matter. - St. Lig., ibid. - The more severe with Concina teach that an excess surpassing two ounces is grave. Not a few require an excess above the small supper equivalent to another half-small-supper; others hold with Billuart that there is required an excess which, taken separately, would wholly equal the small supper [2].

[2] Perhaps you would say that this opinion is not altogether undeservedly somewhat laxer.

In various places, from introduced custom, on the vigil of the Nativity, or on the supper of the Lord, it is lawful to take a quantity twice as great; but this custom is not in force everywhere.

Q. 3. What quality of foods can be used in the small supper?

Resp. Bread, any fruits, also any vegetables, and sweet foods of various kinds. But above all the custom of places must be kept. For more things are permitted in various dioceses or provinces which are forbidden elsewhere: thus, for example, in France and elsewhere generally it is lawful to eat cheese.

499. ○ **Q. 4. Whether it is lawful to eat eggs and butter in the evening small supper?**

Resp. It is denied generally, although a dispensation for milk products is had, as is clear from the Decree of Bened. XIV and Clem. XIII. Nevertheless in certain places, as we have said, from present-day custom it is lawful to take some butter or cheese; but eggs are by no means permitted, because they are of the greatest substance, and therefore are rejected by custom, says St. Lig., ibid. [3]. - See the things to be said n. 504. - St. Lig., n. 1027.

[3] ** But that even this depends on custom according to the diversity of places is clear from the things which Sporer has with regard to Germany (append. to the 3rd Precept of the Decalogue, sect. 2, n. 32): "Considering," he says, "modern custom, especially in our Germany already long tolerated and plainly prevailing, I think... that the opinion is altogether probable and safe... that in the evening collation of fasting, the quality of foods must not be attended to, but only quantity: so that from all foods which can lawfully be taken at dinner on a fast day, even fish, legumes, cakes, eggs, milk products, etc., it is also lawful to take them at supper. Cajetan, Bonacina, and our Peter Marchant expressly teach this, and he expressly says: I answer that in the evening little collation there is not to be dispute about the quality of food, but only about the quantity. Nor otherwise Holzmann (part 3, n. 23): In colder regions, especially of our Germany, the present-day custom obtains that attention is not given to the quality of fasting foods, but only to quantity, so that we lawfully take in the evening collation any foods whatever which we lawfully take in the midday supper, provided the due discretion of quantity is kept. Hence little broths cooked from wine or beer, bread, herbs, fruits, etc., seasoned with oil or butter, are lawfully set out and eaten; likewise fish, legumes, eggs, cakes, etc., whether they are cold or hot."

And to this indeed pertains the fact that Sporer (l. c.) complains amicably of Laymann, because he departed from the rule customary among Germans. "I marvel," he says, "that Father Paul Laymann, otherwise so good a German, in this matter alone was so austere to his countrymen."

Q. 5. Whether fish are permitted in the small supper?

Resp. It is affirmed if there is question of small fish, especially dried, and probably also of larger fish; yet St. Lig., n. 1208, thinks that a weight of two or three ounces from these should not be exceeded. - St. Lig., n. 1208.

500. ○ **Q. 6. Whether it is lawful in the small supper to use a little broth from herbs cooked with water, vinegar, oil, or boiled wine?**

Resp. It is affirmed probably, unless custom is certainly opposed [4]: then neither water nor wine are to be counted in the weight; but that which does not have the character of drink must be counted according to Viva, for example, oil. - St. Lig., n. 1209, and others.

[4] It scarcely appears in reality why one must be doubtful about these; and since a very small part of oil is added, Viva's observation and others of that sort seem lighter than that either a theologian should seriously linger over them, or a Confessor should inquire scrupulously, all the more because minute investigations of this kind smell rather of the Jewish spirit than of the spirit of the Church.

Q. 7. Whether it is lawful to take in the small supper bread cooked with water and oil, or brothy bread (in French: potage)?

Resp. It is affirmed, from present-day custom, which even the timorous follow, and which more recent theologians commonly approve. - Nevertheless, according to St. Lig., n. 1209, it is not lawful to take eight ounces of bread cooked with water, with this water not counted. The reason is that bread through cooking and fermentation with water acquires another nature, so that from these something one is made, and it becomes one greater substance.

But it can be conceded, says St. Liguori, that during the meal itself someone dips bread in water or wine, and thus also takes eight ounces of bread soaked in wine; since here no fermentation intervenes, and the liquid, since it serves only as a vehicle, is not counted.

501. ○ **Q. 8. What quantity of bread cooked in this way can be permitted, with the water not counted?**

Resp. Theologians disagree; for some, more severely, deny that it is lawful to exceed eight ounces. More severely, I say; for if one ounce of bread cooked in ten ounces of water with another ounce of oil were lawful, what scruple would there be in permitting these twelve ounces? But others, laxer, concede eight ounces of cooked bread, with the water not counted. But by reason of cooking and fermentation of this sort, you have something one of food, which certainly nourishes more than bread alone; therefore one cannot at least wholly abstract from the water. We choose the middle opinion, namely that five or at least four ounces of cooked bread can be permitted, with neither water nor oil counted. - Thus probably. - Salmant., c. 2, n. 77. But St. Lig., n. 1029, says that he does not disapprove this opinion. The same likewise must be said of other cooked things which are likewise usually set out in the small supper, for example, from spelt, rice, etc.

Article II. On Abstinence from Flesh Meat in Fasting

502. **Principles.** - I. By the precept of the Church the eating of flesh meat is forbidden to all the faithful using reason on every single fast day. Hence by the law of fasting a double precept is imposed, as Bened. XIV also defines, namely of abstaining from several meals, and of abstaining from flesh meats; therefore, contrary to what several older authors hold, one dispensed or impotent as to one is not for that reason to be excused from the other. - St. Lig., n. 1005.

But under the name of flesh meat come all animals living and breathing on land, as theologians commonly admit from the rule handed down by St. Thomas; therefore fish, frogs, snails, tortoises, etc., are not prohibited. - St. Lig., n. 1011.

II. In the Lenten time eggs and milk products are also prohibited, namely all those things which draw their origin from flesh. This is established from the practice of the Church, from her dispensations, and from proposition 32 condemned by Alexander VII, which sounds thus: "It is not evident that the custom of not eating eggs and milk products in Lent obliges." Now, nevertheless, in very many places a general dispensation from that law is conceded to the faithful, if a few days are excepted. Indeed in many dioceses Bishops, from a faculty delegated by the Roman Pontiff, concede dispensation also as to the eating of flesh meat for the principal part of Lent.

Moreover, although the eating of eggs and milk products cannot, per se, be excused from grave sin according to the common opinion, nevertheless smallness of matter seems to be more easily admitted in these than in eating flesh meat.

503. **Questions. - Q. 1. Whether abstinence from milk products must be observed also in fasting outside the Lenten time?**

Resp. It is denied. Because an obligation of this sort is imposed by no general law. It is the common opinion, says St. Lig., n. 1009. Yet somewhere, for example at Rome, a custom having the force of law has prevailed, that on certain other days also, for example on Ember Days, abstinence of this sort be observed.

Q. 2. Whether abstinence from milk products must be observed on the Sundays of Lent?

Resp. It is affirmed, because neither law nor custom excepts the Sunday. - St. Lig., n. 1007, and others commonly against some, whose opinion is not probable according to St. Lig., ibid.

504. ○ **Q. 3. Whether in the time of Lent it is lawful at the meal to eat breads made with eggs?**

Resp. It is denied, unless eggs have been permitted; the reason is that their substance is not lost from the fact that it is mixed with flour. - St. Lig., n. 1009, etc.

Q. 4. Whether those dispensed for milk products are considered by that very fact also dispensed for eggs?

Resp. It is affirmed, because these are equated by custom, unless the distinction is clearly expressed in the dispensation.

Q. 5. Whether those dispensed for flesh meats on fast days can also eat fish?

Resp. It is denied, if there is question of eating fish in the same meal. This is established from the Constitution of Bened. XIV, *Non ambigimus*.

Article III. On the Hour of the Meal

In these our times, from universal custom, the meal is lawfully taken almost at midday. - St. Lig., n. 1016. - *Hom. apost.*, n. 9.

505. **Questions. - Q. 1. Whether the hour of the meal pertains to the essence of fasting, so that he sins gravely who notably anticipates it?**

Resp. It is disputed. There is a twofold probable opinion. St. Lig., *Hom. apost.*, n. 21, and many others affirm. But Laymann, Elbel, and not a few others deny. The practice consonant with the first opinion seems to be preferred, unless the legitimate custom of places permits otherwise [1].

[1] You have in these words the opinion of the Author; which nevertheless takes away nothing from the probability of the second opinion, even as to practice.

Q. 2. Whether the fast is broken if the small supper is taken at midday, but the meal in the evening?

Resp. It is not broken essentially, and therefore if it is done without cause, it does not exceed venial sin. But a reasonable cause, and the custom of the place or of the condition, excuses even from this venial sin. Indeed in many places from present-day custom the small supper can be done at the tenth hour in the morning, and the meal in the evening.

Q. 3. How long can dinner be prolonged?

Resp. Nothing can be determined absolutely about this; but it does not seem that it can be prolonged beyond two hours without another fault [2]. - St. Lig., n. 1020, *Hom. apost.*, n. 10. - Lacroix. - Billuart, etc.

[2] St. Alphonsus adds (lib. 3, n. 1020, q. V): "Indeed Elbel with Gobat concedes up to three or four hours, at least for Germany according to their custom; but Croix deservedly doubts whether this custom is approved, unless, as he says, after about two hours only sweets or lighter foods are set out...; and this I neither approve nor reprove."

506. ○ **Q. 4. Whether he breaks the fast who interrupts the meal, and after an interval has elapsed approaches it again?**

Resp. 1. If the interruption is light, for example of one quarter-hour, it lacks every fault, even if it is done without reason. - St. Lig., ibid.

2. If the interruption is of nearly one hour without reason, it does not lack some light fault, as it seems.

3. If the interruption is very notable, for example of two hours, it cannot be excused from grave sin, because it cannot be called one meal, unless a just cause excuses.

But if the interruption is had for a grave cause, it is no sin to return to the table, even with a notable delay interposed, when the present meal was not sufficient; because the Church never intended to oblige one to pass the day without a sufficient meal. - St. Lig., n. 1020.

Q. 5. Whether he who rose from the table with the intention of eating no more can again recline at table?

Resp. It is affirmed probably if the fellow-guests are still eating, or if a new dish is set on the table which he himself did not know was going to be set on. The reason is that it is still morally considered the same dinner. - St. Lig., n. 1020.

Q. 6. If someone in the morning, for the sake of a journey, took breakfast, whether he is bound to fast if afterward he does not set out?

Resp. It is affirmed per se. The reason is that since the essence of the fast has not yet been destroyed, its obligation continues to urge. Except, however, if by that one eating he cannot conveniently fast for the rest of the day. - St. Lig., ibid. - See *Cases*, on fasting and abstinence, from n. 458 to n. 467.

Chapter II. On the Causes Excusing from Fasting

The causes excusing from fasting are commonly reduced chiefly to three, namely: 1. to impossibility, whether physical or moral; 2. to piety or charity; 3. to dispensation, as was said concerning other precepts.

507. **Resolves.** - 1. Poor persons begging door-to-door are excused from fasting, and all others who neither have nor can provide for themselves the means by which they may procure a suitable meal. But for this there do not suffice bread and fruits, nor pottage with bread and fruits, nor bread and wine alone, unless perhaps for one or another day [1]. - St. Lig., n. 1033; *Hom. apost.*, n. 23.

[1] This limitation, "of one perhaps or another day," is not St. Alphonsus's; indeed he gives this reason why poor persons of this sort are released from obligation (lib. 3, n. 1033): "For although," he says, "he may be accustomed to foods of this sort, nevertheless he therefore sufficiently sustains himself because several times in the day, and several times in great quantity, he is accustomed to refresh himself with those foods which are of little nourishment." St. Alphonsus indeed affirms these things with the common opinion of the Doctors.

2. The sick, the infirm, the convalescent, and the weak are excused, for example, those who labor under tertian or quartan fever, or are convalescing from it; furthermore those who, unless they are refreshed twice, suffer notable headache or vertigo from emptiness of the stomach. - St. Lig., n. 1033-1034.

3. Those are excused who exercise very laborious works, such as plowing, digging, cutting stones, carrying heavy burdens, and other things of this sort. - St. Lig., n. 1041.

4. Male and female servants or others of this sort are excused when they are occupied with so many and such great labors that fasting cannot be joined with these without great difficulty or inconvenience; likewise those making a journey on foot for a notable time with great fatigue. - St. Lig., ibid.

5. But per se and ordinarily barbers, tailors, painters, scribes, servants, footmen, printers who do not turn the press but only arrange the characters, and those applying themselves to other similar things are not excused. - St. Lig., n. 1041. - Reuter, etc.

508. **Questions. - Q. 1. Whether young men stronger in powers are bound to fast before the completion of the twenty-first year of age?**

Resp. It is denied, because the law, as it is received and determined by approved custom, obliges only those who have completed the twenty-first year: for in this there is attended only to that which happens commonly. Yet young men are to be advised that, according to the measure of their age, they sometimes fast, so that more easily, when the time of obligation has come, they may be able to keep the law of fasting. - St. Lig., n. 1035, etc.

509. ○ **Q. 2. Whether sexagenarians are excused from fasting [2]?**

[2] That those can here be understood as sexagenarians who have merely begun the sixtieth year, Diana teaches after others, tom. IV, tr. 6, res. 5, n. 1-2, and res. 8, n. 3.

Resp. 1. They are certainly excused if they are weak in powers, as is clear. Indeed they are also excused according to the common opinion in doubt about the strength of their powers, because then the presumption stands for their weakness. - St. Lig., n. 1036.

Resp. 2. If they abound in powers, it is disputed. The first opinion denies that they are exempted from the law of fasting, because those who have strong powers at that age are not reputed as old men. - Laymann, Antoine, Collet, etc. This opinion indeed is probable, says St. Alphonsus in the same place, but no less probable is the opposite opinion, which Sanchez, Roncaglia, Salmant. hold... The reason is both because universal custom bears it so, as Doctors more commonly testify; and because otherwise it would be a matter liable to many scruples to examine whether some sexagenarian is or is not sufficiently robust for sustaining a fast. But the stronger reason is that old men of this sort, both on account of weakness of powers and on account of defect of heat, cannot take sufficient food all at once, and need more frequent food; and although some at such an age may seem robust, nevertheless their strength is easily illusory and inconstant, since it cannot be denied that in old men of this sort the powers fail and slip toward death. Hence the common adage: Old age itself is a disease [3].

[3] What is said concerning ecclesiastical fasts can be established also concerning fasts which Religious observe from their Rule: for sexagenarians will also be able to be excused from these, unless perhaps, as St. Alph. notes (lib. 2, n. 159), they expressly promised the observance of fasting even unto death.

This norm can be extended also to those who have vowed some weekly or monthly fasts for their whole life. But likewise except if someone, thinking about old age, expressly wished to bind himself even to the end of life.

Here the Doctors append the question (see St. Alph., lib. 3, n. 1037), whether the weaker sex, as one which grows old sooner, is also excused sooner from fasting, and they raise a controversy especially about the fiftieth year. Those who deny that they are excused are moved by the fact that although a woman grows old sooner, nevertheless she is less wasted by fasting and needs less food. But others affirm, and press that which no one denies, namely that what is true equally for men and for women is that old age is a disease. Nor certainly does it sufficiently appear why those things which St. Alphonsus observes concerning old age for men would not be equally valid for women. But if women need less food, or rather if because of weakness they are unequal to bearing more abundant food, this will prove rather that they are excused from the law which concedes one meal, since one scanty meal cannot be equal to sustaining their powers.

Moreover, Sanchez wisely concludes concerning this matter (*Cons.*, lib. 5, cap. 1, dub. 4, n. 3-4): "Those who before the sixtieth year are already old and weak are excused. Yet when there is doubt about incapacity, the Confessor ought to attend to providing for necessity with the least detriment of the law; so that if it is sufficient that he anticipate the hour, or make the nocturnal little refection more indulgently, he ought to concede this, and not relax the fast wholly."

** Concerning this Note the Veronese Vindicators (p. 922, in note) observe that P. B. perhaps did not know the things which St. Alphonsus had premised (lib. 3, n. 1032) in these words: "I carefully took care on this point, namely on causes excusing from fasting, to observe very many authors and to recount them here, because in this matter the authority of Doctors redounds into intrinsic probability, since there is question of a matter which depends very much on the estimation of the wise."

Resp. 1. St. Alphonsus, concerning the present question (l. c., n. 1037), thus reports authors: "The first opinion affirms that women of fifty are excused, which Escobar, Renzius, and Narbona, Machadus, and Pellizzarius apud Diana hold; and Sanchez also approves this, who although in the treatise on matrimony he recalled it into doubt, nevertheless in the little work *Counsels* with Cajetan and others teaches it absolutely; and Viva and Mazzotta think it probable. But the second opinion, which Laymann, the Salmanticenses, Tamburini, Croix, Holzmann, Elbel, Anacletus hold, denies that women of

fifty are excused unless," etc. Therefore if from the premised warning of St. Alphonsus, which the Veronese Vindicators wish to be kept before the eyes, the authority of Doctors in this matter redounds into intrinsic probability, it will now scarcely appear why by force of that warning intrinsic probability is to be denied also to the first opinion.

Resp. 2. St. Alphonsus, where he asks (ibid., n. 1036) whether sexagenarians robust in powers are bound to fasting, does not doubt to embrace the negative opinion against Laymann, Elbel, and Anacletus, who oblige them; and against Croix he urges that when it is doubted whether a law comprehends some case or subject, it does not oblige. Therefore if it was lawful for St. Alphonsus to postpone the authority of these four authors, nor did he judge that, on account of their contrary opinion, the intrinsic probability of the opposite opinion perished, it is therefore lawful for us also to postpone the authority of these same writers with regard to women of fifty, lest otherwise we be said to have weight and weight. And hence also it is clear that perhaps the Veronese Vindicators less to the point objected here (l. c.) that the argument taken from these authors is the more valid because those Authors cannot be counted among the more rigid. We shall not say that they are rigid; nevertheless it is manifest that St. Alphonsus in that question abandoned them as more rigid.

Resp. 3. Finally, it is lawful also to inquire on what foundation those authors objected to us rest. For even St. Alphonsus, although he says that extrinsic authority redounds into intrinsic, nevertheless does not omit the examination of reasons. And to begin with Laymann, he (lib. 4, tr. 8, c. 3, n. 2) merely objects the authority of Sanchez. But Sanchez stands altogether against Laymann. For although, as St. Alphonsus says, Sanchez in the treatise on matrimony recalled it into doubt, nevertheless in the little work *Counsels* (lib. 5, c. 1, dub. 4, n. 6) he teaches absolutely that opinion, namely the opinion which excuses women of fifty; and this work *Counsels* is later, for the Treatise on Matrimony is cited there. Therefore Laymann rests merely on a false supposition. - Anacletus (tr. 10, dist. 2, q. 4, n. 64) rests merely on the authority of Sanchez and Laymann. But from the things said both these supports fall. - Tamburini (*Dec.*, lib. 4, cap. 5, § 7, n. 5) refers to Laymann, Fagundez, and John Sanchez. But both Fagundez (*De 4 Praec. Eccl.*, lib. 1, c. 8, n. 11) and John Sanchez (*Select.*, disp. 54, n. 11), not otherwise than Laymann, rest merely through a false supposition on the authority of Sanchez, as if he had taught the opposite. Therefore also the suffrage of Tamburini is built upon an empty foundation. Elbel (part 3, conf. 18, n. 507) merely cites Laymann and Tamburini. But from the things said the suffrage of both these is deficient. - Croix (lib. 3, p. 2, n. 1318) confirms his opinion by citing Laymann, Fagundez, Sanchez, and Tamburini. But, as has been seen, those citations do not help the cause. - The Salmanticenses (tr. 23, cap. 2, n. 131), besides the fact that by opining merely "more probably" they confess their assertion, thereafter support this very thing with the customary testimonies of Fagundez, John Sanchez, and Laymann, that is, with shaken reeds. - Finally Holzmann (part 5, tr. 1, c. 3, n. 17), while he adds two writers for our thesis, namely Cassianus a S. Elia and Abreu, just as Croix (l. c.) had added Lotherius, merely opposes Sanchez and Babenstuber. But Babenstuber (tr. 6, disp. 1, art. 3, n. 3) also fortifies his opinion solely with the empty authority of Laymann and Tamburini, to whom he adds, as Holzmann also does, Sanchez, who, as we have said, is indeed the leader of the contrary opinion. Behold, therefore, what the authorities are worth on which St. Alphonsus also relied when he said that he did not dare to call the first opinion probable.

But, you will say, did those authors bring forward no intrinsic reason for their opinion? - Resp. They do bring forward some, indeed; but almost those which Sanchez also had drawn out (*De Matrim.*, lib. 7, disp. 32, n. 17), and he weighed them in an even balance in such a way that he concluded thus: "These things render me uncertain; and to learned men consulted by me it pleased that a lesser age should be assigned to women than to men; but they doubted about the quantity of the age. But certainly the things which I brought forward in the preceding number... and from common estimation prove that a woman of fifty is equally called old as a man of sixty. And therefore this part pleased other learned men. And with the matter considered by myself, and the reasons weighed, I think that he will say nothing deviating from reason, nor moderately alien from probability, who excuses women of fifty from fasting, just as men of sixty are excused." But then he adds those other things which gave occasion to some to cite Sanchez as obliging women of this sort to fasting, but to others to reproach him as speaking contradictory things. For presently he writes: "But until something else more clearly convincing shall appear, I choose as the more probable opinion that which maintains that one must speak indiscriminately of the age of man and woman for excusing from fasts; and the aforesaid things will serve lest we condemn one embracing the opinion which excuses women of fifty. Nevertheless, although the aforesaid things show that that opinion is probable speculatively speaking, yet in practice I judge that it is not safe." And indeed these last words you see are those which after Laymann they eagerly seized and repeat, as many as cite Sanchez as equating women with men as to fasting and condemning the opposite opinion; and likewise they are those on account of which John Sanchez (l. c.) brings Sanchez forward as speaking contrary things, when in reality no cause appears why an opinion which he affirms to be speculatively probable should not be held probable practically. But whoever knows this, which also St. Alphonsus testifies, as we have seen, that Sanchez in the later Work absolutely excused women of fifty from fasting, will say that all these things were brought forward in vain.

510. ○ **Q. 3. Whether smiths, artisans, etc., are excused from fasting if they are so robust that they can fast quite easily?**

Resp. It is affirmed probably, because custom exempts generally all who exercise arts of this sort; but laws do not regard that which happens rarely and per accidens, but what happens commonly and per se. But Concina, Bonacina [4], etc., deny it, and this too probably. - This second opinion, says St. Lig., n. 1043, speculatively speaking seems more probable, but in practice scarcely one will be found who is not greatly weakened by labor of this sort.

[4] Bonacina (*De Ieiun.*, punct. ultim., n. 8) speaks about those workers who can conveniently fast.

Q. 4. Whether workers are excused from fasting on those days on which they abstain from labor?

Resp. It is affirmed, if they interrupt their labors only for one or another day, by reason of repairing weariness and preserving strength for sustaining the next labors. - Thus commonly.

Q. 5. Whether rich artisans are excused, who can cease from labor on fast days?

Resp. It is affirmed more probably. The reason is that it is of interest to the Republic that because of fasting workers not interrupt the exercise of arts to which they are bound from their office. This seems also to be established from the declaration of Eugene IV apud St. Lig., n. 1042 [5]. Nor is it the mind of the Church that the faithful be impeded from ordinary occupations. - Thus commonly [6].

[5] St. Alphonsus (lib. 3, n. 1042) thus reports the declaration of Eugene IV, which he also defends as genuine: "Artisans exercising laborious arts, and rustics, whether poor or not poor, are not bound to fast."

[6] See St. Thomas, 2. 2, q. 147, art. 4, ad 3, where, speaking of pilgrims, he has these things: "It does not seem to have been the intention of the Church establishing fasts that by this it should impede other pious and more necessary causes."

511. ○ **Q. 6. Whether they sin who without just cause undertake unusual labor incompatible with fasting?**

Resp. It is affirmed per se, even if they do not act in fraud of the law; for the law which commands fasting consequently commands that causes which are opposed to satisfaction of the same not be placed without reason. - Thus commonly.

I said without reason; because when a just cause intervenes, it is lawful to take up labor incompatible with fasting, although that labor is unusual, for example, for perceiving the greatest profit, etc. But the sole reason of mere pleasure never suffices, unless another honorable cause is added. - St. Lig., n. 1046.

Q. 7. What journey undertaken on foot for a just cause exempts from fasting?

Resp. They commonly say that a journey of about 5 leagues, that is, fifteen thousand paces, is required and suffices; but if either the road were very difficult, or the weather harsh, or the traveler weak and unaccustomed to a journey, he could be excused by a journey of two leagues. - St. Lig., n. 1047.

512. ○ **Q. 8. Whether, or in what way, preachers, teachers of sciences, and Confessors are excused?**

Resp. 1. Preachers who have a sermon daily or almost daily are commonly excused from fasting by reason of piety and office. With even greater right Missionaries, who are exercised with graver fatigue in Missions. Generally speaking, preachers who preach only three or four times in the week are not excused; but in this one must stand by the judgment of the prudent. - St. Lig., n. 1049; *Hom. apost.*, n. 34.

Resp. 2. Teachers of sciences are excused, although they teach for only one hour on each day, if they need study and labor for preparing lessons; but not those who merely deliver from a written text lessons already previously arranged and often repeated. - St. Lig., ibid. But Sanchez and Azor rightly judge, against Salmant. and others, that teachers of grammar are excused if they teach for 4 or 5 hours.

Resp. 3. Confessors are not excused per se, but only when they undergo extraordinary labor, for example, when on several successive days they must hear confessions, as is usual in Missions, or when they are so weak in powers that without grave inconvenience they cannot satisfy the frequency of penitents [7]. - St. Lig., ibid. - See *Cases*, n. 468 and following.

[7] As to all these things, and others of this kind, one must always recall the premised opinion of St. Thomas, that it is not the intention of the Church, when she commands fasts, to impede pious and more necessary causes. Add likewise that it is not the intention of the Church that in these matters she oblige with notable inconvenience. Therefore whoever, by fasting, could not preach, even once, or teach sciences, whether he has prepared lessons or not, or hear confessions, even for a brief hour, without notable inconvenience, the mind of the Church does not seem to be that he should interrupt these exercises on account of fasting. But St. Thomas wisely adds (ibid.): "Yet it seems that in such things recourse must be had to the dispensation of the Superior, unless perhaps where it is so customary, because from the very fact that Prelates dissemble, they seem to agree." And these things indeed do not pertain to mere counsel when, all adjuncts having been inspected, the cause does not appear sufficient for excusing, although it may seem sufficient for dispensing.

Responses Concerning Fasting and Abstinence from Flesh Meats

513. ○ 1. To the question: Whether on fast days the time of eating can be inverted, by taking the evening little refection between the tenth and eleventh hour in the morning, but deferring dinner to the fourth or fifth hour in the evening?

The Sacred Penitentiary (on 10 Jan. 1834) judged that it should be answered: If there exists some reasonable cause for the aforesaid inversion, penitents who use this custom are not to be disturbed.

2. To the question: Whether heads of families, when in the family there is someone dispensed from the law of abstinence from flesh meats, can extend the dispensation indiscriminately to all persons of the family? (Latin version from the Italian exemplar.)

The Sacred Penitentiary judged that it should be answered: Illness and any other reasonable impediment whatever, by the counsel of each physician, but not gluttony, avarice, or generally economy of expenses, can exempt from the precept of abstinence on fasting days.

3. To the question: Whether, when a father of a family dispensed from the law of abstinence from flesh meats during Lent cannot or does not wish to have foods of both kinds, namely fasting foods and flesh meats, prepared, his sons or household members can eat flesh meats? (From the Italian exemplar.)

The Sacred Penitentiary (on 16 Jan. 1834) judged that it should be answered: That it can be permitted to persons who are under the power of the father of a family, to whom a legitimate faculty of eating flesh meats has been made, to use the foods granted to the father of the family, with the condition added of not mixing lawful and forbidden dishes, and of one eating in the day for those who are bound to fast. But the reason of this permission is not the Indult conceded to the father of the family, but the incapacity in which the sons of the family are placed of observing the precept. Thus the Sacred Penitentiary declared on 27 May 1863. See *Ephemer. Revue cathol. de Louvain*, July 1863. Likewise, *Correspondance de Rome*, 17 October 1863.

514. ○ 4. To the question: Whether the faithful exempt from the law of fasting on account of laborious arts, during Lent, when the eating of flesh meat and milk products is permitted to all at one meal, can eat flesh meats and milk products several times in the day, not otherwise than on Sundays of the same Lent, on which the obligation of fasting does not urge? (From the Italian exemplar.) The Sacred Penitentiary (on 16 Jan. 1834) responded: The faithful who by reason of age or labor are not bound to fast can lawfully, in Lent when an Indult has been granted, on all days comprehended in the Indult, eat flesh meats or milk products permitted through the same Indult as often as they eat during the day. But this does not apply in a diocese whose Bishop by apostolic authority grants to the faithful that on Monday, Tuesday, and Thursday of the time of Lent they can once in the day eat flesh meats and eggs; but to those who by reason of age or labor are not bound to fast, he permits that they use eggs more often in the day. Thus the Sacred Penitentiary declared on 27 May 1863. - See *Ephemer. Revue catholique de Louvain*, July 1863. - Likewise, *Correspondance de Rome*, 17 October 1863.

5. To the question: Whether those who by reason of age or labor are not bound to fast are subjected to the law of not mixing dishes of flesh meat and fish, when flesh meats are permitted through an Indult?

The Sacred Penitentiary (on 13 February 1834) responded: Let each one consult approved Authors [8].

[8] Concerning this matter there is controversy among theologians. Some teach, thus Scavini, app. II at the end of vol. I, that they also are subjected; for the law, regarding the quality of foods, obliges all using the use of reason, so that, if there were no Indult, even they would have to abstain from flesh meats: hence the whole diversity regards only this, that those things which those fasting can eat once, those exempt from fasting can eat as often as they wish. But others, whom Righetti follows, hold the contrary; for the Encyclicals of Benedict XIV, by which that mixture is prohibited, speak only of those fasting; therefore they are not to be extended further; otherwise if they were to be urged too much, flesh meats would have to be indulged to those dispensed from fasting in only one eating, since flesh meats are there indulged only once. See Appendix at the end of vol. 2, p. 1078.

515. ○ 6. To the question: Whether the faithful dispensed from the law of abstinence on Fridays and Saturdays during the course of the year, when the obligation of fasting does not urge, can eat fish and flesh meats together? (From the Italian exemplar.)

The Sacred Penitentiary (on 13 Feb. 1834), the proposed doubt having been diligently weighed, and a report having been made to the Most Holy Lord Gregory XVI, by mandate of His Holiness, responds: It is permitted.

7. To the question: Whether on fast days during the time of Advent, prescribed by Pius VI, milk products nevertheless being permitted, to him to whom because of infirmity the eating of flesh meats is lawful, the promiscuous use of flesh meat and fish is forbidden?

The Sacred Penitentiary (on 8 Jan. 1834) responded: Affirmatively, namely that promiscuous use of this sort is not lawful.

8. To the question: Whether, under the law of prohibited mixing with flesh meats, there are comprehended little fish dried with salt, or anchovies (in French anchois, in Italian acciughe, alici), herrings (in French harengs, in Italian aringhe), and other things similar to these; whether they can be mixed in the manner of a condiment for another dish?

The Sacred Penitentiary (on 10 Jan. 1834) responded: Fishes dried with salt... are forbidden to be mixed with flesh meats whenever the mixture of flesh meat and fish is forbidden.

9. To the question: Whether during the time of fasting, to him to whom the eating of flesh meats is lawful, it is lawful to mix marine shellfish, which are improperly called fruits of the sea but are commonly considered fish, that is, oysters (in French huitres, in Italian ostriche), crabs (ecrevisses, gambari, granchi)?

The Sacred Penitentiary (on 16 Jan. 1834) responded: Marine shellfish, which are improperly called fruits of the sea but commonly fish, are forbidden to be mixed with flesh meats whenever the mixture of flesh meat and fish is prohibited.

10. To the question: Whether those dispensed from the law of abstinence from flesh meats can, on days on which the obligation of fasting urges, for the sake of health, eat only broth seasoned with flesh meats, and otherwise eat fasting foods, as the others who can eat fish, in order to observe the law of abstinence insofar as it can be done? (From the Italian exemplar.)

The Sacred Penitentiary (on 8 Feb. 1828), the matters set forth having been attentively considered, responded: Affirmatively.

516. ◦ Here also must be remembered the decision of the Sacred Congregation of the Holy Office, 25 May 1853, concerning the fast of the vigil of St. Peter for those regions in which the feast of St. Peter is transferred to the following Sunday. Now it reads thus: "In the general Congregation of the holy Roman and Universal Inquisition, held in the convent of Saint Mary above Minerva, before the Eminent and Reverend Cardinals of the Holy Roman Church, general Inquisitors against heretical depravity, the written petition having been proposed, and the vote of the Lords Consultors having first been had, the same Eminent and Reverend Lords ordered it to be written back that the fast on the fore-vigil of the festivity of the Holy Apostles is to be observed." (25 May 1853).

Although, however, from the manifold decision of the Sacred Congregation the fast must be observed by the aforesaid faithful, not indeed on the very fore-vigil of St. Peter, but on the Saturday immediately preceding the Sunday to which the Solemnity of the Holy Apostles is remitted;

nevertheless, if the feast of the Holy Apostles occurs on the Saturday itself, then the day before, or Friday, will be fasted. Thus decided by the Sacred Congregation of the Council, 22 Sept. 1858.

END OF THE TREATISE ON THE PRECEPTS OF THE CHURCH.

Treatise on Justice and Right

So great is the necessity of the treatment which we are undertaking, concerning justice and right, that it is deservedly to be placed among the principal parts of moral theology; but so great is the difficulty that, unless clarity and order lighten the labor, scarcely anyone can extricate himself in the very many things pertaining to this matter. For justice extends most broadly, and embraces very many rights and offices by which the members of human society are mutually bound. But how great the importance of this treatment is, is plain from the fact that especially in these times one may see many men squander their own goods, invade the goods of others, and overturn all rights, so that they may glut the continual hunger of pleasures. In order that ministers of the Church may heal these most hostile evils of the Republic, they ought to know exceedingly well the rules of justice and right. For it is theirs to recall those wandering away to right principles, and to take care with the highest zeal for the equity of rights and duties. Wherefore in handling this treatment most of all, fervent prayer and assiduous study must be used.

We must treat, 1. of the nature and principles of justice and right; 2. of the violation of right, or of injury; 3. of the repair of right, or of restitution.

First Part. On the Nature and Principles of Justice and Right

Chapter I. On the General Notions of Justice and Right

Article I. On the Nature of Justice

517. ○ **Definition.** Justice in the broader sense [1] signifies some equality, or charity, or the universality of virtues. Thus Christ says, Matth. 5. 6: "Blessed are they who hunger and thirst for justice!" But in the stricter sense [2] it is a moral virtue constantly inclining the will to render to another his right. We must treat of justice thus accepted.

[1] The Doctors commonly observe that the name justice is used in Sacred Scripture also in a multiple sense, so that sometimes it signifies: 1. the complex of all virtues; 2. charity or sanctifying grace; 3. generally a right act; 4. any good habit; 5. finally, the special virtue from the four cardinal virtues.

[2] Commonly the definition handed down by Ulpian is received by the Doctors: "Justice is the constant and perpetual will of giving to each one his right." See St. Thomas, who explains its individual parts (2. 2, q. 58, art. 1).

Therefore justice is a special virtue which aims to urge the payment of a debt [3], and to preserve due equality among all men and each single man. Therefore to it pertains to restore things unjustly taken away, to repair things damaged, to abstain from frauds, to keep faith given in agreements, and to preserve intact to each one his right.

[3] The word debt is too vague; for man owes, for example, worship to God, and obedience to parents; yet the virtue of justice does not urge the payment of these debts. Nevertheless the Author in some way confines the sense by the words immediately following.

It is said in the definition, to another; because justice is always toward another, and therefore requires diversity of persons; for no one can be called just toward himself, nor do injury to himself, which is the wounding of a right when the other is unwilling. - Lugo, disp. 1, n. 10 [4].

[4] "I infer," says Lugo, "that justice is always toward another, as St. Thomas teaches, q. 58, a. 2. For no one can inflict injury on himself or render a debt to himself, just as he cannot properly owe to himself, since he can do nothing except willingly; but to one knowing and willing there can be done neither injury nor deceit." From this, since between father and son, as the same Lugo adds in the same place, n. 31, insofar as they are father and son, there is not given with rigor such otherness and diversity as is required for justice, for the son seems to be part of the father and, as it were, another himself; therefore between them, as such, the notion or debt of justice is lacking; and generally, insofar as that distinction or diversity of persons seems to be lacking, to that extent there is departure from the perfect notion of justice.

518. ○ **Division.** Justice is distinguished as fourfold, namely legal, distributive, vindicative, and commutative [5].

[5] There are some who, in order to establish a certain order among these diverse justices, affirm first indeed that it is twofold: one which orders man toward the community, and this is legal or general; but another which orders him toward other particular or private persons, and this with Aristotle and St. Thomas they call particular; then they divide this latter into others in such a way that one is commutative, another distributive, and besides another vindicative. But in all these things there is found in no way a partition of some genus into species; but you have one in which the perfect notion of justice is found, and which is called justice taken precisely, or commutative justice; but the rest, since in something they fall short of the former, nevertheless participate something from it as by analogy, whence they are also accustomed to be called justice in a qualified sense. See Valentia (tom. 3, disp. 5, punct. 2), and Lugo (*De Iust.*, disp. 1, n. 50, 68, and 70).

1. Legal justice [6] inclines each one to render his right to the society of which he is a part, or to the Prince, on account of the common good. Hence it orders the subject to the community as a part to the whole. It is called legal because it has for its object that which is owed to the community according to natural or positive law.

[6] Legal justice, as Lugo has it (*De Iust.*, disp. 1, n. 62), is a special virtue by which someone is borne toward the good of the republic or community, of which he himself is a part.

The material object of this virtue is any honorable act, or, as the Doctors are accustomed to speak, the acts of all the other virtues; whence the name general justice also has been given to it. For as St. Thomas says (2. 2, q. 58, a. 5), "the good of any virtue whatever... is referable to the common good, to which justice," namely legal justice, "orders. And according to this the acts of all virtues can pertain to justice, according as this orders man to the common good. And as to this, justice is called general justice."

But the formal object resides in this, that this virtue commands the acts of other virtues, namely any honorable acts, and orders them to the end proper to itself, namely to the common good. Hence St. Thom. (2. 2, q. 58, a. 6): "Legal justice is a certain special virtue according to its essence, according as it regards the common good as its proper object."

Moreover it is called legal justice because it belongs especially to law to order to the common good. "Because," thus St. Thomas, l. c., "it belongs to law to order to the common good, hence it is that such justice, general in the aforesaid way, is called legal justice; because evidently through it man is in concord with the law ordering the acts of all virtues to the common good."

But this justice has this singular feature, that it is not altogether and perfectly toward another. For as St. Thomas has it (2. 2, q. 58, a. 5), "All who are contained under some community are compared to the community as parts to the whole: but the part, as to what it is, belongs to the whole." And Card. De Lugo (*De Iust.*, disp. 1, n. 68): "The community is not distinguished from its members, as is clear; and therefore it does not regard the common good in such a way that it abstracts from the good of the one acting, but rather it regards it precisely because it is considered to be the good also of the one acting, just as the good of the body is the good of the members: but justice properly regards the good of another by abstracting altogether from my utility." But according to the opinion of all, justice properly so called exists only between

those things which are so mutually distinct that one is not something of the other. Therefore Lugo adds (ibid.): "Just as piety toward parents is not properly justice, because it does not regard the perfect otherness required for justice, a fortiori the same will be true in the present case," namely legal justice.

And from this it is clear that legal justice is not aptly confused with duties either of piety or of formal obedience toward the prince; for not only are the motives of these virtues plainly diverse, but moreover the distinction which intervenes between subject and prince is not present between citizen and the community of which he is a part; and the duties of the subject tend to the good of the prince alone, while those things which the citizen confers upon the community are conferred upon the good of that same citizen, as a part of the community. Indeed even the prince himself, as a member of the community, is ordered to it as a part to the whole through legal justice, although somewhat otherwise than the subject. "Legal justice," says St. Thom., 2. 2, q. 58, a. 6, "... regards the common good as its proper object. And thus it is in the prince principally and, as it were, architectonically," because he prescribes the mode of contributing to the common good, "but in subjects secondarily and, as it were, administratively."

2. Distributive justice inclines the Superior or his ministers to an equal [7], or just, distribution of burdens and goods. Hence it orders the community or Superior to subjects, as the whole to parts [8].

[7] The difference between the equality proper to distributive justice and that proper to commutative justice Lugo intimates thus (*De Iust.*, disp. 1, n. 45), according to the common doctrine taken from Aristotle and St. Thomas: "Distributive justice," he says, "seeks in its object equality according to geometric proportion, not according to arithmetic, that is, it attends to equality between two proportions: for commutative justice regards equality between thing and thing, which is called arithmetic equality; but distributive justice attends to equality of proportions; so that if there are two persons, one of whom has merit as four, the other as eight, the latter exceeds the former in the distribution according to the double, so that if the former receives twenty, the latter receives forty." You may see these things set forth more fully in St. Thomas (2. 2, q. 61, art. 2).

[8] But distributive justice is also in the subjects to whom distribution is made, insofar, namely, as they are content with a just distribution. St. Thom., 2. 2, q. 61, art. 1, ad 3.

3. Vindicative justice inclines the Prince to punish the guilty with congruent punishments for the good of society. Therefore it consists in the congruent punishment of the guilty for the public good [9].

[9] More commonly the Doctors do not hold vindicative justice as a fourth species of justice; but they call it back to legal justice, insofar as either a superior, by avenging crimes, looks to the common good, or a private person with the same affection desires or requires the punishment of crimes; but to distributive justice, insofar as it inflicts punishments congruent to the gravity of crimes; finally to commutative justice, insofar as from office a judge is bound to punish offenses, not otherwise than a guard is bound to keep off a thief, and likewise to inflict on a crime no graver punishment than the matter or the law bears.

4. Commutative justice inclines the will to render his own strict right to each private person, by preserving equality of thing to thing. This regards only private persons, as distinct from one another [10]. But it is called commutative because it is chiefly occupied with exchanges and contracts. Of this alone we shall treat, because it alone claims for itself the name of justice in the precise sense [11].

[10] This seems to be expressed too generally. For he too will plainly injure commutative justice who brings damage upon the public treasury; and likewise the prince will sin against commutative justice who distributes burdens unequally, or who inflicts punishment short of demerit.

[11] Distributive justice, namely, falls short of the proper and strict notion of justice in this, that it does not regard right strictly taken; and therefore, as will be said below, its violation per se does not impose the burden of restitution. But legal

justice also departs from justice properly so called in this, that it is not, as we said, altogether toward another: for the community is not distinguished from its members, and therefore this justice does not regard the common good in such a way as to abstract from the good of the one acting.

Article II. On the Nature of Right

519. ○ **Definition.** By the name of right, taken precisely and as concerns the present matter, there is understood either that which is owed to another, and is customarily called the just or the equal [1], and thus it is the object which justice intends, and which it gives to each one; or it is taken for the title which justice regards on the part of another, or on account of which it wills to give to each one his own, and thus it is the power of obtaining or possessing something. Since these two significations are correlative, for this reason among some they have obtained the name of passive right and active right: by the former form signifying what is owed, but by the latter the reason or title of debt or claim [2].

[1] Concerning this matter Soto (*De Iust. et Iur.*, lib. 3, q. 1, art. 1): "I would believe that by apocope, that is, by cutting off a syllable at the end of the word, *iustum* was called *ius*... Whence in Greek *dikaion* indifferently signifies the same thing as the just and right." Whatever anyone may finally think of this conjecture of Soto, nevertheless this is plainly established: right (*dikaion*), according to Aristotle's opinion, is so called on account of the equality of thing with thing; he says that an equality of this sort in some way arises between two parts of some thing divided in two ways; indeed, from this division into two equal parts he draws the origin or etymon of the word *dikaion*, that is, of right or of the just. For thus he himself says (*Ethic.*, lib. 5, chap. 7): "The equal is the mean between the greater and the less according to arithmetic proportion; for this reason it is also called the just or right, because it is in two, just as if someone were to say divided into two equal parts, and the judge as if a divider into two parts," namely one who divides into two equal parts.

[2] Card. De Lugo must certainly be seen (*De Iust.*, disp. 1, n. 5), where he gives fully the reason why that right which justice regards, and which we signify when we say mine and yours, must be placed in a certain moral prelation, by which this man is morally preferred to others in the use of such a thing on account of the peculiar connection which the thing has with him, and on account of which the whole thing ought to be referred and ordered to his utility. And this seems to concern what the Author added in the definition of right by those words, "for one's own advantage."

520. ○ But in a broader sense the word right is taken: 1. for skill in law, or jurisprudence; 2. for law, or the rule of the just [3], and thus one says natural, positive, divine, human, civil, canonical right, the right of nations, etc.; 3. for the sentence of a judge, and from this the word judge, as if one saying right; 4. for the thing which is owed to another from any title whatever, and then it is passive right, or the object of right; 5. for the very title of the thing owed: thus, for example, jurisdiction is called the right of a Superior to obedience [4].

[3] There are some to whom it is less pleasing that law is signified by the name right in a certain broader sense; for they think rather that *ius* is said from commanding, as *iussum* diminished by apocope, and therefore that in the most proper sense *ius* is taken for law. This question is of very slight importance. But the Author has followed the common opinion of the Doctors, which St. Thomas (2. 2, q. 57, art. 1, ad 2) explains thus: "Just as of those things which are done exteriorly through art, a certain reason preexists in the mind of the artisan, which is called the rule of the art; so also of that just work which reason determines, a certain reason preexists in the mind, as a certain rule of prudence: and this, if it is reduced to writing, is called law. For law, according to Isidore, is a written constitution; and therefore law is not right itself, properly speaking, but some reason of right."

[4] Gregory Valentia (*Comment. Theol.*, tom. III, disp. V, q. I, punct. 1) enumerates nine senses in which the word right is found used by jurists; yet all these have kinship with the primary sense, that it is the object of justice. And therefore among them

you will by no means find the right of a superior to the obedience of subjects; for obedience does not pertain at all to justice, but is counted among the parts of justice which they call potential or potestative. See St. Thomas, 2. 2, q. 80, a. 1.

521. ○ **Division.** Right is chiefly divided into right in a thing and right to a thing.

1. Right in a thing is that which someone has in a thing already his and possessed [5], that is, which is so bound to him that he can dispose of it at will. Such is the right of the buyer in a thing bought under French Law, and in a thing bought and delivered under Roman Law. This right confers a real action, which directly touches the thing itself: wherefore whoever enjoys this right can reclaim his own thing wherever it has gone.

[5] Possession is not necessary for right in a thing, which endures even if a thief has carried off the thing and actually possesses it. Hence also the Author adds that the owner can reclaim his own thing. Moreover, when the Author here names "his own thing," understand that "his own" both as to full dominion and also as to semi-full, whether this is direct, or of property, or merely useful.

2. Right to a thing is that which someone has so that the thing may become his. For it gives a personal action, that is, it directly touches the person, which gives another the faculty [6] of demanding from him the thing contracted, and of pursuing him in judgment if he does not wish to do or give what he owes: whence it is called a personal right, because it immediately touches the person.

[6] Those words are a little obscure, and in some way narrow the sense too much. For, for example, a personal action is given against one causing damage who destroyed the thing; but you would less properly say that the one causing damage gives the faculty of demanding from himself, etc.

Others more clearly: Right in a thing is present when the thing itself is had as obligated to oneself, and therefore it gives vindication of the thing, or an action against the thing itself. But right to a thing is had when to someone there has been acquired a right or power of obligating the thing to himself, and therefore it gives only a personal action against those refusing or impeding the acquisition of the thing itself.

The contract [7] of promise confers only right to a thing. Likewise the title of purchase under Roman Law before delivery of the thing confers only right to a thing. Under the new French Law the consent alone of the parties completes the contract of sale, the delivery of the thing being excluded, and consequently gives right in the thing. Civil Code, art. 1583. Except the particular case in which a movable thing, sold and not delivered, had been handed over to a second buyer in good faith; for then only a right to the thing would be had. - Civil Code, art. 1144.

[7] Concerning these things prematurely noted here, it will be treated better in its own place.

Article III. On the General Principles of Right and Justice

§ I. On the General Principles of Right

Proposition I

God alone is truly and absolutely Lord of all things.

Printed pages 478-479 are wanting in the copy of the 1884 edition we translate (its scan passes from p. 477 to p. 480). From the head of Article III to "It is clear from" in n. 526 the text is translated from the 1866 edition (Internet Archive, compendiumtheo01gury), read against its page images.

522. ○ The matter is evident. For God alone is truly and absolutely Lord of all things, since from Him alone all things have their being, existence, action, conservation, and perfection. Hence it is said in Ps. 23. 1: "The earth is the Lord's and the fullness thereof, the world and all who dwell therein."

Hence 1. no created being can be truly proprietor with respect to God, since no created being is independent from God, and whatever it is and has, it must seek from God alone.

2. Therefore no created being can use any thing whatever as absolutely its own; for a created being is not a principle of existing toward another created being, but all things belong absolutely to God alone.

3. Consequently the right of property cannot be in a created being except from God alone; this follows from what has been said. For otherwise a created being could have something from another being independent of God, which is absolutely repugnant. - Lugo, disp. 2, n. 5.[1]

[1] The Author dwells upon these things with somewhat greater labor on account of the special necessities of France brought on by the madness of the communists.

Proposition II

Man can be proprietor toward another man.

523. ○ **Proof.** Man can be proprietor with respect to others, if nothing stands in the way either on the part of the man himself, or on the part of the objects to be possessed, or on the part of God. But these things are certain. Therefore...

1. On the part of man. For any man is metaphysically independent from another man; for any individual receives and can receive his absolute being from God alone; and therefore he depends on no other by reason of his absolute being. Therefore he can be impeded by no other from becoming proprietor.

2. On the part of the objects. Because there are given objects: 1. of themselves apt for providing either for necessities or for the just pleasures of life, such as goods of fortune, honor, etc.; 2. free from another's right, such as goods not yet possessed or abandoned, or obtained by the cession of another's right.

3. On the part of God. Not only has God not forbidden man to make earthly things his own, but on the contrary He has Himself ordered them so that they should be subjected to man's dominion, as is clear from the nature of those goods, from the need of man, and also from positive divine right. Thus, for example, it is said in Gen. 1. 28: "Have dominion over the fishes of the sea, and the birds of the air, and all living things which move upon the earth."

Hence from the beginning of the world primitive men could, at their own will, apply external goods to their own uses, as is clear from Sacred Scripture. Hence the first division of goods was not made by the law of nations, as several wish. Besides, the consent of all to the division of the earth is something merely gratuitous, not historical.

Proposition III

If any man has legitimately made certain goods his own, he has acquired in them a right inviolable of itself.

524. ◦ **Proof.** Man could not make external goods his own, except by God so ordering it for the relief of the indigence of human nature, as is clear from what has been said. But God could not so order, or bestow upon man a right of possessing one's own, without at the same time establishing that the aforesaid right could not be violated, as also follows from what has been said. Therefore...

525. ◦ Hence 1. there is given a natural precept, promulgated and sanctioned by God Himself, forbidding that another's right be injured, and commanding that, if ever it has been injured, it be restored to integrity. For from what has been said, the right of the proprietor is of itself inviolable and has God as its natural author and sponsor. But this inviolability would be overthrown, nor would God be considered its natural author and sponsor, unless He Himself imposed and sanctioned a natural precept commanding it to be preserved and forbidding it to be disturbed. Therefore...

2. He who unjustly usurps another's thing becomes guilty both toward his neighbor and toward God: 1. indeed toward his neighbor, because he injures the neighbor's natural independence, necessarily inviolable in goods possessed by a just title; 2. toward God, by violating the divine right communicated to the neighbor, and at the same time the natural precept commanding that aforesaid right to be observed.

Questions:

526. ◦ **Q. 1. How was the first division of goods made?**

Resp. It is certain that goods were common in the first origin of things. For God granted the earth to Adam and his children without any division. It is likewise established that the division was made from the first age, so that the goods of one were not the goods of another. It is clear from

Gen. chap. 4, where it is said that Abel offered to God of the first-born of his flock.

But how the division of goods was made, various persons have devised various systems about this. For some derive this division from paternal authority; others from a convention made among men, or from the law of nations; others from civil authority; finally, others more commonly from the simple occupation of common things, that is, things not yet occupied. This last appears altogether more likely. For that mode of division of goods, namely by occupation, seems very natural and very easy, while the others are subject to not a few difficulties. Especially the mutual convention of assembled men seems chimerical and morally impossible. But civil legislation and the law of nations followed after the division had already been accomplished at least in greatest part.

Whatever may be true concerning the origin of property, it is certain that the right of dominion exists of itself inviolable: 1. by natural right, for when it is taken away society would be subverted; 2. by divine right, as is clear from the seventh and tenth precept of the Decalogue: "You shall not steal." -

"You shall not covet your neighbor's house..." Exod. 20. 17, etc.; 3. from ecclesiastical and civil law, as is proved from the legislation of both forums.

527. ○ **Q. 2. What must be thought concerning the system of the communists or socialists, concerning the division of goods?**

Resp. That system is impious, supremely harmful to society, and in itself most absurd.

1. It is impious, because it utterly takes away the most wise order of things established and sanctioned by God, radically subverts the sweet economy of divine Providence, and arrogantly determines that provision has been badly made for men.

2. It is supremely harmful to society. For it brings in its total subversion, while it takes away from the midst the right of property, without which human society cannot stand.

528. ○ 3. It is in itself most absurd. For a perfect division of goods among men is altogether impossible, and therefore it is a foolish and ridiculous invention. For what is more absurd and more impossible than that equal distribution of things among all, and especially its stability? For grant that it has been carried out; how long, I ask, will it endure? Will not idleness, gambling, drunken revelry, prodigality, lack of skill, dullness, or, on the contrary, ambition, industry, or rapacity, good or bad success, destroy that equality as soon as it has been established?

529. ○ But certain ones say: Let no division of goods be made, and let no one be owner; let the Republic alone possess all goods, and let citizens be workers. But what incentive will be present for those laboring? Who will assign the kind of labor to individuals? How will daily sustenance and clothing be supplied to all? Will not a legion of overseers be required? But then not all, therefore, will be assigned to hard labors. But to whom will the office of overseers or subjects fall? What about the sick, the infirm, old men, children? What about the family? What about mutual duties between parents and children? How will the truly infirm, unfit for labor, be discerned from the innumerable who will feign incapacity? What about commerce? About the arts? About letters? About sciences necessary in society, for example, law, medicine, etc.? What, therefore, is more absurd than that utopia? Is this not to be held a heap of absurdities? Therefore what must be said of communism? That which the Poet said of another portent: "A horrible monster, formless, huge, to whom light was taken away."

530. ○ The communists object: The earth produces its fruits for all. Therefore... Thus Rousseau.

Resp. Certainly the earth produces its fruits for all, and in reality all from the beginning of the world have lived from the fruits of the earth. But fruits of this sort must be acquired by some legitimate title, for example, by purchase, exchange, and above all by labor and the sweat of the brow. But before all things the divine law must be kept: "You shall not steal."

531. ○ Among the most ardent patrons of the doctrine of the socialists Proudhon stands out, very famous for this astounding saying: "Property is theft" (*la propriete c'est le vol*).

§ II. On the General Principles of Justice

Proposition I

Commutative justice obliges under grave sin, and with the burden of restitution.

532. ○ **Proof of the first part.** For commutative justice aims to preserve unharmed the natural independence of private persons [1]. But the violation of that independence per se is a grave disorder against the right of the neighbor and the dominion of God; therefore, etc. I said per se, because in this matter smallness of matter is admitted, as is clear to all.

[1] For this somewhat obscure principle another common one can be substituted without loss, namely that it is proper to justice to preserve to each one his right, and that violation of another's right from its genus expresses a grave disorder.

Proof of the second part. For justice regards equality of thing to thing; but injury to this cannot be repaired except by restitution. Therefore as long as inequality remains, the obligation of repairing it remains; and the one injuring sins by preserving the inequality, just as he sinned by violating it.

Proposition II

The other species of justice [2] per se also oblige under grave sin, but not with the burden of restitution.

[2] Namely justice both legal and distributive, and also vindicative, if one pleases to admit this as a fourth species of justice.

533. ○ **Proof of the first part.** For injury to them brings in a grave disorder, since it gravely harms the necessary order of society.

Proof of the second part. For they do not oblige with the burden of restitution if the violation of them violates the strict right of no one. But such is the case; for strict right is founded on independence alone from other men [3]. Moreover, the other species of justice, far from regarding man insofar as he is independent, bind him in the moral order by most strict bonds toward the society of which he is a member. Therefore... Thus by legal justice a subject ought to obey the just precept of his Superior [4]; nevertheless, if, for example, he has become guilty of disobedience, he is bound to no restitution, but only to undergoing the punishment, if any be imposed upon him.

[3] Perhaps you will have a clearer notion in those things which are found in § 519, where the definitions of right, both active and passive, are proposed.

[4] Elsewhere (note to n. 518) we observed that obedience and legal justice are entirely distinct virtues. But acts of obedience, not otherwise than acts of other virtues, then put on the form proper to legal justice when they are ordered to the common good.

Nevertheless the other species of justice are often joined to commutative justice, and the violation of this induces the burden of restitution. Thus a magistrate or judge is bound to restore who, on account of grave negligence in punishing, is the cause why private persons or the community suffer grave damage; in which case he is guilty not only of the common good being neglected, to which legal justice inclines, but also of a violated contract, by which, in assuming office, he implicitly obliged himself to forestall the damages of subjects.

534. ○ Hence 1. the Prince cannot without a most grave cause take away from a subject, by law, his own thing, or an acquired right; because he can do nothing concerning the goods of

private persons unless the reason of the common good entirely requires something.

2. Yet the Prince can, if at any time this is required for the common good, take away a thing from a subject [5]; because a right to the end necessarily imports a right to the means without which the end cannot be obtained. But the public good sometimes requires that someone be deprived of his thing, for example, a field for constructing a public road, etc. But then the Prince, insofar as can be done, is bound to just compensation; because it is not equitable that one man be despoiled while the others remain untouched, as is established from natural and positive law [6].

[5] This is what others commonly call high dominion, namely the right which belongs to the republic over the persons and goods of subjects, the public good requiring it.

[6] In the use of this right, as is gathered also from the Author, these things are to be guarded: 1. necessity must demand it; 2. the use must not exceed the measure of necessity; 3. acceptance of persons must be absent, lest, namely, some be burdened while others in a similar cause and condition are spared. Thus, for example, very unjustly is it sometimes done when soldiers are assigned to lodging; 4. inflicted damages, insofar as can be done, are to be repaired.

535. ○ 3. A Superior is not bound to restitution if he distributes the offices of society to those less worthy; because he does not violate the strict right of the worthier person, nor of the community, which cannot require anything else than that the unworthy be kept away from offices. - St. Lig., lib. 4, n. 107, against some. But otherwise, if in a competition the Superior were to prefer one less worthy to one more worthy; because in a competition a pact intervenes, from which a strict right belongs to the more worthy.

4. A Superior who distributes merely honorary dignities, whether to those less worthy or even to the unworthy, is not bound to restitution; because he has deprived no one of his right, although he has sinned on account of acceptance of persons.

5. A Superior who appoints unworthy persons to public offices is bound to restitution toward the community; because by a quasi-contract he is bound to promote the good of the community. Indeed he is bound also to restitution toward private persons who suffer unjust damage in goods of fortune from unworthy ministers.

Chapter II. On the Principal Species of Right

The principal species of right are dominion, use, usufruct, and servitude.

Article I. On Dominion

536. ○ **Definition.** Dominion is the legitimate faculty of disposing of some thing as one's own [1].

[1] Some add: "unless it is prohibited by law"; because, for example, the law does not permit pupils and minors the free alienation of their own things.

Division. Dominion is chiefly divided into perfect and imperfect, according as it is the right of disposing both of the thing itself and of its utility, or of only one or the other.

But imperfect dominion is subdivided into direct and indirect or useful, according as it regards the property of the thing alone, or its utility alone.

They also commonly distinguish high and low dominion. The former is said to be the right which the supreme authority has of disposing, sometimes from a most grave cause, of the goods of private persons for the good of the community, as was said above, n. 534. The latter is the dominion of private persons, to which the definition properly belongs.

Moreover high dominion is not dominion properly so called, or it is not true dominion of property, since the republic per se does not have a strict right in the goods of subjects. But that dominion holds a certain middle place between dominion of property and dominion of jurisdiction, and could be called dominion of administration. - Thus Carrière, n. 19 [2].

[2] But here also the concept is plainly obscure. Say more simply that it is a right proper to the republic, so that it may prescribe what is necessary or expedient for the common good.

We must treat: 1. of the object; 2. of the subject; 3. of the acquisition of dominion.

§ I. On the Object of Dominion

537. ○ **Principles.** I. Man has useful dominion of the goods which are intrinsic to him, namely of soul and body. Therefore he can, without injury to anyone, use them for his own utility, and for every use not prohibited by law.

Yet he does not have direct dominion of these goods. This is established from Sacred Scripture; thus Wisd. 16. 13: "You are, O Lord, who have power of life and death." - Likewise Deut. 32. 39: "I shall kill, and I shall make alive." - It is also established from natural law, as we said where treating of the fifth precept of the Decalogue, n. 389 and following.

538. ○ II. Man can have useful and direct dominion in external goods of fortune legitimately acquired. This is established, 1. as to useful dominion, because on the one hand these goods are of themselves apt for promoting the preservation or utility of man, and on the other hand the use of them is not opposed to divine and human right; indeed God Himself permitted at least the utility of the aforesaid goods by these words, Gen. 1. 28: "Have dominion over the fishes of the sea and the birds of the air," etc. - And Ps. 8. 8: "You have subjected all things under his feet." - It is established, 2. as to direct dominion, because the faculty of applying goods of fortune to one's own uses is restricted by no right; indeed it is expressly permitted by human right, as is clear from the various laws concerning the right of possessing, and by divine right in the words cited: "Have dominion," etc.

539. ○ **Questions. Q. 1. Whether man has dominion of his own reputation?**

Resp. Affirmatively, according to the common opinion; for even concerning reputation there belong to man the primary acts of dominion, such as to acquire it by labor, to condone restitution of it, etc. Therefore... Yet prudence requires that he not squander it without just reason, and sometimes he is bound under grave sin to preserve it carefully by reason of scandal, of removing harm to the family, etc. - St. Lig., lib. 3, n. 983. - Billuart, diss. 3, art. 2.

Q. 2. Whether man can have dominion over another man?

Resp. 1. Negatively, as to dominion of property; for that belongs to God alone, as is established from what has been said, n. 522.

Resp. 2. Affirmatively, as to useful dominion, or the works of man. The reason is that any man is master of his own work, and therefore he can alienate it for his own utility and hand it over into the dominion of another. For a master can dispose at will of the object of his dominion.

Hence 1. by natural right a man can even sell himself to another forever as to useful dominion. For if he can confer upon another the useful dominion of himself for some time, he can do the same forever, since he can yield whatever he has. 2. Per se servitude is not repugnant to the law of nature, or the state of perpetual subjection by which someone, in exchange for food, is bound to furnish all his works to another.

540. ○ **Q. 3. From what titles can servitude be introduced?**

Resp. From the four following titles: 1. From pact, or one's own renunciation. For it is not repugnant that someone renounce his liberty in order to relieve his own need, etc. - 2. From the right of war. For it is not repugnant that the victor should sometimes inflict this punishment. For sometimes he could kill captives for the security of the nation; therefore, a fortiori, reduce them to servitude. - 3. From an offense, or from just condemnation. For if a guilty person can be condemned to death, a fortiori to servitude, since deprivation of life is deservedly considered the greatest of all punishments. - 4. From birth in a state of servitude, since by law they are slaves who are born of slaves. Thus according to the law of nations, in accordance with the common opinion. - Lugo, disp. 6, n. 11 and 17.

541. ○ **Q. 4. Whether the trade in Negroes is lawful?**

Resp. 1. It is altogether unlawful by every right, as often as Negroes are unjustly despoiled of liberty, and are transported in bands from their own regions as cheap cattle, and are sold, as happens in their nefarious trade (*Traites des Nègres*). Against so monstrous a trade there have come forth various Apostolic Constitutions, namely of Paul III, Urban VIII, Benedict XIV, and lately Gregory XVI, in the Constitution *In supremo apostolatus*, December 3, 1839, as may be seen in the public sheet called *Ami de la Religion*, tom. 103, n. 3219.

Resp. 2. But if it is a matter of Black persons or others existing in legitimate servitude, it is not per se absolutely unlawful, because once servitude has been admitted as legitimate, the master has a true right in slaves, or in their works, and therefore is able to transmit it to others. I said, per se; for circumstances can stand in the way, for example, if a spouse would have to be separated from a spouse, or if civil laws forbid it, just as in reality servitude is generally interdicted in Europe.

§ II. On the Subject of Dominion

542. ○ The subject of dominion is the master of some thing, or he whose some thing is. On earth every man and only man is capable of dominion, because every man and only man can know the utility of things and will to apply them to himself if they belong to no one [1]. Nor are little children incapable of dominion, nor madmen themselves; because

although they cannot make things their own by occupation, nevertheless they can do so through the acts of another, for example, a tutor [2]. We must treat specifically of the dominion: 1. of children under paternal power; 2. of wives; 3. of clerics; 4. of authors. But of the dominion of Religious it will be said below in the Treatise on States, where treating of the vow of poverty.

[1] Lugo renders the reason more clearly and effectively thus (*De Iust.*, disp. 3, n. 1): "He alone can have a right who is capable of suffering injury.... But he alone suffers injury who suffers it unwillingly: but he must be unwilling, not indeed through a will by which he wills his thing, but through a will by which he wills to retain a right to the thing itself, or to oblige others not to take it away. But brute animals cannot have such a will, since they cannot know either moral obligation or turpitude; therefore they cannot be unwilling, just as they cannot give license or transfer dominion, for the same reason; because since they do not know moral right, they cannot yield to their right.... Therefore only an intellectual nature, which can know objects of this kind, is capable of having dominion."

[2] The deeper reason for the capacity of dominion in infants must be sought elsewhere; for that a tutor takes his place is from positive law, and does not furnish the reason for that capacity. Therefore Lugo should be approached, who explains two things on this matter excellently, in his usual way. The first is that from nature itself there is the necessity of dominion or property, which it is wrong to violate; indeed, setting aside every human convention or decree, from nature there are also generally certain modes of acquiring dominion (see *De Iust.*, disp. 6, n. 1-6). The second is that the order of nature itself requires that dominions be able to be transferred to another even without the will of the one acquiring; indeed, that they can be transferred to one who does not yet live: so that human laws which decree concerning these things in reality explain and protect the right of nature.

Point I. On the Dominion of Children Under Paternal Power

543. ◦ Children under paternal power are here properly said to be those who, born from legitimate marriage, of whatever sex they may be, still lie under paternal power.

There are goods of children of different kinds, according to the diverse statutes of peoples.

I. Under Roman Law, goods are distinguished as: 1. castrensian, that is, acquired on occasion of military service; 2. quasi-castrensian, or acquired from some civil office, for example, of judge, physician, etc.; 3. profectitious, which a son gains from paternal goods, for example, by conducting business with the father's money: to this also belong goods which are given to the son with regard to the father; 4. adventitious, which come to the son from elsewhere than from paternal goods, unless they have been given to the son with regard to the father.

II. Under French Law are distinguished: 1. goods acquired by the separate industry of the son, or given to him alone; 2. the remaining goods coming to the son. But goods acquired by separate industry comprehend the castrensian and quasi-castrensian goods of Roman Law, and besides these, whatever the son gains by separate labor or commerce.

544. ◦ **Principles from Roman Law.** I. The son has perfect dominion of castrensian and quasi-castrensian goods; yet if he is under puberty, he does not have their administration.

II. The father has perfect dominion of profectitious goods, provided the son is under paternal power [1]. Yet he can cede to the son the usufruct of the profectitious goods.

[1] Namely, if something is given with regard to the father to a son exempted from paternal power, it is no longer contained under the census of profectitious goods.

III. The son has dominion of property in adventitious goods, but the father has usufruct and administration [2]. But if they are consumptible, the father can dispose of them, but with the burden of restitution, as generally is accustomed to happen in the case of dominion thus divided.

[2] Yet sometimes also the usufruct devolves to the son. Compare Lugo (*De Iust.*, disp. 5, from n. 23).

IV. If the son has conducted business with paternal goods in the name of the father, the gain is profectitious; but if in his own name, it is adventitious. But in doubt whether the gain came from the goods of the father or of another, it must be held as profectitious when the son has administered the paternal goods. - St. Lig., ibid.

V. If the son conducts business outside the house of the father from other goods than paternal goods, the gain is adventitious; but the gain of a son laboring in the paternal house and supported by the father is profectitious. - St. Lig., ibid.

545. ○ **Principles from French Law.** I. A son under paternal power has perfect dominion in goods acquired by separate industry, and in those things which are given to him alone, C.C. 387, although he does not have their administration before majority (21 years), or before emancipation. C.C. 389, 481 and following.

II. But in the remaining goods he has direct dominion before the completed eighteenth year, or before emancipation, which can take place after the fifteenth year. Meanwhile the father enjoys their usufruct; and likewise the mother, the father having died, provided she does not contract another marriage. C.C. 384, 386, 476 and following.

546. ○ **Questions. Q. 1. Whether the son has perfect dominion in movable goods given to him by parents or relatives?**

Resp. 1. Affirmatively, if they are consumptible by first use, because they are given to him absolutely for use, unless perhaps some restriction has been added, for example, for a determined use, as if it were money for buying books, etc.

Resp. 2. If they are not consumptible by first use, such as books, garments, etc., the son generally has only useful dominion, because parents almost never intend to confer anything else upon him.

Q. 2. Whether the son is judged to renounce the usufruct to which he has a right, if, while he sees and remains silent, the father receives this usufruct?

Resp. Negatively, at least generally speaking. The reason is that silence would be equivalent to renunciation only insofar as the son could easily protest; but most often reverential fear prevents him from being able to do this easily. - Common.

547. ○ **Q. 3. Whether the son has dominion of those things which he gains in the paternal house?**

Resp. 1. Affirmatively in the following cases: 1. if he is emancipated; 2. if he labors in his own name, but then the father is not bound to support him; 3. if he is not bound from his condition to labor; 4. if, by an extraordinary excess, he expends more work and labor than the other brothers.

Resp. 2. But negatively: 1. if the labor of the son is necessary for sustaining the life of the parents; 2. if he makes a small gain, because it would scarcely equal the expenses made for him by the parents.

Resp. 3. More probably negatively, even apart from the aforesaid cases, if the son labors and gains rather notably before his brothers, but not by an extraordinary excess; because then the son is judged to act as a member of the family, and thus the whole gain ought to yield to the good of the family. Besides, the peace of families demands that the cupidity of sons not be indulged beyond what is equitable, so that the gate to innumerable lawsuits may be closed. - St. Lig. (at least practically), n. 488 and 544. - Billuart. - Laymann. - Gousset, n. 684.

Nevertheless the opposite opinion appears sufficiently probable, because the son is not of a worse condition than a servant. But the son ought not per se to demand that gain before the death of the father, since it is difficult before then to judge whether the son has suffered damage or not. - Thus Pontas, word *Compensation*. - Lessius, l. 2, c. 12, n. 81. - Elbel, n. 77. - Collet, c. 2. - Bouvier, c. 2, art. 1. - Carrière, n. 244. - Vernier, n. 340. - Ituriaga, t. 1, cas. 3. - See *Casus*, n. 503 and following.

Moreover in practice one must not recede from the first opinion [3], at least before the fact, because of the danger of hallucination. Besides, the circumstances in which both the son and his coheirs are placed must be weighed, so that one may judge what the equality of strict right requires.

[3] When the Author says that in practice one must not recede from the first opinion, while otherwise he confesses its opposite to be probable, he must not be understood as though an obligation ought or even could be imposed on anyone; for the Confessor is not a legislator, nor does he have the power of imposing or declaring a certain obligation when this is uncertain: and it is indeed uncertain when it is probable that it does not exist. Therefore the Author only intimates this, that that practice is prudently to be recommended: prudently, I say, lest while he fears hallucinations in the penitent, he himself hallucinate more gravely, and thus deprive the penitent of a not unjust utility.

But although the second opinion can sometimes be held in practice, at least after the fact, nevertheless it is by no means to be taught publicly on account of the inconveniences which would follow from it through abuse [4]. - Thus Bouvier, ibid. - Carrière, ibid.

[4] But neither should the first opinion be taught publicly, on account of the graver inconvenience of injecting a false conscience, which bears this mere fruit, that it builds unto Gehenna.

Point II. On the Dominion of Wives

548. ○ The goods of a wife are of three kinds, namely:

1. Dotal goods, whose fruits the husband enjoys for sustaining the burdens of marriage.

2. Paraphernal goods (παρὰ φερνὴν, besides the dowry), which the wife has besides the dowry, and which she specially reserves to herself.

3. Common goods, which by the pacts of the spouses or by determination of law are brought into a certain partnership.

Spouses can, before entering marriage, determine the conditions to which their goods are to be subjected, with certain statutes of law being preserved; if they have omitted to do these things, the law will supply.

I. Dispositions of Roman Law

549. ○ I. The wife has direct dominion of her dowry, but the husband has usufruct and administration. When the husband has died, she is preferred to all the personal creditors of the husband, and even during life she can juridically reclaim the dowry if she fears that the husband will become unable to restore it. If the dowry consists in money or in other things consumptible by use, full dominion of the dowry is indeed attributed to the husband, but with the obligation of restoring the value, dominion having been transferred for the wife into all the goods of the husband according to the rate or quota of her dowry [1]. - St. Lig., n. 489.

[1] This is valid if the dowry consists in things which are counted by weight, number, or measure, or certainly in appraised things handed over; for then the husband becomes by full right the owner of those things. But if non-appraised species are given as dowry, then the wife alone is mistress of the dowry; but to the husband only two things pertain from the right of dominion, namely vindication of the thing given, and the right of using and enjoying.

II. The wife holds full dominion and administration of paraphernal goods, so that concerning these the husband is able to dispose of nothing against her will. Hence as to these she depends in no way on her husband. - St. Lig., ibid.

III. The property and utility of common goods belong to each spouse; but the administration of the same belongs to the husband alone. But this community of goods can admit various conditions or restrictions, and therefore attention must be paid to the various dispositions of places. - Elbel, n. 69.

II. Dispositions of French Law

Pacts which can be entered into by spouses before marriage constitute three classes, or a threefold regime, namely: 1. the dotal regime; 2. the regime of community; 3. the regime excluding community.

550. ○ I. **Dotal regime.** Dotal goods are those which constitute the wife's dowry: the husband has full administration of these and receives the usufruct. But the wife preserves direct dominion alone (art. 1549).

If the dotal goods consist in movable goods, either partly or totally, the husband has perfect dominion of them, and is bound only concerning their value consigned in the contract preceding the marriage (art. 1554).

Dotal goods can in no way be alienated, even with the wife consenting, except certain particular cases excepted by law (art. 1551 and following).

But all goods whatever of the wife, not constituted in the dowry, remain altogether her own, or are held as paraphernal; and the woman also has the administration of them and receives the usufruct (1574, 1576). Yet she cannot alienate immovable goods, nor appear in court for them, without the express consent of the husband, or, if the husband resists, without a sentence of the tribunal of first instance (art. 1576); the same must be said if the wife is entirely separate in goods (art. 1536).

To paraphernal goods also belong those which the wife procures for herself by singular industry or extraordinary labor, with sufficient care of the family estate having been applied, or those which she accumulates by subtracting something from what is granted to her for food, clothing, recreations,

etc.; and also those things which have been given to her with the express condition that they not yield to the husband.

551. ○ II. **Regime of community.** It has place when spouses establish in the matrimonial contract that certain goods will be common between them [2]. But community is either legal or conventional, according as it is constituted by law or by the special pact of the contracting parties.

[2] This perhaps is said less exactly. For even if the spouses do not establish that certain goods will be common, nevertheless, if any other pact is lacking, legal community has place by force of law. See art. 1393 and 1400.

Legal community is formed: 1. from all movable goods which the spouses possessed on the very day the marriage was begun, or which afterward come to them by title of succession or donation; 2. from all fruits and any revenues whatever of immovable goods possessed by the spouses before marriage, or coming to them during marriage; 3. from all immovable goods which have been acquired during the time of marriage from common goods (art. 1401-1402).

Conventional community consists in other pacts of the spouses, by which the legal statutes can be restricted or relaxed. When these are lacking, the community is governed by the disposition of the law alone.

552. ○ Under the regime of community, the husband alone has the administration and usufruct of the common goods. Indeed he can sell them, exchange them, hand them over in mortgage, even without the wife's consent. Yet he cannot donate immovable goods by gratuitous title, nor movable goods by universal title, or as to their universality, or quota, namely a half, third, or fourth part. But when the community has been dissolved, the goods and burdens are divided into two parts, unless the wife or her heirs prefer to renounce the goods and so exempt themselves from the burdens. Debts are to be paid by each spouse, or by their heirs (art. 1482).

553. ○ III. **Regime excluding community.** Spouses constitute this in a twofold way, namely: 1. by declaring that they enter marriage without community; 2. by establishing that, as to goods, each will be entirely separate as to his own. In the former case, the husband receives all revenues of the wife's goods and alone administers all things. But if they are consumed by use, he is bound to return their value. In the latter case, however, the woman has the administration and usufruct of all her goods. But each spouse contributes to the burdens of marriage by special pact; but if no convention exists, the wife must contribute up to a third part of her revenues. Wherefore in this third regime, just as also in the second, some dowry is to be furnished by the wife, by which she may in part assist with the burdens of marriage; but such a dowry can be alienated by the husband.

554. ○ **Resolutions.** 1. A wife has a strict right to support from the common goods; therefore she can procure it for herself if the husband refuses, or consents only with very great difficulty.

2. The wife does not sin by subtracting some things for food, clothing, and the other necessities of the family, which husbands often do not take care of, and which would be sought from them in vain. - St. Lig., n. 541.

3. If the husband squanders or wastes goods to the detriment of the family, the wife can hide them and reserve them for the good of the family.

4. The wife does not act unjustly if, without the husband's knowledge, she takes some things for herself which the husband would easily and certainly grant if he were asked; for presumed permission is present, and sometimes a just cause of not asking, lest she be forced to show herself as a maidservant. - Reuter, n. 47.

5. In default of the husband, the wife can spend from the common goods what is necessary for preventing grave damage threatening the family. - Lugo, disp. 16, n. 67.

Yet in these and similar things one must act cautiously, lest the reins be loosened for wives, since they are inclined to extend their rights beyond what is equitable.

555. ○ **Questions. Q. 1. Whether a wife can make alms from common goods or from the fruits of her dowry?**

Resp. Affirmatively, even if otherwise she has goods of her own, provided this is done according to the custom of other women of the same condition. The reason is that a wife is not a slave, but a companion; therefore she ought to have a certain administration in the house of the husband. Then the husband is deservedly presumed to consent to those things which are done by the wife according to the honorable custom of the region and condition; and if he shows himself unwilling, such dissent is judged irrational, because the husband cannot deprive the wife of a right granted to her by legitimate custom. - Thus commonly with Lugo, St. Lig., n. 340.

556. ○ **Q. 2. Whether a husband is bound to restitution who prodigally or badly spends a notable part of the common goods?**

Resp. It is disputed. The first probable opinion affirms. The reason is that although the husband has the administration of the goods, nevertheless the wife has dominion of half of them, and therefore that right is violated if, while she is reasonably unwilling, that part is dissipated by the husband. - Thus Antoine, p. 3, c. 5. - Collet, *De Iust.*, p. 3, c. 4. - Pontas, see *Communauté*. - Conference of Angers, *De Matr. ut contr. civili*, q. 2. - Gousset. The second opinion, also probable, denies generally, that is, unless the husband exceeds the limits of the right granted to him by law. The reason is that the wife, from law, has a strict right only to half of the goods which will exist when the community has been dissolved [3]; nor is the husband bound to render an account of his administration. Hence although he sins gravely against piety toward his wife and children, nevertheless he does not sin against justice properly so called, which induces the obligation of restitution. But the wife can forestall the dissipation of the goods through the faculty which is granted to her by law, of juridically seeking the separation of goods. - Thus Lacroix, n. 1020, *De furto*. - Carrière, n. 276.

[3] It can indeed seem obscure what this opinion means, and even that it involves contradictory things. For it is supposed that the wife, by force of the community, has a right in half of the things existing; then this right is restricted to half of the

things existing when the community is dissolved; and meanwhile a full faculty of disposing of all things is given to the husband, so that he is bound neither to render an account nor to restitution. But to what, then, does that right of the wife finally come, when the husband can so dissipate all things that nothing remains to be divided when the community is dissolved? Besides, speech about a violated office of piety toward the wife and children is introduced wrongly. For the condition of the wife and children is unlike in the case. For while the father is living, there is no strict right for the children in paternal goods; but something else is here supposed concerning the wife as to common goods.

Nevertheless this opinion will not seem so absurd if account is had, which the Author did not declare sufficiently, of the French Code, which certainly the authors of this opinion had before their eyes. Namely, there by the laws sufficient provision is made for the wife, so that of those things which she brings into community she can recover either whatever still exists, or the equivalent, and exact the indemnities decreed by the judge, and this in such a way that she is preferred both to the husband and to the creditors as regards the community itself. But if any restitution is denied in this opinion, this pertains to those things which could remain from the good administration of the revenues. Wherefore the indemnity of the wife is no less consulted here than in that mode of the dotal regime which transfers full dominion of the dotal goods to the husband.

Moreover Croix is alleged here to no purpose (lib. 3, p. 1, n. 1020): for the Authors whom he alleges as absolving the husband from the burden of restitution judge that the goods concerning which there is a question are proper to the husband alone; but those who judge the goods to be common, Croix alleges as imposing the burden of restitution. Therefore Croix would rather fight for the first opinion, not for the second.

But under French Law the husband would exceed the limits of his right, and would certainly be bound to restitution, if he gave some immovable goods by gratuitous title, or the totality or a quota of the movable goods, or if he took the goods of the community for himself.

557. ○ **Q. 3. Whether a wife sins by accepting something from common goods or from the fruits of the dowry for relieving the necessity of parents or children who were received from a first marriage?**

Resp. Negatively, if she does not have paraphernal goods, nor the husband wishes to give what is necessary, because by the law of nature the wife is bound to support the aforesaid blood relatives, and the husband ought to consent to this. - Thus St. Lig., n. 542, with others.

Q. 4. Whether the wife is bound to restore goods accepted in this way, when she has come into the husband's inheritance, or when she has recovered her dowry?

Resp. 1. Negatively, if these goods are of small importance, because then they are held as common alms, which, if made moderately, do not carry with them the burden of restitution. - Thus all.

Resp. 2. Several likewise deny, even if the goods subtracted are of greater importance, because they judge all burdens which come to one spouse while the marriage stands to be common to the other [4]. But the affirmative opinion seems to be held with St. Lig., n. 543; *Hom. apost.*, n. 33. - See *Casus*, n. 505.

[4] Lugo reports this opinion thus (*De Iust.*, disp. 16, n. 71): "Nevertheless Lessius thinks it probable, with Molina, that those things which are spent for supporting parents so needing, namely extremely or gravely, and the same must be conceded concerning supporting children, are to be paid from the common goods of each spouse, if the marriage was celebrated by a contract of halves of goods; but if by a contract of earnest-money and dowry, they are to be paid from superadded gains, if there are any; but if there are none, they ought to be taken by the wife in part of those things which she should have had when the marriage was dissolved."

Yet this last little clause does not seem to have pleased Lugo. For after he said (ibid., n. 72) that when the wife does not have other free goods, but nevertheless has half of the goods with the husband, or brought a good dowry, or other goods which the husband administers, or there are gains common with the husband, she can assist needy parents or children, and

perhaps also brothers; and he added that he did not see why, if those expenses are moderate, she ought, when the marriage is dissolved, to count them into her own part; he soon adds: "Indeed this also seems probable, even if she married without a dowry, with the husband consenting, and does not have half of the goods or common gains. The reason is that the husband could also assist from common goods his own parents, or children of a prior marriage who are in need: why therefore will the wife not be able to do the same, since the burdens of each ought to be common? For although under the name of support, if they are taken precisely, those things do not come which the wife would give to her parents, nevertheless the wife does not seem only to have a right to bare support; because she seems to be a participant in the goods and family estate in some way; nor is she like one of the family, so that she ought only to be fed, but she has a part in the government of the family: and although she is under the power of the man, nevertheless she is a companion and participant of dignity; wherefore just as the man is called lord of such a city or town, so the wife is called lady of the same place. Hence although as to administration the wife is subordinated to the man, nevertheless it is equitable that he permit his spouse, with due moderation, the use of goods for relieving the grave necessities of her own people: for the use of goods is more necessary to the wife for this than for other things for which the man could not justly deny necessities to his wife."

Point III. On the Dominion of Clerics

558. ○ The goods of Clerics are distinguished as of four kinds, namely: 1. patrimonial, which come from paternal inheritance, or from any other profane cause, for example, from donation, succession, etc.; 2. quasi-patrimonial, which are acquired on occasion and with regard to functions, for example, by celebrating Mass, preaching, etc. They are also called quasi-ecclesiastical, or casual; 3. ecclesiastical, which are received from benefices of the Church, for example, from revenues of benefices, etc.; 4. parcimonial, which a Cleric sets aside by living sparingly from the fruits of a benefice, and which he could consume by living honorably.

559. ○ **Principles.** I. A Cleric has perfect dominion of patrimonial goods. The reason is that a Cleric is per se truly capable of dominion, nor is he prohibited by any law from freely disposing of the aforesaid goods. Indeed that right is supposed in six hundred places of canon and civil law.

II. A Cleric has perfect dominion of quasi-patrimonial goods, or quasi-ecclesiastical, or casual goods. The reason is that these goods are not the fruits of a benefice, nor the price of a sacred office, but as it were a certain stipend for extrinsic labor to which the Cleric is not bound, or also a certain largess bestowed by the faithful for the support of the Cleric. - Thus commonly. - St. Lig., n. 491. - Lugo, d. 4, n. 23, etc. - It is also established from the response of the Sacred Penitentiary given on August 9, 1824, which declared that the offerings of the faithful are not ecclesiastical goods, as will be reported below, n. 563.

III. A Cleric can use the fruits of a benefice for honorable support; but he is bound to spend all superfluity on the poor, or on other pious works. The first reason is that one ministering to the Church can live honorably from the goods of the Church, since benefices were established especially for this end. The second reason is drawn from the precept of the Church, which is evident from innumerable decrees of Councils and of the Sacred Canons. For the Canons of the Church impose this obligation on Clerics, or suppose it to have been imposed, says Benedict XIV, *De Syn.*, l. 7, c. 2, n. 4.

IV. A Cleric enjoys perfect dominion of parcimonial goods, and therefore can dispose of them as a true owner. The reason is that a Cleric has a strict right to honorable support; therefore whatever he

takes from this support by living more sparingly belongs to him and remains in his free power, since that right is altogether absolute. - St. Lig., n. 491. - Lessius, c. 4, and others commonly.

560. ○ **Questions. Q. 1. Whether Clerics badly spending the superfluities of ecclesiastical goods are bound to restitution?**

Resp. Probably negatively, because although the precept of the Church is established, nevertheless the obligation from justice is not established. Indeed from the Council of Trent it seems to be gathered that they make the fruits their own, although with the obligation of spending the superfluity in alms or other pious works. For the Council says of non-resident Clerics: "Let them not make the fruits their own." - Lugo. - Billuart. - Lessius. - St. Thomas, etc.

Yet others probably affirm, because Clerics are only administrators and stewards of ecclesiastical goods. Collet. - Laymann. - Antoine. - The first opinion, that is, the negative, says St. Lig. in *Retract.*, q. X, seems no less probable in practice, especially on account of the authority and reason of St. Thomas, 2. 2, q. 185, art. 7 [1]. But as regards the guilt of the violated precept of the Church, for grave matter there is required a much greater quantity than in theft, namely, according to the truer opinion, approximately a twentieth part of the superfluities [2]. - St. Lig., n. 491, IV.

[1] ** St. Thomas asks (Quodl. 6, art. 12), "Whether clerics sin mortally if they do not bestow in alms those things which are superfluous to them." And (ibid., ad 3) he responds: "In the second things," namely in those goods which are principally attributed to the uses of ministers, such as are the prebends of clerics and other things of this kind, "they do not commit sin except through abuse, as was said concerning patrimonial goods. Hence one is not bound to restitution, but only to doing penance."

And hence it is easily clear in what place they are to be held who, for the contrary opinion, boast of Sacred Scriptures, Sacred Canons, the primitive Church, being fortified by the prescription of fifteen centuries, by the authority of the Holy Fathers and Pontiffs, confirmed by traditions, etc., as may be seen in the compendium of the Salamancans (tr. XI, c. 9, n. 120). For where, I ask, will they find St. Thomas contradicting the Scriptures, Fathers, Decrees of Pontiffs, Sacred Canons, etc.?

They allege also the authority of St. Charles Borromeo in the Synod of Milan. But Benedict XIV, being carried away by the zeal of no party (*De Synod.*, lib. 7, cap. 2, n. 12): "But we," he says, "have found nothing of this kind decided by St. Charles." Then (ibid., n. 14) he says that the method of those is not to be approved who inculcate that this obligation arises from the office of justice in such a way that they wish the question to be held as defined; but he advises that the obligation indeed be inculcated, but that they cease in Synods to ask whence this arises.

[2] This norm will be able to have place only when the superfluities so abound that a twentieth part of them much exceeds the common gravity of matter in theft; and here, moreover, that gravity of matter seems to have to be understood not as relative, but as absolute. I said, "much exceeds"; for St. Alphonsus (lib. 5, n. 491, IV) with St. Thomas requires for this a great excess beyond the common gravity.

561. ○ **Q. 2. What is understood as superfluous per se?**

Resp. That is judged superfluous which remains over after honorable support. Moreover the honorable support of a Cleric is that which befits a Cleric by reason of his state, dignity, etc. Wherefore it does not exclude honorable recreations, moderate donations, and other expenses of this kind; but these can be determined by the judgment of a prudent and timorous conscience rather than by a general rule. - Billuart, art. 5.

Q. 3. Whether Clerics can preserve the superfluity for the future?

Resp. Affirmatively, because per se there is no obligation of immediately spending superfluities; indeed they can laudably be preserved for a pious foundation, provided good faith is used and the danger is absent lest afterward they be converted to profane uses. - St. Thom., 2. 2, q. 185, art. 7. - St. Lig., n. 491.

562. ○ **Q. 4. Whether a Cleric who has from patrimony that by which he may live can support himself from the fruits of a benefice?**

Resp. Affirmatively with St. Lig., n. 491. - St. Thom., 2. 2, q. 185, art. 7. - Billuart, diss. 3, art. 5, and others commonly, against a few. The reason is that it is just that he who labors in the Church be supported by the same, and it is entirely per accidens that he is rich or poor. Therefore not by reason of poverty, but of labor, does a Cleric have a right to support. Hence a Cleric can spare his patrimony, while he uses the fruits of the benefice for support befitting his dignity. It is also established from the words of the Apostle, I Cor. 9: "Who ever serves as a soldier at his own wages?... Do you not know that they who work in the Sanctuary eat the things that are of the Sanctuary; and they who serve the Altar participate with the Altar?"

Q. 5. Whether pensioners also ought to spend the superfluity on the poor?

Resp. Negatively, because the Supreme Pontiff, by drawing pensions from the fruits of a benefice for a just cause, already applies those same fruits to pious uses; hence those fruits do not carry with them the obligation of another application. - Lugo, d. 4, n. 32. - St. Lig., n. 491.

563. ○ **Q. 6. Whether the pension which in France is paid to Priests by the Government has the character of an ecclesiastical good [3]?**

[3] It is best done that theories of this kind are set forth in this and the following question; nevertheless, only for merely theoretical regions, namely for sterile erudition, do these things serve. For in practice, since that which those atheist governments give especially to priests of the Catholic Religion is so slender and utterly miserable - for a government truly is atheist which holds in the same place both religion and any superstitions whatever - the question concerning revenues superfluous to suitable support is altogether idle.

Resp. Affirmatively, because from the Concordat of the year 1801, the aforesaid pension seems to have been established in compensation for ecclesiastical goods which were snatched away during the French upheaval. Therefore it has the same nature as the goods for which it is substituted. This is also established from these responses of the Sacred Penitentiary.

"1. Whether the salaries which in Belgium are paid by the Government to Pastors and Canons take on the character of benefices or ecclesiastical goods, and have attached the obligation inherent in these goods, namely the strict and canonical obligation of spending superfluities on the poor or on pious causes, and of residence under the penalty of not making the fruits their own?

"The Sacred Penitentiary, the matters set forth having been weighed, responded: That already at other times it had been answered affirmatively by the Holy See, by the counsel of the secret Congregation.

"Given at Rome, on January 19, 1819.

"2. The Sacred Penitentiary, consulted whether that response ought to be applied to salaries which are paid by the Government to Pastors and Canons of the kingdom of the Gauls, judged that it should be answered: Affirmatively.

"Given at Rome, in the Sacred Penitentiary, on August 19, 1821.

"3. Whether the response for Belgium of January 19 ought to be applied only to fixed salaries of 1,000 livres for Parish Priests and 750 livres for Assistants, or ought to be extended to the offerings of the faithful?

"The Sacred Penitentiary, concerning the matters newly set forth, judged that it should be answered: Affirmatively as to the first part, negatively as to the second."

564. ◦ **Q. 7. Whether supplements also are to be reckoned ecclesiastical goods, which in France are bestowed on Priests by parishes or municipalities?**

Resp. It seems that one must affirm with Carrière, n. 193, and others more commonly. The reason is that these also must be judged as coming from the general administration of the Government, and therefore by force of the Concordat between the Pope and the Government. For they are not bestowed except from a general decree of the Government (art. org. 67) and from its consent; therefore they are judged to have been constituted by the Government itself, and are as it were part of the endowment which it promised. - The same must be said a fortiori of pensions which are bestowed by the Government on Canons.

Yet it must be said altogether otherwise concerning supplements, or concerning a pension, which is bestowed on some Cleric from the free and private offerings of the faithful. For then they do not come from the public authority, and therefore are not constituted in place of ecclesiastical goods. - Nor are there to be counted among ecclesiastical goods pensions which are bestowed by the Government on aged Priests, or on Religious formerly expelled from a monastery; for they are aids or a certain compensation, to be altogether equated with patrimonial goods.

565. ◦ **Resolutions.** 1. Distributions which are accustomed to be made for assistance in choir are to be numbered among quasi-patrimonial goods; because although those distributions are given on occasion of a benefice, nevertheless they are not given immediately for the title, but for personal service, and as a stipend of the person. - Thus more probably. - Lugo, d. 4, n. 25. - St. Lig., n. 491. - Salmant., etc.

2. The same must be said of curial rights, or of revenues of the stole, as they say, that is, those which are owed to a Parish Priest as Parish Priest, for example, those things which are brought with blessed bread, or which are bestowed upon him for funerals, although he did not in any way attend them, etc. The reason is that they are given to the Parish Priest as a certain stipend of his labor and solicitude; nor do the faithful seem to confer these things on the Church, but on the Parish Priest, so that they are his without any burden. - St. Lig., n. 490 and 491.

3. Offerings which are made in boxes set out for a certain use are certainly to be applied to that use, and therefore the Parish Priest cannot claim them for himself, because the will of those offering is sufficiently established. The same must also be said of collections which are made, whether within or outside the Church, for a certain end.

From practice, sufficiently common at least today, almost only the offerings which are made at the altar in Mass, and those which, on occasion of the administration of the Sacraments, for blessing

marriages, for obsequies and burials, or for other similar functions, are specially brought, belong to the Parish Priest. But the other offerings must be applied to the Churches themselves, altars, or other certain ends, from custom or from the intention of the faithful. - See *Casus*, n. 507.

Point IV. On the Dominion of Authors

566. ○ It is certain that any man by natural right has a right in the fruit of his industry and of his talent. For if a thing fructifies for the owner, a fortiori this ought to be true of internal faculties, since nothing can be more proper to man. Therefore anyone can use for his own advantage those things which he has devised by his talent in the sciences. Therefore the inventor of some art has a strict right that his secret not be stolen and, against his will, be published in public; and if this happens, the one causing damage is altogether bound to restitution according to the measure of the injury inflicted. But the difficulty is whether an author, once his works have been emitted into the light, can preserve them as proper to himself, and exclude others from the use of them [1]. Hence:

[1] Understand "from the use" which the Author of the work reserves for himself; what sort this is is gathered from the following questions.

567. ○ **Questions. Q. 1. Whether he violates another's right who publishes a manuscript work in print without the author's consent?**

Resp. Affirmatively. For this is openly repugnant to natural right; and among all it is established that as long as the work has not been emitted into the light, it remains entirely under the dominion of the author. Therefore there is no doubt that such a usurper is bound to restitution and to compensation for damages. - Carrière, n. 61.

Q. 2. What must be said of him who would publish in print the public lectures of some professor, or the sermon of an orator?

Resp. One must respond as in the preceding question. For to teach publicly or to preach is not to hand over one's work to another for publishing and selling. Thus judged the Tribunal of Appeals of Paris, February 28, 1801. - See Carrière, n. 61.

568. ○ **Q. 3. Whether he who has published a book in print has the right of preventing anyone from committing it to the press and selling it with damage to the author or to the bookseller to whom the author transmitted his right?**

Resp. 1. Affirmatively, by positive right in force in France and in most other places.

Resp. 2. If it is a matter of natural right, it is disputed. More probably it seems that an author does not have a perpetual right in his work, because a thing once handed over to the community becomes by that very fact of common right [2]. Yet it is consonant with equity that by positive right some privilege be granted to the author for a certain time, or for his life.

[2] This reason perhaps would prove that it is lawful for anyone to take harvests or grapes for himself at will, because the owner of the field or vineyard cannot guard them. Certainly if the law of nature itself requires that to each one there be preserved his right in the fruit of his industry and talent, as was set down beforehand (n. 566), and no fruit of industry in our matter can be received unless the work is handed over, as they say, to the community, surely the same law of nature

requires that this handing over or publishing of the work to the community not deprive the author of the fruit of his industry.

Q. 4. Whether a recently published book can be committed to type in a neighboring kingdom without the author's permission?

Resp. It seems more probably that one must affirm, because the author by natural right can claim no certain right [3], and therefore cannot complain of violated strict dominion. The same must be said of the inventors of various arts. - Thus Carrière, ibid., etc. Moreover, in many places provision has been made excellently by treaties admitted among various dominions, by force of which the author can enjoy the same right elsewhere as in his own fatherland.

[3] This general assertion likewise is repugnant to the principle which was established as certain in n. 566. For this reason the agreement of diverse republics is especially congruent with natural right, so that privileges granted anywhere to authors may also be preserved elsewhere. If this agreement is not admitted somewhere, the sanction of a violated duty will indeed be lacking there, but not the duty altogether. Nevertheless, since the publication of books in very distant regions less impedes the author from receiving a suitable fruit of his industry, that principle established above seems to press less as regards them.

§ III. On the Acquisition of Dominion

Dominion can chiefly be acquired: 1. by occupation; 2. by finding [1]; 3. by prescription; 4. by accession; 5. by contracts, concerning which it will be said in a particular Treatise.

[1] Others more commonly call finding back to the mode of occupation; and therefore they enumerate not five, but four modes of acquiring dominion.

Point I. On Occupation

569. ○ Occupation is the real apprehension of a thing which belongs to no one, with the intention of acquiring it for oneself. It is a legitimate mode of acquiring dominion, provided the required conditions are present, namely: 1. that the thing be capable of private dominion and belong to no one; 2. that the one occupying wishes to make the thing his own when he apprehends it in fact; 3. that no law stands in the way of occupation [1].

[1] Yet if a wild animal has been caught by a snare which someone placed against the will of the owner of the estate, the owner seems able to take possession of the prey; the reason is that just as he has the right that you not enter to place the snare, so also that you not enter even to take out the wild animal. Therefore he himself could release the wild animal; but plainly he can occupy it when it is to be released. Therefore.

The more frequent cases in practice regard the occupation of animals; therefore there will be speech of this alone. But animals are distinguished as of three kinds, namely wild, tame, and tamed. 1. Wild or savage animals are those which enjoy natural liberty and are subject to the dominion of no one, such as hares, deer, fish, birds, etc. 2. Tame or domestic animals are those which do not enjoy natural liberty and which are subject to the dominion of men, such as sheep, horses, hens [2], etc. 3. Tamed animals are those which are indeed born for natural liberty, but are deprived of this by man's industry and are subjected to his dominion, such as birds which become tame by art and industry, doves, bees, etc. [3].

[2] The diversity between wild and tame is more aptly sought from the disposition which enjoys or shrinks from human association. For otherwise even wild animals are found which do not enjoy liberty, and tame animals which do not have an

owner.

[3] A fourth class is constituted by animals become wild, which either have cast off their connatural tame disposition, or have resumed their former wild one after they had been tamed.

570. ○ **Principles.** I. Wild or savage animals [4] become the property of the first occupant. For things which belong to no one are lawfully occupied by natural right, and therefore become the property of the first occupant, at least unless some positive law prohibits this. But once reduced into the dominion of someone, they remain under dominion so long as they are retained by custody, and have not recovered natural liberty. But they are judged to have recovered liberty when they have so escaped custody that their pursuit is difficult; and then they so cease to be under dominion that they can become the property of another occupant, as if they had never had an owner.

[4] Reiffenstuel (*Theol. Moral.*, tr. 7, dist. 5, q. 1, n. 5) better expresses this third condition, which a few add, thus: "Unless by some human law their dominion is applied to some other." You have an example of this (with the Author, n. 576, III) in goods which are called vacant. For their occupation is customarily reserved by positive right to the public treasury. I said that this condition is better expressed thus; for even according to what the Author says shortly (n. 571), mere prohibition of law does not impede dominion from being acquired through occupation.

II. Animals wild by their own nature, but tamed, remain the property of the prior owner, so long as they have not evaded his custody or lost the habit of returning; for animals of this sort belong to the possessor both by reason of occupation and also by reason of education and detention. Thus, moreover, all laws establish. - But if they have evaded the custody of the owner, or have lost the habit of returning, they become the property of another first occupant, because they have recovered their first nature. Thus Roman and French Law.

III. Tame or domestic animals remain the property of the prior owner, however much they wander; hence they cannot be occupied by another. The reason is that domestic animals can never be said to have recovered their liberty, since by their nature they are judged to have no liberty. Therefore as to these there can never be place for occupation.

571. ○ **Questions. Q. 1. Whether and how does he sin who hunts or fishes against the prohibition of law?**

Resp. The first probable opinion denies that he sins against justice [5], or even against obedience; because from custom and from the common estimation of men that law seems altogether penal [6]. - Thus Roncaglia, tract. 13, c. 5. - St. Lig., *De Leg.*, n. 145, etc.

[5] This man does not sin against justice, and, as Lugo says (*De Iust.*, disp. 6, n. 65), the common opinion of the Doctors is that a hunter acquires dominion of the wild animals or fish which he takes. The reason is that those wild animals are still in the goods of no one and remain in their liberty; and therefore they become the property of the first occupant.

[6] Here, as is clear, the speech is not about canonical laws which interdict certain hunts to clerics.

The second opinion, likewise probable, holds that he sins only venially against obedience, but in no way against justice. For 1. he sins against obedience, because one must always obey the Prince commanding from a just cause. 2. He does not sin against justice, because the laws, although they prohibit hunting, nevertheless do not declare the acquisition of the prey invalid. 3. He sins only venially per se, because generally such violation of law does not seem gravely harmful either to the

Republic, which does not suffer great detriment from it, or to private persons in whose estate the hunting is done. - Lugo, disp. 6, n. 64. - Bouvier, *De Iust.*, c. 2. - Carrière, n. 301. - Lyonnet, etc.

There is also a third opinion of a few, who say that one hunting when law forbids sins gravely both against obedience and against justice [7]; but it is commonly held as less probable.

[7] These authors judged that justice is injured not on account of the prey captured, but on account of the injury inflicted on him who has so great a right of keeping anyone from entrance into the place that he can even impede them by force. Nor do they suppose a mere prohibiting law, but besides this an exclusive right of hunting or fishing made to someone. Moreover, according to the same authors, that violation of justice brings on no obligation of restoring unless by another reason some damage has been inflicted.

572. ○ **Q. 2. Whether he sins against commutative justice who hunts or fishes on another's estate without his permission?**

Resp. 1. Negatively, if that estate is passable; for no sin is committed unless from this some other damage comes; the reason is that wild animals are by no means to be held as fruits of the estate.

Resp. 2. Affirmatively, if the estate is entirely enclosed, so that the wild animals cannot go out from it and can easily be caught there; because these are then judged to have lost their liberty and to belong to the owner of the estate. - Lugo, disp. 6, n. 72.

Q. 3. Whether the owner of the estate can take prey killed by another, or impede it from being taken by him?

Resp. Negatively to both; because although the owner has the right of preventing another from hunting on his estate, nevertheless a killed wild animal belongs to the killer [8]. Yet the owner has a right to compensation for the damage which perhaps the hunter has brought in. - Lugo, n. 70.

[8] Understand those which enjoy natural liberty, as the Author said. But they are judged to enjoy this when they can wander at will, as deer in the forests, fish in the sea, etc.

573. ○ **Q. 4. Whose is a wild animal wounded or caught by a snare?**

Resp. to the first: It belongs to the one wounding, if he has wounded it enough for taking it, and is morally certain that he will easily apprehend it; for thus he has already morally apprehended it. - St. Lig., *Hom. apost.*, n. 71. - Lugo.

Resp. to the second: It belongs to him who placed the snare, if it has been so caught by the snare that it will not escape; the reason is that it is sufficiently occupied through the instrument itself. - St. Lig., n. 604.

Q. 5. Whether someone can kill another's doves harming his field?

Resp. 1. Negatively, if they do not cause grave damage, or if they can easily be driven away. - Thus commonly.

Resp. 2. Affirmatively, according to the common opinion, if they gravely harm; because it is lawful for everyone to preserve his own thing, even if from this there indirectly follows to another a damage equal to that which he directly wishes to avert from himself. But doves are not presumed to harm gravely except in the time of harvest or seeds. - Lugo. - Billuart. - Elbel.

Q. 6. If someone extracts another's sheep from the mouth of a wolf, can he make it his own?

Resp. Negatively, because the sheep even in the mouth of the wolf "cries to its owner," that is, it continues to be in the dominion of the same, even if certainly to be lost unless it is saved by another. The same must be said of him who extracts any thing whatever from a burning house, even if it would certainly perish there. Yet if he had suffered some damage, he could exact compensation for this, unless the damage exceeds the value of the thing.

574. ○ **Resolutions.** 1. A swarm of bees which has flown out from your hive is yours so long as it remains in your sight, and its pursuit has not become difficult for you. Otherwise it becomes the property of the first occupant. Under French Law it belongs to the owner of the estate in which it has settled.

2. Doves fleeing of their own motion, without having been attracted by fraud, become the property of him in whose dovecote they fix their seat. Otherwise, if they have been attracted by fraud, for example, by food altogether extraordinary or very choice. - Lugo, d. 6, n. 42, etc.

3. A hunter going beyond his own boundaries and going into nearby places of others does not ordinarily sin; because the neighboring proprietors know this, and themselves do the same in turn, content with the fine if they are caught. - Reuter.

4. He who bought from the Government the right of fishing in some river cannot be deprived of that right without injustice; hence he would be bound to compensate the damage inflicted who would catch or destroy so great a multitude of fish that he would notably injure the buyer's right. But otherwise, if he caught not so many fish; because the right of the lessee is not thereby rendered less valuable, nor does it rigorously touch individual fish, since these can leave the place, or are not certainly to be caught there. - See *Casus*, n. 510 and following.

In France the Government leases the right of fishing in navigable rivers. In the others this right belongs to the adjoining proprietors. Everywhere, however, fishing with a cast-line is lawful.

Point II. On Finding

575. ○ Goods which can be found are distinguished as of four kinds, namely treasures, things recently lost, abandoned goods, and vacant goods.

A treasure, under Roman Law, is a sum of hidden money, of which no memory exists. - Yet by common interpretation, under the name treasure there also come other things estimable by price which are found buried. - But under French Law a treasure is any hidden or buried thing whatever, which no one can prove to be his, and which is found by chance.

Those things are said to be lost which are involuntarily left behind by the owner. They differ from treasure because they are not hidden or buried, but ordinarily have been lost recently.

Abandoned goods are those which the owner has cast away with the intention of no longer possessing them. But vacant goods are said to be those which are left by one dying without testament and heirs.

576. ○ **Principles.** I. A treasure found by the very owner of the estate yields wholly to the finder. But a treasure found in the estate of another, by positive right, whatever may be true by natural right, must be divided equally between the proprietor of the estate and the finder, if it has been found by chance; but if by industry, and without the knowledge of the owner of the estate, and therefore without his consent, it yields wholly to him, yet after the sentence of a judge [1]. - Thus Roman and French Law. - But a treasure found in a public place must be divided between the finder and the treasury, if the place is profane; and between the finder and the fabric or Prelate, if the place is held as sacred. Thus by Roman Law. Thus also French Law seems to suppose, because a public place in reality belongs to some owner [2], namely either to the Republic, or to the municipality, or to the Church. - Gousset. *Code commenté*, art. 710.

[1] These words of the Author, "after the sentence of a judge," you should not take in such a way as though, apart from a sentence of this sort, nothing is owed to the owner of the estate. For before every sentence of a judge, by force of the laws, the finder is bound in conscience to give half the part to the owner of the estate. Therefore the sentence of the judge can be awaited as to the other part, which yields to the finder when he finds the treasure by chance; for since the finder is deprived of this part as a penalty for a crime, and therefore that law seems penal, for that reason this does not seem to oblige before the condemnatory sentence of a judge, as the Doctors commonly hold.

[2] It does not seem that one should insist on this reason, but rather on the decrees of the laws which are found in the Institutes, *De rer. divis.*, § *Thesaurus*. The reason is that if the republic, for example, performed the role of owner, the common laws concerning the part which belongs to the owner of the estate for the diverse cases would have to be observed, and thus, for example, the whole treasure would have to yield to the treasury if it had been sought by industry and without the knowledge of the magistrates. But the law, with no distinction of these cases having been made, attributes half the part without exception to the finder. Thus Cardinal De Lugo (*De Iust.*, disp. 6, n. 115), where, after he cited from the Institutes of Justinian (*De rer. divis.*, § *Thesaur.*, 39) these words: "If someone has found a treasure in a fiscal, or public, or civic place, half is his and half belongs to the treasury or the city," he deservedly adds: "Which is understood whether it is found by chance or by industry; for in this case no difference is made." But the other laws which Molina opposes against this opinion (*De Iust. et Iur.*, tract. 2, disp. 56, n. 2) rather confirm it. For law *unic.* C. *De Thesauris*, and law *Si is qui* 63, ff. *De adquirendo rerum dominio*, have nothing more than the text cited from the Institutes. Therefore, just as Lugo reasons concerning this, it will be licit for anyone to reason concerning those. Something is added to this disposition of law in l. *Non intelligitur* 3, § *Deferre* 12, ff. *De Iure fisci*, in these words: "But he who, when he has found a treasure in a place of the treasury, and has suppressed the part pertaining to the treasury, is compelled to pay the whole together with as much again." But these things openly act against Molina's opinion. For from the rule of attributing only half the part to the treasury there is excepted the single crime of a suppressed part pertaining to the treasury. Therefore from the very well-known saying, "The exception confirms the rule," etc., Lugo's opinion is confirmed, that as to treasures found in a public place it makes no difference whether they are found by chance or were sought by industry without the knowledge of the magistrates.

II. Recently lost things must be returned to the owner, if he is found, because the fact of loss is not a title for despoiling the owner of his own thing. Besides, according to the axiom received by all, for retaining, intention alone suffices; but for occupying there is required real apprehension with a legitimate intention of having; but no one can have a legitimate intention of taking or retaining for himself a thing which he knows pertains to another known owner; therefore he must restore it to him. Hence the saying: "The thing cries to its owner" [3].

[3] Concerning a thing lost by someone, whether known or unknown, which perhaps you find, there can be a multiple obligation.

For 1. charity can oblige you to take up care of the thing, if you foresee that otherwise the thing will in some way perish for the owner.

2. Likewise charity will require that if at any time it is established to you concerning a thing either found by another or lost, you disclose this to others, when you prudently judge that this will be useful so that the thing may return into the hands of the owner.

3. If you yourself take a thing perhaps found, by justice you are bound first to exercise diligent care of the thing and to guard it. The measure of this obligation indeed is easy to draw from those things which the Doctors commonly hand down concerning that species of quasi-contract which is customarily called management of affairs. On this matter see Molina, *De Iust*., tom. 2, disp. 553, 554.

4. Likewise, if the owner of the thing is unknown to you, by justice you are bound not to conceal the thing; you will violate this obligation not only if you carefully hide the thing so that the owner cannot learn that the thing lies with you, but also if you do not use suitable means so that notice of the thing existing with you may come to the owner.

III. Abandoned and vacant goods by natural right become the property of the first occupant. The reason is that they no longer have any owner; therefore they yield to the first occupant, not otherwise than those things which have never had an owner. - Thus very commonly the theologians. - But by positive right they are commonly attributed to the Republic (C.C. 539). Yet by custom this seems to have to be restricted to immovable goods alone, at least before the sentence of a judge. - Carrière, n. 285 and 343, after several jurists.

577. ○ **Questions. Q. 1. Whether one who suspects that there is treasure in a field, and buys it at the common price, can retain wholly for himself the treasure found there?**

Resp. Affirmatively. Because that treasure, since it is not part of the estate and lies hidden, does not increase its value. - St. Thom., 2. 2, q. 66, art. 5. - Lugo, d. 16, n. 126. - Billuart, etc., against others.

Q. 2. Whether a workman who, by laboring in some house, finds in some corner of a wall or in an old chest a sum of money, can retain part of it for himself?

Resp. Distinguish. If there are traces from which it is judged that this money belongs to some person or family, the whole must be returned to this one; because this money is to be reckoned as a good recently lost. Otherwise he can retain half the part for himself, because then it seems to have the character of treasure.

578. ○ **Q. 3. Whether the finder of a lost thing can retain it for himself if, sufficient diligence having been used, the owner does not appear, nor is there any hope of finding him?**

Resp. The first opinion denies, and judges that the thing found must then be spent on the poor, or on other pious uses. The reason is that the owner, by the fact of loss alone, has not lost his right in his own thing; but if he remains owner, that thing must be spent in the way in which he is presumed to wish; moreover this will of his is to be presumed, that the thing be spent for his utility in the better way, and consequently be expended on pious works. - Billuart, diss. 4, art. 2, § 6. - Collet. - Habert, etc. [4].

[4] To this opinion it is wholly owing that in the past century in certain dioceses it was provided by law that if anyone found a thing, at least one which exceeded the value of 12 francs, he should denounce this to the Bishop, so that he might decide concerning the use of that thing itself; as though, namely, it were certain and fixed that a thing thus found belonged by open and notorious right to goods destined for pious works, whose administration belongs to the solicitude and authority of the Bishop. But besides the fact that St. Alphonsus (lib. 3, n. 603) does not even hold that opinion as sufficiently

probable, for he calls the opposite truer, Vasquez (*De Restit.*, c. 5, § 4, dub. 1, n. 12) does not hesitate to affirm that the custom by which the Bishop reserves to himself the determining of the mode by which restitution must be made through pious uses is irrational, even when it is a matter of true uncertain debts; but a fortiori this would have to be said of our case, when it is more probable that no debt of restoring exists.

The second opinion, more probable, affirms. The reason is that that thing must then be held as abandoned. For in the hypothesis, although the owner does not dismiss or abdicate dominion properly so called in his own thing, nevertheless he has wholly lost the faculty of using his thing and of disposing of it; and therefore the thing ceases to be in his dominion. Therefore the will of the prior owner is not to be sought, since, having morally lost dominion, he can dispose nothing concerning it. Therefore that thing is morally to be held as abandoned; therefore it can become the property of the first occupant. - Thus St. Lig., n. 605, where he says that this is the truer opinion [5]. - Lugo, disp. 6, n. 140. - Lacroix, n. 80. - Elbel, n. 171, etc.

[5] St. Alphonsus in reality does not hold this opinion altogether, but a certain third

one, which, while it partly accedes to the first and partly to the second, does not seem sufficiently consistent with itself.

579. ○ **Q. 4. What must be done if at last the owner appears, when the thing has been spent or consumed for pious uses?**

Resp. 1. If it was spent or consumed for pious uses when the owner was judged now no longer able to be found, no restitution is to be made, because the thing could rightly be held as abandoned, and therefore it was legitimately acquired by the first occupant.

Resp. 2. If it was spent or consumed for pious uses while hope still shone forth of finding the owner, then the damage must be repaired. The reason is that in the case either the thing was to be preserved, or at least its price [6], since dominion still remained with the owner. - St. Lig., n. 590, 603; *Hom. apost.*, n. 69. - See *Casus*, n. 516 and following.

[6] The difficulty is how long the thing or its price ought to be preserved, as still pertaining to its former owner; and indeed not even those things which St. Alphonsus discusses after Cardinal De Lugo solve that difficulty. On this matter this much is sufficiently manifest: a prudent judgment concerning whether the hope of finding the owner of the found thing is to be cast aside or not cast aside depends very much on circumstances; and therefore the measure of time varies according to their variety.

But two things seem not to be omitted. One is that the norm seems a little too severe which certain words of Cardinal De Lugo seem to insinuate (*De Iust.*, disp. 6, n. 139), as though it must be waited until there is present some possibility, not indeed probability, of finding the owner, however fortuitous, so that the hope is cast aside only when the owner could be found only by a miracle. The reason is that a prudent norm of human actions is accustomed and ought to be taken from things which commonly happen, not from fortuitous and extraordinary things.

The other is that some norm is supplied by certain civil codes, which decree generally that whenever the diligence prescribed has been used for seeking the owner of the thing, and he does not appear after two years, the thing yields to the finder. For even if that law is not in force somewhere, nevertheless, since it can be held as a dictate of prudence, one will rightly infer that, after two years have elapsed after suitable diligences have been used, the finder can dispose of the thing as his own in such a way that, whether he has consumed it or has prescribed by possessing it as his own, he is held to nothing, even if perhaps the owner afterward appears.

Point III. On Prescription

580. ◦ Prescription is some positive reason or right of acquiring dominion, or of freeing oneself from some obligation through a certain lapse of time, the conditions prefixed by law having been posited (C.C. 2219).

Hence a twofold prescription must be distinguished: one acquisitive, through which some thing or some right is acquired; the other liberative, which frees from some servitude or some burden.

581. ◦ **Principles.** I. Human law can, by force of prescription, transfer the dominion of things from one to another, even without the consent of the owner. The reason is that this is not only useful, but plainly necessary for the common good of society, namely for preventing or settling lawsuits which otherwise would more often arise from the uncertain right of possession. On the other hand, it is not repugnant to natural equity, since the law has been established before every event, and by this very fact it presents to all and each an equal lot of gain or loss. - Thus generally the Canonists and Theologians. - Gousset. - Bouvier.

II. Prescription furnished with the due conditions transfers dominion in conscience. This is evident from the genuine sense of the words by which the law is enacted. For it is said that dominion is transferred, acquired, etc. On the other hand, human authority would in no way obtain the intended end, namely public security and the peace of consciences. It is evident besides from Canon Law, which recognizes the force of prescription even for the forum of conscience.

III. These five things are required for prescribing legitimately, namely: a prescriptible thing, possession, the required time, title, good faith. Hence the common little verses:

> You will not take by use, unless these five things are yours:
> If the thing is apt, faith good, and the title also just,
> You possess justly when the time of the law has been completed.

We shall say a few things concerning each.

I. A Prescriptible Thing

582. ◦ Generally, all and only those things are prescribed which come under private dominion and commerce, and for whose acquisition there can be given a legitimate title (C.C. 2226). - For since the end of prescription is to transfer dominion by the authority of law, such a transfer cannot be made concerning a thing which by its nature, or by the disposition of the laws, cannot come into the dominion of private persons. - Hence sacred things, such as churches, cemeteries, ecclesiastical rights, and also those things which are of public dominion strictly taken, such as squares, roads, etc., cannot be prescribed [1].

[1] Thus the laws, which add to things not apt to be prescribed also a free man (*Inst.*, § 1, *De Usucap.*): Sometimes also, even if someone has possessed a thing in the highest good faith, nevertheless usucapion does not proceed for him at any time; as if someone should possess a free man, or a sacred or religious thing...

To these, from common law, must be added stolen things or things possessed by violence. Thus the Laws (*Inst.*, § 2, *De Usucap.*): Stolen things also, and things possessed by violence, even if they have been possessed in good faith for the

aforesaid long time, cannot be usucapted. For the law of the Twelve Tables and the Atinian law prohibit the usucapion of stolen things; the Julian and Plautian law prohibit that of things possessed by violence.

But that the Author is silent about this defect of stolen things or things possessed by violence must be attributed to the character of the French code, which (whether wisely or not, let others judge) decreed that the damage inflicted by thieves is to be borne by the legitimate owner of the thing rather than by its last possessor.

Nor is this to be understood only of thieves, but also of others to whom stolen things have come. Thus *Inst*., § 3, *De Usucap*.: But what has been said, that the usucapion of stolen things and things possessed by violence is prohibited by the laws, does not pertain to this, that the thief himself, or he who possesses by violence, cannot usucapt them (for usucapion does not belong to these for another reason, because, namely, they possess in bad faith), but so that no other, although he has bought from them in good faith or has received from another cause, may have the right of usucapting. Hence that saying, that the thing is defective, and that the defect passes with the thing (L. 11, C. *De acquir. et retin. Poss*.). Defects of possessions contracted by ancestors persist; and the fault of his author accompanies the successor.

II. Possession

Possession is said to be the detention of a thing in one's own name, or the exercise of some right [2]. This possession is required for prescribing [3]. It is evident from Civil Law, both Roman and French. A proof drawn also from Canon Law accedes to this. For thus rule 3 in the Sext lies: Without possession prescription does not proceed.

[2] This is what is commonly accustomed to be called improper possession, or quasi-possession; for properly possession is customarily said only of corporeal things, not of incorporeal things, such as, for example, the right of electing, hunting, servitudes, etc.

[3] A threefold possession is distinguished by the Doctors, namely natural, civil, and mixed. Natural possession is (as Schmalzgrueber has exactly, lib. 2, tit. 12, n. 4) when someone indeed possesses a thing by the support of body and mind (namely, he apprehends the thing and stands upon it, so that he takes and has it as his own); nevertheless someone else besides retains the civil possession of the thing.

Civil possession, as separated from natural, is when someone continues to possess by the support of the mind a thing once possessed naturally, though not by act of the body, either by himself or through another.

Mixed possession is when someone actually possesses a thing by the support of body and mind in such a way that no other retains the civil possession of the same thing. This is the most perfect possession.

Among interpreters of law, mention is also made of most civil possession, namely when by disposition of the laws dominion and possession are transferred without any act of the body (that is, without an act of apprehending), whether true or fictive. To this purpose belong C. *Ecclesia* 3, *De Causa Possess. et Propriet.*, and C. *Contingit* 9, *De dolo et contumacia*.

Moreover, for beginning prescription there is necessary not only natural possession, since without actual apprehension of the thing, true or fictive, possession itself is not even begun, but civil possession is also required, inasmuch as one intends both with an opinion of dominion and with the will to possess the thing as his own. Nevertheless, the asserted necessity of natural possession does not exclude that most civil possession suffices; for since by disposition of the laws this is judged true possession, as to effects it ought to differ in nothing from true natural and civil possession. See Reiffenstuel, lib. 2, tit. 26, n. 190.

But possession must enjoy various conditions. For it must be 1. dominative, or the thing must be had with the mind of an owner, not of a depositary, etc.; 2. public, that is, not clandestine, so that the thing is not purposely hidden from him against whom it is prescribed [4]; 3. tranquil, so that no joining

of issue about the thing has intervened; 4. certain, that is, not equivocal; 5. continued, or not interrupted, until the required time is completed.

[4] This second condition, which the illustrious Scavini also mentions (*De Praescript.*, q. 4, n. 4), is taken from the French Code, art. 2229. But it is manifest that it pertains to the external forum; for as to the forum of conscience it does not bear on the matter. And indeed, whoever is going to prescribe as to the internal forum must be ignorant in good faith that the thing is not his, and must retain it as his own. To what purpose, then, the warning not to possess clandestinely? It will be valid for the thief, who hides for this reason, that he not be disturbed from tranquil possession until he can complete the time of prescription.

III. Title

583. ○ Title is said to be a cause sufficient of itself for transferring dominion, for example, purchase, donation, etc. From Roman Law a fourfold title is customarily distinguished, namely true, colored, putative or estimated, and presumed.

A true title is not indeed required, as is plain; otherwise the possessor would not need prescription for acquiring the thing. Therefore a colored title suffices, that is, one which bears before itself the appearance of a true title, although in itself, on account of a hidden defect, it is not true [5]. - For prescription of thirty years no title is required, but possession alone suffices even in conscience, provided good faith is present; or rather, then a presumed title is had in the very fact of tranquil possession through so great an interval of time.

[5] Even a merely putative or estimated title suffices, namely when it is probably believed that a title intervened which nevertheless in fact was not present; for example, if an heir hands over a thing to someone as bequeathed to him by testament, which nevertheless in truth was not bequeathed. Concerning which matter L. 5, ff. *Pro Legato* says thus: The thing which has been handed over in the name of a legacy, although its owner lives, nevertheless is usucapted in the name of legacies (L. 6, ff. same title), if he to whom it was handed over thought the owner to be dead. Nevertheless it is required that the title be reasonably estimated to have been present.

But from French Law no title is required for prescribing movable things [6]. Hence the saying: For movables, possession is equivalent to title (C.C. 2279). Whence he who detains the thing is judged its owner, unless the contrary is proved.

[6] This will be able to hold for the external forum, in which indeed the thing is presumed to pertain to him who affirms it to be his; although otherwise possession of a thing determines nothing, since both true owners and also thieves and robbers possess things in their keeping, as frequent experience testifies.

But that possession so understood, namely without any title, can be valid in the forum of conscience is a plainly absurd hypothesis. For in the forum of conscience prescription without good faith is repugnant. But good faith is the judgment by which we believe that to be ours which we wish to possess as ours. But it is repugnant that we should think something to be ours if there is no cause why we should think it, namely if no title is present. Therefore without title it is impossible to begin possession of good faith; namely, even that very possession which they say holds the place of title is impossible, since without title I cannot even begin to have the thing as mine, or possess it for mine.

IV. The Required Time

584. ○ I. As regards acquisitive prescription:

1. For immovable things possessed without special title, thirty years are required for prescribing. - But with a special title, ten years are required and suffice if the true owner is present, that is, if he dwells in the same province in which the estate subject to prescription is situated; but if

the true owner is absent, the years of absence are doubled. But this province is determined by particular laws.

In France the true owner is said to be present if he has domicile in a place subject to the same superior Court (*Cour d'appel*) in whose territory the estate lies.

2. All actions, both real and personal, are prescribed through 30 years without title.

3. Active servitudes, if they are continuous and apparent, are prescribed with title like immovable things, and therefore in thirty years if a special title is lacking. But active non-apparent servitudes are not subject to prescription without title. But those are called non-apparent which are not plain of themselves, as, for example, a prohibition of building on such an estate, or of raising a building beyond such a height. - But whether they can be prescribed with title in ten years as immovable things is disputed.

4. For movable things under Roman Law three years are required with title, but thirty without title. - But under French Law, three years without title for stolen and found things; but as to the rest, possession alone suffices (art. 2279).

5. If another's thing has been possessed successively by several, the last possessor, for prescribing, can compute all the time in which it was detained in good faith by others, even if he has had it for only a few days when the time of prescription is completed.

6. In Roman and Canon Law 40 years are required for prescribing ecclesiastical goods; and 100 for the goods of the Roman Church, or of St. John Lateran. But French Law does not distinguish ecclesiastical goods from others [7].

[7] Here you have a trace of the depraved sense into which the age that authored these laws betrays that it had been handed over. For that some special homage or reverence is owed to things sacred to God, even the very dictate of natural reason suggests, so that we find this received in every age and among all peoples, however pagan and barbarous.

Add that some singular privilege for ecclesiastical goods had seemed necessary to ancient wisdom also for this reason: since those goods are administered by those who do not have dominion of them, they therefore rightly seemed to be equated to the goods of pupils and minors, whose singular care the laws have never failed to assume, although otherwise they are not destitute of tutors or curators.

Bouvier (*De Iur. et Iust.*, c. 2, § 4, sect. 3, punct. 2, prop. 2) well limits that the prescription of ecclesiastical goods is made in the same way as that of others, at least in the external forum. For in reality civil laws cannot derogate from the natural rights of the Church, except among pagan legislators.

II. As regards liberative prescription:

1. Passive servitudes, ground-rents, and all debts, good faith being supposed, are extinguished after thirty years. - St. Lig., n. 513. - Lugo, etc. - (C.C. 2262).

2. From French Law five years suffice for prescribing pensions due from ground-rents, alimentary pensions, the price of the leasing of houses and estates, and whatever must be paid yearly, or after a shorter time (art. 2277). - There are also other shorter prescriptions: thus, for example, only six months are required for wages of workmen, innkeepers, etc.; one year for fees of

physicians, servants, etc.; two years for fees of procurators, once the case is finished [8]. - (Art. 2271 and following).

[8] As to these things each person must consult the laws of his own region.

585. ○ **Questions. Q. 1. When is prescription said to be interrupted?**

Resp. When, because of an impediment interposed, it ceases in such a way that it must be begun again. But this can happen in a twofold way: 1. naturally, if the one prescribing loses possession for a time greater than a whole year, or if bad faith supervenes; 2. civilly, if a lawsuit is moved juridically concerning the possession, and the interpellation has not been rejected by the judge. Thus Roman and French Law.

Q. 2. When is prescription said to be suspended?

Resp. When an impediment is opposed to it so that it does not proceed further; namely, 1. while courts cannot be exercised, for example in time of plague, of war; 2. against the Church, while it lacks a rector or superior; 3. against pupils during the whole time in which they remain pupils [9]; 4. against anyone who cannot prosecute his right. Thus the laws more commonly.

[9] Against the goods of pupils prescription can neither be begun nor continued, if it was begun against a predecessor; and this, from common law, is valid both concerning ordinary prescription and concerning extraordinary and longest prescription, namely that of thirty years. But the condition of minors differs, because against their goods a prescription of ordinary time can indeed neither be begun nor continued, yet a thirty-year prescription can be begun and run.

586. ○ **Q. 3. Whether prescriptions of three years for stolen and found movable things are valid in conscience, as French Law bears?**

Resp. 1. As regards stolen things. 1. A thief, or a possessor of bad faith, can never prescribe, even if by lapse of time he has forgotten that he accepted the thing unjustly, since he began possession in bad faith. 2. But a buyer or donee who accepted the thing in good faith from a thief can prescribe, if the other conditions required for prescription are present [10].

[10] Two articles of the French Code gave occasion to this controversy, namely 2279 and 2280, which afterward, even after the French invasion ceased, certain codes of Italy retained, such as the Piedmontese, Parmesan, Modenese, and Sicilian.

Article 2279 has itself thus: As regards movable goods, possession produces the same effect as title. Nevertheless, he who has lost some thing, or from whom it has been taken by theft, can reclaim it within the space of three years, to be computed from the day of the loss or theft, from him with whom he finds the thing, while the action of this one against him from whom he received it is preserved.

But article 2280: If the actual possessor of a thing taken by theft or lost has bought it at fairs or in a market, or on the occasion of a public auction, or from a merchant who sells goods of that sort, the original proprietor (owner) cannot reclaim it for himself unless he pays the possessor the price for which he acquired it.

Therefore the question is whether those dispositions as regards stolen things are valid also in the forum of conscience, or whether they are to be held in the same place as liberative prescriptions, which look merely to this, that for diminishing the number of lawsuits an action is denied to the creditor in the external forum. And the Author, as is plain, adheres to the opinion which admits those dispositions also for the internal forum; which opinion has pleased also some other writers of our age, against the certain sentence of all the older writers, who receive this only as regards prescription of the longest time, that is, thirty years, by which all actions are extinguished.

Nevertheless it must be said that this opinion of the more recent writers on the one hand rests on reasons not sufficiently firm, and on the other hand is pressed by grave difficulties. And indeed they bring forward as reason, some that the mind of

the legislator seems to be that that law should obtain in conscience; but others that the law must be held as just, because it is most useful for commerce, the public good, peace, and the tranquillity of possessions. This latter is that of the Most Reverend Bouvier.

But as to the first reason, it must be wholly denied that those dispositions can obtain in conscience from the mind of the legislator. And indeed, since the law 1. requires no good faith, 2. requires no title of possession besides possession itself, and 3. merely requires that the stolen thing not be found by the owner before three years; certainly the authors of the law, unless we imagine them most stupid, could easily have seen that it can happen that by force of the law a stolen thing must be adjudged through prescription to thieves and robbers themselves.

Nor does it seem to profit sufficiently that those writers with the Author add that they posit the condition, provided the other conditions required for prescribing are present, or that according to the Piedmontese code possession has the force of title only in favor of a third party. For here the question ought to be whether the force of transferring dominion can be attributed to the law considered in itself and as it lies. But the law, as it lies, does not demand the conditions which those writers add, but permits the thing to be prescribed even by a thief. Therefore. But the limitation placed in the Piedmontese code does not prevent a third party who is conscious that the thing is stolen from being able to prescribe. For this reason the Austrian Code (§ 367) wisely took care at least expressly that this third party be a possessor of good faith.

And indeed strength accedes to these things from comparison with the articles of the same code which establish liberative prescriptions, and also with article 2269, which decrees that for prescribing immovable goods it suffices that good faith was present at the time of acquired possession. For in the same way, by force of prescription, the thing is adjudged to the possessor. Yet even the writers themselves deny that liberative prescriptions are valid in conscience; and they must establish the very same thing about him for whom good faith, which was not lacking at the time of acquisition, is afterwards lacking before the time for prescribing has been completed.

The question therefore is brought to this: whether a law can seem just which as it were supposes that dominion can be transferred by a thief to a buyer at fairs, etc. And common law indeed always denied that dominion is transferred; and therefore it preserved for the owner a right and action against the thing itself, by which he could vindicate it for himself, whoever at last, whether thief or another, now detained it. For this reason it plainly provokes laughter that either the compilers of the French code, or I know not who else, set under this law certain allegations from Roman common law, where it treats of the usucapion of another's thing, which, for example, is sold in good faith by one not the owner, or by one interdicted from alienating. For one must be stupid, or entirely a foreigner in Roman law, who confuses another's thing with a stolen thing. Nay rather L. 10, ff. *De usurp. et usucap.*, which they also alleged, proves the opposite, while it says that another's thing can be usucapted, but denies that a stolen thing can be usucapted.

Moreover, since Roman law is plainly conformable to the law of nature, to which it is plainly repugnant that the owner be compelled to buy his own thing; and since French law also supposes that dominion of the thing is preserved for the owner when before the completed three years it gives the owner the right of reclaiming the thing for himself, provided the possessor has not acquired it at fairs, etc.; it would certainly be necessary that what is generally established concerning the justice of prescriptions according to natural law, civil common law, and canon law should also be valid in the case, namely that there be present so grave a reason why his own thing should be taken away from the owner that it would make necessary this spoliation of the owner. And to this matter the Most Reverend D. Bouvier has drawn forth the utility of commerce and the tranquillity of possessions.

But that there is present that urgent reason of necessity is cast into great doubt by the fact that through so many ages no one perceived it; indeed, they saw that it was necessary that the law of nature be observed in that case. Nor will anyone be able to object the diverse circumstances of times; nay rather, the more corrupt society appears, and the more cunning and bold the art of doing harm, the more grave will press the necessity that the republic protect the rights of property by laws.

But as to the reasons drawn forth by Bouvier, has commerce up to this age, or in places where that law is not in force, been so impeded that the free and safe exchange even of stolen things is manifestly to be desired? Or are we accustomed to be deterred from buying things which stand for sale at fairs or among merchants, or to tremble concerning the tranquil possession of things thus bought?

But on the contrary, what is that microscopic convenience of commerce worth in comparison with the grave inconveniences flowing from the same law? And certainly a most grave inconvenience is that by the wrongdoing of others the owner falls not only from the possession of his things, but entirely from dominion and every right. Nor should you say that the buyer

of a stolen thing is placed in an equal condition if the thing is evicted by the owner. For the owner evicts what by natural right is his; but the buyer, on the contrary retains what by natural right is not his, but another's, and compensates the damage inflicted on him by the fraud of the thief by the unjust spoliation of another innocent person.

Likewise, the law introduces a very grave inconvenience to society, since it brings in a most ample favor to thieves. For thus an easy way is supplied for enjoying the fruits of thefts, when, after partnership has been entered into with men of the same flour, it suffices for a most safe protection of stolen things that the stolen thing has come into another's hands at fairs.

Resp. 2. As regards found things. A second possessor, or the successor of the finder by title of purchase, donation, etc., can prescribe, as was said concerning the successor of a thief. - But whether the first possessor of a found thing can be said to be of good faith, due diligence having first been used for finding the owner, and thus can prescribe, is disputed. But it seems that it must be affirmed; because if, after the circumstances have been considered and due diligence has been used, the owner cannot be found, nor does any hope shine forth of finding him, he falls from the dominion of the thing in such a way that the thing is judged to belong to no one, and therefore becomes the property of the first occupant. Therefore the finder in that case can begin possession of the thing with the intention of retaining it as his own. - Elbel, n. 172. - Sporer, *de inventione*, n. 187.

But as regards article 2280, which establishes that a stolen thing cannot be recovered by the owner unless he redeems it for as much as someone bought it at fairs or from a merchant, etc., in reality this does not pertain to the argument of prescription. For it sanctions that this must be observed at any time even within the three years, so that it could happen even two days after the theft, for example, if the thief on the next day after the theft sells a stolen calf or horse at the fairs of another village.

587. ○ Q. 4. Whether other movable things can be prescribed in conscience by the sole title of possession [11] according to French Law?

[11] Above (in the note to n. 583) we have already warned that the hypothesis of good faith necessary for prescribing in the internal forum is repugnant when any title is lacking on account of which someone believes that some thing is his, which he wishes to retain as his own. Therefore we said that that saying, that possession as to movables is valid for title, merely serves in the external forum for presuming in favor of legitimate possession in order to introduce prescription, as article 2230 of the same code also insinuates.

Consequently, the question here would be made more suitably: how much time is required for prescribing other movables (namely those which can be called neither found nor stolen things), if the other necessary conditions are not lacking? On which matter perhaps the Author less suitably gives examples of a rented or deposited thing (for even according to the French code, art. 2236, the tenant and depositary of another's thing can in no way prescribe it at any time), unless those examples are understood of a thing rented or deposited which by error has come in good faith into the hands of another by some title.

Moreover, as to what the writers mentioned by the Author suppose, namely that the new French law was wholly silent about movables which they think are by no means contained under the count of lost or stolen things: this indeed seems to depart from probability. Nevertheless, on this hypothesis, the opinion which the Author reports last would certainly seem the more reasonable, not insofar as it establishes that the title of possession suffices (which words can have no probable sense there), but insofar as it admits that three-year possession with good faith suffices for prescribing even in conscience. For the privilege which the same code does not deny even to stolen things would absurdly be denied to these movables. But, as has been said, this hypothesis does not seem probable. And if indeed it is lawful to opine in a matter which could seem obscure, I would have thought that movables of this sort also are contained in the French code under the name of lost things. For the division of things is not obscure, so that some are withdrawn from the possession of owners without the wrongdoing of another, but others from the wrongdoing of another. And just as in Law a stolen thing is taken in a very broad sense for any thing whatever which, without the will of the owner, someone knowing it to be another's, and therefore

through wrongdoing, has handled or alienated (*Instit., De Usucap.*, § 3; L. 2, C. *De Usucap. pro donato*; L. 1, C. *De Usucap. pro empt.*); so in a broad but true sense a lost thing can be called whatever thing, without the will of the owner and without anyone's wrongdoing, but by chance or unknowingly, passes into the possession of another, although not every thing lost in this sense can in an equally proper sense be called found as regards him who begins to possess it. And in reality it is easily plain also from common law that the word "losing" is used in this broader sense (see ff., lib. 8, tit. VI, *Quemadmodum servitutes amittuntur*, and lib. 41, tit. II, *De adquirenda et amittenda possessione*).

Resp. It is disputed. Some require thirty years, because no time is established by law, nor does the sole title of possession seem sufficient. This can be true, inasmuch as through 30 years all actions are extinguished, even when a special title is lacking. Others require only three years. For the new French Law is silent. But the old was abrogated. Yet this, as it seems, can be admitted. For if the law admits a three-year prescription for stolen and found things, it ought to admit it also for others. - Others more probably admit that the title of possession is sufficient of itself. Nor do there seem to be such great inconveniences in this opinion; because, besides stolen things and found things, which are prescribed in three years, cases of possession of another's thing are very rare, for example in a thing rented or deposited; and since possession must be strong by various conditions, which cannot be fulfilled in a single instant, this prescription will more often fall back into three-year prescription, which can be admitted in conscience.

588. ○ **Q. 5. Whether liberative prescriptions of five years under French law are valid in conscience?**

Resp. 1. Negatively, if it is a matter of the first debtor, because in him good faith cannot be supposed, which wholly requires ignorance of the debt.

Resp. 2. Affirmatively, as regards the successors of the first debtor at least by particular title, according to what will be said below, n. 590, if they were ignorant of the debt of the author. - Gousset, n. 719.

Q. 6. Whether liberative prescriptions of French Law shorter than three years are valid in conscience?

Resp. Negatively, because in such prescriptions the legislator does not have the intention of transferring dominion. Thus article 2275 of the Civil Code clearly supposes; according to it, those who oppose prescription are held to swear that they have truly paid the debt.

V. Good Faith

589. ○ Good faith in this matter is a firm persuasion by which someone prudently judges that the thing possessed by him is his.

I. This good faith is altogether necessary for acquiring dominion from prescription. The reason is that whoever notices that he possesses another's goods by that very fact immediately contracts the obligation of restitution, since another's thing, both by natural and also by positive right, whether divine or human, can knowingly neither be snatched away nor retained. This is evident also from the Fourth Lateran Council, and also from the second rule of Law in the Sext, which has itself thus: A possessor of bad faith does not prescribe at any time. Whence the dispositions of civil law, insofar as they do not demand good faith, or demand it only at the beginning of possession, are not valid for the internal forum, and are to be held as merely a denial of recourse, that is, of action, against another.

II. But good faith is required not only for acquisitive prescription, but also for liberative prescription, because for both the same reasons and authorities press equally.

Nevertheless, according to many theologians and jurists, good faith is not required for freeing oneself from some passive servitude; or rather one must say that good faith consists in this, that no obstacle is placed by which another is impeded from the use of his right. The reason is that the one prescribing is bound by no debt toward him against whom he prescribes; nor is he held, while the time of prescription is running, to warn another to use the right of servitude against him. Yet others deny this. - See Bouvier [12], etc.

[12] Bouvier (*De Iure*, etc., part I, cap. 2, art. 1, sect. 3, punct. 2) merely says that Pothier seems to have thought otherwise. But this man, if indeed he dissented from the common sentence (for the things which Bouvier indicates from him are ambiguous), otherwise uses an argument which would be a mere begging of the principle.

Moreover, it ought to have been observed that according to the common sentence of Theologians and Jurisconsults, what is said, that good faith is not required for extinguishing a servitude by prescription, is valid only as regards the servitudes of rural estates; for this prescription no act of the one prescribing is required, but only the non-use of him to whom the right of servitude belongs. But otherwise one must speak in urban servitudes; against these, since prescription is not made without some positive act of the one prescribing, it is required that this be placed with good faith, by which someone thinks himself free from the servitude; otherwise that positive act would be done unjustly and would not grant place to prescribing.

But Bouvier perhaps, no otherwise than the Author, omitted those things because the French code distinguishes nothing between urban and rural servitudes; and besides in this also it differs from Roman common law: that the former (art. 642 and 706) requires the longest space of thirty years both for acquiring the right of servitude and for extinguishing servitudes by the help of prescription; but the latter predefines the same time as for prescribing immovables, namely (L. 13, C. *De Servit.*), ten years among those present, twenty among those absent.

590. ○ **Questions. Q. 1. Whether an heir prescribes who doubts concerning the good faith of his predecessors?**

Resp. Affirmatively, because bad faith of itself and ordinarily ought not be presumed, since no one is presumed bad unless it is proved. - Thus commonly.

Q. 2. Whether the bad faith of the predecessor always impedes the successor from prescription?

Resp. 1. Affirmatively, if the heir succeeds by universal title, at least for ordinary prescriptions, or of 10 or 20 years; because by a fiction of law the heir is judged to be one moral person with the author [13].

[13] Concerning the force of this reason, Lugo speaks excellently thus (*De Iust.*, disp. 7, n. 59): The common reason is customarily brought forward, namely that one and the same possession is reckoned to be that of the deceased and of the heir; and since that one possession had a defective beginning, the whole possession is, by fiction of law, reckoned defective. Yet this reason, if it is taken bare, seems weak. And he gives the reason, because if the deceased in the very first year had bad faith, and in the time following had good faith, the preceding bad faith would not harm the possession of the same man with good faith for the following time, but he could from then begin prescription. Then he continues (n. 60): Therefore the reason for this decision ought to be that the universal successor, that is, the heir, so represents the person of the deceased that he succeeds into all obligations and burdens. Since, therefore, the predecessor, on account of bad faith and unjust taking and retention of the thing, contracted the obligation of restoring and of impeding the prescription of that thing, and of repairing all damages, the heir succeeds in this very obligation; and therefore he cannot cooperate with prescription which he himself is held to impede, for which he ought to restore. In this sense the common reason adduced above can be understood; not because the possession of the heir and of the deceased is in some way the same, but in such a way that the

heir always represents the deceased with all his vices; wherefore just as the deceased with his bad faith could never prescribe, so the heir, who represents him such as he died with that bad faith, is judged to retain the same representatively, and therefore cannot prescribe.

And hence there is the reason why the same Lugo denies that the heir can enjoy even the benefit of thirty-year prescription, since that good faith is always judged to be lacking which is required even for prescription of the longest time. This sentence, indeed, plainly conformable to Roman law, is common and received, as Laymann says (lib. 3, *De Iust.*, tr. 1, cap. 8, n. 18), who proceeds: An example is if a thing was handed over to the deceased for the sake of custody; afterward the heir in good faith numbered it among hereditary things. He can never prescribe it, so that after two hundred or three hundred years, if the possession has never been transferred by a particular disposition, but has always up to this time passed in the name of inheritance, it can be vindicated from that possessor. And for this reason the opposite opinion, to which the Author below inclines after Gousset, seems to rest neither on any reason nor on the articles of the French code.

Hence also it is that Lugo (l.c., n. 61) and Laymann (l.c.), against others (whom the Author follows), judged that not even a mediate successor can prescribe a thing of this sort; because, as Lugo says, the reason adduced above seems equally to proceed concerning a mediate universal successor. For the creditor does not act against the heir, but against the mediate deceased, who from his own delict and injury contracted a real obligation of satisfying for the injury brought in, and of repairing all damages which will follow from that injury, whether they are afterwards inflicted by others in good or in bad faith. Since, therefore, the universal heir is held to all the debts of the deceased, at least according to the resources of the inheritance, it follows that even a mediate universal heir is held to these debts of the deceased, notwithstanding his good faith. For he does not restore because they have been consumed by himself, but because the deceased antecedently obligated himself to impede and repair all subsequent damages.

Resp. 2. Negatively, if he succeeds by particular title, because then he is not judged to constitute one person with the predecessor. The same must be said of things acquired by purchase or by another contract. - St. Lig., n. 516.

Q. 3. Whether the bad faith of the predecessor harms a universal successor, even as regards prescription of 30 years, that is, if the heir in good faith has entered upon the inheritance and then possesses for 30 years?

Resp. More probably negatively, because civil law says that all obligations, both real and personal, can be prescribed through 30 years. Thus Gousset, n. 720, and explanation of the Civil Code, art. 2236, against others who say that such an heir cannot pursue prescription. - Billuart. - Lugo, etc.

Q. 4. Whether the bad faith of the predecessor harms a mediate heir?

Resp. More probably negatively, because he is not judged to make one person with the predecessor. - Thus commonly. - See *Casus*, n. 434 and following.

Point IV. On Accession

591. ○ Accession is a mode of acquiring dominion in some thing because that thing is added to our thing. But accession is customarily made in various ways, namely:

1. By nativity, or when from our animal another is born, although conceived from a male pertaining to another. For he who has the mother has a right to all her offspring. Hence the axiom: The offspring follows the womb [1].

[1] Nativity here must be taken in a broader sense for origin, to which production or nativity is referred, both real, such as the offspring of animals and the fructification of fields, and that which is judged such by fiction of law, such as the rent of the leasing of houses and ground-rents. But the general rule is that whatever is born or produced pertains of itself to the dominion of the one bearing or producing.

2. By alluvion, or when by force of waters an increase gradually accedes to some estate [2]. But dominion cannot be acquired by sudden alluvion. - Thus all Laws establish [3].

[2] This happens in two ways, namely when either by force of the course of rivers material gradually carried to some estate accedes to it, or some bank is deserted as the course of the water recedes. The rule is that the increase belongs to him whose is the land.

[3] Roman common law (*Instit.*, § 22, *De rer. Divis.*) thus limits: If the force of a river has torn away some part from your estate and carried it to the neighbor's estate, it is plain that it remains yours. Plainly, if it has clung for a longer time to the land of your neighbor, and the trees which it drew with itself have driven roots into that land, from that time they seem to have been acquired by the estate of your neighbor (or as Vinnius reads) it seems to have been acquired by the neighbor's estate.

Roman Law (*Instit.*, § 22, *De rer. Divis.*) also resolves the question concerning an island which is born in a river, thus: An island born in a river... if indeed it holds the middle part of the river, is common to those who possess estates near the bank on both sides of the river, namely according to the measure of the breadth of each estate which is near the bank. But if it is nearer to one side, it belongs only to those who possess estates near the bank on that side. But if a river has been divided in some part, and then united below, and has reduced someone's field into the form of an island, that field remains his whose it had been.

3. By adjunction, or when two things pertaining to different owners so coalesce into one thing that they cannot be separated without detriment: then the whole composite belongs to him whose material is more excellent in the composite thing, either by magnitude or by price [4]; but he must make the other indemnified. - Thus Roman and French Law.

[4] Others more clearly: the whole belongs to him whose thing has itself as principal, while the other thing added has itself as accessory, namely according to that saying: The accessory follows the principal. Nevertheless it is not easily defined afterward what must be judged principal and what accessory, for example, if you have painted on another's tablet, or if you have written on another's paper.

4. By specification, or when from another's material a new species of body is made by art. Then, from Roman Law, if the species cannot return to the prior matter, the thing pertains to the craftsman, who is held to pay the price of the material and to compensate damages, if there are any. - But from French Law the owner of the material can reclaim the new species, by paying the price of the labor. Yet if the price of the industry far exceeds the price of the material, the craftsman can retain the species made by himself, the price of the material having been paid. If the craftsman acted in bad faith, he is held to repair the damages inflicted on the owner of the thing.

5. By commixture, or confusion of two equally principal things pertaining to different owners. Then if the mixed things can be recognized and separated, let them be separated [5]; but if they cannot be recognized, the thing will be common, and is to be divided according to the proportion of the proper quantity of each. Nevertheless the owner of the more excellent material can preserve the whole heap, with due compensation having been made; but if the mixed things are about equal, the composite pertains to both owners in common, and either the heap can be sold so that the price may be divided, or it can be divided according to proportion.

[5] When the things of each can easily be distinguished, the question does not pertain here, where we dispute concerning dominion acquired by the mixture or confusion of things.

592. ○ 6. By building, or when a building is constructed from another's material on one's own land, or from one's own material on another's land, or from another's material on another's land. Generally the dominion of the land draws with itself whatever is placed above or below. Therefore the building belongs to him whose is the soil, due compensation having been provided. Nearly the same must be said of planting and sowing. Hence the common verses:

Whatever is planted, sown, or built in,
All yields to the soil, if nevertheless it has taken roots.

But as regards indemnity, these things are established: 1. He who on his own land has built, planted, or done other works from another's material must under Roman Law pay double the price of the material [6]; but under French Law he must pay only the price of the material and repair damages, if there are any. - 2. He who from his own material has built, planted, etc., on another's land, under Roman Law can reclaim the price of the material if he acted in good faith [7], otherwise if in bad faith; but under French Law he can likewise reclaim the price of the material if the owner of the land wishes to preserve the works; but otherwise this owner can compel the other to remove the works at his own expenses, unless his good faith is juridically established. See *Casus*, n. 547 and following.

[6] Moreover, if he joined another's material to a building in bad faith, not only is he punished by double the price, but the owner can perhaps vindicate for himself the material removed from the building; or even, if it remains joined, an action is given to the owner for vindicating the valuation of the material, so that the other must again also pay the price of the material besides the double.

[7] Understand this if to good faith there also accedes possession of the building constructed, and moreover if the estate has been made more valuable to the owner (L. 38, ff. *De rei vindicat.*). For if the builder is not in possession, no action is supplied to him by law by which he may obtain the price of the material and the expenses; and the only relief remains to him that, if indeed the owner of the estate has been made richer, by favor of equity an action be given to him freely by the office of the judge.

Article II. On Use and Usufruct

Use is the right of using another's thing, its substance being preserved. Usufruct is the right of at once using and receiving fruit from another's things, their substance likewise being preserved.

593. ○ **Principles.** I. A usufructuary has the full use and fruit of another's thing, so that he makes all the fruits of the thing his own, and can dispose of them according to his pleasure, whether by himself or through another. The reason is that the usufructuary is judged to act as the person of the proprietor as regards useful dominion. - Thus by Roman Law and French Law.

II. The burden lies on the usufructuary both of furnishing custody and of undergoing expenses, if they are moderate, so that the thing may be preserved in its whole state, and also of making expenses so that he may receive natural fruits from it. He is also held to pay the ordinary burdens by which the usufructuary thing is burdened, such as salaries, annual taxes, and similar things.

III. The usufructuary must use another's thing as a good father of a family, and return it such as it ought to be found after good administration. But the proprietor can do nothing by which the condition of the usufructuary is made worse, because he suffers him to enjoy. - Thus various laws.

594. ○ **Questions. Q. 1. How is usufruct acquired?**

Resp. It is acquired 1. from law, and then it is called legal: such is the usufruct of parents from the goods of children, or of a husband from the goods of a wife; 2. from agreement or contract, and therefore it is called conventional.

Q. 2. How does usufruct cease?

Resp. It ceases 1. by the natural or civil death of the usufructuary; 2. by the time established; 3. by the destruction of the whole thing; 4. by consolidation, for example, if the usufructuary becomes owner of the thing; 5. by an all-mannered change, for example, if a meadow becomes a pond; 6. by abuse, by which through the fault of the usufructuary the thing is made worse; 7. by the renunciation of the usufructuary, provided it is not made in fraud of creditors [1].

[1] These same things are valid as regards the acquisition or cessation of mere use. For (as L. 3, § 3, ff. *De usufructu et quemadmodum*, etc., has it) by the same modes by which usufruct both is constituted and is ended, by the same modes also bare use is customarily both constituted and ended.

595. ○ **Resolutions.** 1. Things consumable by a single act, such as wine, oil, bread, etc., do not come under use and usufruct, because by such use the substance of the thing is not preserved [2].

[2] Usufruct can be had insofar as someone can consume things of this sort and then return their valuation.

2. The usufructuary has the faculty of receiving whatever is born on the estate, namely crops, hay, fruits of trees, etc.; to him also pertains the yield of fishing, the offspring of animals, their wool, milk, etc. Likewise he can cut in woods a certain portion of timber, namely that which a father of a family is accustomed to cut.

3. The usufructuary can cede his right to another by title of sale, leasing, or donation. But the very same cannot be said of a user; who nevertheless, if he has the right of using some house, will be able to dwell in it with his family, even if at the time when he acquired the use he was not married.

4. Natural and industrial fruits hanging at the beginning are received by the usufructuary without the burden of paying for cultivation, or seed, etc. And reciprocally, if he departs before the maturity of the fruits, he can reclaim nothing. But civil fruits are acquired from day to day, and therefore must be divided according to the proportion of time during which the usufruct lasted.

Article III. On Servitude

596. ○ **Definition.** Servitude, passively taken, is a burden imposed on a thing for the utility of another. - But actively taken, it is a right which someone has in another's thing, so that it may serve him [1] or his thing.

[1] By this word "him," perhaps the Author indicates the broader range to which the name of servitude extends among the Doctors. For they take the name of servitude passively indeed for an obligation by which a thing or person is so bound to

another that it serves him in some way; but actively for a right which inheres in someone, so that another's thing or another person may serve him.

Hence comes the distinction, concerning which the Author says nothing, according to which servitude can be 1. personal, which is owed by person to person, and is proper to a slave toward his master; 2. mixed, which is owed by a thing to a person, such as use, usufruct, habitation; 3. real, which is owed by a thing to a thing, and is customarily defined passively indeed as a burden imposed on an estate for the utility of another estate; but actively as a right inhering in an estate, so that another may serve it. And concerning this last alone both the Author and others are accustomed to treat in this place.

Division. 1. By reason of origin, servitude is either natural, legal, or conventional, according as it arises either from the disposition of places, or from law, or from mere agreement.

2. By reason of object, it is urban or rural, according as it is instituted for the utility of an urban or rural estate.

3. By reason of mode, it is continuous or not continuous, according as it can endure without the deed of man, as is the servitude of an aqueduct, or cannot be exercised without it, for example, the servitude of a path. Again it is apparent or non-apparent, according as it is openly declared by an exterior sign, for example, a door, window, etc., or lacks such a sign, as is, for example, the prohibition of building in some place, etc.

597. ◦ **Questions. Q. 1. What are the rights and obligations of servitudes?**

Resp. Generally speaking, these depend on the nature of the thing, or on law, or on agreement; but these are chiefly established. 1. He who actively has a right to the servitude can perform all works which are necessary for using it and for preserving it. 2. If the estate for whose utility the servitude was constituted is divided, this servitude is owed to each part of that estate. 3. The owner of the servient estate can do nothing from which the use of the servitude could be diminished; and conversely he to whom the servitude is owed can do nothing whence the condition of the servient estate may become more burdensome. Thus natural equity bears, to which the laws also are consonant.

Q. 2. How are servitudes extinguished?

Resp. 1. By the established time having elapsed, or by the condition having been fulfilled; 2. by express or tacit renunciation; 3. by consolidation, by which the owner of the dominant estate becomes at the same time owner of the servient estate, or vice versa; 4. by prescription, or by non-use of the right of servitude for at least 30 years. Nay, since servitudes have the character of immovables, they can be prescribed through the space of time which is observed in prescribing these.

598. ◦ **Resolutions.** 1. If it is a matter of natural servitudes, or of servitudes which follow from the natural disposition of places, the owner of the lower estate cannot construct a dike so that the waters of the higher estate no longer flow down through his land; just as neither can the owner of the higher estate do anything so that the flow of the waters be unusually increased.

2. For acquiring by prescription a right of servitude, for example, a right of way, aqueduct, etc., through another's land, the one prescribing must exercise positive acts by which he may acquire such a right, and at the same time have good faith by which he believes that that right

pertains to him. Nor does the knowledge and tolerance of him against whom prescription is made suffice, if he does not have a title. But if he has a title, knowledge and tolerance of this sort are not required.

3. Those who possess fields at the banks of navigable rivers cannot stand in the way of a road necessary for the course of ships being opened. The same must be said of those whose estates lie beside roads or other public works; for they are held to suffer the servitude so long as it is necessary for the making or repairing of the aforesaid works. But in both cases the injured proprietors have a right to some indemnity, if this can be done.

4. The owner of the servient estate cannot change the position, for example, of the road, waters, or little stream, unless the servitude has become more burdensome, or impedes repairs useful to the estate from being made.

Second Part. On the Violation of Right, or On Injury

Chapter I. On Injury in General

599. ○ **Definition.** Injury is the violation of another's right.

Division. It is 1. formal or material, according as it is done knowingly and voluntarily, or without knowledge and consent.

2. Grave or light, according as from it the neighbor suffers grave damage or only light damage.

3. Direct or indirect, according as it is intended in itself, or only foreseen and permitted in the cause.

600. ○ **Principles.** I. There is a natural precept promulgated and sanctioned by God, forbidding that the strict right of another be injured; whence every injury is opposed to natural right. The reason is plain from what was said above, n. 523 and following. For since someone has been made the legitimate owner of certain goods, he necessarily must have an inviolable right in them; otherwise his right would be illusory, or would not be a right, which involves a contradiction.

II. Injury, or the wounding of another's right, is a grave sin from its kind. The reason is that it is gravely opposed to right reason, good order, and divine law.

III. Injury is not done to one knowing and willing; because one willing yields from his right, and therefore does not wish the right to be preserved. Hence it is of the essence of injury that it be exercised toward one unwilling, or against one who is unwilling.

Except some cases in which man cannot yield his right, however much he wills: thus a married man cannot by his consent prevent the violation of his wife from being adultery, because nature demands that conjugal right be entirely inalienable. Add for Christians the right of the Sacrament, which cannot be violated. Hence the following proposition was condemned by Innocent XI under n. 50:

Copulation with a married woman, with the husband consenting, is not adultery, and therefore it suffices in confession to say that one has fornicated.

601. ○ **Resolutions.** 1. Injury is done to one consenting from deceit or fear unjustly introduced, because he either in fact provides no consent, or does not provide it freely, but only to redeem himself from unjust vexation.

2. He likewise sins against justice who kills another willing to be killed. The reason is that God has reserved to himself dominion of human life; but man is merely a usufructuary, who therefore cannot abdicate from himself a right in life. Whence, if not man's right, certainly God's right is violated.

3. A usurer does injury to the borrower paying usury, just as a seller does to a buyer conceding a price beyond the highest for merchandise [1].

[1] Namely, neither of these is judged to wish to donate; therefore the title is lacking by which the dominion either of the exacted usury or of the excess in price may be transferred.

4. The torturers did injury to the martyrs, although the martyrs desired death and bore it gladly.

602. ○ **Questions. Q. 1. What matter is judged grave or light in injury?**

Resp. That matter is judged grave which from its nature, or from the estimation of men, is apt to cause another a sadness difficult to calm, or to dissolve mutual charity. Thus Lacroix, n. 979. - Reuter, n. 436, and others. The reason is that since the end of justice is to promote common peace, public tranquillity, and mutual love through the preservation of rights, that matter is deservedly judged grave which, from its nature or from the estimation of men, can dissolve mutual love with the loss of common peace, or cause sadness difficult to calm.

I said from its nature, etc.; because in establishing a general rule attention must be paid to that which commonly occurs in men using temperate judgment and affection, not to what the tumult and intemperance of passions suggests in those circumstances; for justice follows the guidance of reason and the dictate of prudence.

Q. 2. Whether injury can effectively be inflicted on another through a merely internal act?

Resp. Affirmatively. Because sometimes by an internal act alone the strict right of another can be injured. - This is plain by the example of rash judgment, by which, according to the common sentence, justice toward the neighbor is violated, since each one has a strict right to a good estimation of himself among individuals. - Recall what was said concerning the eighth precept of the Decalogue, n. 465. - Moreover, in this case there is no special difficulty; since, as a merely internal injury inflicts no external damage on the injured person, no exterior reparation is to be made, but only the imprudent judgment of the mind is to be cast aside.

603. ○ **Q. 3. Whether an internal act can of itself bring it about that an external act becomes unjust?**

Resp. 1. Negatively, if the external act of itself materially does not injure another's right, notwithstanding the wicked intention of harming in the agent. The reason is that where no right is injured, there can be no injury. Hence one refusing out of hatred to aid another does not sin against justice, unless he is held to do so from office. - Thus most commonly. - Lugo, d. 19, n. 180. - Vogler, n. 400, against a few.

Resp. 2. Likewise negatively, when the agent has the right of directly placing an external act which is harmful to another, even if he acts from the intention of harming. The reason is that a wicked intention cannot make unjust what of itself is just, since it cannot change the nature of the external act. Hence a judge does not sin by an external act against justice by condemning a murderer, out of hatred, to the death deserved; nor a merchant by selling his merchandise at the lowest price so as to deprive other merchants of profits. - Thus most commonly according to Vogler, n. 402, with Lugo, d. 8, n. 79, and d. 18, n. 98.

Resp. 3. But affirmatively, if the external work is indifferent to harming or not harming, apart from the direct right of the agent; for then often the wicked intention determines the external work, so that it becomes harmful. Therefore you do not indeed sin against justice by accepting a thing from the hands of a thief in order to restore it to the owner; but otherwise if you accept it in order to retain it. Nor do you do injury to a friend by taking his book so that you may run through it in passing; but otherwise if in order to steal it.

604. ○ **Q. 4. What if an external work is indeed placed from a bad intention, but it is not truly probable that damage will follow?**

Resp. It is disputed among very grave theologians. But the state of the question will be clearer from the following examples. 1. Someone places poison or a snare in a place in which his enemy very rarely passes, but with that intention, that he may be killed if perhaps he passes. 2. A physician uses all the diligence to which he is held, but does not wish to use greater diligence out of hatred, so that the death of the sick man may follow. It is asked whether they are the cause of an unjust death, if in fact it follows. There is a twofold opinion.

The first opinion, which seems the more common, denies. The reason is that on the one hand the external act is not unjust, since the mere possibility of another's damage ought not to be attended to in human affairs; on the other hand the internal act is not made injurious by reason of intention, since intention does not flow into the efficacy of the cause, or into the danger of damage. Wherefore it must be called a cause merely by accident, nor does a wicked intention change its nature. - Thus Lessius, lib. 2, c. 9, n. 133 [2]. Vogler, n. 404, and not a few others. The second opinion, however, affirms, resting on a foundation not weak. The reason is that in the aforesaid cases homicide is certainly against justice, and is not excused except insofar as it is involuntary. But the intention renders it voluntary. For, intention set aside, it is therefore not voluntary because the one placing the cause is not judged effectively to will the effect, since the effect is not probably connected with the cause; but intention supplies that connection and brings it about that the one operating is the true cause of it, since the intention of the one operating conduces much to the character of cause. Therefore, etc. - Thus Lugo, d. 8, n. 75. - The Salmanticenses. - Lugo moreover warns that in the aforesaid cases, for the character of injury, the foresight of the possibility of damage does not suffice, but the intention of procuring it is also required.

[2] Cardinal De Lugo (*De Iust.*, disp. 11, n. 80) observes that Lessius, who very often taught that that diversity of intention by which someone does something out of hatred or so that damage may follow matters nothing, so that therefore the obligation of restitution follows, ... at last recurs to that diversity of intention in order to posit or deny the obligation of restoring for damages following from killing... Whence he admits that if one should kill to this end, that the damage of others would follow, he would indeed be held to restitution... He concedes the same thing... with respect to the creditors of the one killed, to whom, if, so that you might harm them, you killed their debtor, you are held to restore the debts which otherwise they could not recover.

Moreover, this inconstancy of doctrine is seen not only in Lessius, but also in others, whom one may see in St. Alphonsus (lib. 3, n. 633). And he indeed, in order to avoid this note, replies that in the aforesaid case not only is there a wicked internal intention, but this breaks forth into a force externally unjust, according as it is the homicide of the debtor, from which the intended damage of the creditors follows. But indeed the difficulty does not seem to be solved by these things, or Lugo's doctrine refuted. For the same killing of the debtor, as St. Alphonsus himself acknowledges, is judged or is not judged the cause of the creditors' damage, and therefore unjust toward them, solely according to the intention of harming or not harming; for otherwise the killer will be held to restitution even if that wicked intention is absent, because an action, if of itself it brings injury to another, imposes the burden of restitution, even if the intention of harming is absent, provided the damage was foreseen. Since, therefore, the exterior force itself becomes unjust toward the creditors only from internal intention, the foundation of the distinction which is assigned between this and the other cases collapses.

Chapter II. On Injury in Species, or on Sins Against Justice

Here one must treat only of injuries in goods of fortune, namely of theft and its species. - For concerning other injuries, namely in goods of the body, of honor, and of reputation, enough has been said in the Treatise on the fifth and eighth precept of the Decalogue.

One must treat 1. of the nature and gravity of theft; 2. of the causes excusing from theft.

Article I. On the Nature of Theft

605. ○ **Definition.** Theft is the hidden taking away [1] of another's thing, when the owner is reasonably unwilling.

[1] When it is said *taking away*, theft is distinguished from mere damaging. Wrongly, therefore, do some find an example of grave theft if someone steals from a tailor a needle without which he cannot work. For it will be grave damaging, but not grave theft.

Division. Theft is thus distinguished:

1. Theft simply, if it is done secretly. - 2. Robbery, if it is done openly with violence inflicted on the owner [2]. - 3. Sacrilege, if it is done concerning a sacred thing.

[2] If theft is a hidden taking away, but robbery an open taking away with violence, then robbery ought not to be called a species of theft, but of unjust taking away.

Principles. I. Theft, by whatever name it is called, is a grave sin from its kind, because of itself it is gravely opposed to the natural law, as is plain both from reason and from Sacred Scripture, in which it is numbered among the sins which exclude from the kingdom of heaven. For thus says the Apostle, 1 Cor. 6:10: Neither thieves..., nor robbers shall possess the kingdom of God.

II. Sacrilegious theft and robbery constitute a species of diverse malice: the former because besides justice it violates religion; the latter because to the unjust taking away of another's thing it adds injury inflicted on the person. But other modes, or other objects of theft, do not change the species, because by these the nature of damage is not changed.

606. ○ **Questions. Q. 1. What matter is judged grave in theft?**

Resp. 1. It cannot be rigorously determined [3]. According to the common sentence, which seems altogether to be held, this matter is not to be considered absolutely in itself, but relatively to the various conditions and necessities of men, so that graver matter is to be required for grave sin in theft against a rich man than against a poor man [4]. The reason is that the gravity of theft, like the gravity of any injury, especially depends on the greater or lesser deprivation, sorrow, and reluctance of will which he from whom it is stolen suffers; but now no one does not see that the same matter causes sorrow now light, now grave, according as the owner from whom it is taken is rich or poor. Nevertheless one must attend to the reluctance of the will as it is commonly and reasonably had among men, not with respect to men drawn by a greater or lesser love of money. - Thus commonly with St. Lig., n. 526, against Billuart and some others, who contend that matter, whether grave or light, must be considered absolutely in itself, and that it consists in that which is required for the daily sustenance of an honest or moderately rich man.

[3] Nearly all the Doctors (says Lugo, *De Iust.*, disp. 16, n. 21), after a long inquiry and great study in order to determine some matter of grave theft, ingenuously confess that no fixed rule can be established, but that this whole thing depends on a moral judgment, so that God knows when here and now the matter is grave; but we in doubt ought to abstain. For although we can determine with certainty some matter which is light, for example one obol or one as; and another which is certainly grave, for example one hundred gold coins; nevertheless between those two extremes we cannot define what the boundaries of each matter are, so that short of such a sum it is light, and beyond it it is grave. But they try to assign some moral rules for discerning at least confusedly each matter, some of which according to the genius and character of each one are too strict, others too lax.

Nevertheless, as Lugo himself adds (ibid., n. 35), the law of nature itself demands that some certain quantity of grave theft be determined, short of which a quantity a little smaller, for example by one or two obols, can be taken without grave sin. For otherwise we shall fall into that very great inconvenience, that either all thefts, even the most minute, have grave guilt, or no theft, even the gravest, can be called gravely prohibited. For unless sometimes the transition is made from light to grave matter by the slightest distance, and conversely, from certainly light matter by the smallest increments we shall never arrive at grave matter, and on the contrary from certainly grave matter by slight decrements we shall never come down to light.

These two things certainly, namely both the plainly uncertain boundaries between grave and light matter, and the necessity of some certain term between grave and light matter, make the condition of this treatment, as is plain, exceedingly rough.

[4] The common distinction is that the matter of theft is called grave, one kind absolutely, another relatively. The former is judged grave with respect to all and always; but the latter is grave with respect to certain persons, although with respect to others it can be held light, since it (as Lugo says, *De Iust.*, disp. 16, n. 27) is taken from the quantity of the thing taken away with proportion to the goods of the one suffering the injury. Nor indeed does the Author reject this distinction in this place; but he seems to have attacked certain persons who perhaps admitted only the absolute gravity of matter, but not the relative.

Nevertheless, some absolute matter must be determined which it would never be lawful to go beyond without grave fault; for otherwise, if an all-mannered proportion had to be observed among all conditions, certainly the greatest quantity would be required for grave matter where someone steals from a very rich prince; but this would surely yield to the damage of society.

607. ○ Resp. 2. But for grave matter considered relatively (attention being paid to the principal places of Europe and to the circumstances of our times), there seem to be required: 1. approximately the value of one franc, or 20 asses, relatively to the poor, and sometimes less for a greater degree of necessity; 2. approximately two or three francs, or 40 or 60

asses, relatively to workmen who procure food for themselves by long labor; 3. approximately four or five francs relatively to men moderately rich; 4. approximately six or seven francs relatively to ordinary rich men.

But as regards matter absolutely grave, the more common sentence in St. Alphonsus [5] is that two or three gold coins are judged grave matter. But a gold coin is equivalent to about five francs. Yet you should wish to call to mind that money at that time, as being more rare, was also more precious [6].

[5] St. Alphonsus (lib. 3, n. 527) enumerates at least 20 authors who, as regards the very rich, require two or even three gold coins for grave matter. Indeed he attributes to very many the sentence that three gold coins are required; and he testifies that this sentence is called common by Laymann. But the common gold coin is equivalent to the Roman scudo. And from this it is plain that in the judgment of these Doctors, absolutely grave matter, namely that which can never be judged light fault, ought to have reached at least the sum of three gold coins.

[6] The inconstancy of the value of money brings it about that several Doctors thought that the measure of grave matter should by no means be taken from a certain quantity of money. Thus Molina (*De Iust.*, tr. II, disp. 685, n. 2): First of all, I judge that this matter must not be defined by the quantity of money. For as was shown in disp. 406, with money least changed..., its value increases and decreases by its multitude or scarcity... Whence it happens that for defining the sum which is sufficient so that theft is a lethal fault by comparison with all places and times, it is not an apt fixed rule to say that it is a certain quantity of money, such as two, three, or four silver reales. For where they are worth less because of the greatest abundance of money, less wounding and lesser injury is done to the neighbor in theft of the value of the sum of that money than where they are worth more; and where they are worth more because of a great scarcity of money, greater wounding and greater injury is done to the neighbor in theft of that value of the sum of money than where they are worth less. And Cardinal De Lugo (*De Iust.*, disp. 16, n. 25): Nor can the value reduced to so much money for grave matter be designated; because the very value of money, or its estimability, is not equal in every place and time. Therefore it pertains to the Confessor to have before his eyes the circumstances of places. For the daily labor of a workman, for example, will bring three francs somewhere, while elsewhere the same labor will scarcely bring one franc.

Nor is a lesser variety in the value of money found according to the variety of times. And indeed this diversity must be considered even more attentively, so that the mind of the Doctors on this matter may be accurately known. For Molina, who died in the year 1600, already in his own age noted this variety that had been introduced thus (*De Iust. et Iur.*, tract. 2, disp. 685, n. 2): Things which eighty years before were bought or hired for one are not bought or hired today for five or even six. But indeed after half a century Cardinal Lugo, who died in the year 1660, thus notes that the value of money had diminished still more (*De Iust. et Iur.*, disp. 16, n. 25): We also know that among ourselves the estimation of money has so decreased..., that those for whom formerly 50 gold coins sufficed for living, today 150 do not suffice. But what has happened to the value of money from that age up to ours, no one is ignorant. For if St. Alphonsus too (lib. 3, n. 383) notes a great difference in this matter between his own age and that of La-Croix (but La-Croix existed a little at the same time as Lugo), it is easily plain what must be thought in our days, when all are astonished and complain that the prices of things have grown immensely in a short interval of time, or, what comes back to the same thing, that the value of money has decreased immensely.

Hence, moreover, it follows of itself that the measure of grave matter in theft (especially if speech is of matter absolutely grave) is not aptly taken from the older writers in such a way that the limits prescribed by them then ought also now to be judged defined from their authority. Thus since you have (in St. Alphonsus, lib. 3, n. 527) Sylvester, Angelus, Soto, Corduba, Arragonius, Rodericus, etc., who are older than Ludovicus Molina; but these require for matter absolutely grave three gold coins, namely at least three scudi, whose sentence otherwise Laymann, contemporary with Molina, calls common (in St. Alphonsus, l.c.); certainly whoever wishes to define the matter by the judgment of those Doctors must be wholly required to have regard for the change which the value of money has undergone from that age up to us.

608. ○ **Q. 2. What matter is required so that thefts of wives, children, and servants become grave?**

Resp. 1. It is certain among all that in thefts of a wife and children more is required for constituting grave matter than in thefts of strangers, because the father of a family is less unwilling, or at least less reasonably unwilling in the former case than in the latter, and often he is unwilling more as to the mode (that it is taken secretly) than as to the substance. - St. Lig., *Hom. apost.*, n. 32. But they add that more probably there is required for these a sum twice greater than for strangers; but no general rule can be assigned, for the matter will generally have to be defined from the various circumstances of persons or conditions [7].

[7] As to what the Author reports concerning a double quantity for sinning gravely against the substance, understand it when the father is reasonably unwilling also as to the substance. Moreover, the sentences of the Doctors which St. Alphonsus (*Hom. apost.*, tract. 10, n. 32) reports, on account of the circumstances which the Author also mentions generally, extend that quantity of matter much more broadly.

Resp. 2. For servants it depends also on the greater liberality or tenacity of masters, on the quality or situation of the thing stolen, for example, whether it is edible or not, guarded or open..., etc. According to many, through minute thefts made by servants in foods and eatables which are not customarily carefully kept, generally one does not come to mortal sin, provided these things are not sold or carried out of the house, or are not of extraordinary price. But if servants steal money [8] or things carefully guarded, a greater quantity is not required for grave sin, because then masters are not less unwilling toward them than toward others. Indeed thefts of this sort are punished more severely by civil law on account of the defect of fidelity which intervenes in them. - St. Lig., *Hom. apost.*, n. 34.

[8] This exception nevertheless does not seem to be extended to the very slight subtractions of some obol or half-obol, not infrequent among maidservants or servants, while they are accustomed to buy daily food for their masters.

609. ○ **Q. 3. Whether minute thefts can coalesce for constituting grave matter?**

Resp. 1. Altogether affirmatively, if it is a matter of thefts committed against the same person, because united they can easily bring grave damage on the owner. This is evident also from this proposition 38 condemned by Innocent XI: No one is held under pain of mortal sin to restore what has been taken away through small thefts, however great the total sum may be. - Therefore a grave obligation is given of restoring a grave sum taken away through minute thefts, and therefore minute thefts coalesce.

Resp. 2. Affirmatively, with the common sentence, even if it is a matter of minute thefts committed to the damage of diverse persons. The reason is that the precept not to steal obliges not only lest grave damage be brought on the neighbor, but also lest someone grow rich from another's thing [9]. Indeed such a thief, if not to individuals taken singly, certainly brings grave damage on the community. And indeed, unless thefts of this sort were prohibited under grave obligation, not a few men would easily wish to grow rich from thefts, since they could do this without the loss of eternal salvation; therefore great disorder in society would follow. Therefore these thefts had to be prohibited under grave obligation by natural right. - St. Lig., n. 534. - Lugo, disp. 16, n. 37.

[9] This reason (says Lugo, *De Iust.*, disp. 16, n. 49) does not seem sufficient; because the precept not to steal does not intend to avoid one's own profit, but the damage of the neighbor... If therefore the neighbor is not gravely injured, that action cannot be gravely prohibited. These are Lugo's words, not as though rejecting the common doctrine concerning the gravity of fault in these thefts, for he soon (ibid., n. 50) defends it with solid reasons; but wishing to suggest the less firm strength of that reason. And indeed by right of finding, alluvion, and prescription a man lawfully grows rich from another's thing.

610. ○ **Q. 4. Whether minute thefts still coalesce if a great interval is placed between them?**

Resp. Negatively, according to the more common sentence. The reason is that when a great interval is posited, little thefts from the common estimation of men are not judged to be morally united, nor therefore do they constitute one object in the genus of morals. Besides, then grave damage inflicted on the owner does not appear, since he can scarcely perceive it; and therefore he is not judged gravely unwilling. - St. Lig., n. 530. - Vogler, n. 133.

Q. 5. When is an interval judged great?

Resp. More probably it must be held that thefts no longer coalesce beyond the space of two months, even if they would approach matter as it were grave. - St. Lig., ibid.

Yet some require an interval of one year so that little thefts cease to coalesce; but others contend that it suffices if one month intervenes, or even a shorter time if it is a matter of very minute little thefts. But the former seem to decline into rigor, and the latter perhaps into some laxity [10].

[10] In this matter the disagreement itself of the Doctors shows that some certain norm can scarcely be handed down. It can be added that this judgment should not be taken from the space of time alone interposed between individual thefts, but also from a comparison of the mind of him who steals, and from other circumstances, from the diversity of which the diverse estimation of men concerning this matter for diverse cases must be derived. Thus, for example, those who, through fields, by rather light thefts often steal and devour grapes, figs, beans, apples, etc., are indeed reprehended; but you will scarcely find one who fears the note of laxity if, even after several years of this custom, he does not inject into them a scruple of grave theft on account of coalescing matter.

Moreover, minute thefts, with whatever interval having been posited, coalesce according to the sentence of all whenever they were committed with the intention of arriving at a notable sum; because through this intention they are truly united among themselves. - St. Lig., n. 530. - Billuart, etc.

611. ○ **Q. 6. When does matter become grave in minute thefts?**

Resp. 1. If minute thefts are made against the same person on diverse occasions, the matter will be grave when it exceeds by half the sum commonly required for grave theft. - Thus commonly [11].

[11] All admit with Cardenas that for grave matter then more is required, for example twice more than would suffice if it were taken away at the same time. Thus La Croix, lib. 3, part 1, n. 1011. But the sentence reported by the Author is the opinion which St. Alphonsus (lib. 3, n. 530) attributes to Benjamin Elbel.

Resp. 2. If minute thefts are made against diverse persons, matter per se will be judged grave when it is twice greater than the sum commonly required for grave theft [12]. - St. Lig., lib. 3, n. 530, and many others.

[12] St. Alphonsus (lib. 3, n. 530) also reports this opinion as if from Elbel. But in reality Elbel (*De Restit.*, conf. 10, n. 290) does not speak of minute thefts which are made to diverse persons at diverse times, but of thefts perpetrated at the same time, which therefore are called minute because the damage brought to each individual is light, for example if you should once steal from a mass common to several.

Moreover, whether you adhere to this opinion, or with others prefer to require something more on account of thefts perpetrated on diverse occasions, it must be noted that the common measure of grave theft cannot here be taken from relative gravity; for the damage is not inflicted on one person, but on several, to none of whom nevertheless we suppose relatively grave damage to have been inflicted. Therefore the common measure of grave theft, which henceforth must be

computed at least doubly in the case, ought to be taken not from relative but from absolute gravity, which namely is used when thefts yield to the damage of a community.

Q. 7. Whether retraction of the will impedes subsequent little thefts from being united with preceding ones?

Resp. 1. Affirmatively, if the retraction was efficacious, that is, if the things previously taken away have in fact been restored, because once separated they now here and now no longer exist. - Thus commonly.

Resp. 2. Again affirmatively, if the subsequent theft were made from some particular motive; for then it would not seem efficaciously to destroy the preceding will of restoring; or even if the thief expressly and seriously again at the same time proposes to restore the things previously stolen [13]. Yet this can scarcely be admitted in practice, since he who seriously proposes restitution here and now does not repeat thefts. - Nevertheless it is denied where this will seems in some way to be revoked through a new theft; for in this case nothing prevents a notable sum from being retained, and the thefts from coalescing into one.

[13] Thus Lugo (*De Iust.*, disp. 16, n. 40) with Molina, Sanchez, Rebello, Granado, Diana, etc. But the reason (says Lugo) is clear; because to steal with the intention of restoring at once or soon does not seem to be a grave sin, speaking of itself, since that brief detention brings little detriment to the owner, unless by accident in some rare case. Therefore, if you intend quickly to restore the former things, so that for a brief time you retain with yourself the debt of a grave sum, there is not whence that theft would receive grave malice. These things indeed seem valid if the thief intends soon to restore not indeed the things previously taken away, but only those which he steals here and now.

612. ○ **Q. 8. Whether he sins gravely who, after grave matter has been completed, still steals some light thing?**

Resp. It is disputed. The first opinion, which seems more probable, denies, the intention of arriving at a new grave sum being excluded. The reason is that that little theft does not seem to be referred to the grave sum already completed, but rather to a new one, which the thief then begins and pursues. - Thus St. Lig., n. 538. - Lessius, c. 12, n. 44. - The Salmanticenses, *de Restitutione*.

The second opinion affirms, because in this new little theft the thief renews the intention of retaining the grave sum already stolen. - Thus Lacroix, n. 1007, and Lugo, d. 16, n. 43, who nevertheless denies that the sin is multiplied, but says that the same sin is terminated also to the later theft together with the preceding sum [14], etc. According to others, it must be distinguished thus: that man sins gravely if he does not have a true purpose of restoring the grave sum already possessed; but otherwise, if he has such a purpose. - Thus Billuart, diss. 11, art. 4.

[14] Therefore La Croix alleges Lugo for his opinion without reason, since Lugo rather seems to agree with the opinion of Billuart.

613. ○ **Q. 9. Whether he sins gravely who by a light theft completes grave matter begun by others with the same person?**

Resp. 1. Negatively, if he did not know that little thefts had been committed by others, because he is not conscious of the grave damage inflicted on the owner. - Thus all.

Resp. 2. Negatively, at least more probably, even if he knew that almost grave damage had been perpetrated by others, yet with the case of conspiracy excluded. The reason is that this man, taking a

very small thing, is neither of himself the cause of grave harm, nor is he in the cause that others took other things; therefore by no way ought the grave damage which the owner suffers to be imputed to him. - Nor should you say that such a thief sins as gravely as a murderer bringing death by a light blow to a man already struck by innumerable light wounds by others; for death is owed to this last wound, which otherwise would not have followed. But the matter has itself otherwise in the case of theft; for on account of the last little theft no notable calamity or damage accedes. - Lugo, d. 16, n. 53 and following. - Lessius, lib. 2, cap. 2, n. 52, and others commonly, against Bonacina and others.

614. ○ **Q. 10. Whether, if several persons without common counsel but by example commit light thefts, so that the total damage is grave, each sins gravely?**

Resp. More probably negatively by reason of justice, although they can sin against charity. The reason is that example is not a positive cause flowing into another's damage [15]. - Thus St. Lig., n. 537. - Lessius, ibid., n. 52, and others more commonly, against some.

[15] If it is a matter of the guilt which someone incurs because by his example he provokes others to evil, in the case not all individuals, but only those who thus moved others to inflict damage, will be held by guilt of this sort.

Q. 11. When on the part of the thief does the taking away of a light thing become a grave sin?

Resp. It happens in a threefold way, namely: 1. through the intention of arriving at grave matter; 2. through multiplication, if minute thefts arrive at a grave sum; 3. through conspiracy, where several conspire among themselves, and the little thefts of the individuals collected constitute grave matter.

615. ○ **Resolutions.** 1. If a thief, intending to arrive by little thefts at a grave sum, renews this intention as often as he steals, he sins gravely each time. Yet if from the beginning he intends to steal some determinate sum through minute thefts, for example so that he may not be detected, more probably he admits one sin, because it is one moral act; for all the particular acts tend determinately to effecting one thing [16]. - Recall what was said in the Treatise on Sins, n. 163.

[16] In reality it scarcely appears how this case differs from the preceding one. For in both there is a multiple external act with the purpose of the same wicked end; nor does it change the substance of the matter that in the other the thief gradually steals for this reason, lest he be detected. But perhaps for this reason the resolution of each is diverse: because, since the opinions of the Doctors vary in a question of this sort, one and the same case is resolved now from the opposite opinion of these, now from that of those. See what was said above concerning this question (p. 144, note a).

2. He who takes away from an owner a small thing very dear to him, for example, a rare and singular flower, the first fruits from a tree destined for honoring some distinguished man, and at the same time foresees that the owner will be gravely afflicted from such a loss, sins gravely against charity; but against justice lightly, unless perhaps grave damage seems about to follow from it.

3. Merchants using false weights sin gravely, although on individual occasions they defraud in small matter; because they intend to arrive at grave matter, or certainly know that they are going to arrive at it.

4. Tailors and their servants sin lethally against justice when, by retaining for themselves or selling fragments of cloth which are left over and otherwise still useful to the owners, they

have arrived at grave matter. Except unless somewhere a custom is in force that less be paid and the fragments remain to the tailors; or unless it is established that wealthy owners do not wish the fragments to be restored to themselves, or care little about them. - St. Lig., throughout. - See *Casus*, n. 553 and following.

Article II. On the Causes Excusing from Theft

A twofold cause is assigned: 1. necessity; 2. hidden compensation.

§ 1. On Necessity Excusing from Theft

Necessity is one kind extreme, another grave, and another common. That is called extreme in which life itself is endangered, or a most grave evil is imminent; but grave necessity is that in which life is led with great hardship; common necessity is that in which begging poor persons are commonly found.

616. ○ **Principles.** I. Man can in extreme necessity use another's goods, as much as is enough for freeing himself from such necessity. The reason is that the division of goods, however it has come about, cannot derogate from natural right, which belongs to each one, that he provide for himself when he labors under extreme necessity. Therefore in such a case all things become common; and therefore he who accepts another's thing for helping himself accepts a truly common thing, which he makes his own, just as happened before the division of goods. Therefore he does not commit theft. - St. Thom., 2. 2, q. 66, art. 7. - St. Lig., n. 520.

II. In order that someone can steal another's goods, grave necessity does not suffice, nor a fortiori common necessity; for in these circumstances owners are reasonably unwilling, and otherwise an easy approach would lie open to plunderings [1].

[1] Some confirm this doctrine by the condemnation of proposition 36 among those proscribed by Innocent XI: It is permitted to steal not only in extreme necessity, but also in grave necessity. But it is not sufficiently certain that the reason of the condemnation looks here. For since to steal signifies of itself an unjust taking away, this surely is not lawful even in extreme necessity, although then it is lawful to provide for oneself from another's goods.

Although indeed Dominic Viva (*ad h. Prop.*, n. 1) says that he does not subscribe to those contending that in this proposition theft formally taken is condemned, nevertheless, among others, John de Cardenas (*Dissert*. 23, cap. 1, art. 1) went into the plainly opposite sentence. For, he says (n. 4), the Pontiff chiefly intends to condemn that which is more shameful in the proposition: but in this proposition 36 it is more shameful to say that theft is lawful in some case than to say that in grave necessity it is lawful to take away superfluous goods from a rich man, while at the same time asserting that one has a right to them, and therefore that it is not theft... Therefore the principal intention of the condemnation is to condemn that assertion, that in some case theft is lawful.

But this very thing he confirms thus (n. 6) from history. For, as Fagnanus reports in lib. 1 *Decret.*, in c. *Ne innitaris*, *De Constit.*, n. 339, the Bishop of Ghent in the year 1657, on the fourth day of May, consulted the Doctors of Louvain so that they might bring forth their censure concerning this same proposition: It is permitted to steal not only in extreme necessity, but also in grave necessity. But they set forth their judgment in these words: To steal is permitted in no case, because it is intrinsically evil; that is, it is not only not lawful to steal in grave necessity, but not even in extreme. But afterwards those Doctors of Louvain denounced this same proposition among several others to His Holiness Lord Innocent XI, that he might brand it with the censure of which it was worthy, as is evident from the petition which they offered to the Roman Pontiff, of which I have a transcribed copy with me. Since, therefore, the Pontiff condemned the proposition in the same way in which the Louvain Doctors proposed it, it must be held as certain that this was the intention of the Roman Pontiff, namely of condemning in this sense, that not even in extreme necessity is it lawful to steal.

Then indeed as regards the present question concerning grave necessity he thus concludes (n. 7): From what has been said it is inferred that this proposition, It is permitted to steal in grave necessity, remains condemned; and this even if the opinion teaching that in grave necessity it is lawful to take secretly from a rich man the things necessary for alleviating it were probable: because according to this condemnation it must never be conceded that in some case theft is lawful; and although it were probable that then it is lawful to take secretly, nevertheless it would not then be probable that it would be lawful to steal, on account of what has been said.

Nor did Duarte think otherwise in the *Exposition of the Condemned Propositions*, dedicated to Cardinal Paolucci the Major Penitentiary and published at Rome in the year 1712. For thus he says briefly (n. 289): The decree of Innocent XI condemning proposition 36 chiefly intends to condemn that in some case it is lawful to steal, because it is intrinsically evil. Nevertheless it must be admitted that in extreme necessity it is lawful to take secretly from a rich man the necessities for alleviating it, whether manifestly or secretly, nor does this have the character of theft or robbery.

Thus also Peter Catalani (*Th. Mor.*, part 2, q. 19, cap. 3, n. 2), after he establishes that he who, placed in extreme necessity, steals as much as suffices, etc., does not sin, then adds: Nor from the common sentence brought forward is it inferred that theft is lawful in extreme necessity, since theft from its intrinsic character is incapable of being made honorable, as is a lie...; but only it is asserted that to steal another's thing in extreme necessity is not theft. And therefore Innocent XI rightly condemned that 36th proposition asserting: It is permitted to steal not only in extreme necessity, but also in grave; since theft cannot be committed in extreme necessity, not only in grave.

And let these things be enough, so that it may be plain that the opinion which in grave necessity attributes leave of providing for oneself from another's goods can indeed be attacked by other reasons; but the argument which is sought for that end from the condemnation of proposition 36 cannot be held as altogether efficacious.

617. ◦ **Resolutions.** 1. It is not lawful for a poor man placed in extreme necessity to take away more than is necessary for himself. Whence if the mere use of the thing suffices, for example of a horse, once the necessity ceases, the obligation of restoring remains. - St. Lig., *Hom. apost.*, n. 15.

2. If one extremely in need has elsewhere, in reality or in probable hope, whence he can pay, he cannot take away another's thing except with the burden of restitution; because necessity does not demand that the property of the thing accede, when he can be sufficiently relieved by the thing accepted as a loan or lent for use. - *Hom. apost.*, n. 19.

3. But he who in extreme want has consumed another's thing is held to nothing after the use of the thing, if he had no probable hope that he would ever be able to restore, even if afterward he should come to a better condition. - *Hom. apost.*, ibid.

4. The things which are said of extreme necessity can also be said of necessity quasi-extreme or most grave. But such necessity is judged to be present when someone is in probable danger of incurring death, of losing some principal member, of falling into perpetual captivity, or of undergoing the penalty of the galleys, or a most grave or perpetual disease. For in these cases extreme necessity is already morally present [2]. - *Hom. apost.*, n. 15.

[2] Some called a necessity of this sort grave; against whom others less cautiously hurled proposition 36 condemned by Innocent XI. Less cautiously, I say: both because it is not sufficiently evident that by that condemnation the doctrine is struck which says that the taking away of another's thing is lawful in grave necessity, as was noted in the preceding note; and because grave necessity among those writers, as Viva also notes (*ad Prop. XXXVI. Innoc. XI*, n. 2), signifies the same as almost extreme necessity among others; wherefore they dissent from others not in sentence, but only in diversity of words.

5. A rich man hiding his goods, or using another device so as not to aid a poor man, once the necessity of the poor man ceases, is not held to restitution, because necessity, even extreme,

confers on the poor man a right to the use of another's thing only so long as the necessity itself urges [3]. - *Hom. apost.*, n. 20.

[3] The truer reason why in the case the rich man is not held to restitution seems rather to be this: that he sins merely against charity, but in no way against justice. But the reason brought by the Author would then be valid if the rich man by force had impeded the poor man from taking some thing for himself. In which case he would indeed have sinned against justice; but when the necessity ceased, and therefore the right of the poor man, the burden of restitution would also have ceased. See Lugo, *De Iust.*, disp. 16, n. 143.

618. ○ **Questions. Q. 1. Whether someone can steal another's thing not only for helping his own necessity, but also another's?**

Resp. Affirmatively, with St. Thom., 2. 2, q. 66, art. 7, and others commonly. The reason is that then he in some way performs the role of the needy person, and shows that he loves his neighbor as himself [4].

[4] Nay indeed charity can oblige to this, unless someone would have to undergo grave inconveniences for that reason. And since one extremely in need can provide for himself from the goods of anyone whatever (unless perhaps charity counsels that someone laboring under want should be spared), since in those circumstances all goods become common, therefore he who assumes and performs the role of that man can do the very same; nor does the law of charity seem to demand that he rather burden himself in order to spare others.

619. ○ **Q. 2. Whether he can be said to be in extreme or quasi-extreme necessity who is to be killed by robbers unless he hands over such a sum of money, or he to whom perpetual or most grave captivity would threaten, or another similar misfortune [5]?**

[5] The state and solution of the controversy will become clearer if the question is made, not indeed whether in these circumstances a man is in extreme or quasi-extreme necessity, for by force of the definition the matter plainly has itself thus, but whether then it is lawful to take a very precious thing or a huge amount of money when this is absolutely necessary for preserving life. Thus certainly the Author's response is easily understood.

Resp. It is disputed. Not a few affirm with St. Lig., n. 520, Lugo, disp. 16, n. 146. The reason is that that necessity consists in the most grave or extreme danger which threatens when someone has been reduced to the greatest misery, or is already about to die, not only from lack of food, but from any other cause whatever. But others deny, asserting that then only do goods become common when someone is found in extreme necessity from natural causes [6], but not from the wickedness of men. - Thus Concina, *de Eleem.*, c. 9, q. 4.

[6] As though indeed even necessity induced by natural causes could not be of such a kind that enormous expenses are required for warding it off!

The first sentence is the more common, and seems also the more probable. Hence in these cases it is lawful to provide for oneself from another's goods, at least through means not refined nor extraordinary [7]; because since these necessities are not frequent, by that very fact abuse in them is not easy, such as can commonly be feared in the other cases.

[7] By these words the Author, the first sentence in reality having been left behind, descends to the tempered doctrine of Lugo, which can also be called common. And St. Alphonsus indeed judged that by Lugo's vote there was supported the opinion which grants to a man in that necessity that he may usurp for his own uses even four thousand gold coins, because namely Lugo (*De Iust.*, disp. 16, n. 146) adds only two conditions to the general doctrine: 1. that the thing be necessary to the needy person; 2. that it not be necessary to the owner of the thing himself. But indeed in the following passages Lugo circumscribes that doctrine. And although he concedes (ibid., n. 159) that in extreme necessity it can happen that someone

extremely in need can, against the owner's will, take for himself that which the owner was not held from charity to give, nevertheless he immediately adds these limits: When namely this is from means not refined and extraordinary, but ordinary and common, by which that necessity is commonly accustomed to be avoided. But the reason is (as Lugo himself excellently disputes), because in order that a right be produced of taking another's goods for oneself, not only must the thing be necessary for alleviating necessity, but besides it must be necessary that this necessity be aided. But we all hold that someone is not obligated to extraordinary means, for example, to preserve life, especially if this would yield to the grave damage of his own family. A fortiori, therefore, this must be said concerning the goods of another, who for that reason would be reasonably unwilling.

But what means Lugo judged common and ordinary is plain from the following (ibid., n. 154): If someone, he says, in order to flee pursuing enemies, from whom he fears only captivity and the loss of liberty, needs another's horse, it appears very harsh and altogether incredible that he cannot use it without the owner's knowledge, even if he can never afterward restore either the horse or its price to the owner. Wherefore the same seems to have to be said if the horse were necessary to him for fleeing a most grave positive infamy, since this is sometimes esteemed no less than captivity. And the same will be true concerning a perpetual or long-lasting disease and other similar evils, on account of the same reason. After this reason has been set forth, he adds: Although nature did not wish refined and extraordinary means to be common to all, nevertheless it seems to have wished common and ordinary means, by which these goods are commonly preserved, to be common to all for the common preservation of those goods. For to that use it produced horses, for example, so that by them man could flee enemies and grave dangers, and to that end it produced common garments and medicines, so that by these we could commonly protect ourselves against grave dangers of this sort.

§ II. On Hidden Compensation

620. ○ A twofold compensation is distinguished, legal and extra-legal. The former has place when two persons are mutually debtors to each other, and one reserves to himself the thing owed to the other: thus, for example, if I owe you 100 francs for cloth, and you owe me 100 for wine, each debt is extinguished by compensation. This compensation is manifestly lawful, and is confirmed by the law itself (C.C. 1289 and following). The latter, which is called hidden compensation, is the recovery of one's own thing through the occupation of another's. Of this alone we must treat.

621. ○ **Principles.** I. Hidden compensation can sometimes be just and lawful, if it does not lack the required conditions, that is, if no injury is done to the debtor, nor any disturbance of the order of right follows, nor any disturbance of the Republic. But these three things can be had. And 1. no injury is done to the debtor; for by hypothesis in such compensation you accept only that which is certainly yours, or what is owed to you from strict justice. 2. There is no disturbance of the order of right, since it is supposed either that a judge cannot be approached, at least without notable inconvenience, or that he is unable to restore his right to the injured party. For that is not said to be omitted which would be sought in vain. 3. There is no disturbance or damage of the Republic; for provision is sufficiently made for it by cautions to be placed in the conditions. - Thus St. Lig., n. 521. - Lacroix, n. 959, and also Antoine, c. 5, q. 9, where he says: It is the common sentence; and Collet, *de Iustitia*, p. 3, c. 4, where he says: Thus nearly all theologians.

622. ○ II. But the required conditions are the following: 1. That the debt be certain, at least morally [1]. For in doubt the principle is valid: Better is the condition of the one possessing [2]. Therefore in doubt compensation is illicit and unjust.

[1] Cardinal de Lugo, after he had disputed much concerning this matter, thus concludes (*De Iust*., disp. 16, n. 102): Therefore when the proofs concerning the fact on the part of the plaintiff, although they are not evident, are nevertheless such that, in the judgment of the Doctors, the judge ought to judge for him notwithstanding the proofs of the adversary, he himself, before the matter is brought to judgment, with the other conditions required for compensation concurring, will be able to embrace the probable opinion, so that he may compensate himself.

Nevertheless (ibid., n. 106) Lugo adds that he prefers to abstain from rendering the last judgment concerning this matter; because, he says, although in particular cases the Authors seem to admit this, as we have seen (n. 95), nevertheless in common, and while they treat the question in its proper terms, they seem commonly to deny it, because perhaps something occurred to them by which our arguments placed above could be dissolved. But perhaps that sentence of Lugo is not far from the common one; for since he supposes that in the judgment of the Doctors the judge would not have judged otherwise, now you have that species of probability which in ethics is equivalent to moral certitude.

[2] Elsewhere we warned (see above, n. 79, q. 5) that this saying has less bearing when it is a matter of a probable opinion. Otherwise, unless the matter were certain, the judge could not bring a sentence for either party which does not possess, which is false.

But what St. Alphonsus has (lib. 3, n. 521) must not be passed over: Although certainty of credit is required for compensation, nevertheless very many grave Authors admit that compensation can be made with a credit only probable in three cases, namely when there is compensated 1. reputation with money, 2. infamy with infamy given, and 3. a legacy left in a non-solemn testament.

2. That the debt cannot be recovered otherwise, at least without grave inconvenience. For if the creditor can obtain what is owed to him by mere petition or recourse to a judge, then by compensating himself he does injury to public authority, and therefore offends against the order of right.

3. That the thing be taken in the same species, if this can be done. For otherwise the thing of the debtor is exchanged without his consent, and therefore unjustly.

4. That damage to the debtor be guarded against, namely by taking care that the debtor is not exposed to the danger of paying twice, if perhaps he is going to restore. Hence if that case is foreseen in some way, he must be warned in some way, for example, by a fictive renunciation or remission, etc. [3]. But if, after compensation has been made, he restores, it will have to be restored to him again. Moreover, that case will be rare, since compensation is not lawful except where there is no probable hope of recovering the debt [4]. - St. Lig., n. 521.

[3] In practice these things will be able to be done with difficulty in such a way that some suspicion of compensation having been made will not often enter the mind of the debtor; and grave inconveniences could thence come upon the creditor, for example, if it is a matter of a servant. Therefore, if these are feared from the warning, this can be omitted; and if any damage should thence befall the other, let him impute it to himself and his own inequity; for the creditor has used his own right.

[4] Understand: where there is no probable hope of recovering one's own without some grave inconvenience. For although the hope were not only probable but plainly certain of recovering one's own through recourse to a judge, nevertheless this recourse would involve the creditor in grave difficulties and vexations of lawsuits, enmities, expenses, etc.; and therefore he would not have to be prohibited from hidden compensation, as the Author himself also warns below.

623. ○ **Questions. Q. 1. Whether servants judging that their salary is below the work furnished by them can use hidden compensation?**

Resp. Negatively, at least generally speaking, with the common sentence [5]. It is evident 1. from proposition 37 condemned by Innocent XI: Domestic male and female servants can secretly steal from their masters to compensate their labor, which they judge greater than the salary which they receive. 2. From reason; for they would act against the agreement, since they consented to the lesser price, and on the other hand nothing is owed to them except the price concerning which there was agreement. Besides, if this were lawful, the way would be opened to innumerable thefts; for servants would easily persuade themselves that their wages are less than just; thus no security would remain for masters. - The same must also be said, from parity of reason, of all workmen, craftsmen, and merchants who would wish to have recourse to compensation under the pretext of the lower price at which they hired out their works or sold their merchandise.

[5] P. Gury in another edition (year 1865) had placed this response under the same question entirely: Resp. Affirmatively, if the due conditions are present. But the case can happen if the servant is compelled by force and fear to consent to an unequal price (namely, unjust); if compelled by necessity he consented to it, provided nevertheless that the master would not have found other servants at the same low price, yet a just one, or did not accept this one asking from mercy; if he is burdened by undue works. Yet the danger which can arise from fallacious judgment must be guarded against. Therefore proposition 37 was deservedly condemned by Innocent XI, which thus generally established: Male and female domestic servants can secretly steal from their masters in order to compensate their labor, which they judge greater than the salary which they receive. The reason of the condemnation of this proposition is, namely, that servants are generally very prone to deciding wrongly that the salary is below the work furnished by them. Thus in that Edition.

Moreover, it is easily plain that of each response, although contrary in appearance, there is in reality one and the same doctrine. But the inconvenience of this apparent contradiction could easily have been avoided if the question had been proposed in other words than those by which the condemned thesis is expressed; and it would have been ready to respond that it is lawful for servants to do what is lawful for all, namely to use hidden compensation when the due conditions are not lacking. Nor does the condemnation of that thesis stand in the way; for it cannot be said that Innocent XI wished by that condemnation to oblige servants to bear damage contrary to the laws of justice, when the crime of wages unjustly denied to workers is counted in catechisms among those things which as it were by crying out provoke against themselves the anger of almighty God. That thesis was deservedly condemned, not only because servants very often judge badly that more is owed to them than what they agreed upon from the beginning, but also because for lawful hidden compensation other conditions besides the wounding of justice are required.

I said, at least generally speaking, because not a few except: 1. if the servant is compelled by force or fear to consent to an unequal price. 2. If compelled by necessity he consented to it, provided nevertheless that the master would not already justly have found other servants at the same low price, or did not accept this one asking from mercy. 3. If unwillingly he is burdened with undue works [6].

[6] Thus St. Alphonsus (lib. 3, n. 622): A servant, when he is compelled by his poverty to agree thus (namely at less than a just price), then does not yield his right voluntarily, but by compulsion, and therefore his poverty cannot excuse the master so that he does not pay him at least the lowest wage. But when a servant compelled by necessity agrees for a small price (namely below the lowest), he will be able to compensate himself up to the lowest price; as Viva says with Lessius, Suarez, Molina and Dicastillus, and others very commonly. Yet this holds unless the master would already justly have found other servants for the same small price (that is, within at least the lowest limits of the just price); or unless the servant had been offered of himself, and the master from pity, or need, used him.

Q. 2. Whether at least a servant, increasing the works owed, can compensate himself?

Resp. 1. Negatively, if he acts thus by his own choice, because then he is judged to give his work gratis in order to conciliate the favor of the master to himself.

Resp. 2. Affirmatively, if he increases the works from the will of the master, whether expressed or tacit, because then the workman is judged worthy of his wage by right. - St. Lig., n. 523. - But what compensation is just can sometimes be left also to the judgment of the servant, if he is God-fearing and prudent, and danger of self-love is absent; yet this will happen very rarely. - St. Lig., n. 524.

624. ○ **Q. 3. Whether he who is condemned by a judge to pay a debt which he certainly did not contract, or which he certainly has already satisfied, can use hidden compensation?**

Resp. Affirmatively, because the sentence of the judge is unjust, as founded on a false presumption of fact, and therefore cannot oblige in conscience. For although one must always stand by the sentence of a judge in a matter of law, unless it is a matter of an evidently unjust law or sentence; nevertheless otherwise, scandal being excluded, if the judge certainly errs concerning a fact which from error he thinks true. Moreover, the judge does not have the faculty of transferring dominion; nor can he who obtained a favorable sentence, even when the error has been detected, keep the thing adjudged to himself. - Thus commonly Moullet, t. 1, p. 491.

625. ○ **Q. 4. Whether he sins gravely and against justice who compensates himself without first having recourse to a judge?**

Resp. 1. He does not sin of itself against justice, provided he accepts only as much as is owed to him; nor therefore is he held to restitution. The reason is plain, because with this compensation having been made, equality is restored between him and the debtor. I said, of itself, because sometimes a detriment could follow for the debtor from the privation of some determined thing, for example, a horse, a precious thing, etc. - Lugo, d. 16, n. 19, and others.

Resp. 2. Nor does he sin gravely, generally speaking; because ordinarily grave scandal or grave disturbance of the republic does not follow from this inversion of order. - Lugo, ibid.

Resp. 3. He sins in no way if recourse to a judge is difficult, if there is danger of scandal, or extraordinary expenses, etc.; because then recourse is morally impossible. - See *Casus*, n. 573 and following.

Third Part. On Restitution

Section I. On Restitution in General

One must treat: 1. of the obligation of restitution; 2. of the roots of restitution; 3. of the circumstances of restitution; 4. of the causes excusing from restitution.

Chapter I. On the Obligation of Restitution

Restitution, as regards the name, sounds the same as the placing of a thing into its pristine state. As regards the reality, it is the repair of another's injured right.

626. ○ **Principles.** I. Restitution in reality, or at least in vow, is absolutely necessary of itself for salvation if it is a matter of grave matter.

1. It is evident from the principles established above, n. 532. For commutative justice necessarily demands that the violation of another's right cease; but it cannot cease except through restitution. Therefore.

2. It is evident also from Sacred Scripture. Thus Ezek. 33:14: But if you say to the impious man: You shall die the death; and he does penance for his sin, and does judgment and justice, and that impious man has restored the pledge and has returned robbery..., he shall live life and shall not die. - And Epist. St. Jas. 5:4: Behold the wages of the laborers who have reaped your fields, which have been defrauded by you, cry out; and their cry has entered into the ears of the Lord of Sabaoth.

3. It is evident from the unanimous consent of the Holy Fathers. Thus St. Augustine, ep. 153 to Macedonius: The sin is not forgiven unless the thing taken away is restored, when it can be restored. - These words of the holy Doctor were inserted into Canon Law (*Decret. Gratiani*, cap. *Si res aliena* 1, causa 14, q. 6); and thence the fourth rule of law in the Sext: Sin is not forgiven unless the thing taken away is restored.

I said in reality or in vow; for restitution is not necessary by necessity of means for salvation in reality; wherefore if it is impossible in reality, it does not obstruct salvation. But no one can be excused from restitution in vow; and whoever has injured another's right must always have a firm purpose of restoring when he can; for otherwise he would retain affection toward an evil thing, and thus would be found in habitual sin. - Thus all. - Hence St. Augustine in the text just cited says: when it can be restored.

627. ◦ II. The precept of restitution is primarily negative, but secondarily affirmative. The first reason is that the precept of restitution is immediately founded on the obligation of not violating another's right, or on the obligation of neither accepting nor retaining another's thing. But this obligation is primarily negative, as is plain, and therefore it urges always and for always, that is, it urges at any moment until restitution has been made. - The second reason is that the obligation of not receiving or retaining another's thing, on which the precept of restitution is primarily and immediately founded, cannot be fulfilled without there thence being made a positive action by which that which is his is returned to the owner.

III. There is no obligation of restitution except on account of the violation of strict right, or of commutative justice; but otherwise not on account of violation of the right of uprightness simply. The reason is that restitution brings it about that the thing owed to the neighbor equals his right unjustly violated. But now this cannot be done when speech is of the violation of the right of uprightness. For if someone injures the right of his Superior or of his neighbor, by denying obedience to the former, and offices of charity to the latter, that violation cannot be strictly repaired, because a new act of obedience or charity would not repair the violated right, but would only satisfy the precept, which always urges, namely of obeying the Superior and relieving the neighbor in straits.

628. ◦ **Questions. Q. 1. Whether one unable to restore from goods of the same order is held to restore from goods of a diverse order?**

Resp. More probably negatively. The reason is that no comparison is given between goods of a diverse order; therefore neither can compensation be given. And indeed it could never be decreed how much arithmetically ought to be restored, since between goods of a diverse order no common measure is given. - St. Lig., n. 627. - Lacroix, etc., and others more commonly.

Nevertheless certain others affirm, because, they say, he who cannot repair the whole damage is held at least to compensate the part which he can. - St. Th., 2. 2, q. 62, art. 2. St. Lig. calls this sentence probable, but holds the first as more probable.

Nevertheless, through vindicative justice it can be imposed by a judge or by a Superior that for injury concerning one kind of goods someone provide something in goods of another order; yet more probably by reason of penalty only, but not by reason of justice. The injured person besides has the right of denouncing before a judge him from whom he accepted injury, and therefore of accepting money from him so that he may omit the denunciation; thus, for example, a woman violently oppressed by someone can compel the violator to court, or exact money from the scoundrel so that she may renounce her right.

629. ◦ **Q. 2. Whether an obligation of restitution is induced from an action affectively only, but not effectively injuring another's right?**

Resp. Wholly negatively, because no real injury is inflicted on the neighbor, although the agent sins gravely by an internal act against justice. Hence a malicious judge bringing forth a sentence which he thinks unjust, if in reality it is just, is to be exempted from the burden of restitution; or he who snatches away a thing which he thinks another's, while it is his own. - St. Lig., n. 556. - Recall what was said above, n. 602, 605.

Q. 3. Whether sins are multiplied by delay of restitution?

Resp. More probably negatively, if the bad will of not restoring habitually perseveres. - St. Lig., l. 5, n. 40. - Recall what was said in the Treatise on Sins, n. 166.

630. ◦ **Q. 4. Whether little thefts made to diverse persons oblige to restitution under grave obligation if they have arrived at grave matter, and whether restitution must be made under grave obligation also to the owners themselves?**

Resp. to the first: Affirmatively, because the precept not to steal not only prohibits damage from being brought on another, but also that someone be unjustly enriched by another's thing. - Thus commonly. - Recall what was said above, n. 609.

Resp. to the second: More probably negatively. The reason is that by hypothesis no owner has suffered grave injury. - Therefore, even if the owners are known, without grave injury of anyone restitution can be made to the poor, or to pious places; indeed if a reasonable cause accedes, for example, the urgent necessity of the poor, etc., even venial sin will be absent. - St. Ligorius, n. 534, 595. But if the owners are unknown, restitution must be made under grave obligation to the poor or to pious places. - St. Lig., ibid.

Q. 5. Whether he who in minute thefts did not sin gravely, but from inadvertence arrived at grave matter, is held to restore under grave obligation?

Resp. Affirmatively; because although he did not sin gravely by stealing, nevertheless he is an unjust possessor of grave matter, and therefore he will sin gravely by retaining the stolen thing. This is valid even if the thefts were made to diverse persons; for otherwise he could be unjustly enriched by another's thing without grave sin, which from what has been said is not lawful.

631. ◦ **Q. 6. Whether a thief who has stolen a grave sum of money is held to restore it whole under grave obligation?**

Resp. Negatively. For he is held under grave obligation to restore only that which completes grave matter, because when this has been restored the matter retained is no longer grave. Hence someone can be obligated under grave obligation to restore light matter; but then the obligation arises not from the light thing, but from the grave quantity. - St. Lig., n. 555.

Q. 7. Whether the soul of a deceased person, as they say, is detained in purgatory until restitution has been made by his heirs?

Resp. Negatively. This error of the common people has arisen from certain fictitious or badly understood revelations, in which souls dwelling in purgatory are reported to have appeared and to have begged for restitution, that they might be liberated from the flames. The reason is plain. For no one in the other life is punished except for fault which he personally committed in the present life; but no one is punished on account of the fault of heirs. Nevertheless, if the heirs have been solicitous to accomplish restitution so that they may exhibit some satisfaction for the soul of the debtor, it must piously be trusted that God will benignly accept this for it, at least in part.

632. ◦ **Resolutions.** 1. He who is found in inability to restore another's thing or its value must always have a firm purpose of restoring when he can, and meanwhile to acquire, if he can, something by which he may satisfy his obligation as soon as possible.

2. If someone cannot restore the whole, and it is a matter of a divisible thing, he is held to the part which he can. For the injured person has a right to the individual parts, just as to the whole.

3. He who has inflicted light damage on his neighbor is held to restitution toward the injured owner under light obligation, and with inconvenience proportionate to the thing; for light injustice must be repaired under light obligation, just as grave under grave. Yet a reason excusing from restitution can then more easily be present, especially from making it to the owner himself. But if it is a matter of a very slight thing, any difficulty whatever will suffice so that restitution can be made to the poor. - St. Lig., n. 534.

4. He is deservedly held unworthy of absolution who refuses to promise restitution; who leaves to his heirs the care of restoring, while he can do it by himself; who, burdened by debt, in food, clothing, service of servants..., undergoes expenses of such a kind on account of which he foresees that he will afterwards be unequal to paying his debts. The same must be said of him who, enjoying good fortune, does not wish gradually to diminish his state so that he may satisfy creditors. But with him who twice or three times has promised that he will restore, and

has by no means kept his promises, it will belong to the prudent Confessor to judge whether restitution is to be exacted before absolution or not [1].

[1] Namely, even if the Confessor judges the penitent to be wholly prepared to fulfill as soon as possible the obligation of restoring, nevertheless, unless circumstances persuade otherwise, it is expedient that he rescue him from the danger which can be feared from his inconstancy.

5. Nor are those to be absolved who bring forth futile pretexts for delaying restitution, for example, those who are accustomed to keep saying: I shall not carry my goods into the tomb...; the heirs will restore...; I shall establish in my testament that restitution must be made...; or: I have already instructed my children that they themselves restore as soon as possible... For those are to be reckoned badly disposed who do not wish to do here and now whatever they morally can for satisfying the neighbor: 1. because the precept of restitution urges without ceasing, and the creditor suffers injury and often also damage from delay; 2. because provision is badly made for restitution to be made by committing it to heirs; for they too can similarly put it off to the end of their life; 3. because perhaps time will be lacking for making a testament, or, if it is made, perhaps also for various reasons or pretexts it will happen that it is not executed.

6. The Confessor ought to act cautiously with dying persons subject to restitution. But he will be able to proceed thus: 1. If the penitent seems to be in good faith, and there is no time remaining for prudently warning him concerning his obligation, or it is foreseen that the warning will not be of use, this having been omitted, he is to be absolved. 2. But if fruit from the warning is hoped for, or if the penitent is not in good faith, he will have to be warned of the obligation of restitution both firmly and gently, and aided to accomplish it immediately. 3. If the obligation is hidden and cannot be done immediately, the sick man will have to be induced to commit a sum of money to himself the Confessor, or rather, if it can be done, to a faithful man, so that afterwards it may be secretly committed to the creditor; or to leave that sum to him in the testament, mention of restitution having been omitted. 4. If the obligation is not hidden, nor can it be fulfilled immediately, let the Confessor bring it about that it is certainly cared for by the heirs, whether through a small note to be handed to the creditor, etc. - See *Casus*, n. 580 and following.

Chapter I [II]. On the Roots of Restitution

633. ○ The roots of restitution are said to be the causes from which the obligation of restoring arises. But they are taken from a threefold head, namely: 1. from the acceptance of another's thing; 2. from unjust damage; 3. from unjust cooperation; which nevertheless, as regards the matter, falls back into one or the other of the preceding.

Article I. On the Acceptance of Another's Thing

634. ○ **General Principle.** The owner alone of a thing has of himself the right of possessing it, nor does he lose the dominion of the thing, into whosever hands at last it may come. - It is said, of himself, because any other possessor, even of good faith, has the right of possessing the thing only by accident and from invincible error. - Thus all laws establish.

- But from this general principle these four very well-known axioms flow of themselves, which will recur very often in the course of this treatment, namely:

1. The thing cries to its owner, that is, the strict right of recovering his thing belongs to the owner wherever he may find it.

2. The thing fructifies for the owner, because use and enjoyment are necessarily included in the idea of perfect dominion.

3. The thing naturally perishes for the owner, because when the object of dominion fails, dominion itself also vanishes. Yet if it still exists in an equivalent, that equivalent belongs to the owner.

4. No one ought to be unjustly enriched from the thing of another; or in other words: The measure of restitution is the quantity of another's thing detained without cause. The reason is plain; for it belongs to the owner alone of the thing to receive utility from the same.

But these principles, besides the fact that sometimes according to the diverse laws of places they receive a diverse application, are further modified according to the diverse condition of the possessor. For someone can possess another's thing either with good faith, or with bad faith, or with doubtful faith. Therefore one must speak: 1. of the possessor of good faith; 2. of the possessor of bad faith; 3. of the possessor of doubtful faith.

§ I. On the Possessor of Good Faith

A possessor of good faith is he who invincibly does not know that the thing possessed by him is another's, and prudently judges that it is his own, for example, because he has already acquired it by a title of dominion translative of itself, such as of inheritance, legacy, donation, or purchase. But it is supposed that he has not yet prescribed the possessed thing; for otherwise he would now not be the holder of another's thing, but of his own.

635. ○ **Principles.** I. A possessor of good faith, as soon as he knows that the thing possessed by him is another's, is held to restore it, still extant in whole or in part, or in profit, to the owner; for otherwise he retains another's good, with the owner reasonably unwilling, and therefore violates his strict right. - Thus all.

II. A possessor of good faith is held to absolutely nothing if during good faith he consumed, lost, or even destroyed another's thing, provided he did not become richer thereby. For he is not held by reason of the thing accepted, which no longer exists; nor by reason of unjust taking, consumption, or destruction, because he possessed the thing in good faith. This is also valid if he destroyed the thing purposely, or if it perished from his negligence. The reason is that he inflicted injury on no one by destroying or neglecting a thing which he believed to be his own. It is confirmed also by positive right. For thus, l. 31, § 3, ff. *de petit. hered.*: He who neglected a thing as his own is subject to no complaint.

I said, provided he did not become richer thereby; because that in which he had become richer would succeed in place of the thing. But it is against natural right that someone be enriched with another's

injury, according to rule 48 of Law in the Sext: Someone cannot be enriched with another's injury or loss.

636. ○ **Questions. Q. 1. Whether a possessor of good faith is held to restore the fruits which he received during good faith?**

Resp. The fruits must be distinguished. For 1. some are natural, which come forth from the very substance of the thing, without any or with moderate work of man, such as grasses, etc. 2. Others are industrial, which are attributed chiefly to the industry of the possessor. 3. Others are mixed, which are partly natural and partly industrial, such as crops, etc. 4. Others finally are civil, which are not fruits properly so called, but are held as such by Law, such as annual revenues, the price of the leasing of a house, etc. [1].

[1] Civil fruits can also be called either natural, or industrial, or mixed, according as they are judged to come from the thing rather, or rather from labor and industry, or from both.

I say 1. A possessor of good faith is held by no reason to restore merely industrial fruits, because these by reason of industry pertain wholly to the possessor [2]. - Thus all.

[2] To this are also recalled mixed fruits in that part in which they are owed to industry. On this matter St. Alphonsus says (lib. 3, n. 825): Mixed fruits, namely those coming as much from the nature of the thing as from industry, must not be restored to the owner by a possessor of either good or bad faith except insofar as they correspond to nature, but not insofar as they correspond to industry: for those fruits are not of the thing, but of the man gaining for himself on occasion of the thing or through the thing as through an instrument. This doctrine both in this place and in n. 610 he calls common. Croix (lib. 3, p. 2, n. 213) skillfully warns that the Authors commonly mean this for themselves when they say that mixed fruits are to be restored, the value of industry having been deducted.

I say 2. From natural right a possessor of good faith must restore all other fruits, whether natural or civil, expenses and labors nevertheless having been deducted [3]. The reason is that by natural right fruits pertain to him to whom the fructifying cause itself pertains, since they come forth from the thing itself, according to the axiom: The thing fructifies for the owner. - St. Lig., n. 610.

[3] Add, as regards civil fruits: and with the valuation of industry deducted, as is plain from what has been said.

I say 3. From Roman Law, according to the common interpretation, natural fruits perceived and still existing must be restored, although the law is not always so clear. But it is disputed as regards fruits no longer extant or consumed. Some judge that nothing is to be restored, although the possessor became richer from them, because the obligation of restitution cannot be proved either from law, which is silent or is not sufficiently clear [4], or from the practice of tribunals, which favors the possessor. - Yet they except if someone possessed another's inheritance which has been evicted; for then by law he is evidently held to give back everything from which he has been made richer. - See Carrière, n. 1052. - But more commonly the theologians, at least from natural right, oblige him to restore everything from which the possessor has been made richer. - Thus St. Lig., n. 610.

[4] Therefore Roman law could seem obscure because, as Cardinal De Lugo well observes with others (*De Iust.*, disp. 17, n. 41-47), the decrees of the older jurisconsults which are borne in the Digest disagreed in such a way that the Doctors labored with empty effort to compose them among themselves. Yet that uncertainty seems to vanish when the laws of the Emperors Diocletian and Maximian (L. *Certum* 22, C. *De rei vindic.*), and of Justinian (§ *Si quis a non domino* 33, Inst. *De rer. Divis.*), have been considered. But whatever may be true about this, since the general rule, as Lugo says (l.c., n. 39), of the Theologians is - and indeed not only from the more common, as the Author hints, but from the very common and unanimous sentence of them all - that extant fruits are to be restored not only in themselves, but also equivalently, namely insofar as the possessor of good faith has been made richer from them; and since, as the Author also indicates, according to

the sentence of the same Doctors this obligation flows from the natural law, it can scarcely indeed be understood how Carrière, because Roman law seemed to him either to be silent or to speak obscurely about this matter, could conclude that the obligation of natural law ceases! But what the same Carrière adds concerning the practice of tribunals, which favors the possessor, is nothing. For does the sentence of any judge, spoken according to the laws of his own region, change or destroy the law of nature? Surely this one thing will now remain: that, fearing the practice of the same tribunals or those laws, we should think marriages duly dissolved even as regards the bond when a French judge speaks a sentence for these divorces!

I say 4. From French Law all fruits, whatever they may be, are assigned to the possessor of good faith, provided he possesses the thing itself as proprietor and by a title which of its own nature is able to transfer dominion. Civil Code 549, 550. But can this disposition of French Law also have force in the forum of conscience? It must more probably be affirmed, because it can reasonably be presumed that such is the force of the law [5], since, understood thus, it promotes the public good much more, and removes from the midst inextricable quarrels and difficulties, which would continually be moved concerning the quantity of fruits to be restored, etc. Thus Carrière, n. 1054. - Vernier, n. 564. - Gousset, n. 931, etc., against some.

[5] Nothing surely compels us to judge that any law, because it is found in the French code, is for that reason just and endowed with some force in the forum of conscience. But the reason which is added, of the public good, namely that thus occasion for quarrels and difficulties in determining the quantity of fruits to be restored is removed, shows itself too weak even at first sight; both because innumerable examples occur in the code itself in which that difficulty of determining the quantity of the thing to be returned or of the money to be paid by no means exempts from the debt to be paid; and because it is in itself most inequitable that a certain right either of reclaiming one's own or of paying another's should cease for this cause alone, that some difficulty occurs in deciding whether perhaps more or less than thirty gold pieces must be paid.

637. ○ **Q. 2. To what is a possessor of good faith held if he has donated another's thing to another?**

Resp. He is held to nothing if he has by no means been made richer, as follows from what was said above in principle II. Otherwise he must restore that in which he became richer, as is clear from principle I.

Q. 3. Whether, after the donation has been made and the error detected, he is held to warn the donee that he should give the thing back to the owner, or the owner himself, so that he may be able to recover his thing?

Resp. He is certainly held from the general principle of charity, if he can easily do it. But he seems also to be held by reason of justice, from the general obligation which the author of an injustice, even merely material, incurs.

638. ○ **Q. 4. To what is a possessor of good faith held if he has sold to another a thing bought from a thief?**

Resp. 1. In the case of eviction, that is, if the owner vindicates his thing from the buyer, the seller is held to return the price to the buyer. The reason is that the sale is wholly void, both from natural law and from positive law; therefore when eviction intervenes, the contract must be dissolved, and the buyer by the fact itself acquires recourse against the seller, since by handing over the thing to the buyer he implicitly obligated himself to repair the damage if perchance there should be a future eviction. Say the same, for the same reason, in the case of spontaneous restitution made by the buyer. - St. Lig., n. 601. - Salm., n. 89, etc. Lugo, however, denies this, D. 17, n. 109. [6] The same must be

said if another's thing has passed into the hands of various possessors by onerous title. For if the last possessor is compelled to give the thing back to the owner, both he and each of the buyers have the right of pursuing his seller, so that they may recover the price paid.

[6] Lugo, however, circumscribes this doctrine thus: If he to whom you in good faith sold another's thing, without warning you, restored it to the owner, and for that reason you cannot afterwards recover the price from him who had sold it to you, you are not held to return the price to him; because the damage which you brought upon him by selling another's thing, he in turn brought upon you by his accelerated restitution, by preventing you from being able to recover your price. Thus Lessius... This, however, must be understood with a twofold condition. The first is that for that reason you do not recover the price; for if you either can still recover it, or certainly, even if the thing had been returned to you by your buyer, you would not have recovered it, then he did not bring upon you a damage which you can compensate by denying him his price. The second condition is that your buyer, compelled by no necessity, restored the thing to the owner; for if he did it under compulsion, he is not judged to be the cause of your damage, and therefore there remains in you the prior obligation of restoring to him and of repairing the whole damage which he suffered from the purchase.

Resp. 2. Outside the case of eviction, or, according to some, even of spontaneous restitution on the part of the buyer, the matter is not without difficulty, and is keenly controverted. Thus it seems to us that it must be resolved.

1. From Roman Law the seller is held to nothing, at least more probably, unless he has been made richer from the sale. The reason is that the sale of another's thing with good faith is not held in law as wholly void. For although through it the dominion of the thing is not transferred to the buyer, nevertheless the dominion of the price is transferred to the seller. And indeed this seller, even if afterwards he detects that the thing sold is another's, is nevertheless not held either to warn the owner so that he may be able to recover his thing, or to disclose to the buyer that the thing is another's. - Thus more commonly. - Lugo, disp. 17, n. 106. - Salm., c. 1, n. 88. - Vogler, etc., against Billuart, a. 10, and others, who oblige the seller to return the price to the owner or to the buyer; because, they say, the sale of another's thing is wholly invalid.

2. From French Law the difficulty increases, because from art. 1599, C. C., the sale of another's thing is declared void. Therefore if, they say, the contract was plainly void, the buyer did not transfer dominion of the price to the seller, and consequently the seller has no right to keep that price. Therefore the price seems to have to be refunded to the owner, if he cannot reclaim his thing from the buyer. - Thus Carrière, n. 1047, with others.

Yet others deservedly contradict, whose sentence ought to seem sufficiently probable. For it is not plainly established that, even from French Law, the sale of another's thing has absolutely no effects. For from the cited article these things merely can be deduced: 1. that the owner of the thing preserves his right in it; 2. that the buyer is subject to eviction; 3. that the seller, in the case of eviction or restitution on the part of the buyer, is obligated to restore the price to the buyer. Nothing else beyond these can be deduced from the practice of tribunals. But what cause is there between the seller and the owner of the thing? What kind of recourse can this latter attribute to himself against the former [7]? Besides, it would be very hard that he who no longer has another's thing, nor has been made richer from it, should be obligated spontaneously to undergo so great an inconvenience. Therefore there remains for the owner, for pursuing his right or reparation of the right violated, recourse indeed against the actual possessor of the thing, or against the thief, but in no way against the others. - Thus Gousset, n. 929, and others.

[7] Namely, the owner has against the seller neither a personal action, because no fraud intervened, nor a real action, because the seller does not have the thing.

639. ○ **Q. 5. To what is a possessor of good faith held if he has sold to another another's thing accepted gratuitously?**

Resp. 1. In the case of eviction he is held to repay the damage to the buyer, as in the preceding case.

Resp. 2. Outside the case of eviction, namely when the thing cannot be recovered by the owner, either because the last possessor consumed it, or because he no longer appears, the seller according to the common sentence must refund to the owner the whole price received from the buyer. The reason is that from that whole price he has truly been made richer, nor therefore does he suffer any loss on its occasion; while on the contrary the owner, unjustly despoiled of his thing, is compelled to undergo the whole damage of the thing. Hence this latter must be kept unharmed from the profit which the seller received without any title. - Vogler, n. 66, and innumerable others.

Some, however, free the seller from every obligation, because the owner can have no recourse against him, just as in the preceding case. - Thus Gousset, n. 930. - Yet one must not depart from the common sentence.

640. ○ **Q. 6. If someone in good faith has bought another's thing at a moderate price and has sold it at a greater one, whether he is held to return the profit received to the owner?**

Resp. 1. Negatively, if that profit is to be attributed to extraordinary industry, for example, if he has gone to another place with notable labor so that he might find a suitable occasion of selling the thing more dearly, etc. The same must be said if the thing, in the time of detention, was made better by the care of the holder.

Affirmatively, on the contrary, if the thing increased from its nature, or from the common estimation of men, but not from the industry of the holder, because in that case it increases for the owner.

Resp. 2. But in other cases it is controverted. Some affirm, because from that profit the possessor has been made richer. - Billuart, etc.

But others deny, more commonly and more probably, because that whole profit seems to be the fruit of the industry of the possessor. - Thus Lugo, disp. 17, n. 20, and others sufficiently commonly, as Billuart admits.

641. ○ **Q. 7. To what is a possessor of good faith held if he has sold another's thing, and it has perished in the hands of the buyer?**

Resp. 1. If he had the thing by onerous title, more probably he is held to nothing, as follows from what was said in the fourth question. For 1. he is not held by reason of the thing, since he no longer has it; 2. nor by reason of damage, since he is not the cause of its destruction, nor otherwise in any way formally cooperated in the removal of the thing.

Resp. 2. If he had the thing by gratuitous title, the solution does not become so easy, because he became richer. The Theologians depart into various opinions concerning this question, and

difficulties stand before you on every side. A threefold sentence is chiefly distinguished.

The first sentence, which seems more probable, teaches that the price must be restored to the buyer. For the seller cannot keep it, since he has been made richer from it. On the other hand, he is not held to give that to the owner, because the thing perished for the owner. Besides, if the first possessor was of bad faith, as more often happens, he is held toward the owner for the value of the thing. But on the other hand, since the sale was invalid, the buyer has a right to recover his money. - Bouvier. - Carrière, etc.

The second sentence, sufficiently probable, holds that the price must be restored to the owner. The reason is that, since he has been unjustly despoiled of his thing, he must be made unharmed. But since the thing no longer exists, it is equitable that he receive that by which the thing is represented. But it is represented by the price which the seller has. Therefore... On the other hand, the nullity of the sale in no way harms the buyer; because it harms him no more than if the contract were valid; but if it were valid, he could demand nothing back. Therefore... Several rightly except the case in which the thing would equally have perished with the owner, for example, from intrinsic defect or from age; for then in reality it would have perished for him.

The third sentence says that the seller can retain the price for himself, because he need not restore it either to the owner or to the buyer. And 1. not to the owner, because the thing perished for him in every case; 2. not to the buyer, because the money which the seller accepted does not precisely represent the thing, but rather the obligation which he undertook for keeping the buyer unharmed in the case of eviction. But the buyer was not evicted; therefore the seller can retain the price by reason of the thing abandoned. This sentence counts few patrons, nor does it seem sufficiently probable.

642. ○ **Q. 8. What must be done if among various possessors of good faith there has been one of bad faith?**

Resp. That circumstance changes absolutely nothing in the condition of the other possessors, whatever place at last he occupied in the series of possessors. For the same obligation toward the owner is incumbent upon each one as if that possessor had been of good faith, since his bad faith in no way redounds upon the others. But he will be treated as will soon be said concerning possessors of bad faith.

Q. 9. What must be done if a possessor of good faith indeed detects that the thing possessed by him is another's, but the owner does not appear?

Resp. This must be determined as concerning a thing found. Therefore more probably the possessor can keep that thing for himself. - Recall what was said, n. 578.

643. ○ **Q. 10. Whether a possessor of good faith can subtract the necessary expenses which he underwent in conserving or increasing the thing?**

Resp. He can deduct all necessary expenses, indeed also useful ones, namely those which conserve the thing and make it better; for otherwise the owner would receive more than what is his. But he can demand nothing for merely voluptuary expenses, because it is not equitable that the owner pay expenses which bring him no utility.

But among expenses are not to be counted fortuitous cases, nor damages caused by accident. Thus, for example, if in cultivating another's field your horses perished, the value of the horses cannot be deducted, but only the valuation of the labor done by the horses for the cultivation of the field.

644. ○ **Q. 11. Whether he who bought a stolen thing in good faith can give it back to the thief in order to recover his price?**

Resp. 1. Negatively, if the owner appears, reclaiming his thing from him; for then he must return it to him, even with the loss of his price, because by natural law the owner can occupy his own thing wherever he finds it. Nevertheless, an action is given to the buyer against the thief.

Except from French Law, if the thing was bought in a public market, or from him who is accustomed to sell things of this kind; for then the buyer is not held to return the thing to the owner, unless the price has been paid. Now this disposition of law, according to some, has force also in the forum of conscience, because it is most useful for the public good, for the tranquillity of possessions, and greatly favors commerce [8]. - Thus Bouvier, on the possessor of good faith. Carrière, n. 1041. - Gousset, n. 1027.

[8] See what we said above concerning these French laws, where prescription was treated.

Resp. 2. If the owner is indeed known, but ignorant of the thing, more probably the buyer can send the thing back to the thief so that he may recover the money; because the buyer is not held to preserve the thing for the owner with his own damage. - Thus St. Ligor., n. 569. - Lugo. - Lessius, etc. - Yet others probably deny, because the thing cries out for its owner. - Thus Lacroix. - Laymann. - Carrière, n. 1042, etc.

Resp. 3. If the thief or another seller does not appear, or does not wish to return the money, the buyer, with the owner known, cannot sell the thing to others, nor convert it to his own uses so that he may keep himself unharmed, because he is not the owner of the thing; but he must return it to the owner, notwithstanding the loss of the price. But he preserves recourse against the seller. But if he cannot find him, the damage must be undergone by himself. - See *Casus*, n. 599 and following.

§ II. On the Possessor of Bad Faith

A possessor of bad faith is he who knows that the thing which he accepts or possesses is not his own.

645. **Principles.** - I. A possessor of bad faith must restore the thing itself in individual, if it exists, or in equivalent, if it does not exist, and besides everything in which he has been made richer [1], as was said concerning the possessor of good faith.

[1] Understand the natural fruits of the thing; for if he has been made richer through industrial fruits, he can licitly retain these for himself, as the Author warns below.

II. He is held besides to compensate every damage brought upon the neighbor from the unjust taking, even if he was not made richer. The reason is that through the taking formally unjust and of itself efficacious of damage, he violated the right of the neighbor. But commutative justice requires that the violated right be integrally repaired. Therefore...

III. Yet he can retain all industrial fruits, and deduct expenses both necessary and useful; indeed even merely voluptuary ones, where they can be separated with the substance of the thing intact, unless as

a penalty of the delict he has been condemned to lose the expenses. - St. Lig., *Hom. ap.*, n. 74, 77.

646. **Questions. - Q. 1. Whether a thief is held to restitution who stole a thing otherwise certainly going to perish?**

Resp. Affirmatively, nevertheless with the expenses made, together with the price of the labor applied to free the thing from danger, deducted. The reason is that that thing did not cease to belong to the owner, although it had been exposed to the greatest danger.

Several probably except the case in which the thief consumes the thing while it remains in certain danger, for example, food or drink now about to perish in a fire; because a thing not freed from danger is of no value for the owner. - Lugo, D. 18, n. 77, 144 and following. - St. Lig., n. 620. - Elbel, n. 80.

Several extend this to the case in which another's thing is withdrawn from proximate danger and is immediately consumed; for example, if you take another's wine, which just now was certainly going to be seized in an enemy incursion, and drink it with your family or friends. - Lugo, Elbel, ibid.

647. ◦ **Q. 2. Whether a thief is held to restitution if the stolen thing has perished with him?**

Resp. 1. Absolutely affirmatively, if it perished through the fault of the thief or of any other person whatever, because the thief was the efficacious cause of the damage, whether he himself or another by culpable negligence lost or consumed, donated, or destroyed the thing. - Thus all.

Resp. 2. Generally affirmatively, if likewise the thing perished with the thief, even without any fault of his. The reason is that the thief, by removing the thing, took all its danger upon himself. - St. Lig., n. 620.

Resp. 3. Nevertheless negatively, if the thing would have perished with the owner at the same time and by the same chance, or from its intrinsic defect, because then absolutely no damage is inflicted on the owner. More probably this has force even if the thing certainly would have perished at the same time and in the same common danger in which it perished with the thief, for example, in the same fire, or in the same public calamity. The reason is that then the theft was not the cause of the damage, but the thing would equally and in the same way and time have perished. - Thus commonly. - St. Lig., n. 620; *Hom. apost.* on the seventh precept, n. 79. - Lugo, Disp. 18, n. 141. - Vogler, n. 501, against Concina, etc. I said 1. if the thing would have perished at the same time with the owner; because if it would have perished earlier, and it must be ascribed to the theft that it did not perish, now it was always crying out for its owner while it was remaining with the thief, nor would it have perished if it had already been restored; therefore the thief is held to restitution. But if it would have perished later with the owner, the same obligation of restitution presses for the thief, who at that instant at which the thing perished with him contracted the obligation of restoring.

I said 2. in the same danger; because where the danger is wholly diverse, it can well be imputed to the thief that it perish, because without his theft the thing would not have been exposed to this danger, although it would have undergone another risk. - St. Lig., n. 620. - Some, however, contradict, because, they say, it is the same whether the thing perishes in this danger or in another, when both risks coexist at the same time.

From Roman and French Civil Law, in whatever manner the thing perished in the hands of a possessor of bad faith, he is held to restitution. Yet he does not seem to have to be obligated to restitution before the sentence of a judge, unless it is established that he is obligated by natural law. - Carrière, n. 1072. - Gousset, n. 933.

648. ○ **Q. 3. To what is a possessor of bad faith held when the thing had various value during the time of detention?**

Resp. 1. The things which follow must be held as certain:

1. If the thing was made worse with the thief, it must be restored according to the value which it had at the time when it was taken away. For otherwise the owner would not receive all that was his.

2. If the thing increased with the thief, it must be restored with all increments here and now existing, because the thing always belongs to the owner, and increases for him.

3. If the owner would have sold his thing at the time at which it was taken away from him, and the thief at the same time sold or consumed it, he is held only to restore the value which it had when he stole it.

4. If the thing increased with the thief and afterwards decreased, and it is established that the owner, at the time at which it was of greater price, would have sold or consumed it, the thief is held to return the whole greater price.

5. If the thief consumed a thing not going to be kept by the owner at the time of lesser price, he is not held to restitution of the increase, at least more probably, because he does not become rich from another's thing, nor inflict injury on the owner. - Thus more commonly, against some. - Except if the owner could not have bought at the same price a thing similar to the one consumed. - St. Lig., n. 621.

6. If the thief sold or consumed a thing not going to be kept by the owner at the time of greater price, he is held to return that price to the owner, although the owner would have done something else with the thing, because the thing fructifies for its owner. - Thus commonly. - St. Lig., n. 621.

Resp. 2. But it is controverted whether the thief is held to restore the stolen thing according to the greater value which it at some time had, if the owner would have kept that same thing until the time of lesser price, or if he would have consumed it before its price had increased. It seems more probably to be denied, because the thief is held to restore the greater value neither by reason of the thing accepted, as is plain from what has been said, nor by reason of damage inflicted, because he places the owner back in the same state in which he would have been if the injury had not been committed. - Lugo, D. 18, n. 132. - Lacroix, n. 233. - Carrière, etc.

Yet not a few others affirm, because the thing belonged to the owner with its increase at the time of greater price, and therefore then he was held to return it. Therefore, etc. - St. Lig., n. 621. [2]. - Billuart. - Antoine.

[2] ** The VV. oppose to the Author's doctrine as regards the second part of the question (p. 923) those things which St. Alphonsus (Lib. 3, n. 621) has. If the owner, he says, would have consumed the lamb at the time of the lower price, and with the thief the value increased, but afterwards with him decreased to the original value, Concina responds that the thief is held to restore the lower price, since restitution does not oblige except according to the measure of the damage inflicted. But this seems to me wholly improbable, since, when the price of the lamb had increased to five for the benefit of the owner, and at that time the thief culpably did not restore the lamb to him, the damage was not in five, but in ten, and the delay of the thief was indeed the cause of this damage; wherefore he must restore not five, but ten.

But perhaps both sentences can be reconciled, if in both places the hypothesis is supplied, or the limitation which each left to be understood according to the first part of the question. Laymann (Lib. 3, Tr. 2, C. 4, n. 5) proposes this limitation thus: But it must be limited, unless the thing is so situated that, although the unjust possessor had restored the thing in the best state, nevertheless it would not have been sold by the owner, etc., but kept, and similarly would have been made worse; then the unjust possessor satisfies by restoring the thing in the worse state to which, nevertheless without his fault, it came. The reason is that in this case the thief, by the delay of restoring, in reality brought no damage upon the owner, as is clear from the things said above.

Lugo himself clearly proposes this in the place which the Author also alleges (Disp. 18, n. 132). And first he thus proposes the doctrine later handed down by St. Alphonsus: If, while existing with the owner at the time of greater value, it was to be consumed or alienated, the thief is held afterwards to restore to the owner according to that greater value; because at the time of greater value he ought to have returned it to the owner, and from the unjust retention he was the cause that that damage arose for the owner or that profit ceased; and this whether from the fault of the thief, or without it, the value or goodness of that thing decreased. And the Author also hands down this same doctrine in the fourth and sixth Resolution. Lugo then (ibid.) adds the limitation or other hypothesis thus: If that thing decreased in value, which would have decreased in the same way with the owner, by whom it was to be kept up to that time when it was worth less; now regard must be had only to the value of the thing for the time when it was consumed, and when the damage was truly inflicted; because from that unjust consumption or from the past unjust retention or taking, the owner suffered no other damage, as we suppose. Therefore neither by reason of arising damage nor of ceasing profit must anything else be restored above that which the thing was worth when it was consumed.

In practice, since almost all the aforesaid circumstances do not become known, for the most part only compensation of the value which the thing had at the time of the theft is to be urged.

649. ○ **Q. 4. Whether a thief, besides the stolen money, must also restore the interest (*les intérêts*)?**

Resp. Affirmatively, if it is established or presumed that the owner would have received that profit, because this latter, with respect to the possessor of bad faith, must be made wholly unharmed; but otherwise probably in the other hypothesis, because it is not established that the owner has a right to that increase.

Q. 5. Whether those are held to restore who, in order to receive alms, pretend that they are poor, or true poor persons who say that they are upright when they are not?

Resp. to the first: Affirmatively. The reason is that they have no right to alms; for those who dispense them intend to help only true poor persons. Therefore restitution must be made either to the giver, or at least to truly poor persons. More probably it suffices if restitution is made to poor persons. Nevertheless restitution does not seem to have to be urged if it is a matter of very modest alms, such as are given door to door, because those dispensing them are less unwilling as regards these. - Thus commonly. - St. Lig., n. 622.

Resp. to the second: Negatively, generally, because need alone, but not uprightness, is the condition to which the donor attends or is presumed to attend. - Thus commonly.

650. ○ **Q. 6. What if another's thing has passed through the hands of several possessors of bad faith by donation or sale?**

Resp. 1. As regards the thing, this is to be restored by him who still holds it or changed it into another value, or consumed it, or lost it in any way. But if he is lacking, the robber is held. But if neither of them has satisfied his debt, the others must pay the price of the thing in equal portions. Finally, in the defect of the others, each one is held for the whole.

Resp. 2. As regards the fruits and damages of the thing, each one is held to compensation for the part of the time during which each detained the thing. But if the remaining persons do not compensate for their part of the damage and fruition, the reparation of the whole damage is incumbent upon each, yet pro rata of the time elapsed from the day on which successively they were made unjust possessors of another's thing [3]. - Thus commonly.

[3] Namely, each of them is held to repair the damages, not those which followed before he himself became possessor of another's thing, but those which followed afterwards.

Q. 7. Whether he who knowingly bought another's thing from a thief can give it back to him in order to recover the price?

Resp. It is controverted almost as in the similar case of a possessor of good faith, concerning which above, n. 644. More commonly it is denied, because by buying in bad faith he took upon himself the danger of the thing; on the other hand, no one's fraud ought to patronize him. But others affirm as probable, with St. Ligor., n. 570, because although he sinned by buying the thing in bad faith, nevertheless after the purchase he has a right, just as a possessor of good faith does, to rescind the contract; nor, by giving the thing back to the thief, does he place it in a worse condition than that in which he found it, from which moreover he was surely not held in justice to free it.

651. **Resolutions.** - 1. A possessor of bad faith is held not only to compensate the damage arising to the owner from lack of his thing, and at least foreseen in a confused way, but also every ceasing profit; namely, not only that which the owner in fact lost on account of lack of his thing, but also that which he would have received in a licit manner.

2. He who transported stolen grain belonging to another to another place, where he sold it for a greater price than the owner was going to sell it, is not held to assign the increase of the price to the owner. - St. Lig., n. 618. - But if the thief sowed the same grain in his own field, he is held only to return similar grain, so that the owner may be kept unharmed. Likewise if someone places another's eggs under his own hen to be incubated, he is held to restore only the value of the eggs.

3. If someone has stolen wheat which the owner was keeping to be sold at the time of a greater price, and consumed it at the time of a lesser price, he is held to restore that price which the owner was expecting; unless perhaps restitution is made so early that the owner can buy similar wheat at the lesser price and keep it without inconvenience until the time of the greater price.

4. If someone has killed a stolen lamb, or consumed another thing of this kind taken away by theft, he is held to pay only so much money, at least more probably, as corresponded to the

value of these things at the time of killing or consumption; unless perhaps the owner with the same money could no longer buy a thing of the same value, and at the same time wished to keep that thing so that he might obtain a greater sum of money from its sale. - St. Lig., n. 621.

5. If the thief stole and consumed wheat which the owner was going to keep until the final time of sale, but after the theft the value of a modius first indeed increased, but afterwards, when the thief wishes to restore, decreased again to that value which it had at the time of the theft, it is enough, at least more probably, to pay the price corresponding to this value. - Reuter, n. 330. - See what was said, n. 648, Q. 3, Resp. 2. - See *Casus*, n. 610 and following.

§ III. On the Possessor of Doubtful Faith

652. **Principles.** - I. A possessor of doubtful faith, whether he doubted from the beginning or only in the course of possession, is held seriously to inquire, so that he may put away the doubt. The reason is plain; otherwise he exposes himself to the danger of retaining another's thing from his own culpable negligence.

II. If, diligent inquiry having been made, the doubt perseveres, more probably he can retain the whole thing, if before the doubt arose he possessed in good faith. The reason is that in an equal case, or doubt, the condition of the possessor is the better; and possession begun with good faith creates of itself the greatest presumption concerning the justice of the possession, and attributes to the possessor a certain right, which, unless it is overcome by other stronger reasons or presumptions, ought to prevail both in the internal and in the external forum. - St. Lig., l. 1, *de Consc.*, n. 34. - Lugo, D. 17, n. 86. - Lacroix, n. 563. - Carrière, n. 1094, and others commonly, against some who say that the thing must be divided pro rata of the doubt.

III. If the doubt preceded the possession, a distinction must be made. For he who in doubt began to possess by despoiling another of his possession is held to restore the whole thing to the prior possessor [1], when it is not established that this latter began to possess the thing in bad faith; because in an equal cause his condition is the better, as being possessor. - Lugo, D. 17, n. 80. - Carrière, n. 1100.

[1] Understand, if the doubt afterwards perseveres.

But he who accepted the thing by another title, for example, of purchase, and after diligent examination the doubt still perseveres whether he from whom he accepted it is its owner, must restore, pro rata of the doubt, to the probable owner, or to the poor if the owner is unknown. The reason is that possession begun with doubtful faith does not favor him, and therefore he cannot retain the whole; nor on the other hand does he seem held to restore the whole. - St. Lig., n. 625. - Lugo, ibid.

653. **Questions. - Q. 1. To what is he held who accepted some thing in bad faith, judging it to be another's, and afterwards doubts whether the thing is his or not?**

Resp. He must be equated with him who began possession with doubtful faith; for the prior estimation is found to be false, and consequently is not to be attended to in the solution of the case.

Therefore weigh whether by his possession he despoiled another or not, and resolve according to what was said in principle III.

Q. 2. What if such a possessor neglected to inquire from the beginning, and afterwards the owner of the thing can no longer be found?

Resp. It seems that something must be restored to the poor pro rata of the hope which the owner could have had of recovering his thing. Generally that hope does not attain half the price, but is of much lesser value. - St. Lig., *de Consc.*, n. 31. - Lugo. - Lacroix, n. 564, etc.

654. ○ **Q. 3. To what is a possessor of doubtful faith held if he neglected to inquire, and the owner appears?**

Resp. Generally after the beginning of the doubt he must be treated as a possessor of bad faith; therefore he must be obligated not only to give the thing back to the owner, but also to repair all damages to him. - Lessius, c. 14, n. 83. - Carrière, n. 1088, and others commonly.

He seems to be excepted who began possession in good faith, and afterwards, when doubt had arisen, neglected to inquire, thinking that the owner could be found only with difficulty; for he would be equated with a possessor of good faith.

655. ○ **Q. 4. Whether a possessor of doubtful faith can prescribe, if, the due inquiry having been made, the doubt perseveres?**

Resp. 1. More probably affirmatively, if he began to possess in good faith; because that persevering doubt, notwithstanding the diligence applied, is invincible, and consequently even while it remains, conscience can be formed from that principle especially: The condition of the possessor is the better.

Resp. 2. But negatively, if he began to possess in doubtful faith, because he lacks the good faith required for prescribing. - St. Lig., n. 504. - See above, n. 589.

Q. 5. Whether a possessor of doubtful faith who began to possess in good faith is held to restitution if, inquiry having been made, he finds that the thing is more probably another's?

Resp. More probably negatively, because from certain possession a morally certain right arises. Besides, until another has proved his certain right, the axiom has force: The condition of the possessor is the better. - St. Lig., l. 1, n. 35, and others very commonly according to St. Lig., against some who teach that then restitution must be made pro rata.

Q. 6. Whether a debtor, in doubt concerning the completed payment of the debt, is held to pay integrally or in part?

Resp. Generally one must attend to the various circumstances of things, so that it may be discerned whom the presumption favors. - See what is to be said concerning the causes excusing from restitution, n. 721.

656. **Resolutions.** - 1. If you possessed another's thing in good faith, and when a doubt supervened and remained after inquiry, relying on the principle of possession, you consumed it, but afterwards the owner unexpectedly appears, you will be held to restore only that in which you have been made richer. This follows from what has been said. - St. Lig., n. 607, 608.

2. When none of those concerning whom there is doubt whether they are owners of the thing possesses the thing itself in fact, if the doubt is equal, the thing must be divided equally among them; but if the doubt is unequal, it seems to have to be divided according to the proportion of the doubt. But if the thing cannot be divided, it must be sold, so that the price may be divided; or, from the consent of the parties, it must be granted to one who is obligated to render the right to each of the others; or also it must be cast into lots, so that it may be assigned to him whom the lot will favor. - Lacroix, n. 566. - Sanchez, *Decal.*, l. 2, c. 23, n. 173. - Carrière, n. 1101, and others.

3. If you doubt whether your predecessor possessed goods by a legitimate title, you can, the matter having been weighed and the doubt persevering, nevertheless accept and retain the inheritance, provided it is established that he possessed in good faith. For if the axiom, in doubt the condition of the possessor is the better, favors your predecessor, it favors you also as successor; for in this case the principle of the possessor of doubtful faith who began possession in good faith must be applied, since predecessor and successor by law effect one moral person.

4. In doubt whether someone began possession in good or bad faith, it must be presumed in favor of the possessor, because delicts are not presumed but must be proved. Yet if someone is found actually in bad faith, and it is doubted whether he began to possess with this bad faith, he must be presumed to have been of bad faith from the beginning, because one who is once bad is always presumed to be bad, according to Rule of Law 8 in the Sext. - Thus Lacroix, n. 567. - Lugo, D. 18, n. 16. - See *Casus*, n. 622.

Article II. On Unjust Damage

657. ○ An unjust damager is he who injures another's right and harms the neighbor in his goods, yet does not thereby become richer.

A twofold fault is distinguished by which damage can be inflicted, namely theological fault and juridical fault. - Theological fault is that which includes an offense of God, that is, formal sin, whether mortal or venial. - But juridical fault is an omission of diligence from which damage comes to another, whether it is a formal sin or not. - St. Lig., n. 549.

But juridical fault, from the common interpretation of Roman Law, is either broad, slight, or slightest. Broad fault is the omission of diligence which men commonly are accustomed to apply in similar business. Slight fault is the omission of diligence which more prudent and more diligent men are accustomed to apply. The slightest fault is the omission of diligence which only the most prudent and most diligent are accustomed to apply. But this distinction of faults is not expressly commemorated in French law [1].

[1] It is supposed, however, when for diverse circumstances of the thing the same code requires lesser or greater diligence. See art. 1137 and art. 1927, compared with 1928.

658. **Principles.** - I. An unjust damager is held to restore 1. the whole equivalent of the thing damaged; thus, for example, if someone culpably burns another's house, he must repay its whole price to the owner; 2. the whole equivalent of damages foreseen besides the damage of the thing, if any have come from it. Hence, for example, if a craftsman is compelled for some

time to omit his customary work because you destroyed the instrument necessary to him, you are held to compensate him not only for the value of the instrument, but also for the ceasing profit.

The reason for this principle is plain from what was said, n. 532 and 626. For the injured owner must be made wholly unharmed. But for this it is not enough if the damager pays him the intrinsic price for the thing, when the other has suffered other detriments from the privation of his thing; since he would not recover all that he lost from the unjust damage. Nor is it an obstacle that no advantage came to the damager from the damage; for the whole reason of restitution must be sought not from utility received from another's thing, but from the damage inflicted.

659. ◦ II. In order that a damaging action induce an obligation of restitution, by the law of nature, a threefold condition is required, namely that it be unjust, an efficacious cause of the damage, and theologically culpable; that is, that it be unjust truly, efficaciously, and formally.

1. Unjust. For the obligation of restitution necessarily supposes the strict right of another violated. But strict right cannot be violated except through an unjust action, or one opposed to commutative justice, according to what was said above, n. 532, etc.

2. An efficacious cause of the damage, namely 1. that the action influence the damage through itself, so that this damage is truly judged to follow from it; 2. that it can be imputed to such an agent. The reason for each is clear. For an action cannot be imputed to anyone unless it is his own; nor can the detriment of an action be ascribed to anyone unless his action was the true and efficacious cause of the detriment physically and morally.

But this happens when an action is posited which from its nature, or from the circumstances, has at least a probable connection with the damage. Hence 1. a merely occasional cause of the damage is not sufficient for restitution, because it is not an efficacious cause, but only the occasion of an efficacious cause. Hence if, on occasion of a theft perpetrated by you, another is accused and condemned, you are held by no obligation of repairing his damage. Nor 2. is an accidental cause sufficient for restitution; for this is that which, considered in itself and with the circumstances attended to, does not have a probable connection with the event, and therefore must not be called an efficacious cause. Hence, if you hand a sword to Titius without probable foresight of his abuse of it, you are not guilty of injustice if he commits homicide with that sword.

3. Theologically culpable. For there cannot be an obligation of restoring in the forum of conscience unless an injury was committed in the same forum; nor can conscience be bound by an obligation of repairing an injury which it itself did not bring about. Otherwise even sleepers and the insane, if they inflicted some damage, would be held to restore in conscience, which is absurd. But there is no injury in the internal forum where there is no theological fault; for to injury there is required a will of harming at least indirect, or some foresight, at least confused, of unjust damage. Therefore, etc. - St. Lig., n. 551 and following; *Hom. apost.*, n. 39 and 41.

660. ◦ III. Nevertheless even from merely juridical fault there can be an obligation of restoring in conscience after the sentence of a judge. For a just sentence of a judge must be

obeyed; otherwise laws would not provide for public security, and would be empty. But the sentence of which we are speaking is just. For that law is borne for the common good and tends to make men more cautious, lest they inflict damage on others. Besides, before every event it favors all citizens equally. Therefore no one can complain about it. Therefore, etc. Thus commonly. - Billuart, diss. 8, art. 4. - St. Lig., n. 554.

661. **Questions. - Q. 1. Whether theological fault is required for inducing an obligation of restitution for damage inflicted on another's thing, which was destined by some CONTRACT, for example, of leasing, deposit, or loan, etc.?**

Resp. There is a twofold probable sentence. The first sentence, which appears more probable, affirms absolutely that theological fault is required. The reason is that merely juridical fault does not suffice for inducing an obligation in conscience, as is clear from what was said above in principle II, unless a special pact has intervened. But concerning such a pact there is no proof at all; indeed it is not presumed that the contracting party wished in conscience, under grave obligation, to undertake so great an obligation with only juridical fault. - Thus Lugo, D. 8, n. 106. - Lacroix, n. 177. - Roncaglia; and St. Lig., n. 554, calls this sentence very probable [2].

[2] Card. De Lugo, whom St. Alphonsus follows (ibid., n. 554), although he admits (*De Iust.*, Disp. 8, n. 100) that even without theological fault there can be an obligation of repairing damages on account of slight or even slightest fault, whether this happens by force of an explicit pact among the contracting parties, or by authority of laws which establish the same by way either of legal penalty, or conventional penalty, or insurance, nevertheless denies with others (ibid., n. 102-104) that such an obligation, considered by natural law alone, is present. Indeed he adds (ibid., n. 106-110), from common sense, that neither is this the intention of the contracting parties, nor do the laws according to the common interpretation exact it.

Nevertheless he also adds other things (ibid., n. 110-113), by which it is shown that the practical conclusions of the second sentence do not oppose the preceding sentence. This indeed is nothing wonderful, because Antoine did not advert to it. For what good would you seek or expect from such a one, where solid doctrine and criterion are needed? And indeed, by what pact does Antoine (*De Iust.*, Cap. 3, q. 5, Resp. 4) reconcile these two things, namely that someone omits the diligence due from the nature of the thing and from a pact at least implicit in guarding another's thing, and nevertheless is wholly free from theological fault? Therefore Lugo skillfully warns that, setting aside the case of forgetfulness or inadvertence, in which, short of theological fault, at least grave, there is no obligation of restitution in the forum of conscience before the sentence of a judge, it never happens that there is an obligation of restoring from juridical fault which is not joined with theological fault, and indeed with one equally grave for imposing the burden. The reason is sufficiently manifest, because negligence in the office undertaken of guarding another's thing is, from its genus, mortal fault.

Nor should you object that mortal sin is conceived with difficulty when the juridical fault is slight, and much more if it is the slightest. For slight or slightest juridical fault can have place when someone is held by force and nature of the contract to apply that diligence which is fitting to a business demanding more exact or most exact diligence, and which for that reason, with the nature of this business considered, can be called common, since it is commonly required for such a business. Therefore if the nature of the contract imposes the obligation of the most exact diligence, it is nothing wonderful that its omission imports grave guilt.

Thus indeed Card. De Lugo, whose doctrine St. Alphonsus both embraces and adorns with this encomium (Lib. 3, n. 552): Thus, he says, the most learned Lugo, who after St. Thomas can easily be called princeps among the other Theologians, and not rashly; since in discussing doubts this Author, often with no one going before him, places the sickle so to the root that the reasons which he himself brings forward can scarcely be solved.

The second sentence denies that theological fault is necessary in order that someone be subject to the burden of restitution, if you except the case in which the contract yields to the sole utility of one of the contracting parties, for example, of him who received the thing as a loan, etc. The reason is that

when another's thing is granted to someone for his utility, equity demands that he guard it very diligently. Hence there seems to intervene an implicit pact by which the holder of the thing obligates himself to guard it with special care, or to repair the detriment which the thing could undergo from omission of this care. - Antoine, quest. 5. - Collet, c. 2, art. 4, etc.

662. ○ **Q. 2. Whether theological fault is required for the obligation of restitution on account of damage inflicted on another in fulfilling an office, or in observing a QUASI CONTRACT? For example, if a physician from inculpable error has given a harmful remedy to the sick person?**

Resp. More probably affirmatively, as in the preceding question. The reason is 1. because an obligation of restoring on account of merely juridical fault in an office, or in a quasi contract, cannot be proved either from natural law, or from positive law, or from the convention of the parties; 2. because such an obligation would be harmful to the public good; for thence it would happen that upright and God-fearing men would be kept away from undertaking the affairs of others, and also from public offices. - St. Lig., n. 555. [3]. - Billuart, diss. 8, art. 7. - Lacroix, n. 184, and Antoine himself also, quest. 4.

[3] St. Alphonsus namely, after Lugo (*De Iust.*, Disp. 8, n. 93), holds as probable that these are held only from broad juridical fault, and grave theological fault.

But what the same St. Alphonsus adds (same, n. 555) with Laymann, that he who accepts a stipend is held from slight fault, signifies nothing except that this person is held to greater diligence; and therefore St. Alphonsus condemns him of grave fault if he does not apply this.

Yet the Doctors commonly except one case, says Lugo (ibid., n. 90), namely, they oblige to repair damage from the slightest fault, when someone professes himself to be most diligent and most skilled, and offers himself as such to someone seeking not a mediocre but a most diligent artisan. Yet he limits this doctrine unless he receives only the common stipend. But the reason of the resolution is plain from what was premised in the preceding Note.

Q. 3. Whether he is held to restitution who indeed inculpably placed the cause of damage, but afterwards did not impede it, although he could have impeded it?

Resp. Affirmatively. The reason is that each one is held from justice to prevent his action from harming the neighbor; therefore he is also held to prevent the evil following from his action from persevering. - Thus commonly. - St. Lig., n. 564.

Hence 1. he who inculpably set fire beneath another's house, when he adverts to the danger of fire, is held from justice to impede it, if he can; 2. likewise the pharmacist who by error sold poison for medicine must from justice warn the buyer; 3. likewise he who by error said something grave against the reputation of another is held afterwards, when the error has been known, to correct it; and if he does not do so, he sins gravely and is obligated to the reparation of all damages which come from this.

663. ○ **Q. 4. Whether damage following from a cause indeed culpably placed, but already retracted when the damage is inflicted, must be repaired?**

Resp. Affirmatively, at least if that damage was determined and foreknown in species. Thus, for example, if someone voluntarily gave poison to another, and afterwards cannot impede its effect, however much, repentant of the deed, he may wish it, he will be held to repair the damages coming

from the homicide. The reason is that he who placed the cause of the damage always continues to influence it efficaciously. - Thus commonly [4].

[4] Hence it happens that retraction does not even prevent this, namely that the effect afterwards perhaps following induces irregularity or some censure. Suarez had already adverted to this (*De Peccat.*, Disp. 3, Sect. 4, n. 7), and Lugo afterwards (*De Poenit.*, Disp. 16, n. 445) hands it down as the common sentence: However much, he says, the past will may in fact be retracted, still, if the effect of death afterwards follows, he who had given poison will incur irregularity or excommunication, according to the common sentence of nearly all, as if the will had not been retracted; because, namely, by that retraction it is not taken away that the effect followed as voluntary..., whence it absolutely denominates him a homicide; otherwise it would not render him irregular.

Nor is the reason valid which St. Alphonsus reports against this from the Salmanticenses (*De Cens.*, Cap. 1, n. 155; Lib. 7, n. 40), namely that censures are not borne except against the contumacious; but he is not such who has already retracted the evil will. For it is answered that the contumacy of will which is required for incurring censures is that by which someone knowingly and willingly transgresses the law, not the lack of retraction before the ultimate effect; for a censure does not punish the sin of an evil will persevering up to the consummation of the effect, but the sin of a will inflicting death through the positing of a cause, although it was expedient and wisely provided by the Church that a penalty of this kind not be incurred unless the effect followed, lest, namely, on account of the uncertain event of the crime, the censure be uncertain, and lest it happen that one be regarded as excommunicated on account of homicide who afterwards was detected as not guilty of homicide, since death had not followed.

Q. 5. Whether damage must be repaired which has indeed been inflicted by accident, but while applying oneself to an illicit work?

Resp. Negatively, because that damage is not voluntary, since it was not foreseen even in a confused way. Nor does it matter that the action was illicit; for this pertains nothing to the account of justice. Thus a Cleric who, while applying himself to hunting against the prohibition of the Church, kills a man instead of a wild beast, is no more guilty of injustice than a layman who had done this. Indeed damage inflicted by accident need not even be repaired, even if it happened on the occasion of an unjust action, because it has no connection with that action. Hence he is not held to restitution who kills Titius, whom he did not at all see nor know to be present, while he was directing a gun at Caius. - Thus very commonly. - Vogler, n. 170. - Lugo, D. 8, n. 72 and 82. - St. Lig., *Hom. apost.*, n. 39.

664. ○ **Q. 6. Whether you are held to repair damage which you brought upon someone from error, while you intended to harm another; for example, if you burn the house of Caius, which you think is the house of Titius your enemy?**

Resp. It seems that it must be affirmed. For in that case all the conditions required for urging restitution are present, namely an unjust action, an efficacious cause of damage, and theological fault. Nor should you say that your action is not unjust relatively to Caius, whose damage you did not will; for you intended to destroy that thing, wholly determined. But by destroying it you undertook the burden of repairing that same thing. But it matters nothing whose it may be; for the question is not about the name, but about the thing. Therefore the error does not affect the substance of the act, but something merely accidental. - Thus commonly, as St. Lig. admits, although he dissents. - Vogler, n. 202. - Bonacina. - Sanchez. - Busemb., etc.

Some nevertheless deny with St. Alph., n. 629, namely Lugo, D. 17, n. 75. - Lacroix, n. 200 and following. - Their reason is that the action was not voluntary toward the damaged person, since it proceeded from inculpable ignorance of his right. But from what has been said this reason seems to have little force [5].

[5] ** The VV. (p. 923 in note) object that the opinion of St. Alphonsus rests on this unshaken principle: In order that you be held to restitution, it is required and suffices that your damaging action be at once affectively and effectively, or formally and materially, unjust; if either of these is lacking, the obligation of restoring ceases.

Resp. St. Alphonsus (Lib. 3, n. 556), with Busembaum, thus defines and distinguishes material and formal injuriousness: Damaging injuriousness is twofold, namely material, as, for example, when someone destroys, accepts, or retains another's thing in good faith, that is, judging probably that this is licit for him, or that it is his own; formal, by which someone destroys, accepts, or retains another's thing in bad faith, that is, when he knows or can and ought to know that this is not licit for him and that the thing is not his own. See Less., Laym., Bonacin. But, so that we may insist on the example which both St. Alphonsus (Lib. 3, n. 629) and the VV. use, whoever burns and destroys the house of a friend, thinking that it is an enemy's, certainly does not fail to know that the house which he destroys is another's; and this is true even if it is not the house of him whose he believes it to be. Therefore knowingly and willingly he burns and destroys a thing which he knows is not his own. But from the definition this is not material but formal damaging injuriousness.

But the argument which is commonly brought against this (see St. Alph. and the VV. in the cited places), namely that from the killing of a friend who was thought to be another, namely an enemy, deceit is absent, because in no way did you intend to kill Paul the friend; indeed rather you would in no way have killed him if you had known that he was Paul the friend, this argument, I say, Molina had already anticipated thus (Tom. 4, Tr. 3, Disp. 30, n. 5): To the argument of the contrary opinion, he says, the consequence must be denied. For although that homicide did not have deceit with comparison to Paul, nevertheless he had deceit as regards that killing, insofar as it was the killing of a certain man, whom, beyond the estimation of the one killing so unjustly and with deceit, it happened to be Paul. But it is enough that that homicide was committed simply with deceit.

Molina (ibid., n. 2) confirms this response from L. *Eum qui* 18, § 3, *De iniuriis*, where it is read thus: If an injury is done to me by him to whom I am unknown, or if someone thinks me to be Lucius Titius, when I am Caius Seius, that which is principal prevails, namely that he wished to do an injury to me; for I am certain, although he thinks me to be other than I am, and therefore I have the action for injuries. But Molina adds: Here you see that the fact that the one bringing injury upon me thinks me to be another man in number than I am does not take away his fault, nor excuse him from penalty, because in reality he intends to do an injury, and does it with deceit.

But he had first explained the matter thus (ibid.): In that killing of Paul two things must be considered. One is the unjust killing of a man; but the other is of this man in singular, suppose Paul... But that killing, insofar as it has the account of the unjust killing of a man, was deceitful, because it was done from the intention of committing homicide concerning that man. But it is by accident that that killing does not have the account of deceitful homicide because it terminated at this man in singular.

It is confirmed and declared with the same Molina (ibid.): When, he says, in some delict there is knowledge of the delict joined with invincible ignorance of some circumstance which adds to the delict either gravity or a diverse species, then that ignorance, just as it excuses from the fault which results from that circumstance, so excuses from the penalty which corresponds to the circumstance. But just as this ignorance does not excuse from fault for that part of which knowledge is present, so neither can it excuse from the corresponding penalty and consequent burdens.

And hence it is plain how far that which St. Alphonsus (l.c.) replies after others has force: It is answered, he says, that this proceeds in the external forum, where the presumption of knowledge of the injured person stands against the one injuring, to whom belief is by no means given if he asserts that he wished to offend another. For in the external forum it is not a presumed delict that is condemned and punished, but a delict perpetrated in the unjust killing of a man, whoever this may have been. Indeed it so far departs from the true that the forum relies on such a presumption of knowledge and takes no account of an error of this kind, that the laws expressly establish the contrary. Thus (L. *Illud* 3, § 4, ff. *de iniuriis*): If someone struck a free man, while he thinks him his own slave, he is in such a case that he is not held for injuries. And again (L. *Si cum servo* 4, ff. same title): If, when I wished to strike my slave with a fist, I unwillingly struck you standing next to him, I am not held for injuries. Therefore even the external forum takes account of this error. Yet the distinction between the preceding and this case Gotofredus indicates very well in a note: For, he says, my intention was of applying myself to a legitimate thing, that is, of punishing a slave. And Molina had gone before (l.c., n. 3), saying: He who thus intended to strike his own slave intended to do no injury, but was using his own right, wishing to punish his own slave. But truly it cannot be said that he used his own right or did not intend to do an injury, who wished to kill or strike an enemy, or wished

to burn the house of his enemy. But whoever, knowing that he inflicts a damaging injury by his act, inflicts it with a wholly free will, surely takes upon himself the consequences of his action, which are certainly formally unjust.

It could easily be shown here by what route both Tamburini and Sporer, and some others after them, were driven sideways by certain arguments sought merely from some parity, which indeed is very easily detected as limping. But these arguments cannot be suitable to a brief Note.

665. ○ **Q. 7. To what is he held who indeed inflicted grave damage, but with slight fault, for example, from defect of advertence, etc.?**

Resp. More probably he is held to nothing. For he cannot be obligated either under grave or under light obligation: 1. not under grave obligation, for a grave obligation has no proportion with slight fault; 2. nor under light obligation, because a light obligation has no proportion with a grave thing. - Thus St. Lig., n. 552. - Lugo, D. 8, n. 56. - Vogler, n. 109. - Lessius. - Roncaglia, etc.

Others, however, oblige him under grave obligation to repair the whole damage. - Others indeed to the whole, but under light obligation. - Finally others to some part only, according to the proportion of the fault. But these sentences seem to introduce the greatest inconveniences.

666. ○ **Q. 8. Whether he who inflicted grave damage through several venial faults deliberately committed is held under grave obligation to repair that whole damage?**

Resp. 1. Affirmatively, if the damage was inflicted on the same person, although the damager did not sin gravely. The reason is that he is held to repair the whole damage committed voluntarily and freely. But the whole damage was freely inflicted, and besides is grave in the hypothesis; therefore that whole damage [6] must be repaired under grave obligation. - Vogler, n. 124 and 126. - Lugo, D. 8, n. 69, etc.

[6] St. Alphonsus nevertheless warns (Lib. 3, n. 553) that it suffices for avoiding mortal sin that only that small matter which completes grave matter be restored, as Sanchez, Lessius, Vasquez, etc., more probably hold.

Resp. 2. But more probably negatively, if minute damages were inflicted on diverse persons. The reason is that on the one hand no one suffers grave damage, and on the other hand the damager does not become rich by another's thing [7]. Hence the present case differs from the similar question related above, n. 630, because a thief becomes rich from minute thefts, but not a damager.

[7] It has already elsewhere been noted that the depravity of theft does not consist in this, that someone becomes rich from another's thing, but that he becomes rich unjustly. But this injustice resides in the violation of another's right, which is present in the same way both if someone becomes richer from the violation of another's right and if he does not become richer, because, for example, either he immediately consumes, or loses, or destroys the thing stolen, or inflicts damage while taking nothing to himself. And since the violation of another's right carries with it the obligation of repairing that same right, this is present and must be present both if the violator became richer from it and if he did not become richer. Since these things are so, as regards the present matter it ought to be evident that he who has harmed several by minute damages in such a way that the collected matter of all the damages together must be judged grave is in absolutely the same condition and therefore is bound by the same obligation of restoring, both if he has been made richer from the matter of the several thefts, and if he has by no means been made more rich, since either he at once consumed what was gradually stolen, or harmed others while stealing nothing for himself. Therefore if any obligation of restoring is present on account of minute damages inflicted gradually on several by thefts from which someone has been made richer, the same obligation must be said to be present even when from the inflicted damages no utility has accrued to the damager. For absolutely the same reason prevails in both cases.

Q. 9. Whether one who thinks from invincible error that the damage inflicted by him is much less than it really is, is held to restore all that damage if afterwards he recognizes the true price; for example, if someone throws into the sea another's gem worth 100, while he believes it to be worth only 40?

Resp. Probably he is held to restore only pro rata of the known damage, because damage is not judged willed which is invincibly unknown. - St. Lig., n. 615. - Elbel, n. 90. - Vogler, n. 189. - Carrière, n. 1151, against others.

Nevertheless there will be an obligation of repairing the whole damage if at some time, on account of a suspicion of greater price arising at least in a confused way, the whole damage becomes voluntary.

667. ○ **Q. 10. Whether an owner is held to repair damage brought upon the neighbor by his animals?**

Resp. 1. Affirmatively, if from theological fault he neglected to watch over the animals. For each one from natural right is held diligently to guard his animals, lest they inflict damage on others, just as he ought to take precautions lest detriment come to the neighbor from his own actions.

Resp. 2. But if theological fault has been excluded, he is indeed not held before the sentence of a judge, as is plain from principle II, n. 659; but he is certainly held when sentence has been pronounced, as is clear from principle III.

Q. 11. Whether he is held to restitution who by his bad example induced others to inflict damage, if he foresaw the efficacy of the bad example?

Resp. The first sentence, the more probable one, denies it, because he who gives bad example is not the cause of the damage, but a mere occasion. For an evil action does not through itself tend to this, that it should excite others to imitate it. Therefore the other damagers are determined wholly from themselves to inflict the damage. - St. Lig., n. 537 and l. 2, n. 45. - Salmant. - Laymann. - Sanchez. - Lugo, etc.

The second sentence affirms it, because one giving bad example with foresight of contagion can be held as an efficacious cause of the damage, since in some way he influences the determination of those who inflict the damage; and experience teaches that men are moved more by examples than by counsels, according to the axiom: Words move, examples draw. - Antoine, p. 2, c. 3, q. 13. - Billuart, diss. 8. - Cuniliati, etc.

668. ○ **Q. 12. Whether he is held to restitution who doubts whether he himself was the cause of damage?**

Resp. 1. If the doubt turns on the existence of the damage, more probably he is held to nothing, provided that after diligent inquiry the doubt perseveres. The reason is that, since the fact of the damage is not certain, it cannot produce a certain obligation of repairing it. This is clear from this principle: An obligation is not to be imposed unless it is certainly established. Likewise from this other principle: A fact is not presumed, but must be proved. - Thus St. Lig., n. 562. - Lacroix, n. 574. - Vogler, n. 73, and others more commonly against some.

Resp. 2. If the doubt turns on the influence of the action upon the damage which certainly happened, it is controverted, and there is a twofold probable sentence. - Thus St. Lig., ibid., etc.

Nevertheless more probably restitution must be urged whenever it is certain that damage was inflicted, and the doubt is only who among several was the damager, when they posited the damaging action in the same way; for it is repugnant that an innocent person should certainly have to suffer because it is not established to whom the damage must be imputed. Thus two men together firing a bullet at a third seem to be obligated pro rata to compensate the damages arising from mutilation or killing, although it is discovered that he was injured by only one or the other. Some nevertheless excuse them wholly from restitution, but they contend this with less firm arguments [8].

[8] ** The question which the Author touches upon in this last paragraph differs somewhat from that in which St. Alphonsus (Lib. 3, n. 562) disputes whether, in doubt whether your counsel, or command, consent, recourse, flattery, silence, etc., was the cause of the damage, etc., you are held to restitution. For in this question of the Holy Doctor there is some certain person who is held to restitution, for example, the executor. But on the contrary in the question proposed by the Author this seems to be lacking. Hence the VV. (p. 924) oppose to this resolution of the Author not indeed those things which the Holy Doctor has in the cited n. 562, but those which the same treats in n. 657 and 658, where he treats of restitution on account of adultery; since both the Author also treats this peculiar question below, n. 733, it is better to reserve the response to the objections for that place.

669. ○ **Q. 13. Whether you are held to repair damage occurring to someone on occasion of your unjust action; for example, if you have stolen and the theft is imputed to him?**

Resp. 1. Certainly negatively, if you did not foresee that damage. It is plain from what was said above in principle II, n. 659.

Resp. 2. Also more probably negatively, although you foresaw this damage. The reason is that your action, posited with the foresight of damage alone, must be held not as its cause through itself, but only by accident. This is also clear from the second principle, ibid. Except if at some time the circumstances were such that between them and a grave suspicion concerning another a true connection was given. - St. Lig., n. 635. - Lessius. - Lacroix, n. 157, etc., against others.

Resp. 3. Indeed probably it must also be denied, although you acted purposely so that your action might be imputed to him; because this action is always only the cause of the damage by accident, and not through itself, for it did not efficaciously influence that damage from its nature. For a depraved intention does not bring it about that a work be unjust which of itself is not unjust with respect to a third party [9]. Nevertheless, it must be excepted if someone should use those means which furnish a very grave suspicion for accusing another; for example, if he clothed himself with that person's garments to perpetrate homicide and threw these garments away defiled with blood, etc. - St. Lig., n. 656. - Lessius. - Vogler, against others.

[9] We have observed elsewhere with Cardinal De Lugo that the patrons of this doctrine are driven by its difficulties, when merely the species of the fact is changed, so far that they do not hesitate to set it aside. The same is to be noted also as regards the things which are said below at Q. 16.

670. ○ **Q. 14. Whether an unjust distributor of offices is held to restitution?**

Resp. 1. More probably he is held to nothing toward the worthy person passed over, excluding the case of a concourse, because he violated no one's strict right. - St. Lig., l. 4, n. 106. - Vogler, n. 241,

and others commonly.

Resp. 2. By reason of the election of an unworthy person, he is certainly held toward the society concerning all damages thence arising. The reason is that there is judged to be present a pact of strict justice between the society and the elector, by which the latter is bound not to choose unworthy ministers. - Thus commonly. - Vogler, ibid. - St. Lig., *Hom. apost.*, tract. 13, n. 39.

But more probably he is held to nothing by reason of the election of a less worthy person, although he can sin gravely. The reason is that the society is not judged to oblige electors by the title of commutative justice to choose the more worthy. - Vogler, n. 243. - *Hom. apost.*, ibid.

671. ○ **Q. 15. Whether he is held to restitution who impeded another from the attainment of some good or benefice?**

Resp. 1. Affirmatively, if the neighbor has a strict right to obtaining the thing, for example, in the case of a concourse.

Resp. 2. If the neighbor does not have a strict right to obtaining the thing, one must distinguish: 1. it must be affirmed, if this is impeded by unjust means, for example, by force, fraud, calumny, fear, etc.; 2. but denied, if it is impeded by means just in themselves, for example, by persuasion, prayers, etc. The reason is that no right of another is then violated, neither in itself nor in the means. - Thus commonly. - *Hom. apost.*, n. 61.

Q. 16. Whether you are held to restitution if from an evil intention, for example, from hatred, yet with means unjust of themselves excluded, you turn another away from attaining a good to which he does not have a strict right?

Resp. More probably negatively. The reason is that no injury is inflicted on the neighbor. For an evil intention does not suffice for injury, but an external action is required which is a true and efficacious cause of unjust damage. - St. Lig., n. 584. - Elbel, n. 108. - Antoine, q. 15, and others more commonly against others.

672. **Cases.** - 1. Didacus at night puts away a very precious crystal vessel of Caius in a corner of the house through which no one was going to pass soon, intending to put it in a safe place very early in the morning. But Basilius, entering the house without a light on this same night, strikes against the vessel and breaks it. What of right? - Resp. Neither Didacus nor Basilius is held to restitution, because theological fault is lacking on the part of both; for neither thought of the damage or of its danger. Indeed neither would be held if either had foreseen some very remote danger, because in moral matters attention is not given to mere possibility. - Vogler, n. 177, and others commonly.

2. Quirinus, intending to steal cloth, enters the workshop at night and lights a candle, applying diligence to avoid every danger of fire; but by an unforeseen chance, namely the leap of a cat, the candle is thrown down into straw, and in a short time the whole workshop is set on fire, and the thief, having scarcely taken flight, escapes unharmed. What concerning Quirinus? - Resp. He is held to nothing, because he by no means foresaw the danger. Indeed he is not held concerning the cloth which he wished to steal, even if he had grasped it, because that damage also is involuntary; nor is the grasping of the cloth the cause of the damage; nor did the

carrying of a candle, sufficient caution having been applied, create a proximate danger of fire. Yet if the thief had not only grasped the cloth, but had consummated the theft by removing it from the power and custody of the owner, when by chance, for example, by the lit candle, the cloth should be burned, he would be held concerning it, just as is said concerning any stolen thing which perishes by fortuitous chance with the thief. - Thus Lugo, D. 18, n. 88. - Vogler, n. 178. - Lacroix, n. 165 and following. - Reuter, n. 320, etc.

3. Pomponius, impelled by the spirit of vengeance, while he was seen by no one, fired a bullet at the goat of Maurus peacefully grazing in the field of its owner; but instead of the goat, unharmed, he struck and killed the cow of Marinus lying behind a hedge, with himself wholly ignorant of this. To what must Pomponius be obligated? - Resp. To nothing. For he is not held to anything for the aforesaid goat, since it remains unharmed; nor for the cow, since he in no way foresaw its damage. But what if the cow belongs to the same owner? The difficulty increases, since the damager truly intended to inflict damage on such a person; for although he does not destroy the thing specially intended, since in general he wishes to harm the enemy, the damaging action which he posits seems formally injurious to the same owner. Yet standing in the rigor of the principles, he can still more probably be excused, if he in no way, not even in a confused way, foresaw this other damage. For it can be said that it happened merely by accident; nor does the depraved intention of harming that same person bring it about that the damage of a thing wholly unknown becomes voluntary. It is otherwise, however, if, willing generally to harm the enemy as much as he could, he had known in some confused way various objects to be damaged [10]. - Recall what was said, n. 659 and 669.

[10] Namely, if he had known that from the firing of the bullet some damage, however not clearly known by him, could perhaps follow. For if nothing is present from which Pomponius may think that it can happen that by the firing he may harm the enemy, the act will proceed from concomitant ignorance, and accordingly the killing of the cow will be involuntary if not contrarily, at least negatively; it will namely be not voluntary.

4. Sidonius, seeing Justin passing by and thinking him to be Titius, says to his companions: Behold, this man is not the primipilus of the scrupulous!... But he is a man of nothing, a thief, fornicator, and drinker. It is asked: What must Sidonius do, when the error has been detected? - Resp. He must retract what was said before the same companions, although he said these things against Justin involuntarily; and if he does not do so, he will be held to repair all damages which follow from the defamation. - Reuter, n. 320, and others commonly.

5. Babinus, by repeated request and flatteries, yet with every fallacy excluded, induces the dying Rogerius to tear up the testament already composed in favor of Paul, so that he himself, or a friend, or a blood-relative may be constituted heir. But Babinus is determined to doing this, besides his own advantage or a friend's, from inveterate hatred which he cherishes against Paul. Is Babinus guilty of injustice? - Not at all. For although on account of hatred he has sinned gravely against charity, nevertheless he does not seem to have injured the virtue of justice, because he violated no strict right of Rogerius. The same would have to be said if someone from hatred had turned a testator away from constituting Paul heir, so that any other might be constituted in his place. - Elbel, n. 115. - Antoine, c. 4, q. 15. - Recall what was said, n. 671. - See *Casus*, n. 627 and following.

Article III. On Unjust Cooperation

Cooperation in the damage of the neighbor can be done in nine ways, of which the six former are positive, the three latter negative. All are contained in the following verses:

Command, counsel, consent, flatterer, recourse, Participating, mute, not resisting, not manifesting.

§ I. On the One Commanding

673. ○ One commanding or mandating is said to be he who induces another to act, so that he may inflict damage on another in his name.

The one commanding is held to repair every damage commanded and inflicted by force of the mandate; but otherwise if he only approves damage done in his own name [1]. The reason is that in the former case, but not in the latter, he efficaciously influences the damage. But for this it is required that he acted as a true master, or that through force, fear, or authority, he morally compelled the mandatary [2].

[1] Mere approval of the deed pertains nothing to the account of mandate, and accordingly he who merely approves what has already been done neither ought nor can be called one mandating.

[2] The Author seems to have taken mandate for a certain moral compulsion or necessity of acting imposed on another. But this is far distant from the notion of mandate, which by jurists and theologians is commonly defined as a contract of good faith, consisting in consent, by which a business is committed gratis to another who undertakes it. Therefore nothing pertains here to whether the one mandating is the Superior of the mandatary, or by any other title has authority over the mandatary as over a subject. But in the definition the word gratis is added, which indeed does not reject an honorarium or salary, but only a wage strictly taken, which would transfer mandate into a contract of hiring; although in delicts mandate is commonly taken more broadly, so that it embraces even hiring, for example, of an assassin for killing a third party.

674. **Questions. - Q. 1. Whether one mandating is held to restitution if he revoked the mandate before the damage was inflicted?**

Resp. Negatively, if the revocation becomes known to the mandatary before the execution of the mandate; but otherwise if it becomes known not at all or too late, because in the former case he does not influence the damage, but certainly does in the latter. - Thus Vogler with several others.

Q. 2. Whether the one mandating is held concerning the damages which occur to the mandatary in the execution of the mandate?

Resp. Lacroix affirms with others, because the one mandating, by ordering the damage, is judged to undertake in himself the obligation of keeping the mandatary unharmed. But this seems to have to be restricted to the case in which the one mandating compelled another by force or fear. For otherwise the mandatary seems spontaneously to have undertaken in himself the whole burden and its consequences; and unless a pact concerning indemnity preceded, the one mandating will be held only from a certain equity.

Q. 3. Whether the one mandating is held to repair damage which the executor from invincible error brought upon another?

Resp. Negatively. Because the true cause of the damage is the error of the mandatary [3]. - Thus Vogler, n. 279, and others commonly.

[3] Nevertheless one must except if perchance it was too difficult to avoid the error. For although all agree that the one mandating is not held concerning damages which the mandatary inflicted beyond the mandate, yet they limit this if it was within the power of the mandatary to keep the limits of the mandate. Therefore also in the case in which it was not morally possible to avoid the error, the error must be imputed to the one mandating. By mandating something illicit, says Perez in Lib. 4, C. Tit. 35, n. 7, someone seems to have mandated all things which could probably accompany it. Hence in C. *fin. de Homic.* in 6, he who mandated a beating is pronounced irregular if the mandatary, exceeding the limits of the mandate, mutilates or kills.

Q. 4. Whether a Superior, holding damage ratified, is to be compared with one mandating?

Resp. Negatively, if the ratification follows the execution of the damage, because then it cannot influence the damage. But otherwise if it precedes the damage, or regards the proposal of inflicting damage, and truly influences it. - Vogler, etc.

675. **Resolutions.** - 1. The one mandating is held to nothing if he revoked the mandate in time, although the mandatary, in order to receive the promised payment, pretended that he had not received the revocation before the damage was inflicted.

2. If it is established that the revocation of the mandate was not heard or understood by the mandatary on account of deafness or distraction, the one mandating is held to restitution, because the effect follows by force of the prior mandate. The same reason has force if the one mandating sends letters revoking the mandate, and these are intercepted by some chance. - Lugo. - Vogler, n. 273, 277.

3. He who induces another by prayers only to inflict damage on the neighbor, for his own, that is, the inducer's, utility, is compared with one mandating, although he does not command the damage by authority [4], because he is principally acting in the moral order. For the executor is not judged to act except in his place, and accordingly the one inducing to damage is judged to assume in himself every burden of reparation. - See *Casus*, n. 657.

[4] We have already adverted that the authority of the one mandating pertains nothing to the account of mandate; for mandate means a contract by which someone freely assumes the burden of managing another's business, not the office of a subject who obeys a superior or master.

But he who induces another by prayers ought to be counted among counselors rather than among those mandating; and he who yields to prayers acts in his own name, not in the name of the one asking, although for this latter's utility. Therefore among cooperators he will occupy not the primary but the secondary place in order to the burden of restoring.

§ II. On the One Counseling

676. **Principles.** - I. One counseling sins against justice whenever knowingly and willingly he furnishes an iniquitous counsel by which another is efficaciously induced to inflict damage unjustly, because the damage is imputable to him. This is clear also from proposition 39 condemned by Innocent XI, which lies thus: He who moves or induces another to inflict grave damage on a third person is not held to restitution of that damage inflicted.

II. One counseling who in good faith gave damaging counsel, when the truth has been known, is held to retract it, and indeed from justice. This follows from what was said above concerning him who inculpably placed the cause of damage, n. 662. - Vogler, etc.

III. But one counseling is not held to restitution if the executor, without that counsel, would have inflicted the damage equally well and in the same way, because then the counsel did not efficaciously influence the damage. - St. Lig., n. 561.

677. **Questions. - Q. 1. Whether one counseling is held to restitution who revokes his counsel before the execution of the damage?**

Resp. 1. Negatively, if the counsel was bare, that is, simple, because through revocation the whole force of the counsel is removed. - Thus commonly.

Resp. 2. If the counsel was clothed, or resting on motives, it is controverted. Probably also negatively, provided other motives, at least equally efficacious, have been applied in the retraction [1]. - Thus Azor, etc., against others, whose sentence St. Lig. says is the more probable. Except if you have shown to a thief determined to inflict damage the way of entering a house, which otherwise he would not have found, or something similar; because your cooperation was then truly efficacious, especially if you foresaw that the thief would not change his depraved proposal; unless, however, you warned him to whom the damage is imminent, to which in the case you are held, as the Doctors apud St. Alphonsus, n. 559, judge [2].

[1] Reasons sought from faith are most especially efficacious by their own nature; if the other pays no regard to them, he turns the whole cause of the damage back upon himself. Besides, although St. Alphonsus says the opposite opinion is more probable, nevertheless he admits that this one is sufficiently probable; and since some others, such as Laymann, have called this same opinion very probable, and others even most probable, such as Roncaglia apud St. Alph., Lib. 3, n. 559, surely an obligation of restoring ought not and cannot be imposed, especially because he who inflicted the damage has the most certain burden of restoring, and thus the damaged person has been sufficiently provided for.

[2] St. Alphonsus alleges the Salmanticenses and Sporer, who nevertheless (Tr. 4, Cap. 3, Sect. 1, n. 22) limits it: if without equal or greater damage the counselor can warn the one to be damaged concerning the imminent damage.

Q. 2. Whether one counseling the lesser evil for averting the greater is held to restitution?

Resp. Negatively, if it is a matter of the same person, because the counsel favors him, far from harming him; but otherwise according to many, if it is a matter of another person concerning whom the damager was not thinking, because this person is reasonably judged deservedly unwilling. - St. Lig., n. 565. Yet others hold the contrary, led by a sufficiently probable reason [3].

[3] The reason is, says Vasquez (*Op. De Scand.*, art. 1, dub. 2, n. 14), that this kind of counsel tends formally to this, that the greater sin not be committed; from which it happens that he from whom the robber steals what is lesser is not reasonably unwilling concerning him who furnished the counsel. And Turrianus (*De Fid., Spe*, etc., Disp. 95, dub. 6): To me it is more probable that such counsel is licit when by no other reason could someone be drawn back from committing that greater sin, because to counsel a lesser sin in this case is not evil. Then he upon whom injury is inflicted is not reasonably unwilling with respect to the counselor, because he only advised a lesser theft so that the robber would not commit a greater sin; yet he would be unwilling with respect to the robber. This observation of Turrianus indeed is most wise, namely that he who suffers damage has a just cause of complaint not against the one counseling the lesser damage, but only against the robber. And surely charity demands that to one willing to perpetrate evil I advise the lesser; and likewise charity requires that I rather impede the damage of him who would suffer more than of him who would suffer less. Therefore this latter cannot be reasonably unwilling with respect to him who manages the matter according to the norm of the precept of charity.

678. ○ **Q. 3. Whether one knowingly counseling evil to another is held also concerning the damages which this latter has suffered in executing the depraved counsel?**

Resp. Negatively, of itself. The reason is that he brought no injury upon him, since no injury is done to one knowing and willing. - Otherwise, however, if the one counseling so circumvented the executor with frauds or sophisms that this latter did not advert to the iniquity of the counsel.

Q. 4. Whether one counseling only the manner of an unjust action is held to restitution?

Resp. Negatively, if the manner is merely accidental, as commonly are circumstances of time, place, or means. But otherwise, if the manner in some way redounds to the substance, for example, if it increases the damage, etc. - St. Lig., n. 563.

Q. 5. Whether he is held to restitution who persuades that damage be inflicted sooner?

Resp. Negatively, if he is certain that the other is determined to evil and will not change his depraved mind; otherwise in the other hypothesis. - St. Lig., n. 563, etc.

679. ○ **Q. 6. Whether one counseling is held to restitution primarily or only secondarily?**

Resp. Of himself he is held only secondarily, because the executor is principally acting, as one who is judged to act in his own name and for his own utility [4].

[4] It does not seem to pertain to the matter whether the executor acts for his own utility or another's.

Q. 7. Whether or how one giving harmful doctrinal counsel from gravely culpable ignorance is held to restitution?

Resp. 1. If the one giving counsel does this from his state or office, for example, an advocate, physician, Confessor, etc., he is held to restitution for the unjust damage which follows from his counsel, whether toward the one seeking counsel, or toward him against whom it is given. The reason is that society has a right that he have the knowledge suitable to his office. - Thus commonly.

Resp. 2. If the one counseling is not such a person who by reason of his office or state makes a show of skill, 1. he is not held toward the one seeking counsel unless from deceitful counsel, or unless he affects great skill which he lacks; 2. nevertheless he is obligated toward a third person who suffers damage thence, if he himself knew his own lack of skill and foresaw at least in a confused way that damage would follow. - St. Lig., n. 564, and others commonly.

680. **Resolutions.** - 1. Women, common people, and others generally whose insufficiency is known, and who do not deceitfully affect skill, are held to restore nothing to those who sought counsel from them. Yet they are held toward others to whom damage has been inflicted from their counsel, if they sufficiently foresaw that damage; for they are guilty when, by giving rash counsels in those matters which they do not know, they expose themselves to the danger of injuring an innocent person unwillingly. - St. Lig., ibid.

2. If by persuasion or exhortation you were the cause that a greater damage was inflicted than otherwise would have been inflicted, you are held only for the excess of damage. Hence if you persuaded a thief prepared of himself to steal 100 gold pieces that he should steal 200, more probably you contract only the obligation of restoring 100.

3. If two together counsel theft to Peter, who, induced by their counsel, steals, each is held to restitution; for although Peter would have stolen even with only one of them counseling,

nevertheless in fact each influenced by his counsel, and by that very fact each was the cause of the theft. - St. Lig., n. 561. - Lugo, D. 19, n. 2.

4. If a thief orders me to show him my treasure, and I show the treasure of another, I am held to restore, because I am the cause of the damage; for the thief does not have a determined will to steal the treasure of another. - St. Lig., n. 565. [5].

[5] St. Alphonsus in this place, namely Lib. 3, n. 565, has nothing concerning a special case of this kind, but only touches the general question, whether to a man prepared to inflict a greater damage one can advise a lesser even against another; which question the Author also touched above, n. 677, Q. 2. Therefore if the whole force of this fourth resolution depends on the principles laid down there beforehand, the things said there concerning the general question must be brought back to this special case.

5. One counseling is not exempted from the obligation of repairing the damage which he counseled, if the executor whom he warned to restore does not restore, because he efficaciously cooperated in the damage; but efficacious cooperation necessarily exacts efficacious reparation. For the damaged person must be made wholly unharmed. - See *Casus*, n. 662 and 665.

§ III. On the One Consenting

681. **Principles.** - I. One consenting is held to restitution whenever knowingly and freely he emits a vote or sentence on which directly depends the violation of another's right, that is, whenever he gives efficacious consent to the damage or injury of the neighbor. I said, efficacious consent, because if the consent did not efficaciously influence the injury, he would not be held to restitution, since he consented affectively indeed, but not effectively, to the harm; and likewise if, fraud or a special pact being excluded, by his vote he impeded another from the attainment of a good to which he had no right.

II. He is not held concerning the damage who authentically revokes a sentence or vote previously given before the wickedness is consummated; nor one voting in good faith, although when the error has been detected he is held from charity, indeed from justice, to revoke his vote, if by time it is licit for him to do this.

682. **Questions. - Q. 1. Whether one consenting, who gives an unjust vote, is held to restitution if other votes already sufficient for the damage are not lacking?**

Resp. 1. It is certain that all consenting are equally held to restitution if they gave votes by agreement, since, with a conspiracy entered into, there is one moral action of all.

Resp. 2. It is also certain that all consenting contract the obligation of restoring when they brought their vote at the same time, because since no one was then prior or posterior, the sentence resulting from the sum of the votes is deservedly attributed to each of those voting.

Resp. 3. It is also certain that those who first give a vote before the number is completed are not to be excused from restitution, even if they foresee that others who consent will not be lacking, because they truly influence the damage; for although it was to be inflicted without them, nevertheless

through them, as far as is in them, it is in fact inflicted. - Thus commonly. - Vogler, n. 302. - Lugo, D. 19, n. 17.

Resp. 4. But whether, conspiracy and simultaneous casting of votes being excluded, the last voters can be excused from the obligation of restoring when now the number of votes required for defining the business has been fulfilled, is controverted. Several grave theologians affirm, because voters of this kind are in no way the cause of the damage, since it has already been sufficiently prepared and determined by others. - St. Lig., n. 566. - Lugo, ibid., n. 22, etc. - Others deny it, because since a sentence is never judged perfect unless it is concluded through the collation of all votes, the last influence the sentence no differently than the first [1].

[1] Although perhaps this latter opinion may please the Confessor more, nevertheless he cannot impose the burden of restitution on the penitent, since it is uncertain on account of the reasons of the former opinion.

683. ○ **Q. 2. Whether he contracts the obligation of restoring who does not bring a vote when he can bring one?**

Resp. 1. Negatively, if the vote is to be given in mere favor or grace of someone [2], because no injury is inflicted on him.

[2] The sentence of the Author is a little obscure. The sense is that in the case the obligation of restoring is not contracted when the right of bringing a vote has been granted to someone in mere grace or favor of himself. Wherefore at the end of the response you would more aptly say: because here he inflicts no injury on another.

Resp. 2. Affirmatively, if it had to be given from office, and its omission was the efficacious cause of grave and unjust damage. - Lugo and others commonly. - See *Casus*, n. 667, 670.

§ IV. On the Flatterer

684. ○ A flatterer is said to be he who by praising, flattering, or blaming moves another to damaging. Concerning the flatterer these things must be held:

1. He who induced another to inflict damage by proposing praise or otherwise ignominy to follow is held concerning the damages. For such cooperation has the character of counsel, since motives for acting that are of themselves commonly efficacious are proposed. Wherefore the flatterer is subject to absolutely the same obligations as the counselor, concerning which see above, n. 676 and following.

2. Those who so represent to a man affected by injury the magnitude of this injury that he, being moved, takes vengeance, are held to restore, provided they adverted at least probably that damage would follow.

3. But he is not held to restitution who approves or ratifies an evil deed already perpetrated, unless he is the cause why restitution is not made or new damages are inflicted. - St. Lig., n. 567.

§ V. On Recourse, or on the Receiver, or the One Furnishing Recourse; You Will Hold These Things:

685. ○ 1. A receiver, namely one who knowingly and freely furnishes security to a robber, is held concerning the damages thence arising. For thus he efficaciously and unjustly determines, or makes firmer, the will of the thief in the proposal either of stealing, or of not restoring, or of stealing again.

2. Likewise merchants and especially innkeepers are held to restitution, who receive the thefts of sons under paternal power, servants, etc., or hide them, or even are accustomed to claim them for themselves as the price of merchandise, drinks, etc.

3. Among receivers are not to be counted those who receive at home friends or blood-relatives who are malefactors; nor those who conceal them under hope of amendment, or show them the way by which they can flee, when they are sought for prison or for death. - St. Lig., n. 568. - See *Casus*, n. 672, 674.

§ VI. On the Participant

A participant is twofold: one in the prey, another in the damaging action. Hence the following things must be established.

686. **Principles.** - I. A participant in the prey is held to restitution of the part which he accepted and detains with himself; this is plain from what was said above concerning the possessor of bad faith.

II. A participant in a damaging action, or one concurring with another, whether immediately or mediately, to inflict damage physically, is, generally speaking, held to restitution whenever his cooperation really influenced the substance of the damage. - St. Lig., n. 571.

III. Yet sometimes a participant in a damaging action will be excused from restitution, especially if he concurs only mediately, provided the required conditions are present, namely: 1. that the act is not intrinsically evil; 2. that it is elicited from a relatively grave cause; 3. that the good effect intended by the cooperator arises immediately from a good or at least indifferent cause [1]. Recall what was said concerning Human Acts, n. 9, and concerning Charity, n. 249. - Billuart, diss. 8, art. 13. - Carrière, n. 1197.

[1] The sense is that the immediate effect ought not of itself to be evil, although afterwards some good may be expected from an evil effect.

687. **Questions. - Q. 1. Whether or when immediate cooperation in the damage of the neighbor in the matter of justice is licit?**

Resp. 1. As regards damage of life, it is never licit to cooperate immediately, not even with danger to life, because it is never licit to kill an innocent person directly.

Resp. 2. As regards damage of members, it is likewise never licit, even for avoiding death, to concur immediately in the mutilation of another, unless perhaps for averting the death of that person himself.

Resp. 3. As regards damage in goods of fortune, three cases are commonly admitted in which cooperation from grave fear is licit, for the reason that the owner is not judged reasonably unwilling,

namely: 1. if the one cooperating can and wishes to repair the damage, when perhaps he is held to this; 2. if grave damage would equally and certainly have been inflicted by the principal agent without the cooperator; 3. if the damage is light with respect to the owner, since I myself am not held to undergo grave inconvenience in order to prevent the light inconvenience of another.

But it is controverted whether it is licit for you to cooperate immediately in grave damage of the neighbor from most grave fear, for example, of death, if you cannot or do not wish to repair the damage. - Some deny it, because the act seems intrinsically evil, since it injures the right of the neighbor, who is deservedly supposed reasonably unwilling. And surely the injured person is held to consent to this cooperation neither from justice, which does not oblige one to preserve the life of another with so great a burden of his own, nor from charity, which also does not urge with so great an inconvenience. Billuart. - Yet others probably affirm. For one constituted in extreme necessity can steal that by which he may avoid death, because then all goods are common, as was said above, n. 616. Therefore why will he to whom death is threatened not be able to cooperate in stealing the goods of the neighbor for snatching his own life from proximate danger? - St. Lig., n. 571. - Molina, etc.

688. ○ **Q. 2. What cause is required for mediate cooperation in the matter of justice to be licit?**

Resp. It will be licit whenever the conditions indicated in principle III are present. But a not small difficulty consists in deciding when a sufficient reason for thus cooperating is found. But concerning this one must judge from equity and good. Generally the following rules will be useful, namely: 1. The greater the evil effect to follow thence, the greater reason is required. 2. The nearer the cause influences the damage, the greater reason is required. 3. A greater reason is required when the damage would not follow without your cooperation, than if it would nevertheless have happened.

689. **Resolutions.** - 1. Blacksmiths do not sin against justice who sell arms indiscriminately, although they know that some generally will abuse them; for otherwise commerce would be wholly taken away. But if they foresee in species that some are proximately going to abuse the aforesaid arms, they cannot sell them for ordinary profit, but a grave cause is required, according as the hope of impeding the abuse is greater or lesser [2].

[2] If nevertheless they sold them, they would indeed sin against charity, but not against justice; for short of some special obligation from office or contract, we are not held from justice to impede the damages of others. Therefore although they sinned by selling arms, nevertheless they would not be held by the office of repairing the damage.

2. Those are exempt from all restitution and sin who, compelled by fear of grave damage, perform functions prior to the damage and influencing it only remotely, for example, placing a ladder, helping one climbing a wall...

3. The excuse is still easier if others would not be lacking who would supply the instruments necessary for the damage.

4. Indeed more probably you do not sin, nor are you held to restitution [3], if for avoiding death you return a sword deposited with you to its owner asking for it in order to kill another, although the killing of that person depends on this handing over of the sword; because your

life is equivalent to the life of the neighbor. - Billuart, diss. 8, art. 13. - Vogler, n. 318. - Carrière, n. 1203, and many others, with St. Lig., n. 571, against several. - See *Casus*, n. 676-679.

[3] The same observation recurs as above; for one returning a sword short of fear of death or of grave evil would sin against charity, but not against justice; whence the question concerning the obligation of restitution does not pertain here, as the Author also warns below, n. 690, res. 1.

§ VII. On the Mute, the One Not Resisting, the One Not Manifesting, or on Negative Cooperators

Negative cooperators are those who do not impede the damage of the neighbor, when from office they are held to impede it. They are commonly called mute, not resisting, not manifesting. 1. The mute is he who does not speak, does not cry out, does not forewarn the one to be damaged, while he is held to this from office or contract. 2. The one not resisting is said to be he who, while damage is being inflicted, does not resist, does not guard the thing, although he ought to do this from justice. 3. The one not manifesting is called he who, after damage has been inflicted, does not denounce the damager to the injured owner or to the Superior, although from office and therefore from justice he ought to denounce. Besides, the same principles and the same moral applications belong to all these.

690. **Principles.** - I. No one by reason of damage not impeded is held to restitution unless from office he is held to impede it; for he who is not compelled to impede damage from office is obligated from charity alone, whose violation does not oblige to restitution.

II. All who are obligated from office to impede the damage of another, if they culpably neglect this, are held to restore; for from justice they ought to impede the damage. Therefore if they omit it, they sin against justice, and consequently are obligated to repair the damages.

III. In order that one cooperating negatively be held to restitution, it is necessary that he could have impeded the damage without grave inconvenience, because neither contract nor positive law is accustomed, at least for the most part, to oblige with a grave burden. - St. Lig., n. 573.

691. **Questions. - Q. 1. Whether a Confessor is held to restitution if from grave negligence or ignorance he omitted to warn the penitent about restitution to be made?**

Resp. More probably negatively. For although from office the Confessor is held to instruct the penitent well, and therefore sins gravely if he omits this when it is necessary, nevertheless he is not held to this from an obligation toward a third party. Except if the silence of the Confessor is equivalent to positive approval, for example, if when asked he so declines a response that the absence of obligation is suggested to the penitent. - St. Lig., n. 578. - Lugo. - Suarez, and others commonly.

Q. 2. Whether servants are held to restitution when culpably [1] they do not impede damages which are brought upon the master?

[1] Some fault could be present even short of the obligation of restoring, when they are held from charity alone; for in the present matter an obligation from charity can be present even in those cases in which no obligation of justice is present.

Resp. 1. Affirmatively, as it seems [2], if it is a matter of damage inflicted by outsiders. The reason is that by the very fact that servants are admitted into the family, they are judged to undertake the

obligation of defending it against outsiders. - St. Lig., l. 3, n. 344. - Lugo, Vogler, etc.

[2] The word it seems, from the sentence of St. Thomas, is the word of one opining. And in this sense it is more probable that the Author used it. Indeed Lugo (*De Iust.*, Disp. 19, n. 106), however much, with Soto, Navarro, and Lessius alleged, he adheres to this sentence, does not conceal that just as many adhered to the opposite one, namely Molina, Rebellus, Azor, and Bonacina. Therefore the Confessor ought to abstain from urging the obligation of restitution.

Resp. 2. More probably negatively, if it is a matter of damage inflicted by other servants, unless the thing had been specially committed to them; because hired servants do not seem to be hired except for labor and for defending the household from outsiders. - St. Lig., ibid. - Others nevertheless dissent not improbably [3].

[3] On this matter Lugo (Disp. 19, n. 105): All admit that he is not held when he sees theft being done by another domestic servant, unless care and custody has been committed to him by a special office. Therefore the opposite opinion must be held as the anomaly of some more recent author. But Lugo adds these things as regards practice: A servant would also be held when a key is given to him for taking something out of some place, because for that time the custody of that place is entrusted to him. Those also are held who have care of the pantry, or are placed over the custody and vigilance of domestic things or the household.

692. ○ **Q. 3. Whether a Superior is held to repair damage inflicted by his subjects?**

Resp. 1. As regards the external forum, affirmatively both from Roman Law, especially if servants and children are concerned, and from French Law [4], in which express mention is made 1. of the father, and with him dead, of the mother, relatively to minor children living with them; 2. of the master or one mandating [5], relatively to servants or mandataries; 3. of the instructor and artisan, relatively to pupils. Nevertheless recourse is given to the Superior against the one damaging, for requiring compensation.

[4] Yet the French Code warns (art. 1384), consonant with Roman law in this, that an obligation of this kind, whether in parents, or in teachers, or in artisans, ceases whenever they make it plain that it was not in their power to impede that deed concerning which otherwise they are held to respond according to their condition. But as regards parents specifically, besides the fact that generally they ought to respond concerning the deeds of children which they could have impeded, a threefold case is expressly expressed in the law in which this burden presses them: namely 1. when at their command a son has done something; 2. whenever the business done by a son has yielded to their utility or profit; 3. when the son does not lack adventitious peculium, of which they receive the usufruct.

[5] It was elsewhere observed that the notion of one mandating by no means of itself demands that he be superior to the mandatary.

Resp. 2. As regards the internal forum: 1. Affirmatively, if the silence of the Superior [6] is equivalent to a positive impulse. 2. But he is not held whenever theological fault is lacking. 3. Nor is he probably held, although he sinned gravely by not impeding the damage, if by his silence he in no way influenced it, especially since it is a matter of damage inflicted on another who is not a subject [7]. The reason is that the quality of Superior by itself does not suffice so that someone is constituted as a kind of sponsor concerning the damages of subjects, unless from a special public office he ought to impede these. - Lugo. - Gousset, against others. - See St. Lig., n. 578.

[6] For example, of the commander of a cohort of soldiers.

[7] But even if damage had been inflicted on a subject, it would have to be inspected whether the Superior from a debt of justice undertakes to himself the damages of his subjects to be impeded.

Q. 4. Whether a husband is held concerning damages inflicted by his wife which he himself did not impede?

Resp. In the internal forum it seems that what was said concerning sons under paternal power or other subjects in Resp. 2 of the preceding question must be said concerning a wife. Hence probably he is held to nothing from mere silence, even gravely culpable. But in the external forum nothing is established in Roman Law or in French Law.

693. ○ **Q. 5. Whether a councilor is held to restitution if by omission of a vote he did not resist an unjust sentence?**

Resp. Affirmatively, if he ought to bring a vote from office, because the office must be fulfilled from justice, at least speaking commonly and with a just cause excluded. But negatively, if he has the right of vote from privilege, or from mere favor; for then he can omit the vote without injustice. - Lugo, D. 19, n. 61 and following. - Vogler, n. 304.

Q. 6. Whether he who accepted money from a thief so that he might be silent is held to restitution, if from office he ought not to cry out?

Resp. More probably negatively, at least of itself. The reason is that he could be silent on account of the thief's prayers without injustice, since he is not held from justice to cry out. Therefore, by parity, on account of gifts promised or handed over he can be silent without injustice. - Lugo. - Tamburinus, etc. - But otherwise it would have to be said if he accepted money so that he might observe whether someone is coming; because then he would cooperate positively in the theft.

Q. 7. Whether guards not denouncing damagers are held to compensate all damages and also to pay the fine?

Resp. to the first: Affirmatively, of itself, because they are constituted to impede damages; except if it is a matter of things of lighter moment, for which, from custom and the presumed will of the owner, secret warning suffices.

Resp. to the second: More probably negatively on account of contrary practice, with which common sense agrees. - Lugo. - Lessius. - Vogler, etc. The same must be said of a judge not procuring compensation of damage, or not exacting a punitive fine. Yet if denunciation of the damager has been made before a judge, he is held to punishing and to the reparation of the damage. - St. Lig., *Hom. apost.*, tract. 13, n. 73. - See *Casus*, n. 681 and following.

Chapter III. On the Circumstances of Restitution

The principal circumstances of restitution are contained in this verse:

How much will you restore? To whom? In what order? In what manner? When?

Article I. How Much Must Be Restored?

694. ○ The quantity of restitution must be measured from the quantity of the thing accepted, or from the quantity of damage inflicted, or of influence upon the injury of the neighbor.

Since special difficulties occur concerning solidarity alone, concerning it alone we will treat specially.

On Solidarity

Definition. Solidarity, or the obligation of restoring *in solidum*, is the burden incumbent on each cooperator of repairing the whole damage inflicted.

Division. A twofold solidarity is distinguished, namely: 1. absolute, which has place when someone is held to repair the whole damage; 2. conditioned, when individual cooperators are held to restore for other cooperators who are lacking.

695. **Principles.** - I. Any one of the cooperators efficaciously concurring in the damage, so that this whole damage can be morally ascribed to him, is held to restitution *in solidum*, that is, in full, either absolutely, or at least conditionally. The reason is that each is an efficacious and unjust cause of the whole damage, and consequently must repair the whole. - Vogler, n. 342, and others commonly.

II. But to some cooperator the whole damage can certainly be ascribed in a twofold case, namely: 1. whenever his cooperation is necessary, although not sufficient, for inflicting the whole damage; for example, if you furnish a vote necessary for an unjust sentence; 2. whenever the cooperation is done from an efficacious conspiracy by which the damagers so efficaciously excite themselves to the damage that, if each one did not concur, the damage would not occur. - St. Lig., n. 579. - Lugo...

III. Whoever is the principal cause of the damage is held to restore *in solidum* absolutely; but the other equal cooperators, or secondary causes, are held only conditionally. The reason is that the principal agent, such as one mandating, a leader, etc., by the very fact undertakes in himself absolutely the whole burden of repairing the damage, since he himself inflicts it primarily and uses the others only as instruments for damaging the neighbor. But who ought to be called the principal cause will be said below, n. 702. But as regards secondary causes, St. Lig., *Hom. apost.*, n. 54, deservedly warns that in practice it is rarely expedient to warn the unlearned or oblige them to repair the whole damage, although they are certainly held *in solidum*; because they do not easily persuade themselves that they are held to restore even the part taken away or destroyed by others.

696. **Questions. - Q. 1. Whether you are held IN SOLIDUM in doubt whether you influenced the whole damage?**

Resp. More probably negatively with the common sentence, because a certain burden cannot be imposed for an uncertain obligation. - St. Lig., n. 579, etc.

Q. 2. Whether you are held IN SOLIDUM in doubt whether the others restored their part pro rata?

Resp. More probably negatively, if after diligent inquiry the doubt perseveres, because a cooperator is not held to anything beyond his own part except in the defect of another; and if there is doubt concerning that defect, there is doubt concerning the obligation. - Roncaglia, Salmant., etc., against others.

Q. 3. Whether an obligation of restoring IN SOLIDUM is given where cooperation indeed influenced the whole damage of an individual thing, but is not of itself sufficient, nor necessary, nor proceeded from strict conspiracy; for example, if four carry off a beam which three would also have carried off?

Resp. Negatively, because since the whole reason of the obligation is influence upon the damage, it ought not be greater than the influence itself. On the other hand, he who would concur in a part of the damage, although with others he would concur in the whole damage [1], surely would not be held to restore the whole; therefore, by parity, he who concurs partially in individual damage is held only partially to the reparation of the damage, because he posited a partial cause. - Lugo, D. 19, n. 82. - Vogler, n. 343. - St. Lig. says this is probable, n. 579.

[1] The sense is: if someone by his work concurs only in part of the damage, for example, of the devastation of a garden, but concurs with others in the whole damage to the extent that the remaining part of the garden had already been devastated by others, but he destroys what he finds left intact by them; this person surely is not held to repair except the part of the damage of which he was the author.

697. ○ **Q. 4. Whether you are held IN SOLIDUM if your action indeed was sufficient for inflicting the whole damage, but by no means necessary, nor proceeded from conspiracy; for example, if you set fire to another's house together with several others?**

Resp. It is controverted. Not a few probably, indeed also more probably, affirm it, because where your action was sufficient for the damaging effect, in reality the whole damage must be morally ascribed to you and to each of the others. Roncaglia, Salmant., etc. - But others probably deny it, because although the damaging action was sufficient for the whole damage, nevertheless it had only a partial influence on it, since it was neither necessary, nor common with the others from conspiracy. Therefore he is not the moral cause of the whole damage. Nor does it matter that it is a matter of an individual thing, because the cooperation does not extend to the whole damage. Yet understand this whenever without your concurrence the damage nevertheless would have occurred; for otherwise even your action would have to be called necessary to it. - Sporer. - Navarr., etc. - St. Lig., n. 579 and *Hom. apost.*, n. 55, holds each sentence probable.

698. **Resolutions.** - 1. If one of the cooperators has repaired the whole damage, the others are freed from every debt toward the creditor; but he who restored the whole has recourse against the other damagers equally obligated, as clear reason demonstrates [2].

[2] This resolution is to be understood of those cooperators of whom each is held for his own rate. See the things to be said below in article III.

2. If to a thief who on account of efficacious motives is now wholly determined to steal, you suggest a new motive which adds a stimulus to him, you are not held, if the other cooperators are lacking, to repair the whole damage, because your motive did not influence the substance of the damage.

3. Indeed probably for the same reason you ought to refund nothing from justice if you only induce another to inflict damage somewhat sooner or more briskly. - See *Casus*, n. 693.

Article II. To Whom Must Restitution Be Made?

699. ○ 1. Restitution must be made to the certain and known owner, whenever it can be done without grave difficulty and injury of another, nor is there another cause excusing from restitution. - St. Lig., *Hom. apost.*, n. 64.

2. He who has taken away a thing deposited with another, or leased or lent, must restore not to the owner, but to the possessor himself. For the possessor cannot be deprived without injury of the right of custody, use, or possession, unless he himself consents. - *Hom. apost.*, ibid.

But what must be done if the owner is doubtful or unknown, or if, although he is known, he cannot be approached? These things seem to be held:

1. If after diligent inquiry the owner is doubtful, either the doubt turns among few, or among many. If the former, restitution must be made to them pro rata, or the presumed owners must be induced to a settlement. If the latter, for example, because someone selling in some city defrauded many in weight or price, restitution is to be made by increasing in the same way the weight or measure, or by diminishing the price toward ordinary buyers, who are presumed to have been damaged, if it can easily be done; otherwise restitution must be made to the poor. - *Hom. apost.*, ibid.

2. If the owner is plainly unknown, or if, although known, he morally cannot be approached either immediately or mediately, a distinction must be made; for either another's thing acquired in good faith is possessed, or in bad faith. If in good faith, then one must act as in recently lost things whose owner cannot be found (see above, n. 578), and therefore they must either be expended on pious causes, or also can be retained by the possessor. But if in bad faith, the possessor must wholly divest himself of such a thing, and spend it on pious works or works useful to the common good. For it is wicked that malice profit a thief or possessor of bad faith. - *Hom. apost.*, n. 67, 69.

700. **Questions. - Q. 1. Whether when your creditor was compelled to make a cession of goods, you ought to restore to him or to his creditors?**

Resp. Generally speaking, you ought not to restore to your creditor, but your debt must be manifested by you to his creditors [1]. The reason is that although the creditors of one ceding his goods do not have direct dominion in his goods, nevertheless they enjoy a strict right that from those goods they be kept unharmed. Yet sometimes you could restore to your creditor; for example, if the debt is slight, if he is upright, and you believe that he will make restitution to the creditors; likewise if he is in grave necessity, and greatly needs that debt for sustaining life, because, as the theologians commonly teach, one ceding his goods can subtract those things which are wholly necessary for living. - St. Lig., n. 699. - Gousset, n. 772.

[1] It seems that one must inspect with whom, after the cession of goods has been made, the administration and custody of the same remains. For to him alone restitution or payment of debts can and ought to be made, so that if it is made to another, it is not valid, and it perishes for the one paying, if perchance the thing handed over does not come to the hands of the administrator. But that the creditors of him who has ceded his goods be warned will perhaps be able to pertain to charity, but not to justice. But the Author seems to speak of credits which are kept hidden by him who cedes his goods. And then indeed those debtors of his would cooperate in this fraud who, with the cession of goods known, would pay the debt to him himself; wherefore both in the forum of conscience they would not be safe, and in the external forum they could be sued to pay again.

701. ◦ **Q. 2. To whom ought a debtor FROM DELICT to restore, if the injured owner cannot be found?**

Resp. According to the common sentence he must restore to the poor, or to pious causes. The reason is that from common sense the unknown owner is judged to be represented through the poor or pious causes; for such is presumed to be his will whenever he cannot recover his thing unjustly taken away or damaged. - Thus St. Thom. 2. 2, q. 62, art. 5, etc. Concerning this it is certainly established from Canon Law as regards usurious and simoniacal profit. The canonical law also seems by custom to be extended to the other cases: But custom is the best interpreter of laws. Therefore it appears that concerning this a certain law of nations has been introduced.

Some say that the debtor can spend those things on any public utility whatever, even profane. But in practice one must stand by the general custom. But never can the possessor of bad faith, nor an unjust damager can retain the debt by any pretext whatever, even of poverty [2], because no one ought to carry back advantage from his own malice, as was already said above, n. 699. Whence he could be excused by reason of inability alone, and for a time. Nor would that debtor satisfy the obligation if he restored to some private person who is not poor.

[2] When the Author says *by the pretext of poverty*, he is to be understood of a feigned cause of poverty. For, as Cardinal De Lugo says (*De Iust.*, disp. 20, n. 8), if the debtor, owing something to an uncertain creditor, and therefore owing it to be given to the poor, is himself truly poor, it can be applied to him. And that this holds also of debts from delict, theft, robbery, and the like, Lugo himself (ibid., n. 6) plainly indicates.

Article III. In What Order Must Restitution Be Made?

The order of restitution can be considered both on the part of those who ought to restore, when several have cooperated in the same damage, and on the part of those to whom restitution must be made.

§ I. On the Order of Restitution Among Cooperators

702. ○ For assigning the order of restitution *in solidum* among cooperators in another's damage, one must inspect whether the cause of the damage is principal, or primary; whether secondary, or subordinate; or finally collateral, or equal. For cooperators can concur in damage either in the same mode or degree, or in a diverse mode.

Principles. - I. If all have concurred in the same mode, each must restore equally *in solidum* conditionally, without any determined order, because none of them undertook a greater danger. I said, conditionally, that is, when the other cooperators would not restore, or no one would pay *in solidum*. - Vogler, n. 381, etc.

II. If they concur in a diverse mode, you will distinguish again; for restitution must be made either from theft or from mere damage.

If from theft, in the first place the possessor is held, who has the thing in individual or in equivalent, or who unjustly consumed it; then the one mandating, or the robber, if the one mandating is lacking; thirdly the other positive cooperators are held; finally the negative cooperators.

But if from damage, first the one mandating is held, as the principal cause; secondly the executor, even if he acted in the name of the one mandating, because relatively to the others according to the common sentence he is the principal cause; then the other positive cooperators; finally the negative cooperators. - Vogler, etc. - St. Lig., n. 580; *Hom. apost.*, n. 60.

703. **Resolutions.** - 1. Secondary causes are held to nothing if the principal cause has restored or has obtained remission of the debt; for secondary causes are held only in the defect of the principal cause, whose obligation has ceased. - St. Lig., n. 581.

2. If one of the less principal causes restores, the principal cause is held to make him unharmed, because the less principal cause acquires the right of the creditor against the principal. - St. Lig., ibid.

3. If the creditor releases a secondary cause from the obligation, the principal cause is not thereby freed, because the obligation of the principal cause is independent of the obligation of the secondary cause. Indeed although the creditor remits to one of the secondary causes, the other secondary causes are not thereby free from the obligation of restoring their part, unless the condonation was wholly full, or can deservedly be presumed such. - Lugo. - Vogler. - St. Lig., ibid. - Except from French Law, if the debt is from contract (art. 1285).

4. If one of the causes equally obligated has restored the whole debt, the others are held to repay him their part, because each ought to satisfy pro rata of his fault [1]. But if one could not or would not restore his part, the others would have to divide it among themselves.

[1] This is manifestly plain if these causes are all equally primary; but if they are secondary, this is valid if the principal cause, one or multiple, does not restore.

5. One counseling or consenting is not held of himself before the executor; for this latter is held first, because the executor, when the one mandating is lacking, is the principal cause of the damage [2]. - See *Casus*, n. 695 and 697.

[2] This is true when the counsel is useful to the executor alone. For if it is useful only to the counselor, this latter is held first, and the executor only in his defect. But if it is equally useful to both, both are judged equally first pro rata and *in solidum* in the defect of the other.

§ II. On the Order of Restitution as Regards Creditors

704. ○ Here one must treat only of the case in which the debtor is unequal to satisfying all his creditors; for otherwise no order is necessarily to be kept in paying debts.

But creditors are: 1. some privileged, who from the privilege of positive law have the right of seeking their debt before others; 2. others hypothecary, who from the title of hypothec or security founded in the goods of debtors have the right of obtaining payment immediately after privileged creditors; 3. others common, who enjoy no benefit of privilege or hypothec.

705. **Principles.** - I. Before all things privileged debts must be paid. Thus from Roman and French Law. But privileged debts are, for example, the expenses which are called of justice, and also funeral expenses, stipends of physicians and servants for the current and preceding year, debts for food from the last six months. - C. C. 2101. [1].

[1] The Author mentions these few, as those which are preferred likewise to the other privileged ones. But there are other privileged credits both in the movable and immovable goods of the debtor, concerning which each one ought to consult the codes of his own country, also so that he may know to what point privileges of this kind extend. For what, for example, the

Author hints according to the French code concerning the credit of servants for the current and preceding year, or for food from the last six months, is not observed everywhere.

II. In the second place satisfaction must be made to hypothecary creditors, the order of time having been kept, according to Rule of Law 54 in the Sext: He who is prior in time is stronger in right.

III. Finally, in the third place common debts must be paid, since they have no right of preference.

From Roman Law another's thing existing with the debtor, for example, in deposit, lease, etc., must be restored to its owner before all debts, however privileged; for that thing existing in species cries out for the owner. Likewise a thing bought on credit, the price not having been paid, if it still exists in its species [2]. - But from French Law a thing sold with the price not paid can be reclaimed only within eight days from delivery, but its price is always privileged. - C. C. 2102. [3].

[2] A contract of sale by Roman or common law, although the thing has been handed over while the price has not yet been paid, admits a twofold hypothesis: namely, dominion sometimes transferred to the buyer, sometimes not transferred. But there is no controversy when the dominion of the thing has not been transferred; for certainly the thing must be restored to its owner, namely the seller. But if transfer of dominion has been made, and the laws proper to each place define nothing concerning this case, or the sentence of a judge has decreed nothing, the Confessor can neither forbid the seller to vindicate his own thing to himself, nor in turn command others to cede the thing to the seller. The reason is that probable reasons prevail for each opinion, and it does not belong to the Confessor to compel someone to follow either opinion. See St. Alphonsus, Lib. 5, n. 685.

[3] The French Code in this place decrees only concerning movable goods.

706. **Questions. - Q. 1. Whether debts from delict must be paid before debts from contract?**

Resp. More probably negatively, but all must equally be paid pro rata, because it is established by no law that the former must be preferred to the latter. - St. Lig., n. 688.

Q. 2. Whether debts from onerous title must be paid before debts from gratuitous title?

Resp. Affirmatively, because he who promises gratuitously always apposes the tacit condition: if I can conveniently perform it; nor can he expend goods gratis with prejudice to a creditor from delict or from contract. - St. Lig., n. 689. - Lugo. - Lessius. - Billuart.

Q. 3. Whether poor creditors must necessarily be preferred to the rich?

Resp. Negatively, unless they are in extreme necessity, because they have no right of preference; and the right of the rich man is as strict as the right of the poor man, since commutative justice does not attend to persons. - St. Lig., n. 691. - Lugo, D. 20, n. 161, etc.

Q. 4. Whether creditors prior in time are to be preferred to later ones?

Resp. More probably negatively, because the law assigns no preference among these credits; but from natural law all creditors are equal, since each has right only in the person of the debtor, which alone is equally obligated to each, but not in his goods. For if the goods of the debtor were obligated, the creditors would already have dominion of them, nor could the debtor sell them, which is false. - Vogler, n. 439. - Lessius. - Carrière, *de Contr.*, n. 391. [4].

[4] Carrière said that most theologians today think so. But who these present-day theologians are, in deference to whom we should hold this first opinion as the more probable, we plainly do not know. However that may be, he nevertheless concedes that the second opinion also is probable, just as St. Alphonsus, who judges the second the more probable, concedes that the first is probable. Hence, whether the later creditor has received something pro rata and so has been made

equal to the earlier, or the earlier has received his whole debt in such a way that the later cannot be paid pro rata, neither can be compelled by the Confessor to restitution.

Yet several affirm, because, they say, one prior in time ought also to be stronger in right. - Thus Lugo, Salmant.; and St. Lig., n. 690, says this is more probable, although he holds the prior sentence as probable.

707. ○ **Q. 5. Whether certain creditors are to be placed before uncertain or unknown creditors by the debtor?**

Resp. More probably affirmatively, if the uncertain creditor cannot be found. The reason is that that uncertain creditor is not judged reasonably unwilling, since he cannot recover his debt. On the other hand, it would be hard to deny the debtor the faculty of freeing himself from a creditor by whom he would often be pursued, so that he restore to the poor he meets, representing the unknown creditor. At least certain creditors can licitly be placed before uncertain ones. - Thus commonly. - Lugo, D. 20, n. 2. - Antoine. - Vogler, against Billuart.

Q. 6. Whether it is licit to pay first the one asking first, even if he is later in time?

Resp. 1. Affirmatively, if he asks juridically, because the legitimate sentence of a judge confers the force of privilege upon the creditor. - Thus all. - St. Lig., n. 692. - Vogler, n. 444.

Resp. 2. More probably affirmatively even if he asks outside court, because he has a personal action against the debtor, and by asking for the whole debt he pursues his right. - St. Lig., n. 692, as more probable. - Billuart. - Lessius. - Salmant., etc., against Lugo. - Carrière.

Q. 7. Whether a debtor, knowing his state to be unstable, can satisfy integrally even one not asking?

Resp. Negatively, because since all creditors are equal in right, and no one among them pursues his right, and therefore by diligence no one becomes stronger in asking, natural equity demands that integral restitution not be made to someone with prejudice to the others. - St. Lig., n. 692. - Lessius, and others commonly.

Q. 8. Whether a creditor who in this case accepted payment is held to restitution toward the other creditors?

Resp. It is controverted. The first sentence affirms, because he has no right that he be paid integrally with the detriment of others. - St. Lig., ibid. - Salmant., etc.

The second sentence denies, because from what has been said probably a creditor having a personal right does injury to no one by urging payment of the debt even outside court; therefore neither by accepting it, since he has the right of exacting it [5]. - Lessius and others apud Lacroix. Nevertheless except the cases in which such payment is declared invalid by law.

[5] The civil laws support this sentence, because what has been paid is not revoked. See St. Alph., Lib. 3, n. 693, and Lugo, *De Iust*., Disp. 20, n. 179.

Article IV. In What Manner Must Restitution Be Made?

708. ○ Generally it can be said that it is required and suffices that restitution be made in that manner by which violated justice is fully repaired, or repaired to equality, and thus the

injured owner is made unharmed.

Hence 1. it is not necessary of itself that restitution be made openly; indeed often it cannot be made in that way, when provision must also be made for the reputation and honor of the one restoring.

2. It is not necessary that restitution be made by the debtor himself, but it can be made through another, provided the thing is returned to the owner. Sometimes it can be made through the Confessor; yet great caution is then needed, both so that the seal of confession remains unharmed, and so that the penitent knows that satisfaction was in fact made to the creditor, lest any suspicion against the probity of the Confessor be able to arise.

3. It is not necessary that restitution be made with the owner adverting to it, because this is not required in order that he be unharmed. Hence the debtor can restore, for example, by increasing the weight or measure in selling, or the owed work in laboring, and in six hundred other ways.

709. **Questions. - Q. 1. Whether restitution made through a simulated donation is valid?**

Resp. Affirmatively, at least more probably. The reason is that for payment it is not required that the debtor externally admit that he is paying. Hence the debtor satisfies whenever he pays even in those circumstances in which the creditor thinks that a gift is being made to him. - Thus the common sentence. - Vogler, n. 534. - Carrière, n. 1265, etc., against Billuart.

Q. 2. Whether, if the creditor, moved by gratitude, pays back another gift to him, this must be restored to him?

Resp. Affirmatively. The reason is that that donation does not seem fully voluntary and spontaneous, as a merely gratuitous donation must essentially be; for it proceeds from the opinion of an antidoral obligation, or of gratitude, which rests on a false foundation. - Thus Carrière, ibid., against Tamb., etc.

Q. 3. In what place and at whose expense must restitution be made?

Resp. 1. If the obligation of restoring is from a thing accepted and retained in good faith, restitution must not necessarily be made in another place than that in which the thing now exists; nor is a debtor of this kind held to transmit the thing to another place where perhaps the owner now lives. The reason is that he is not held to restore the owner to the pristine state from which he did not cast him down by formal injury.

Resp. 2. If the obligation of restoring arose from delict, restitution must be made in the place in which the owner would have possessed the thing if it had not been taken away, and this at the debtor's expense. The reason is that the creditor must be kept unharmed and suffer no damage from the iniquity of the debtor, but be restored to the pristine state. - St. Lig., n. 677.

Resp. 3. If the thing must be paid from contract, one must stand by the clauses appended to the contract, if there was agreement concerning the place and manner of transmission. But when no agreement concerning these has been made, attention must be given to the special laws according to the diversity of contracts.

710. ◦ **Q. 4. Whether a debtor from delict must also pay expenses for the thing to be sent back to the owner, if those expenses exceed the value of the thing itself?**

Resp. 1. Affirmatively, if the excess is not very notable, because the debtor, by committing the injustice, undertook such a burden in himself, and the owner is not held to suffer the loss of his thing. - Thus commonly. - Lugo, D. 20, n. 190.

Resp. 2. But more probably negatively, if those expenses were greatest with respect to the value of the thing to be sent back. Then, however, from the presumed will of the creditor, restitution would have to be made to the poor. For right reason and charity dictate that the creditor cannot demand that restitution be made to himself with expenses of any kind whatever. - Thus Vogler, n. 415. - Lugo, n. 185. - Billuart, diss. 8, art. 46. - St. Lig., n. 598, where he says that this is the very common sentence.

But how great the loss of the debtor ought to be so that he can be excused from restitution to the owner himself, the theologians do not agree. They hand down this rule rather commonly: When, with all things weighed, the damage which the debtor will suffer exceeds the damage of the creditor by only double, it is not sufficient that the owner be deprived of his thing. But if it exceeds this proportion, it suffices that restitution at least be deferred. But for various circumstances this rule must be modified. - Thus Lugo, D. 20, n. 190. - St. Lig., n. 598, etc. But today this controversy can scarcely have place on account of the ease of transferring things or money elsewhere.

711. **Q. 5. Whether a debtor must restore again if he sent the debt through a faithful person, and it perishes by chance or the fault of a third party?**

Resp. 1. A debtor from possession of good faith is held to nothing, because, fault and pact being excluded, the thing perishes for the owner, who is the creditor himself. Yet he would be held after the sentence of a judge if juridical fault had intervened.

Resp. 2. A debtor from contract is held to nothing if it is a matter of another's thing existing in nature, accepted in loan or deposit, etc., because the thing perishes for the owner, unless something else was agreed. Otherwise, if it is a matter of a thing owed in genus; because the debtor preserves dominion in it until it has reached the creditor, and he must answer for the chances of the price or the thing transmitted until it is delivered into the hands of the same.

Resp. 3. A debtor from delict is not freed from restitution, and remains bound to it for so long as he has not truly made the owner unharmed; because he always remains the culpable cause of the damage which this owner suffers. - St. Lig., n. 704, where nevertheless he does not dare to condemn those excusing a debtor of this kind who sent back the owed thing through a Confessor.

Except the threefold case in which the debtor is exempted from every burden, namely: 1. if the owner has designated the person through whom he wishes the thing owed to be sent to himself; 2. if the creditor indeed has not chosen the person, but has left to the debtor the freedom of choosing whom he wishes, provided one prudent and faithful is chosen; 3. if this person has been designated by the judgment of a judge.

712. ◦ **Q. 6. How must restitution be made for damages inflicted on the republic?**

Resp. Restitution must be made through the means established by the Government itself, if means of this kind exist. Therefore attend to the various laws of places. But if such means have not been established, some say that restitution must be made through those placed over tributes, while others hold that satisfaction is made to the obligation of justice if restitution is made to the poor. - See Carrière, n. 1240, where he says that no legal mode exists in France by which restitutions of this kind are made. - See *Casus*, n. 707.

Article V. When Must Restitution Be Made?

712. ○ I. As regards any debts whatever, generally restitution must be made as soon as it can be done without grave inconvenience. For natural right demands that you not retain another's thing when the owner is reasonably unwilling.

Hence 1. he who culpably defers restitution [1] remains in continuous sin, and cannot be absolved. Besides, if damages come to the owner from the delay of restitution, he is held to compensate them.

[1] Add: and notably, as the Author afterwards explains; and if it is a matter of grave matter.

2. If someone, having the purpose of restoring, defers for some time short of grave inconvenience of the owner, he is not easily to be condemned of mortal sin, indeed not even of venial sin, if there is some cause of deferring, for example, hope of a more convenient occasion, etc. - St. Lig., *Hom. apost.*, n. 104, 105.

3. He who wished to restore by parts, when he could easily restore the whole, would not be absolved [2], because the owner is reasonably unwilling also in this. The same must be said of him who, although he can restore during the course of life, nevertheless defers until death; or who, constituted in danger of death, would reject without sufficient reason the obligation of restoring onto his heirs, unless perhaps it is a matter of restitution of uncertain goods. - *Hom. apost.*, ibid.

[2] Understand, when it is grave matter.

II. As regards debts from injury: all damages which have followed from the delay must be compensated, even when the delay was inculpable. - *Hom. apost.*, ibid.

But whether extraordinary damages also must be compensated, or those which do not necessarily follow from the delay of restitution, is controverted. - It seems that it must probably be denied, because these damages could not be foreseen, nor consequently can they be imputed. - Vogler, n. 426. - Lugo, etc.

714. ○ III. As regards debts from contract, generally one must stand by the conditions appended to the contract concerning the time, or concerning other circumstances, unless it is prudently presumed that the will of the other contracting party is otherwise.

Hence 1. restitution, or rather payment, must be made at the time concerning which it was expressly or tacitly agreed.

2. The debtor can anticipate, if the term assigned for payment is in his favor, as ordinarily is accustomed to happen; but otherwise, if the same term turns to the utility of the creditor, as, for example, in the furnishing of money with profit to be received.

3. If the term is not fixed, according to the sentence of several, the debtor can generally wait without at least grave sin until he is warned by the creditor, unless however the latter thence takes damage, or from fear does not dare to warn him, or from forgetfulness or inability omits the warning.

4. If the debtor has a just cause of deferring, he is not held to compensate damage arising from the delay. - Thus commonly, with St. Lig., n. 680.

Q. Whether he who deferred restitution from a just cause is held to compensate ceasing profit or arising damage?

Resp. He is held when the debt comes from delict, because although he did not sin by deferring restitution from a just cause, nevertheless from the preceding injury he is truly the unjust and culpable cause of that damage, if it was then sufficiently foreseen [3]. - Thus commonly, with St. Lig., n. 680 and 704, against others. - But if the debt comes from contract, he is not held; because then the debtor is not the unjust and culpable cause of that damage, since he is by no means supposed to be in culpable delay, and therefore it does not appear by what title he would be held to it. - St. Lig., ibid., and others more commonly. - See *Casus*, n. 704.

[3] The Doctors who hold this sentence do not restrict the burden of restitution to damages in some way foreseen, but even to fortuitous ones (see Lugo, Disp. 21, n. 17). But although St. Alphonsus (Lib. 3, n. 680) said that this sentence is both more common and more probable, nevertheless not a few also judge the opposite probable (apud St. Alphonsus, l.c., and Croix, Lib. 3, P. 2, n. 252); and this will be able to be of use to Confessors, so that they may lessen the difficulty, never not arduous, of restoring.

Chapter IV. On the Causes Excusing from Restitution

715. ○ I. The following excuse for a time: 1. physical impotence, or every kind of impossibility, which is had in extreme necessity; indeed also in very grave necessity either of the debtor himself or of his own, that is, of his wife and nearest blood-relatives; 2. moral impotence, or grave difficulty of restoring, namely when restitution cannot be made without grave inconvenience of the debtor, for example, if by restoring he would have to fall notably from his state justly acquired, or fall into grave necessity, etc. The reason is that then there is true impossibility of restoring; for in morals that is called impossible which is very difficult, and which cannot be done decently and honorably. - Hence if a nobleman cannot restore unless he deprives himself of servants, horses, arms; or a leading citizen, unless he undertakes a mechanical art unaccustomed to him; or a craftsman, unless he sells the instruments of his art, or undergoes great damage, he can defer restitution, and pay his debts gradually. - St. Lig., *Hom. apost.*, n. 117.

Several except the case in which the debtor has culpably cast himself into such necessity, for example, by games, banquets, and debauches. - Thus Laymann, Lacroix, Busemb., with others. But St. Lig., *Hom. apost.*, n. 118, says: This notwithstanding, if the debtor would fall from his state justly acquired,

to me and to other learned men it seems hard to oblige him to integral restitution. Moreover St. Anton., Sporer, Elbel rightly advert that in such a case the debtor is always held to diminish expenses, so that he may restore at least what he can.

716. ◦ II. The following excuse in perpetuity: 1. remission, or condonation of the debt on the part of the creditor; but it is required that the creditor be able to condone, and that he have dominion and administration of the thing owed to him; likewise that the remission not be made by force or fraud, but altogether freely and spontaneously; 2. compensation, that is, when the creditor by his own authority vindicates an equivalent for himself, or retains the same debt for himself; 3. prescription clothed with the due conditions. But prescription for debts is not regularly completed except through thirty years; nor commonly can it have place as regards the debtor himself who contracted the debt, because good faith cannot be found in him. - St. Lig., n. 700, etc. Recall what was said concerning prescription, n. 580 and following.

717. **Questions. - Q. 1. Whether a debtor is held to restore if he is situated in the same necessity, whether grave or extreme, with the creditor?**

Resp. 1. If the creditor is already found in grave necessity, and the debtor by restoring falls into it, he must restore according to all.

2. If each is already found in grave necessity, and the debtor by restoring would fall into extreme necessity, it is disputed. More probably he is excused from restitution which is not owed from delict. Indeed probably even if it is owed from delict; because the debtor then by restoring would subject himself to damage indeed graver. Except if the thing itself still exists in species. - Thus commonly.

3. If each is in extreme necessity, more probably restitution can be omitted; because then all things become common. - Bonac. - St. Lig., n. 701, *Hom. apost.*, n. 119. Lugo, however, with others, holds the opposite no less probably.

718. ◦ **Q. 2. Whether he who accepted and consumed another's thing in extreme necessity is held to restore?**

Resp. 1. If he has his own things elsewhere, affirmatively; the reason is that even at the time of necessity he is not truly unable. - St. Lig., n. 520, and others commonly.

2. The same must be said if indeed he actually has nothing, but has it in probable hope; because provision is sufficiently made for one suffering necessity of this kind through borrowed money without interest. - St. Lig., n. 520.

3. If no hope actually shines forth, he is not held; because then he made the thing his own. - Thus the theologians more commonly. - St. Lig., ibid.

Q. 3. Whether he who, forgetful of a debt, gratuitously gave something to his creditor, is excused from restitution?

Resp. A twofold sentence is given:

First Sentence denies. The reason is that what is gratuitously given cannot be held as payment of a debt. - Thus Sanchez. - Vogler.

Second Sentence affirms, with Lacroix, n. 452, Tamb., etc. The reason is that each person is judged to wish to satisfy first the obligation of justice rather than mere liberality. The first sentence is more common and very probable; but the second does not lack its own probability, says St. Lig., n. 700; and he calls it sufficiently probable, *Hom. apost.*, n. 120.

Q. 4. Whether one burdened with debts can enter Religion, and whether he is freed from debts if he has entered?

Resp. to the first. Negatively, if within a short time he can have the means from which he may pay; otherwise more probably of itself, if he must wait for a notable time. - St. Lig., n. 71, *de Statibus*; Vogler, etc. Nevertheless, if the debts are of great moment, such an entrance, although valid, is prohibited by Canon Law as illicit.

Resp. to the second. 1. Religion is not held to pay these debts from its own goods, as is plain; 2. The Religious is held to pay from the goods which he had before profession, or which come to him by legacy, if he has emitted only simple vows; but otherwise, if he has solemnly professed. - Thus commonly.

719. ○ **Q. 5. Whether cession of goods, whether judicial or voluntary, excuses from restitution in perpetuity?**

Resp. 1. Altogether negatively as regards judicial cession, because that cession is a mere benefit which the law grants to a debtor of good faith and unfortunate, so that, ceding his goods, he may preserve liberty and become immune from compulsion in the external forum. This is clear from the express terms of both Roman and French Law.

Resp. 2. Indeed negatively also as regards voluntary cession, apart from an agreement either express or at least implicit. The reason is that, although the creditors then compound with the debtor concerning only a certain part to be paid, nevertheless they act thus because they cannot have more, and therefore they do not renounce the right which they have to integral payment, if the debtor should at some time be able to pay. - St. Lig., n. 669. - Billuart, diss. 8, art. 20.

I said, apart from an agreement; because if the creditors expressly liberate, or clearly seem to liberate, the debtor totally, he is held to nothing further.

720. ○ **Q. 6. Whether he is freed from restitution who pays the debt to the creditor of his creditor; for example, I owe you 100 francs, but you owe 100 to Titius: do I satisfy by paying 100 to Titius?**

Resp. Affirmatively, of itself, according to the apex of law. The reason is that I, by paying to your creditor that which you owe him, acquire the right which he had of requiring from you the debt owed to him; whence the right which I have in you is equivalent to the right which you have in me, and compensation occurs. For your creditor can transfer his right to me, or I can buy it, just as any other

person who owes you nothing can. - St. Lig., n. 700. - Billuart, diss. 8, art. 14, § 1. - Vogler, n. 541, and others commonly.

I said 1. of itself, because I am not freed if perhaps you are still compelled to pay, or if you have privileged or hypothecary creditors.

I said 2. according to the apex of law, because such a payment, if made without cause, will be illicit on account of the various inconveniences to which it is liable. But there is a sufficient reason if your creditor cannot recover his debt. - Billuart, ibid.

721. ○ **Q. 7. Whether a debtor is freed in doubt, or in probability, of payment?**

Resp. 1. Negatively in mere doubt, as is plain. For an obligation once contracted must be fulfilled, unless a solid reason persuades that payment has been made. - The same must be held where presumption is adverse to the debtor; which is often accustomed to happen, especially when the doubt is to be attributed to his negligence.

Resp. 2. In true probability, it is controverted.

First Sentence, the more common, denies. The reason is: 1. because satisfaction is not made for a certain obligation through doubtful fulfillment; 2. because the burden lies upon the debtor of attending and watching that he certainly restore; whence the doubt that has arisen must be imputed to his negligence, from which the creditor ought not to suffer damage. - St. Lig., n. 700, and l. 1, n. 27 and following. - Lugo, D. 18, n. 12. - Lacroix, n. 571, although he holds the opposite, as Lugo himself also does, where another obligation than that of justice is being treated, and many others. **Second Sentence** says that restitution must be made pro rata of the doubt, at least if each doubts; because since the creditor does not have a right except probable, it is not equitable that as much be paid to him as would be paid if he had a certain right. - Tambur., Laymann. - Diana. Reuter says this is probable, n. 449, although he holds the opposite as more probable.

Third Sentence frees the debtor from every obligation, because an obligation is not to be imposed unless it is certain concerning it. Thus Bossius. - Tannerus. - Viva, etc., apud Lacroix and Reuter. Although this third sentence can speculatively enjoy its own probability, nevertheless in practice generally it does not seem to be followed, because the debtor commonly ought to impute the doubt to his own negligence.

Nevertheless, if the greater probability favors the debtor, and he is upright and diligent in paying debts, he should not be disturbed; for then the greater presumption would be had in favor of payment having been made. A fortiori you will not urge restitution if the debtor says that he certainly has satisfied, although the creditor still complains.

722. ○ **Q. 8. Whether condonation reasonably presumed excuses from restitution?**

Resp. Affirmatively, at least more probably, because retention of another's thing, or omission of restitution, is not unjust unless it is done against the owner's will. But it is not done against the owner or creditor if it is done from his reasonably presumed will. Therefore, etc. Thus sons of families can more easily be excused, if they have stolen a sufficiently small sum of money from their parents. Likewise servants who consumed common foods. But abuse in this matter must be avoided

as much as possible, lest thus a door be opened to innumerable injustices. - Lacroix, n. 462. - Lugo, D. 21, n. 54. - St. Lig., n. 700. - Vogler, etc. - See *Casus*, n. 714 and following.

Section II. On Restitution in Species

Here one must treat of restitution on account of damage brought upon one's neighbor in the goods: 1. of the soul; 2. of the body; 3. of fortune, in certain cases.

Chapter I. On Restitution on Account of Damage in the Goods of the Soul

In general, each person is held from justice to repair the damage which he has effectively and unjustly brought upon his neighbor in the goods, both natural and supernatural, of the soul, provided that damage can be repaired in the same order. For each person has no less strict a right not to be injured in goods of this kind than not to be injured in goods of fortune.

723. **Resolves.** - As regards damage in supernatural goods:

1. He who by force, lie, fraud, or unjust fear has induced someone into mortal sin, is held under mortal sin from justice to the reparation of the damage, by removing the force or seduction, manifesting the error, etc. But he who without force or fraud, but only by counsel, has induced someone to sin mortally, is indeed held from charity to revoke that counsel, but not from justice, because injury is not done to one knowing and willing. - St. Lig., n. 660-661. [1].

[1] The Author, both in the present resolution and in the following resolutions, omits the hypothesis of damage of which you really were the cause, but without deceit, as when, for example, you narrate to another certain false things which you thought true. To this point pertain the things which the Author handed down above, n. 662, q. 3, concerning one not impeding damages to which he has inculpably given cause.

2. He who by deceit induced another into error, especially practical error, from which grave damage can arise for him in the matter of morals, is held from justice to repair the damages which thence proceed, and therefore with all care to remove him from the error. Say the same of speculative error concerning the articles of Faith.

3. He who through force, grave fear, or fraud impeded someone from entering Religion, or induced one already entered to desert religion, is held from justice to remove the fraud and deceit; for each one has a right not to be unjustly impeded or drawn away from the attainment or possession of so great a good. - St. Lig., n. 662.

724. ◦ As regards damage in natural goods:

1. He who deprived another of memory, reason, etc., through poison, a love-potion, etc., is held from justice to repair all that is reparable from the damage unjustly inflicted.

2. He who by fraud impedes another from learning science, art, etc., or from teaching others, is held to drive away the fraud, and to repair the temporal damages which have arisen thence.

3. He who from office must teach an art or science is held to correct errors, if he has admitted any of some moment. The same obligation also lies upon him if through carelessness or levity he has mixed probable things with improbable ones.

4. But if someone gratuitously and without obligation of pact or office were to teach badly from negligence or ignorance, fraud and deceit being excluded, he would not be held to reparation [2].

[2] According to the mind of the Author, he who teaches badly is here to be understood as one from whose teaching either no progress or only slight progress is drawn, but not as one who imbues his hearers with errors. For in this second hypothesis the badly unoccupied teacher would have to be equated at least with one who, without formal injury, inflicts damage upon someone, for example, one who has in no way professed the medical art and inconsiderately counsels some harmful medicine to a sick person; for when he adverts to his error, he is certainly held to forestall the damage with less or greater inconvenience to himself according to the greater or lesser fault of his negligence and temerity, and the greater or lesser danger of another's damage.

Chapter II. On Restitution on Account of Damage in the Goods of the Body

Namely: 1. on account of homicide; 2. defloration; 3. adultery.

Article I. On Restitution on Account of Homicide

725. **Principles.** - I. Homicides or mutilators, and their heirs, are held to compensate all temporal damages, if any have followed from homicide or mutilation [1]. But more probably they must restore nothing precisely for life, a member, etc. [2], because these are not estimable by a price. - St. Lig., *Hom. apost.*, n. 82-83.

[1] Understand damages which have followed directly. See below, q. 2.

[2] Understand this, as the Doctors commonly say, according to rigor. For, as St. Alphonsus has it (Lib. 3, n. 627), the Authors commonly warn that it is fitting for the Confessor to impose upon the penitent, for penance or from equity, that he give something to the injured person. To this debt of equity can be referred the words of St. Thomas (2. 2, q. 62, art. 2, ad 1): When that which has been taken away is not restorable by something equal, compensation ought to be made such as is possible; for instance, when someone has taken away a member, he ought to recompense either in money or in honor, the condition of each person being considered according to the judgment of a good man.

II. Every and only voluntary and unjust homicide begets this obligation, because only unjust and voluntary damaging is the root of the obligation. Hence he is held to nothing who killed another merely for the sake of defense, etc.

III. Restitution, if the injured person has died, is to be made to those who are most nearly joined to the deceased, namely to his sons, father, mother, and other ascendants or descendants in the straight line, and to his wife, because these are judged to be one and the same person with the deceased. - St. Lig., n. 631. - But more probably not to the remaining natural heirs; because if damage comes to these, homicide must be held as only a remote cause, and as it were by accident, of that damage [3]. - St. Lig., n. 636. - Lugo. - Salmant., etc.

[3] This third principle remains very obscure unless a threefold kind of damages, which the killer is held to repair, is accurately distinguished. For 1. some are damages which are inflicted on the injured person before his death, concerning which see the note to the following q. 5; these indeed are called real debts contracted with the injured person himself, and unless they are condoned by him, they are to be paid to his heirs, whoever they may be, to whom the rights of the slain pass. 2. Other damages are not indeed inflicted on the slain person, but necessarily befall the wife, sons, or parents of the slain, concerning which see q. 1 immediately following, and the note to q. 5. But reparation of these damages is owed to the aforesaid persons not indeed by the title of inheritance, by which they would succeed to the rights of the slain - for a wife is not a necessary heir of her husband - but by the title of damaging, by which their own right was injured, and which not even the slain himself could cede or remit. 3. Finally there are any damages whatever, and of whatever persons, which the killer by means of that death specifically wished to inflict; concerning these you have some things in the following q. 2. But

these debts are to be paid by the killer to those who underwent the damages; nor could the slain condone them, because he had no power of disposing concerning the rights of others.

726. **Questions. - Q. 1. Whether a homicide is held to restitution toward the wife and children of the slain also for future damages, if they can easily come to their own aid?**

Resp. It is controverted. **First Sentence**, the more common, affirms, because the damager must repair the whole damage inflicted by himself. - Lugo, D. 11, n. 87.

Second Sentence, sufficiently probable, denies, because the near kin have no right except to those things which the slain person, from strict piety, ought to have expended upon them [4]. - Reuter, n. 384. - Elbel, n. 215. - Lacroix, n. 309. - St. Lig., *Hom. apost.*, n. 87.

[4] Compare Card. De Lugo (Disp. 11, from n. 84), who shows that this opinion rests upon a false principle, namely, as if the killer contracted the obligation of repairing damages of this kind for this reason, that the slain person owed something to another by the title of piety or justice; which reason indeed would induce the obligation of restoring indiscriminately even to the creditors of the slain. But he himself assigns the true reason for this obligation, ibid., n. 79-84, namely that connection of the action with the damage, such that this follows from that not by accident, but of itself and necessarily.

And as regards the practice of this restitution, that must be noted which St. Alph. warns according to the common sentence of the Doctors (Lib. 3, n. 631): not the entire profit which before death was accustomed to be received from the injured person, but according to a certain hope, must be restored. But what things ought to be kept before the eyes so that an equitable estimation of this hope may be had, see carefully in Card. De Lugo (Disp. 11, n. 42-47).

Q. 2. Whether anything must be restored to the creditors of the slain?

Resp. More probably negatively, even if the homicide foresaw it, provided he did not directly intend their damage [5], because such damage follows only by accident. - St. Lig., n. 634. - Lugo. - Salm.

[5] You have here a manifest example of an action which is judged, and truly is, an injury or not an injury against another solely from the intention of the agent. Therefore deservedly elsewhere we have observed that the Authors who, against Cardinal De Lugo, deny that the intention alone of the agent can effect that an action becomes unjust, and nevertheless in this place contend that he who kills with the intention of harming the creditors of the slain sins against justice and is held to restitution toward them, these Authors, I say, do not cohere with themselves, and by the fact itself show that their own opinion is not in every respect true. See these Authors in St. Alph., Lib. 3, n. 633, and *Hom. ap.*, Tract. 10, n. 87.

727. ○ **Q. 3. Whether the obligation of justice remains in the heirs, if the homicide is punished with death before he has repaired the damages?**

Resp. Affirmatively. For the penalty satisfies vindicative justice, but not commutative justice. Therefore the heirs must pay debts from commutative justice, unless the injured parties do not complain; for then these are judged to cede their right. - *Hom. apost.*, n. 90.

Q. 4. Whether he is held to restitution who killed another by exceeding the manner of just defense, or the MODERATION OF BLAMELESS PROTECTION?

Resp. Affirmatively, if he exceeded deliberately, because the aggressor has a right not to be killed unjustly; therefore the killer, by knowingly exceeding the limits of just defense, commits a grave injury. - Thus more commonly. St. Lig., n. 637, with Lugo, disp. 11, n. 54, against some older authors apud the same Lugo, ibid., n. 51.

Q. 5. Whether he is held to anything who killed another in a duel?

Resp. More probably negatively, whether he was the one provoking or the one provoked. For injury is not done to one knowing and willing, when a right can be remitted; but one accepting combat also wished and was able to remit temporal damage [6]. Therefore... - St. Lig., n. 638. - Lugo, n. 66, etc.

[6] One must distinguish, as we intimated in the note to n. 726, a twofold kind of damages which follow from killing. For some damages are inflicted on the injured or slain person, of which kind are expenses incurred in curing illness, and if he lost anything through that time and on that account, either from interruption of labor, or from omitted business, or from impeded profit, etc. Since restitution of these is owed to the injured person himself, but to others only insofar as they succeed to the rights of the injured, the injured person can renounce his own right, unless perhaps he is so poor that he cannot pay the expenses from his own goods, and thus does injury to others, who perhaps are compelled to pay them. And to this pertains what the Doctors commonly hand down, that these debts, as they call them, real debts, can be condoned to the killer by the injured person who cedes his own right.

But there are other damages which are inflicted not upon the slain person himself, but upon others through his death, and which therefore, since they violate not the right of the slain but the right of others, cannot in any way be remitted by the slain. He who by force, as Lugo has it (Disp. 11, n. 63), impedes a father from being able any longer to furnish support to his children, cannot obtain remission of that debt from the father alone, but from the children, who had a right that you should not impede by force or fraud him from whom they ought to receive support.

Nevertheless, since in the case of a duel the killer has not by force impeded the support or emoluments of wife and children, the reason ceases why he should be held to repairing that damage. Thus Lugo (ibid., from n. 70).

Others say that the one provoking is indeed held to restitution if he killed the adversary, but not the one provoked. Others, however, oblige both. But these sentences do not appear sufficiently probable.

Article II. On Restitution on Account of Defloration and Fornication

Recall what was said concerning defloration and fornication in the sixth precept of the Decalogue, n. 421 and 425, etc.

728. **Principles.** - I. For merely natural damage, or for the injury of bodily integrity and the loss of virginity, nothing, at least more probably, is to be restored; because that damage cannot be compensated by money. - St. Lig., n. 640. - Elbel, n. 220, etc. - Recall what was said above, n. 628.

II. Even for temporal damage which has followed from shameful intercourse, nothing, except the education of offspring, ought to be restored when the woman consented to the solicitation; because injury is not done to one knowing and willing. - St. Lig., n. 641.

III. If a deflowerer violated a girl by force, fraud, deceit, or threats, he is held to repair all damages thence befalling her or her parents, because he is the efficacious and unjust cause of these damages [1]. - St. Lig., ibid. - Elbel, ibid.

[1] All agree, so De Lugo, Disp. 12, n. 11, that the deflowerer is held in conscience to compensate all those damages; which compensation ought to be made either by taking her as wife, or by increasing the dowry, or by otherwise procuring that she marry as well as she would have married if she had not been deflowered. But whether and when an option can be permitted either to the deflowerer of offering either of the two, or to the deflowered woman of demanding either of the two, see apud the same Lugo (l. c., from n. 12).

729. **Questions. - Q. 1. Whether a violator is held to marry the girl violated under a promise of marriage?**

Resp. **First Sentence** affirms. The reason is that the innominate contract, *I give so that you may give*, etc., is then perfected when delivery of the thing is made, or the performance of the work is furnished, and then the reason and force of the laws which invalidate shameful pacts cease; for the obligation which is then contracted by the other party is not shameful, nor does it drive one to a shameful thing. - St. Lig., n. 642 [2], and others most commonly.

[2] It can certainly seem strange that St. Alphonsus (cited n. 642) proposes the question concerning the obligation of the deflowerer both if he truly promised marriage and if he fictitiously promised it; and yet he does not introduce even one word concerning the first part of the question, but dwells solely in asserting the obligation of marriage, although the promise was fictitious. But perhaps to that wise man it seemed superfluous to discuss the hypothesis of a true promise; both because the very clear arguments which he brought forth, whether from reason or from authority, for proving the obligation of marriage, even if the deflowerer had fictitiously promised marriage, a fortiori proved it when a true promise had acceded, and when therefore, since the nature of the matter plainly persuades that on the woman's part also a counter-promise of marriage intervened, truest espousals are had; and because that prior part was so beyond controversy in the schools that not a single one of the Doctors could be alleged who dared not only to impugn that doctrine, but even to call it into doubt.

And indeed this very rare and therefore astonishing consensus of Theologians equally with Canonists in that doctrine manifestly shows in what place that second sentence, which the Author subjoins, namely the sentence of certain more recent writers - which you might better call an abnormal aberration - is to be held; and this all the more because those persons have persuaded themselves that a paradox of this kind is very clearly confirmed from the nature of a contract involving some shameful condition, as if indeed the contract of espousals which intervenes there ought or could also be called shameful! But indeed would it not be like a prodigy that all the Doctors of Theology and Law down even to our age had been so blind that in a matter plainly obvious and pertaining to the first elements of natural right, concerning which besides none of them failed to inquire most subtly and diligently and to dispute at length, they should so shamefully stumble? But should not this very thing move those more recent men at least to suspect that they have wandered away from the right path?

I have said that St. Alphonsus confirmed the obligation of contracting marriage by the strongest force of authority, even if a merely fictitious promise had intervened. But this also must be added: whatever probability some have seemed to attribute to the opposite sentence rests only upon the empty show of false allegations.

And indeed, 1. for that opinion Schmalzgrueber (Lib. 4, Tit. 1, n. 32) alleges St. Antoninus, Gabriel Biel, Barthol. De Ledesma, Bonacina, Martin Perez, and Wiestner, by whom he was deceived (Lib. 4, Tit. 1, n. 20) and from whom he borrowed both the thesis and most of these allegations. - But Gabriel Biel (In 4, Dist. 28, q. 1, art. 2, Concl. 5), Mart. Perez (*De Matrim.*, Disp. 2, Sect. 4, n. 3), Bonacina (*De Matrim.*, Disp. 1, q. 1, p. 2, n. 9), and St. Antoninus (*Sum.*, Part 3, Tit. 1, Cap. 19, § 1) affirm this only concerning the fictitious promise of a man who notably exceeds the condition of the woman; which conclusion, as is plain, does not touch the matter. 2. The Salmanticenses (*De Matrim.*, Cap. 1, n. 33) asserted that that opinion is called probable by Dicastillo, as St. Alphonsus also intimates (Lib. 3, n. 642, § 2). - But Dicastillus (Lib. 2, Tr. 2, Disp. 7, Dub. 9, n. 155-156) speaks of a mere fictitious promise without defloration; and this likewise does not touch the matter. 3. Peter De Ledesma also asserted that this opinion is called probable by certain persons, which both Dicastillus (l. c., n. 128) and Sanchez (*De Matrim.*, Lib. 1, Disp. 10, n. 2) intimate; and besides the accustomed St. Antoninus and Biel, he alleged Tabiena (*V. Matrim.*, II, n. 8), and attributed to Francisco De Victoria that he said (*Sum.*, n. 254) that the opposite is not proved sufficiently. - But Tabiena (l. c.) discusses only him who fictitiously CONTRACTS MARRIAGE and afterward has copula; which case is foreign to ours. Victoria, however (l. c.), does not treat of defloration with a fictitious promise of marriage, but raises the question about him who contracted with someone, uttering words outwardly and not having consent inwardly: whether it is marriage? And after he responded that from St. Thomas it is not certain that he is held to marry her, he subjoins the words alleged by Peter Ledesma: Nor do those who say that he is held to marry her prove it sufficiently; which words, as is plain, were not said for our matter.

Therefore we have one alone from the Theologians, Ioan. Praepositus, whom St. Alphonsus also intimates, l. c.; Diana (Tom. 2, Tr. 6, R. 149) indeed skillfully brings him forward as the only one for that opinion, because he had noticed that others were brought forward wrongly. But Praepositus (*De Matrim.*, Q. 9, Dub. 4, n. 48) uses a sophistical argument, which Schmalzgrueber also intimates (l. c.), namely that the deflowerer is not held by reason of the promise, which was fictitious, but only by reason of the damage, which can be compensated otherwise than by marriage. Sophistically, I say. For the

obligation arises from the injury which you do to another when you deny that under whose condition you both demanded and received that which the other furnished under that pact alone; which injury can in no way be repaired unless the other receives that under whose condition he gave his own.

** Whatever things have been said in this Note, all, as is plain, contribute to confirming the sentence of St. Doctor Alphonsus. Nevertheless the VV. seek in it what they may reprehend, and - at which indeed you may wonder - they go so far that they undertake to defend with their powers the cause of those whom St. Doctor refutes. Therefore through twenty columns (pages 361-371) the VV. 1. indeed contend that in the Note the opinion of certain more recent writers is unjustly represented as an abnormal aberration and an immense paradox; 2. they contend that in the Note the weight either of the reasons or of the authority which militate for the same opinion is too much attenuated; 3. finally they contend that elsewhere, namely in the Note which is subjoined below at n. 760, Q. 6, a certain incident pertaining to history is less rightly set forth.

We reserve this last accusation to be weighed where there will be speech about this alleged Note. Now concerning the two prior heads.

As to what pertains to the first, one must respond briefly: I deny the supposition; and the reason is most manifest. For the VV. (page 361) suppose that the question there is about a fictitious promise. Thus they: We shall weigh whether concerning the proposed question the consensus of Theologians and Canonists is so astonishing that the negative sentence is truly to be judged an immense paradox and, as below the distinguished Professor, namely P. Ballerini, will say, an abnormal aberration: namely, that there is no obligation of marrying the girl violated UNDER A FICTITIOUSLY GIVEN PLEDGE OF MARRIAGE. But, I subsume, in the Note, as is plain to the reader, that astonishing consensus of Theologians and Canonists, and therefore also the immense paradox and abnormal aberration of more recent persons thinking the contrary, is said not of the hypothesis of a fictitious promise, but of the hypothesis of a true promise, and when therefore espousals truly intervened through mutual promise. Therefore the supposition must be denied, on which nevertheless the VV. again insist (page 363).

But from this false supposition the VV. fall into another likewise false supposition, as if, namely, the prior part of the Note looked to Authors who in any way thought against St. Alphonsus in the question of fictitious promise; wherefore on this account the VV. dwell through ten columns (pages 365-370) in describing these Authors. But it is plain that that part of the Note in no way pertains to these authors. And if indeed they desire to know who are the more recent writers who declined to that paradox, let them go to the editions of this Compendium of P. Gury, all which preceded the sixteenth - printed at Lyons in the year 1865, but at last emended by Roman cares - not excluding also the one which came forth from the press of Propaganda Fide; there they will find this paradox proposed as the more probable sentence. Let them also go to the Moral Theology of Em. Gousset, where they will find these things written (Vol. 1, n. 1015): He who has seduced a person by the promise of marriage, is he obliged to marry her? According to the opinion of the greater number of theologians and canonists, he is obliged to marry her, whether the promise was feigned or whether it was sincere. He is held to this in the first case, generally, not by virtue of his promise, since it does not oblige, but rather by virtue of the injury which he has done to the person by deceiving her through a false promise. He is likewise held to it in the second case, because, they say, the condition having been fulfilled, the promise becomes absolute and by that very fact obligatory. But since this question falls under that of contracts made under an illicit condition, we regard the promise in question as null, as consequently not being able to produce any effect: "Every condition of a thing contrary to good morals," says article 1172 of the civil Code, "is null and renders null the agreement which depends upon it." Now, such evidently is the agreement of him who promises to marry a person if she consents to commit the sin of fornication. This sentiment is more favorable to good morals than the contrary sentiment; St. Alphonsus de Liguori himself admits it: "It is useful to note," he says, "that it would be very useful for avoiding sins of this kind if promises of marriage for obtaining defloration, even perhaps confirmed by oath, were declared invalid by Bishops." This is also the thought of M. Carrière, and of the author of the *Reasoned Examination on the Commandments of God*. These, therefore, and not others, are the more recent writers who drew forth an immense paradox against the unanimous sentence of the Doctors. And let these things be enough concerning the first head of accusation.

As to the other head of accusation, the VV. 1. object that Gabriel Biel says nothing about the condition of a man notably exceeding the condition of the woman. - Resp. Let the antecedent pass; and I deny the consequence. For in the text of Biel which they themselves describe (page 364), not even a word occurs concerning a promise of marriage, whether true or fictitious. Therefore Biel is alleged against the doctrine of St. Alphonsus fruitlessly and foreign to the matter, because he in no way touches the question.

2. The VV. object that according to Bonacina (l. c., n. 5) a man is not held to marry a virgin or widow of good reputation whom he deflowered by a fictitious promise of marriage, when... there is no danger of infamy. Hence the VV. reproach that this was omitted in the Note. - Resp. 1. In the context of Bonacina this is an exception from the common doctrine which he himself also defends, just as he himself excepts if the man is of a notably exceeding condition. But an exception from the most known maxim confirms the rule to the contrary. 2. Bonacina through this exception speaks openly contradictory things. For he had premised these things (n. 4): Nor will he satisfy by endowing the aforesaid virgin or widow, if she is not content with a dowry. The reason is both because the promise was not concerning a dowry, but concerning marriage; and because, since she has fulfilled the contract "I give that you may do," it is also equal that the one fictitiously promising fulfill it on his part, lest he should bring back advantage from his own delict. But those reasons exclude, indeed destroy, the force of the little reason upon which that exception rests. 3. Add to these that Bonacina in that exception either did not sufficiently explain his mind, or certainly seems to have fallen asleep. For of the eight authors whom he there alleges, omitting now Lessius and Filliucius as having nothing which touches the matter, the six remaining make the question concerning a fictitious promise made to a woman already corrupted, and therefore they either excuse from the obligation of marriage, or allege those excusing, because proportion is lacking between the thing accepted and the thing promised. Therefore the objection of the VV. concludes nothing from the manifold cause.

3. The VV. object (page 365), as regards Martin Perez, that it is passed over in silence in the Note that he in the preceding Sect. 3 denied the obligation of one fictitiously promising to marry the deflowered woman. - Resp. He denied it relying upon three false allegations, and likewise upon a limping parity drawn from a diverse case; let it pass.

4. Against what is said in the prior part of the Note, that all the Doctors of Theology and Law down to our age have agreed in a matter plainly obvious and pertaining to the first elements of natural right, the VV. object (page 365) that there are several more recent Authors who hold the negative sentence, or at least judge it probable. - Resp. It has already been said above that this instance of the VV. labors under a false supposition; because the words of the Note look to the case of a sincere mutual promise, which constituted true espousals; but they heap up Authors discussing a fictitious promise.

With the same fault of arguing the VV. write (page 368): Now let us see who those others are who conspicuously abuse, etc.; these words of theirs accuse what below, in the Note to n. 760, Q. 6, is read thus: These things should have been set forth a little more diligently, after certain others conspicuously abuse that fictitious probability - concerning no effect of a shameful contract after the placing of the work - which some have seemed to attribute to this opinion, for defending that immense paradox concerning there being no obligation of marriage as regards him who has violated a girl under a given pledge of marriage. Here, as is plain, the speech is not about a fictitious promise, but about a sincere promise of marriage. And this is confirmed evidently from this, that there the speech is soon introduced concerning the desire of certain persons that, by episcopal law, promises of marriage for obtaining defloration should be judged invalid, even perhaps PROMISES CONFIRMED BY OATH; which also we saw a little before in the words of Em. Gousset. Nevertheless, behold, the VV. even here suppose that in this place the discussion concerns a fictitious promise; and after they have shown (pages 368-369) that neither Schmalzgrueber, nor Wiestner, nor Henry of St. Ignatius in his condemned work, nor Collet, nor Henno, nor Concina, nor Amort, in the question of a FICTITIOUS promise, used the argument drawn from the null value of a shameful contract, they conclude that labor in the Notes concerning the value of a shameful contract was therefore in vain. Thus they (page 369): If therefore the distinguished Professor, namely P. Ballerini, set forth the question of a promise for a shameful thing more diligently for this reason, that he might oppose the immense paradox and abnormal aberration of certain more recent writers, he certainly could have spared himself useless labor. But would that he had set forth the question more diligently, alleged the Authors correctly and faithfully, and not heaped undeserved injuries upon his adversaries. Since all these things are clearly built upon a false supposition, let the candid reader judge also from this what must be defined concerning Vindications of this kind.

What now matters is that it remains to inspect here what force those things have which the VV. have heaped together so that they may conciliate weight and probability for the opinion which, in the present question, exempts one fictitiously promising from the obligation of marrying the deflowered girl. In this matter this wondrous scene is offered to our eyes, as we have said, in which we see the VV. so carried away by desire and zeal for attacking an imaginary adversary that they do not doubt, in whatever way they can, to attribute strength to that opinion whose opposite they themselves proclaim true, and which St. Alphonsus also, whom they undertake to vindicate, professes to be altogether to be held. But the matter can be dispatched briefly; for just as Schmalzgrueber and Wiestner, so also most others were moved by the putative authority of certain persons to attribute some probability to that opinion.

Second Sentence of certain more recent writers denies, from the general principle concerning contracts invalid on account of a shameful condition, concerning which it will be said below, where we shall speak of contracts in general.

Q. 2. Whether a violator is held to anything toward the parents of the violated virgin, if she herself freely consented to the sin?

Resp. More probably negatively, because no strict right of theirs was violated; nor can they impede the daughter from being able to cede her own right as regards temporal damages. - St. Lig., n. 641. - Billuart. - Lugo.

730. ○ **Q. 3. To what is the violator held toward spurious offspring?**

Resp. 1. If he oppressed the mother by force, he is held to all expenses of nourishment and education. The reason is plain from what has been said. Nevertheless, in his defect the mother must undertake care of the child, although she has admitted no fault, because she is the mother. But then she retains recourse against the corrupter, who is held to compensate her for all expenses which she incurred on occasion of that offspring.

Resp. 2. But if the woman consented to the sin:

1. From Roman Law the mother is held to nourish the infant for three years, and afterward the father ought to provide for him.

2. From Gallic law nothing is expressly established. Jurists, however, acknowledge that parents are equally and *in solidum* obligated at least to nourishing and educating children legally recognized. They elicit this from art. 203. But even if the children were not recognized, nevertheless by natural law the same obligation lies upon them. - Carrière, n. 1371. - Gousset, n. 1016. - See *Casus*, n. 737 and following.

Article III. On Restitution on Account of Adultery

The obligations of each adulterer must be considered according to various circumstances, namely according as the adultery was, or was not, plainly voluntary on each side, whether damaging to the family or not.

731. **Principles.** - I. Each adulterer is held *in solidum* to repair all damages of the family, if the crime was voluntary on each side, because the whole is to be imputed to each. Hence 1. those must be restored all the expenses which the husband sustained in nourishing and educating the offspring; 2. if the illegitimate son has already received the inheritance along with the legitimate children, compensation must be made to these pro rata. - St. Lig., n. 659.

II. The adulteress, if she has paraphernal goods, ought to restore from these to the husband and children injured, through manual gifts, through contract, testament, legacies..., etc. If she does not have them, let her administer the family more diligently, be more sparing in private expenses, and labor more diligently, insofar as her state permits.

III. If the adulterer extorted the consent of the woman by force or grave fear, he alone is held to repairing the whole damage from what was said above, n. 728.

732. **Questions. - Q. 1. Whether the woman is held to reveal her crime, if she cannot repair the damage in another way?**

Resp. Negatively, speaking generally. The reason is: 1. because commonly this revelation cannot be made without great infamy, and often also without danger of death, or of perpetual hatred, or of other grave evils; 2. because even through this she could repair the damage only with difficulty, especially since the son is not held to give faith to his mother. Some except the case in which the mother is of ruined reputation [1], etc. - St. Lig., n. 653.

[1] But an exception of this kind labors under another inconvenience. For if the son is not held to believe the sole testimony of his mother, much less will he be held to give faith to the testimony of one woman, who besides is of ruined reputation.

733. ○ **Q. 2. What is to be said in doubt whether the offspring is the husband's or the adulterer's, or is from this adulterer rather than from another?**

Resp. to the first. More probably the adulterers are held to nothing, because the damage is not certain. - St. Lig., n. 657. - Lugo, D. 13, n. 17, and several others, against others who say that restitution must be made pro rata.

Resp. to the second. Each adulterer is held pro rata to restitution according to the more common sentence, which seems to be held. The reason is that the damage is certain, and it is certain that it was brought about by one or the other; but each one is an efficacious and unjust cause of the uncertainty, which impedes compensation from being exacted determinately from one. Moreover the innocent person ought not to suffer from this uncertainty. - Lacroix, n. 337. - Lugo, n. 19. - Roncaglia, c. 2, qu. 3.

Nevertheless St. Lig., n. 658, dissents, because, as he says, a certain burden cannot be imposed where the obligation is doubtful [2]. Nevertheless he excepts if the second adulterer adverted, at least implicitly, that he would be the cause of that uncertainty. Likewise if the adulterers perpetrated the adultery from common counsel.

[2] ** What the Doctors thought concerning this controversy will certainly be understood with difficulty by one who forms a judgment about the matter merely from the allegations produced by St. Alphonsus. For for his own sentence, which he calls more probable, he reports the Doctors thus (Lib. 3, n. 658): Thus, he says, Sanchez, Cons. Lib. 4, C. 3, Dub. 1, n. 5; Disp. 15, n. 20; Zachar., that is, Croix, Lib. 3, P. 1, n. 704, with Gob., Less., Fill., and Bon., and Salm. ibid., that is, *de Restit.*, C. 3, n. 32, with Sot., Trull., Lop., etc., against Dicast., Mol., and others. And indeed in the first edition, in the year 1748, St. Doctor after the Salmanticenses had added Lugo also for his opinion; but then in other editions we see the name of Lugo removed, although without his name the allegation Disp. 13, n. 20 was retained, which empty allegation is seen also in the recent Turin and Ratisbon editions of the year 1846. But that the name of Lugo was removed by St. Alphonsus himself is suggested by this: that afterward he himself, l. c., alleges Lugo (Disp. 13, n. 24) against himself, as if Lugo there established that adulterers are held to support pro rata of the doubt; which nevertheless is itself less exact. For there Lugo, on the contrary, inclines toward the sentence which denies the obligation of nourishing the offspring, although he admits in the adulterers an obligation of restoring to the husband and legitimate children at least as to part for the damage inflicted upon them from adulterine offspring.

But to come to the remaining allegations, St. Alphonsus, as we have seen, cites for himself Zacharias, that is, Croix, Lib. 3, P. 1, n. 704. But behold, the same St. Doctor a little later, l. c., writes: Nevertheless Croix himself, Lib. 3, P. 2, n. 337, with Lugo, n. 24, speaking of adulterine offspring, says absolutely with Illsung that adulterers are held to support pro rata of the doubt. How, therefore, does St. Doctor allege Croix for himself, when, by his own admission, Croix says absolutely that adulterers are held to furnish support? Nor is it permitted to conjecture that the question of St. Alphonsus, who treats generally of restitution of damages, differs from the thesis of Croix, who perhaps speaks of support alone. For 1. Croix, Lib.

3, P. 1, n. 704, which place St. Alphonsus cites for himself, asks namely by whom the offspring is to be supported; 2. in the other place, P. 2, n. 337, he speaks also of restitution of the hereditary part subtracted from the legitimate children. What certain thing, therefore, can be deduced from this? St. Doctor then brings forward Gobat, but he does not indicate the place; and perhaps he took this allegation from Croix, Lib. 3, P. 1, n. 704. But indeed 1. Gobat is there alleged by Croix not concerning the present question, but concerning another; 2. in the present question, however, Gobat (Quin., Tr. V, Cap. 28, n. 58) calls the sentence of Molina, against which he is cited by St. Alphonsus, most probable.

Then St. Alphonsus brings forward Bonacina also for himself. But the Salmanticenses themselves (Tr. 13, C. 3, n. 31), whom St. Doctor alleges, report Bonacina for the opposite sentence. And in fact Bonacina (*De Matr.*, Q. 4, Punct. 15, n. 10) has these things: When two adulterers have known one and the same married woman, who conceived at that time when the husband was absent, each one is held both to restore for his part, etc. Thus Azor, Rebell., Molina, and others.

St. Doctor adds the allegation of Sanchez, which seems to have been taken from the Salmanticenses. But this seems to touch the matter even less than the others. For Sanchez asks (Cons. Lib. 4, C. 3, Dub. 1) who are called natural children, who spurious. But he infers (ibid., n. 3) that those whom someone had from a concubine outside the house are not to be called natural if the father does not recognize them as sons; otherwise, if he has always recognized them as sons. These things, as is plain, pertain nothing to the present question.

As regards the allegation of Soto, in the first place this argument would prove too much; since in whatever hypothesis Soto (*De Iust.*, Lib. 4, Q. 3, art. 2, ad fin.) denies that the adulterer is held from justice to any restitution. In truth, he says, I do not plainly see why an adulterer would be held to any restitution from justice. This opinion Sayrus also refutes with others (Lib. 8, C. 3, n. 20-21).

But Lopez (Instr., P. 4, C. 90), to whom here must be added Villalobus (*Sum.*, Part 2, Tr. 11, Diffic. 34) and Sayrus (l. c.), does not define that two adulterers are held to no restitution, but these only say that neither of them is held to have that offspring as his own. But that this sentence does not exclude the obligation of restoring is plain both from the nature of the matter and from fact. From the nature of the matter indeed, because the obligation of restitution is not sought here from this, that each adulterer ought to believe the offspring to be his own, but from another reason, which also the Author intimates in the text. From fact, moreover, because in reality the Doctors reconcile each sentence in such a way that they teach each as true. Thus, besides those alleged, Molina also (Part 4, Disp. 103, n. 3), and Trullench (Lib. 7, C. 9, Dub. 7, n. 5), whom therefore the Salmanticenses (l. c., n. 32), and after them St. Alphonsus, allege undeservedly for the opposite sentence.

There remain Lessius (Lib. 2, C. 10, n. 40) and Filliuccius (Tr. 32, C. 8, n. 223). But these in no way weigh this controversy concerning uncertainty between two adulterers, but only establish the question generically concerning the case in which someone merely has a doubt whether he himself is the father. But that this does not exclude a diverse sentence concerning the case about which we are treating is manifestly plain from this: that Bonacina, Molina, Lugo, Trullench, etc., establish those same general principles as Lessius and Filliuccius, and yet consequently did not think that the same sentence was to be held concerning our case. And the reason for a diverse sentence according to the diversity of the case is not obscure: namely, as we have already intimated, the obligation of restitution is not sought from this, that one or the other adulterer is certainly judged to be the father.

Finally, what the suffrage of the Salmanticenses is worth can be judged from this, that their whole furnishing consists of the allegations here weighed.

St. Alphonsus adds (l. c., n. 650) that the opinion which he follows is called common by Lugo, Disp. 13, n. 19. But in fact here Lugo asserts precisely the opposite. The common sentence, he says, certainly affirms that each one must concur in part toward support, etc.

But as regards intrinsic reasons, St. Alphonsus is not far from admitting the force of the argument which is used by the patrons of the opposite sentence, and which is set forth thus apud Croix (Lib. 3, P. 2, n. 337): The reason is that although one who doubts whether he caused unjust damage is held to nothing, which is the argument of St. Alphonsus, nevertheless here each one, by common work, is the cause of the uncertainty itself, which unjustly impedes the due restitution from being able to be exacted from one determinate person, and into this damage each consented by willing copula of itself causative of damages of this kind, as Ills. argues, n. 97, etc. And Dicastill., Reding, Pettschacher, Illsung, Mezger, etc., apud Babenstuber (Tr. 7, Disp. 5, art. 3, § 3, n. 38), and Elbel (*Theol. Sacr.*, Part 3, Conf. 18, n. 452), indeed urge this reason excellently. Moreover St. Alphonsus does not deny the force of the argument, but merely requires that the adulterers had

foreseen this damage; and what sort of foresight this ought to be, the same St. Doctor teaches (*De Act. hum.*, n. 10), where he postulates that the agent, in placing the cause, advert at least in a confused way that an effect of this kind would follow from that cause. Indeed these words are not to be accepted as if the agent ought to know that that effect will certainly follow from his action, but thus: that if the effect follows, the agent knows that the effect must be attributed to his action. Therefore, although it is uncertain whether the woman will conceive from the adultery, or whether death will follow from the explosion of arms, nevertheless if either offspring follows from adultery, or death follows from the explosion of arms, no one doubts that the effect must be ascribed to the cause placed. Moreover, since from the adultery perpetrated either the conception of offspring, or the uncertainty about which there is speech, if perhaps another adulterer has approached the adulteress, are effects of this kind, which follow not by accident, but of themselves from the adultery of each, an excuse can certainly be pretended with too much difficulty, that no foresight of the damage that followed, not even implicit, preceded. Otherwise even the adulterer would seem to be excused who had thought absolutely nothing about offspring to follow from his own crime, or even who had persuaded himself firmly that no offspring would follow from that adultery. But over excuses of this kind there prevails the fact that whoever undertakes a crime also explicitly or implicitly takes upon himself the burden of consequences of themselves coming from it. Hence we see it done that, although so many most grave Authors have treated this controversy accurately on every side, nevertheless Pettschacher alone, whom Elbel and Babenstuber afterward followed in some way, produced this exception in passing.

Q. 3. Whether a son is held to believe his mother, even when she swears, that he is illegitimate?

Resp. Negatively, because from right and common sense no one is held to believe one witness, even of the most approved faith. Otherwise, however, if besides the testimony of the mother evident indications were to accede, for example, the absence of the father for a long time. - St. Lig., n. 654. - Laymann. - Roncaglia.

734. ○ **Q. 4. Whether, if adulterers or wealthy fornicators have sent offspring to a foundling hospital, they are held to reimbursing the expenses?**

Resp. It is controverted. **First Sentence**, the more common and more probable, affirms. The reason is that foundling hospitals were instituted for the sake of infants, not indeed of parents; nor is it to be presumed that their founders wished to exempt the rich from paying expenses. - Lugo, D. 13, n. 3. - Billuart. - Bouvier, *de Restit.*, p. 2, art. 2. - Carrière, n. 1373. - Rousselot, opusc. *de sexto praec.*

Second Sentence denies, because foundling hospitals were erected for all infants indiscriminately who are cast off by parents. Nor is it an obstacle that subsidies are furnished by the Government or by the Municipality for these little ones; because these are generally assigned for abandoned little children, without attention being given to the parents. Moreover, hospices of this kind were instituted for this end, that illegitimate infants might be freed from the danger both of eternal and of temporal death, to which they would be especially exposed unless they were received in those pious places. For how many impious and barbarous parents has fear of infamy driven either to procuring the abortion of their offspring, or to bringing death upon it? Besides, the children of the rich incur such danger no less than the children of the poor. - Thus St. Lig., n. 656, who thinks this sentence more probable.

Nevertheless the patrons of this sentence also agree that in practice the parents must be earnestly exhorted to give something to the foundling hospital, at least by title of penance.

735. ○ **Q. 5. How much must be given to the hospice, according to the patrons of the prior sentence [3]?**

[3] Since the second sentence also is sufficiently probable, indeed in the judgment of St. Alphonsus is more probable, this question seems useless; because the Confessor cannot impose the obligation of paying something as owed from justice; but if the speech is about alms to be freely given, the quantity seems to be permitted to the judgment of the one giving.

Resp. No certain rule can be defined. For the solution of the question depends upon various circumstances of things and places, upon the prolonged life or upon the premature death of the offspring. But scarcely, they say, a sixth part of children reaches the age of twelve years, and often it is unknown to the parents whether they live or not. Whence, they conclude, it will be enough if the parents pay 200 or 150 francs to the foundling hospital pro rata of the doubt. - Bouvier, ibid. - See *Casus*, n. 743 and following.

Chapter III. On Restitution on Account of Damage

In goods of fortune in particular cases, namely: 1. as regards taxes; 2. as regards military service; 3. as regards the plundering of goods during the disturbance of France at the end of the eighteenth century.

Article I. On Taxes

736. ○ By the name of tax is understood the payment which subjects pay from their own goods to the Government or Prince for the common expenses of the Republic.

Some taxes are direct, which affect actual and determined goods of private persons; others indirect, which immediately regard certain wares, and only mediately the persons who transport, sell, buy them, etc., as in French are *les droits réunis*, *les douanes*, etc.

737. **Principles.** - I. The imposition of a tax is an act of supreme dominion over the goods of subjects, and therefore for imposing them there is required supreme and legitimate authority. For it alone possesses the right of high dominion [1], because it alone presides over the whole community.

[1] The right of high dominion, as it is commonly understood, pertains nothing to this point. The power of imposing taxes is attributed only to the supreme ruler of the republic for this reason, that to him alone pertains the care of directing the community to its end through suitable means. Nevertheless the faculty of exacting some tax is accustomed to be given also to the magistrates of municipalities, so that provision may be made for the special necessities of individual places.

II. - The Prince has the power of imposing taxes; for his power extends to all that which the common good requires; but the common good requires that subjects concur in bearing the burdens of the Republic. - St. Lig., n. 615, etc.

III. - It is necessary: 1. that taxes be exacted for the necessity or utility of the community; 2. that equality among subjects be preserved, account being taken of the faculties which they possess. - St. Lig., n. 615. - Lugo. - Billuart.

IV. - Laws which are concerned with taxes, considered generally, are not merely penal, but oblige in conscience. This is deduced: 1. from the words of Christ, Matt. 22:21: Render to Caesar the things that are Caesar's. - Rom. 13:5: Be subject, not only because of wrath, but also because of conscience; for therefore you also pay taxes... - Render therefore to all their dues: tax to whom tax; custom to whom custom. - 2. It is plain also from reason; for the Prince is held to bearing the burdens of the

Republic; therefore by parity subjects are held from justice [2] to furnish the means necessary for promoting the common good. - St. Lig., n. 615-616.

[2] Understand legal justice, by which both the prince and subjects, each for his own part, are held to contribute the necessary supports for bearing the burdens of society.

738. **Questions. - Q. 1. Whether the obligation both of paying customs or indirect taxes, and of restoring pro rata of the fraud committed, must always be urged under penalty of sin and of absolution to be denied?**

Resp. The solution of this question is not without difficulty; concerning the following things they agree sufficiently commonly.

I. The faithful are to be diligently exhorted to pay taxes diligently and to abstain from every defrauding of them. Nor, however, is it expedient that the Confessor ask penitents who are silent in confession about taxes whether they are guilty of some defrauding; lest perhaps he uselessly introduce bad faith into those who are in good faith.

II. But the following are to be condemned:

1. Those who corrupt, by unjust means [3], those placed over exacting customs, so that they do not perform their office; for they sin at least by cooperating in the sin of these.

[3] Namely by gifts, promises, fear, etc.

2. Those who do not pay taxes already imposed from a long time, and which were paid by all, nor was any complaint ever heard concerning their injustice [4].

[4] This resolution perhaps supposes that which is in question. Then how do I know that some tax, unless it is from those which cannot flee the eyes of those exacting, was always paid by all?

3. Those who violently resist ministers exacting customs; for these sin: 1. against obedience: He who resists authority resists the ordinance of God. Rom. 13:2; - 2. against legal justice; for the law which regards taxes, even if at times it were held as merely penal, nevertheless gives to the governors a certain right to exact a fine [5], if subjects are caught in fraud.

[5] Nevertheless a right to a fine does not found a debt of commutative justice; wherefore evasion of a fine is not measured with the obligation of restoring.

4. Those who by right and wrong exercise fraud as a kind of trade, and wander day and night, even armed, with the mind of resisting; for men of this kind become rebellious citizens and most pernicious to society.

5. Nor must indulgence be given to those who, although they never resist, nor have the mind of resisting, nevertheless bend every study and work toward the art of defrauding, and have it as it were as the profession of life; for these are at least not rarely exposed to dangers of soul [6].

[6] Rather than dangers of soul, these men assuredly undergo an enormous danger of fortunes. For both the loss of wares and the superadded imposition of a fine, as often as they are caught in fraud, can bring them, and with them also their family, to extreme poverty.

739. ○ But how many and how great difficulties occur in the remaining cases escapes no one. Whether at times it is permitted to act more mildly with penitents, a twofold sentence is given, namely affirming and denying. St. Ligorius himself does not dare to settle the matter; having set forth the reasons of certain theologians inclining toward the more benign part (n. 616), he says: Whether, however, on account of these reasons, which in other respects do not seem to be contemptible, it, that is, the affirmative sentence, is sufficiently probable, I remit to wiser men than myself. And in *Hom. apost.*, n. 18, he concludes: Nevertheless, this notwithstanding, I do not omit persuading the first, that is, the negative, sentence. - But the chief reason of those Doctors rests upon the universal custom of accepting and interpreting the law in such a way. Wherefore for us also it will be enough, if, after the sentences of some theologians outstanding in piety and doctrine have been set forth, we leave the choice to the pious reader. Thus therefore they:

740. ○ Bonacina, disp. 2, *de Restitut.*, quaest. 9, punct. 4, prop. 2, as regards indirect taxes, says: Let it suffice for us to say that what we assert can probably be defended, lest we impose a burden too grave upon penitents after the fact, although before the fact this more benign sentence is not to be counseled, since the edicts of the Prince are not easily to be reprehended.

Vogler, n. 352. - Although the faithful are especially to be exhorted to pay taxes diligently, nevertheless if they now and then defraud somewhat, they do not seem to be obliged to restitution, because the most common practice has this, Princes connive, and in so great a multitude of taxes all the wisest persons doubt whether all are just [7].

[7] Vogler, as is plain, heaps together reasons from each of the opposed sentences: from the first indeed, when on account of most common practice and the connivance of princes he exempts those defrauding from the obligation of paying; but from the second, when he supposes the obligation, but excuses those not paying by reason of some injustice in the taxes themselves. Nor otherwise De Lugo also, who is soon alleged by the Author, limping between each sentence, says according to one that counsel should rather be used, and according to the other excuses from restitution on account of some possible excess of taxes.

Lugo, D. 36, n. 43. - To me, he says, the counsel of P. Molina has always greatly pleased... before the fact, it must be counseled that taxes not be defrauded; after the fact, if the penitent certainly or probably persuades himself that in so great a multitude of taxes there is something unjust..., he is not to be compelled by the Confessor to restitution; nevertheless this doctrine must be used prudently, both lest they render the Sacrament of Penance too grave, and lest they close the way of salvation to many who, if they are obliged by the Confessor, will not restore and will incur eternal damnation.

741. ○ Scavini (*Theologia moralis*, ed. Novariae, 1845), *de Restitut.*, c. 1, art. 1, after setting forth the negative sentence, which he acknowledges to be most common and more probable, says thus: The second sentence, which affirms, does not lack its own authority and probability... Whatever may be the case concerning the probability both of the first sentence and also of the second, which we remit to wiser men to define, for practice we warn one thing with the most learned Card. de Lugo: Generally speaking, the people are to be admonished and stirred up to paying taxes, but after the fact they are not to be

compelled to restitution of a defrauded tax, if they probably persuade themselves that in so great a multitude of customs they paid something unjustly, or contributed competently to public necessities [8].

[8] But Lugo (cited Disp. 36, n. 42) had warned that neither the obligation of contributing to public necessities, nor the greater burden of others because of the defect of others, compels one to deny the opposite sentence, which does not condemn him who perhaps could have exempted himself from paying.

742. ○ Rousselot (in notes to Saettler, *Theolog. mor., de Leg.*, part 2, c. 2, art. 3), as regards taxes imposed upon wares, commerce in which is permitted to all under the condition of paying the tax, has these things: There is no obligation of paying certain taxes before they are asked, for example, taxes at the gate of the city, at the bridge, etc. For custom bears it thus, and laws do not oblige beyond custom. Moreover, with the author Saettler and many other outsiders, it can more probably be asserted that those taxes, for whose exacting guards and exactors have been constituted, are neither to be paid in conscience, nor are those defrauding them held to restitution.

These things having been duly weighed, one must not immediately nor easily pronounce the defrauding of indirect taxes to be sinful and to oblige to restitution. Nevertheless let these things not be preached upon the rooftops; but with St. Ligorius and Saettler, let Pastors and Confessors urge observance of the laws also in this matter, let them deter from transgressions as far as they can; but let them not immediately condemn transgressors of grave sin [9], nor drive them to restoring, especially if greater evils, for example, desertion of the Sacraments, are to be feared. Moreover good faith often intervenes, to which they are deservedly left.

[9] Behold for yourself a man limping among uncertainties. First he seems to deny the obligation of spontaneously paying indirect taxes; then he adds that this is not immediately nor easily to be pronounced; afterward he constricts the matter to the question of grave sin; finally, as if he does not concede the use of the first doctrine except when graver evils are feared. Let others judge whether this method contributes more to loosening consciences from snares, or rather to entangling them.

Card. Gousset (*Theolog. moral.*, t. 1, n. 999) urges generally the obligation of paying all taxes, of whatever kind they are, notwithstanding contrary custom, which he calls a common error [10]. Nevertheless he diligently commends prudence to the Confessor, lest perhaps, with hope of fruit remote and the greatest danger of salvation acceding, he induce those defrauding from good faith into bad faith.

[10] That a doctrine which so many supreme men, whom we deservedly are accustomed and ought to revere, either professed, or permitted as probable, or at least did not dare to disapprove, is intrepidly represented as a common error, is indeed difficult. Likewise, that nothing is to be deferred to contrary custom, where there is a question about the obligation and interpretation of some law, is also very difficult.

743. ○ **Q. 2. To whom must restitution be made, if at some time it is to be made by reason of a defrauded tax [11]?**

[11] Since the nearly unanimous sentence of the Doctors is that the faithful either cannot licitly be driven to restitution of a defrauded tax, inasmuch as fault is lacking, or at least that it is in no way expedient for this obligation to be urged, this question can seem useless. But it is useful at least if at some time in another way, for example by thefts, someone has brought damage upon the public matter.

Resp. A twofold sentence is given: according to the older Doctors, restitution must be made to the Prince, whose right has been violated. But according to many more recent men conspicuous for piety and doctrine, with Bouvier as witness, restitution is not to be made to the Prince, nor to the subjects; but the defrauded money ought to be expended for pious uses or upon the poor. 1. Not to the Prince, because there is not at hand a mode by which this can be done. Besides, Princes suffer no damage; for foreseeing frauds, they impose greater taxes. 2. Not to the injured subjects, because restitution cannot be made to individuals: therefore the sum ought to be expended upon the poor, or upon public utilities. Gousset, n. 999, agrees. - Recall what was said above, n. 712.

744. ○ **Q. 3. Whether those importing prohibited wares sin and are held to restitution?**

Resp. 1. As regards restitution, absolutely negatively, because they injure no strict right of anyone. For they do not violate the right of the Prince, because he has not reserved those wares to himself, nor imposed any tax upon them; nor the right of any private person, because there is no one who has the privilege of selling these wares [12]. - Bouvier, *Tract. de Restitutione*, at the end, and others commonly.

[12] Even if the prince had reserved this right to himself, or imposed a tax, or granted to someone the privilege of selling those wares, nevertheless the obligation of restoring is not more certain than the disputed matters above persuade.

Resp. 2. As regards sin, it is controverted: some affirm that those defrauding sin, and indeed of itself gravely, because they violate laws which truly oblige in conscience of themselves, and not only by accident. - Bouvier, ibid. But others deny, because those laws from custom are held as merely penal.

At least they are not to be condemned of sin who import prohibited wares in a small quantity and for their own use, especially if they are poor. But the rest can easily sin against charity toward themselves, by exposing themselves to very grave penalties.

745. ○ **Q. 4. Whether those placed over taxes sin against justice as often as they do not exact the tax?**

Resp. Affirmatively, of itself generally, and indeed gravely in grave matter. The reason is plain, since they have obligated themselves to watch rightly and to exact taxes diligently. Therefore, if they fail in their office, they are held to restitution toward the Prince or the Republic. - Thus commonly.

I said generally, because according to several, those placed over exacting customs are not always to be condemned when now and then they act more benignly in a light matter, especially with the poor, or even with those who otherwise pay diligently. - See *Casus*, n. 751 and following.

Article II. On Damage Inflicted on Occasion of Military Service

746. **Principles.** - I. Soldiers are held to nothing by reason of damage inflicted through a common action, unless the injustice of the war is certain to them, because they are not formally unjust damagers. - Recall what was said concerning the fifth precept of the Decalogue, n. 406 and following.

II. But soldiers in a war evidently unjust are held for all damages which they inflicted through private action; and each is held pro rata for damages inflicted by the whole army, unless perhaps they were

compelled to wage war from grave fear. - See above, concerning unjust damage, n. 658 and following.

III. But commanders or Princes are held primarily and *in solidum* for the whole damage inflicted by the army, because they are truly those mandating; or, if they did not command the damage, nevertheless they were held from office to impede it.

747. **Questions. - Q. 1. Whether individual soldiers in the defect of others are held *in solidum* for the whole damage inflicted by the army?**

Resp. More probably negatively; because individuals are not the cause of the whole damage, but of part only. Moreover in practice they would have to be excused from absolute inability. - Lugo with others.

Q. 2. To what are conscripted soldiers who are deserters held?

Resp. 1. From obedience or from legal justice they are held to return to camp. - Thus commonly.

Except: 1. if they would meet with grave danger to salvation, for example, if the means of confessing were not at hand..., etc., as can happen in some places...; 2. if, on returning, they would be punished with death, the galleys, or other very grave penalties; 3. if the war is evidently unjust.

Resp. 2. But certainly deserters are held to no restitution, where the law does not require others in their place; because in no way do they injure commutative justice, since they inflict damage on no other. (Thus in France from the new law of conscription given March 10, 1818.)

748. ○ **Q. 3. To what are those held who hired themselves in place of others, and then deserted military service?**

Resp. Of themselves they are held to restore the price accepted to him from whom they accepted it, because they lack a reason for retaining the money, which is expended only on account of the burden of military service.

Nevertheless this seems to be valid only where he who hired a soldier in his place is exposed to the danger of undergoing military service. But that danger is not given in France, except in the first year of military service, for which alone the hirers are responsible.

749. ○ **Q. 4. To what are those designated by lot for military service held who withdraw themselves from it, or obtain exemption without true causes?**

Resp. 1. Those who corrupt magistrates or physicians so that they may be declared invalid by them, are certainly held to restitution [1]. - Thus all.

[1] Indeed you will reconcile these things with difficulty with those which the Author then subjoins according to the sentence of others. Nor in this matter is the distinction of any moment which is had between this and the following hypothesis. For it is the same whether those designated by lot for military service contrive by themselves alone the fraud by which they withdraw themselves iniquitously, or whether they use physicians or magistrates as partners of the fraud.

Resp. 2. Likewise, according to the more common sentence, those who deceive magistrates by lies, frauds, or prior mutilation. The reason is that after the lot, as the laws establish, has defined who ought to undergo the burden of military service and who are exempt from it, the rights of justice certainly demand that those already assigned to military service not use iniquitous means for shaking

off the burden which must necessarily fall back upon those exempt. - Thus Bouvier, *de Restitutione*, quaest. 2, art. 2. - Gousset, n. 1002. - *Collat. Andeg.*, etc.

Nevertheless several others deny, whose sentence appears sufficiently probable. Their reason is that these conscripts are not an efficacious cause why others are required; for deception neither physically nor morally incites the magistrates to enrolling others. Nor are they even an unjust cause, since it is not certain that others have a strict right that those designated by lot set forth into military service. Therefore, although they sin against legal justice or obedience owed to the law, nevertheless they do not sin against commutative justice, and therefore are not held to restitution. Thus *Collat. Anic. de Restit.*, n. 172. Lyonnet admits each opinion as equally probable, *de Restitutione*, at the end. - Nor are there lacking those who think that this law is opposed to distributive justice, since only families having young men suitable for military service undergo so great a burden.

Whatever may be the case, in practice it will be most wise, even in the first sentence, not to urge very strongly the young men who have freed themselves from military service by the aforesaid means [2]. For very many by no means think that injustice is committed, and otherwise they would rarely obey warnings. - Thus the cited authors. - See *Casus*, n. 757 and following.

[2] If the second sentence also has its probability, it will not only be most wise in practice not to urge to restitution, but it would be unjust to exact restitution. And the reason is manifest; for it is unjust and contrary to the axiom that the condition of the possessor is the better, to impose a certain burden of restitution when it is probable that no obligation of this burden exists.

Article III. On the Plundering of Goods During the Disturbance of France

§ I. On Ecclesiastical Goods

750. **Things to be noted.** - I. Some goods of the Church were plundered by the Government itself, others by private persons.

II. Pius VII entered into a convention on August 15, 1801, with Napoleon, First Consul, by which he freed the acquirers of ecclesiastical goods from restitution.

III. The Sacred Penitentiary, in a rescript to the Most Illustrious D. Bouvier, March 20, 1818, declared thus: The Sacred Penitentiary, by express apostolic authority, declares to the consulting petitioner that ecclesiastical goods occupied by the Government before the convention entered into in the year 1801 between the Holy See and the Gallican Government are in the full power of the acquirers.

IV. Pius VII directed a Brief to the Bishop of Poitiers on October 20, 1821, in which he declared that the concession of goods previously made by the Supreme Pontiff can be applied to all ecclesiastical goods previously usurped by the Government, whether it had already alienated them before the convention of the year 1801, or had not yet alienated them then.

751. **Resolves.** - 1. Those who usurped ecclesiastical goods by their own authority sinned gravely, and are still held to restitution; for they are thieves, nor has any condonation been made for them.

2. But those who occupied those goods with the civil law favoring them sinned, and were held to restitution before the convention of the year 1801, but not afterward, by the concession of the

Supreme Pontiff.

3. Those who after this pact accepted goods of the Church not yet alienated, sinned against justice, and were obligated to restitution, because by force of the convention the concession had not been made except for goods already alienated [1].

[1] This resolution seems, from the premises in the preceding number, to be understood of goods which someone acquired from the government after the year 1801 and before the Brief of the year 1821.

§ II. On the Goods of Private Persons

752. **Things to be noted.** - I. Some goods of private persons unjustly proscribed, *des émigrés*, were occupied by the Republic, others by private persons, as was just said concerning ecclesiastical goods.

II. Louis XVIII, in the year 1814, promulgated a public Constitution for confirming possessions of this kind. - Charles X, by a law passed on April 27, 1825, declared all national properties inviolable, and established that indemnity must be paid to injured private persons. Thirty millions, at a capital of one billion, are assigned to indemnity by the State for Frenchmen whose landed properties situated in France, or which formed part of the territory of France on January 1, 1792, were confiscated or alienated in execution of the laws concerning the émigrés, the deported, and those condemned by the Revolution.

753. **Resolves.** - 1. Private persons who by their own authority occupied these goods are still held to restitution, and never will be able to prescribe, since they were possessors of bad faith.

2. The acquirers of national goods were held to restitution until the time of the Restoration; for no legitimate transfer of dominion had been made.

3. The same acquirers from the year 1814, and especially from the day of April 27, on which the law of indemnity was sanctioned, are no longer held to restitution, provided the acquisition was legal or made by authority of the Government.

4. It is not certain that movable goods are comprehended under the benefit of ratification; for the law of the year 1814 has no word concerning them, and the law of the year 1825 speaks only of immovables. Nevertheless very many think that concerning movable goods which are joined to estates or houses the same must be thought as concerning immovables; because the accessory follows the principal.

End of the Treatise on Justice and Right.

Treatise On Contracts

The science which is concerned with contracts must be judged altogether necessary, especially in our age. For commerce is practiced so far and widely everywhere on earth, and the non-liberal arts are perfected so much day by day, that judgment must very often be rendered in the sacred tribunal concerning the equity of contracts. But here especially appears the difficulty of reconciling the laws inscribed in conscience with the laws of the civil Code. Nevertheless, with God furnishing aid, as we trust, we shall proceed with such caution that, with Doctors of better note as our guides, we may incur the stain neither of untimely severity nor of excessive indulgence.

One must treat: 1. of contracts in general; 2. of contracts in species.

First Part. On Contracts in General

744.† - **Definition.** A contract is an agreement by which one or several bind themselves toward one or several others to something to be given, done, or omitted.

Division. A contract is chiefly distinguished as: 1. unilateral, or bilateral. The former occurs when one or several bind themselves toward one or several not bound, as in the contract of gratuitous promise. The latter is had when one or several bind themselves toward one or several likewise bound, as in exchanges. A bilateral contract is also called synallagmatic, from the Greek words *syn*, with, and *allasso*, I exchange.

2. Gratuitous, or of beneficence, or onerous. A contract is called gratuitous if one of the contracting parties gives something to another, exacting nothing from him from obligation. But it is called onerous if each of the contracting parties obliges himself to furnish something to the other, as in a contract of sale. This division falls back into the preceding one. For a gratuitous contract is unilateral, and an onerous contract is bilateral.

But an onerous contract is again subdivided into commutative and aleatory. It is commutative if one contracting party gives a thing in one species, and the other gives an equivalent thing or one of a diverse species. It is aleatory if one gives a thing, but the other contracting party gives not a thing, but the probable hope of obtaining some thing; since this hope can fail, it effects that a contract of this kind bears before itself the likeness of chance.

3. Solemn or simple, according as it requires special formalities of law, or is subject only to common dispositions.

4. Nominated or innominate, according as it has its own name, as for example sale, or lacks its own name, for example, *I give so that you may give*, *I do so that you may do*, etc.

5. Nude or clothed. A contract is called nude which in the external forum does not beget an obligation, but only an exception [1]: such are agreements which are made without writing or witnesses, as pacts in games, etc. A clothed contract is one which, besides the obligation of conscience, begets an action in the civil forum, as are contracts fortified by the formalities required by law, etc.

[1] If, for example, from a sale I owe you a hundred coins to be paid on the last day of the month, but you promised me that you would give a hundred as a loan; when you seek yours, I can oppose an exception, because that natural obligation of lending survives and has not yet been extinguished.

But nude pacts have other effects also as regards the external forum. For 1. if that which is owed from a pact of this kind has been paid, repetition is not granted; 2. for these natural obligations a surety is bound; 3. the creditor can retain a pledge.

Moreover two pacts are excepted which, although nude, beget an obligation and a civil action, namely: 1. those which, while the simple form of convention remains, have special efficacy of obligation from civil law; these pacts are called legitimate, for example, a pact of donation or of dowry; 2. those which have the same force from praetorian law, as an agreement concerning a pledge. See Vinnius (*Ad Lib.* 3, Tit. 14, § 2, n. 6).

Likewise in the canonical forum, if the cause pertains to it by reason either of persons or of matter, an action is given for a nude pact of promise, as often as this was entered into with expression of the cause. Indeed expression of the cause is not required if a donation was made to the Church; since a sufficient reason is always presumed, namely the reason of piety and religion. Compare Laymann (Lib. 3, Tr. 4, Cap. 3, n. 3).

6. Formal or express, or virtual or tacit. The former is that which is made by words, writings, or other signs explicitly manifesting consent; the latter, however, is that whose consent to the thing agreed upon indeed exists really, but is manifested only implicitly by some saying or deed. Thus a physician exercising his art is judged to promise that he will do that which his profession requires. This contract is commonly also called a quasi-contract.

7. Absolute or conditioned, according as no condition, or some condition, is placed upon it. It is also called pure or not pure [2].

[2] Add here another partition, according to which some contracts are called of good faith, others of strict right. In the former a judge can arbitrate many things from the equitable and the good; in the latter one must stand by the words of the contracting parties (Lugo, Disp. 22, n. 10). Contracts of good faith are buying, selling, lease, hire, management of affairs, mandate, deposit, partnership, etc. On the contrary, contracts of strict right are considered to be most innominate contracts, and likewise loan for consumption, census, gratuitous stipulation or donation: to this pertains L. 99, ff. *De verb. oblig*. Whatever belongs to the binding of an obligation, unless it is plainly expressed in words, must be understood as omitted; and we interpret almost always according to the promisor.

755. ○ In every contract three things must be distinguished, namely essence, nature, and accidentals. 1. To the essence pertain those things without which a contract cannot exist. Thus, for example, in a contract of sale three essential things are given, namely the thing, the price, and consent. One being lacking, there is no contract. If in place of a price, for example, another thing is given, it will no longer be a contract of sale, but of exchange. 2. To the nature pertain those things which, although not expressed, nevertheless from law or custom or equity are understood as comprehended in the contract, although they are not essential; for example, the security furnished against eviction of the thing sold, which could be excluded by the contracting parties without the sale being invalid: when the condition is not expressed, the seller must furnish

security for the thing sold. 3. But accidentals are called those things which can be joined to the contract by a special agreement, without being judged added by law or by the nature of the thing; for example, such a delay of price, or other things of this kind. - Bouvier, etc.

These things having been premised, it remains to treat: 1. of the requisites for contracting; 2. of the obligation of a contract; 3. of the modifications of contracts.

Chapter I. On the Requisites for Contracting

Three things are required: 1. suitable matter; 2. a capable subject; 3. legitimate consent.

Article I. On the Matter of a Contract

756. ○ The matter of a contract generally is things and acts, or all those things which can fall under the dominion of man, and concerning which the contracting parties have free administration.

The matter of a contract ought to enjoy these conditions, namely, it ought to be possible, existing, honorable, proper to the contracting party, certain, estimable by price.

1. Possible, both physically and morally; because no one can be obligated to the impossible. Therefore no one can be obligated to avoiding fortuitous events, since this is impossible. Hence if someone undertakes them upon himself, he obliges himself only to repairing the damages proceeding from them.

2. Existing either in reality, or at least in certain hope, or probably going to exist; otherwise no right could be had in it, as being estimable by no price.

3. Honorable and licit in itself, that is, prohibited by no law; because no obligation can be given to a dishonorable and prohibited thing. But for the validity of a contract it suffices that the matter be substantially honorable; for a contract can be valid, although illicit on account of some accidental circumstance.

4. Proper to the contracting party; for no one can transfer to another a right which he himself does not have. Hence if someone buys a stolen thing, he buys invalidly, even if good faith was present in each contracting party, as is clear from what was said concerning the possessor of good and of bad faith, n. 635 and following.

5. Certain and determined, either individually, or in quantity and quality; otherwise the contract would be illusory.

757. **Questions. - Q. 1. Whether you can accept a price for your action already owed from justice to someone, if the same action can profit another, the right of the former, to whom it is owed, remaining unharmed?**

Resp. Affirmatively. The reason is that you do not injure the right of the former, with whom you had contracted, and you render yourself useful to the later one. Thus, for example, if Titius has hired you to go to a certain place for the sake of treating some business, you can also be hired by Peter to make that journey for treating a new business, provided the later mandate does not harm the former. - St. Lig. and others.

Q. 2. Whether a price can be accepted for a thing owed, not indeed from justice, but from another virtue; for example, if you accept money for fasting in the time of Lent?

Resp. Affirmatively, at least more probably, because that is given from mere liberality and is judged a merely gratuitous gift. - St. Lig., n. 713, and others commonly. - Nevertheless it is supposed that the action or thing to which the donee is held is estimable by price; otherwise the contract would be invalid. Hence he would be held to restitution who exacted money for showing the way to a man passing by, when without any labor or loss of time he can show it; since that action is not estimable by price [1].

[1] In this last particle the Author evidently changes the hypothesis, and introduces someone exacting something, whereas previously the question had been only about one accepting. Nor indeed is a distinction of this kind of no moment. For if you imagine one indeed merely accepting, but another giving something from a liberal gift, it certainly does not matter whether the thing or reason on account of which it is given is estimable by price; for a donation, as being plainly gratuitous, requires no price of work in the donee. But otherwise one must speak if you imagine another exacting something as if owed to himself, when nevertheless he furnishes nothing in itself worthy of price, when the reason of a gift also would cease, which is repugnant to the hypothesis of an exacted price. But in these things the Author, by using the hypothesis of one exacting a price for indicating the way to one passing by, wished to insinuate a principle otherwise most true: that the price of some work can indeed be taken both from the labor or inconvenience necessary for it, and from common estimation, but not from the singular necessity of someone, or from the convenience which as it were by accident comes to someone from it.

Q. 3. Whether a contract is valid if the matter is possible only in part?

Resp. Affirmatively, if the thing is divisible in itself, and the contract was made concerning it divisibly; otherwise, if it is indivisible or if agreement was made concerning it indivisibly. Hence, for example, if you bought 100 measures of wheat in such a way that the contract is not perfected except when the thing has been delivered, and 50 perish, the contract still holds for the remaining 50. But if you promised a hand-watch, and you learn that you have only a partial right in it, your promise will be null.

758. ○ **Q. 4. Whether a merely spiritual thing can be the object of a contract, whether gratuitous or onerous?**

Resp. to the first. Affirmatively. For the right of nature is no obstacle, since agreements of this kind have nothing disordered; nor divine right, since God has permitted, indeed has commanded, the gratuitous communication of spiritual things: thus from the obligation of fidelity you can promise prayers, Masses, Relics, etc.

Resp. to the second. 1. Affirmatively, if the thing is spiritual on each side [2], because then no Simony can be present in the exchange, since there is no comparison of a spiritual thing with a temporal thing.

[2] Understand: unless a prohibition of the Church is added, as happens, for example, in an exchange of benefices made by private authority.

2. But negatively, if the thing is merely spiritual on one side, while temporal on the other; because no comparison can be given between the spiritual and the temporal, as is clear from what was said concerning Simony, n. 287 and following.

759. ○ **Q. 5. Whether the matter of an onerous contract can be a temporal thing joined to a spiritual thing?**

Resp. 1. Affirmatively, if it is joined antecedently, the prohibition of the Church in particular cases being excluded; provided nevertheless that the price is not increased on account of the spiritual thing joined to it. - See what was said concerning Simony, ibid.

Resp. 2. Negatively, if it is joined consequently, at least by ecclesiastical law. But this question chiefly regards benefices.

Resp. 3. But if it is joined concomitantly, distinguish. 1. Negatively, if it is joined intrinsically and necessarily, because then the temporal thing has no value independently of the sacred thing, as is the labor of a Priest in celebrating, absolving, etc. - 2. But affirmatively, if it is joined extrinsically, as was said concerning Simony, ibid.

760. ○ **Q. 6. Whether a thing accepted from a shameful contract must always be restored?**

Resp. 1. Before the placing of the shameful work, affirmatively; because the dominion of this thing was not validly transferred. - Thus all.

Resp. 2. After the placing of the work, it is controverted. A twofold probable sentence is given. **First Sentence**, the more common, says that the price can be accepted and retained, indeed also that it ought to be given from justice. The reason is: 1. because there intervenes there a twofold contract, one absolute, namely concerning the shameful work to be placed for a price, and this is void; the other conditioned, concerning the handing over of the price if the shameful work has been placed, and this, the condition having been fulfilled, becomes valid. For, the work having been placed, the contract *I give so that you may give* already arises; the nature of this contract demands that always, as often as one contracting party has furnished his part, the other is held to fulfill his own, if he can licitly do so; 2. because although the shameful action, insofar as it is illicit, is worthy of no price, nevertheless, insofar as it is laborious, ignominious, dangerous to the agent, or useful to another, it has a price. - St. Lig., as probable, n. 712. - Lacroix. - Lugo. - Lessius.

Second Sentence denies, because a contract invalid before the placing of the work cannot be made valid through this. Hence Rule of Law 18 [3]: That is not strengthened by the passage of time which by law does not subsist from the beginning. Therefore, etc. - Thus Roncaglia. - Comitolus. - Carrière, n. 333.

[3] Rule XVIII of Law, although very well known, no one of the older authors alleged for this matter, because it is altogether foreign to the point. For the older authors knew that the obligation then arises when the contract is perfected; but the contract of which there is speech, just as all innominate contracts also (see Lugo, *De Iust.*, Disp. 22, n. 19), is not perfected unless delivery has followed on the part of one. Therefore the beginning of the obligatory contract is taken not from the pledged faith of a promise given, but from the work furnished. Just as namely the promise of sale is not sale, nor must the promise of marriage be confounded with marriage, so in the present matter the preceding promise does not have in itself

the force of the innominate contract concerning which we are discussing, upon which therefore the allegation of Rule of Law XVIII, as Carrière judged, could fit.

But Roncaglia and Comitolus are falsely alleged. For Roncaglia (*De Restit.*, Cap. 6, Q. 1, Resp. 2) writes these things: After the evil has been perpetrated, setting aside now the prohibition of positive law, the money promised to the malefactor, for example, to a prostitute, a homicide, or anyone whatever who for the sake of the one promising did some evil, must be given. For this it must be observed that although sin considered in itself and formally is always detestable and worthy of no price, nevertheless considered according to the material, that is, insofar as it can bring pleasure, convenience, utility, etc., to someone, it is reputed estimable by price... Hence that prostitutes can retain the price which is given to them is had in L. *Idem* 4, *De Condict. ob turp. caus.*, and St. Thomas teaches it, etc.

But Comitolus, although he runs through pathless and devious places according to his undisciplined genius, nevertheless (*Resp. moral.*, Lib. 3, Q. 5, n. 15) finally comes to this: that he defines that after the crime has been perpetrated, the promised wage must be paid to the prostitute. And it matters little that according to his genius he gives a wondrous reason, namely that the promised wage must be paid as a fine imposed by the laws upon the crime, without waiting for the sentence of a judge; which portentous reason would bring the matter to this, that rather than being punished with a penalty, the guilty woman would have to be heaped up with a reward from the law, and indeed the wage would have to be paid also by him who did not promise. But all these things are plainly congruous with the genius of the author, just as also that which he himself saw (ibid., n. 2), that it is the sentence OF ALMOST ALL THE DOCTORS that nothing is owed to the lessor of criminal work, when Card. De Lugo (Disp. 18, n. 59) saw that it is the COMMON and true sentence that there is an obligation of paying the promised price.

And indeed from Comitolus other allegations seem to have been gathered, for example of Adrian, John Medina, and Navarrus, which among others (see St. Alphonsus, Lib. 3, n. 712) you find for that opinion. But in these also you may see a deed worthy of Comitolus. Indeed Adrian (In IV, *De Rest.*, § *Restat.*, fol. LXXVI, Roman edition, 1522) has these most explicit things: He who obtains something by an office or act forbidden to him... does nothing against commutative justice. Therefore he is not obligated to restore. Then to the objection that the price of prostitution was forbidden to be offered in the temple, he replies: The price of the flesh is licitly and rightfully possessed; nevertheless it is equally prohibited... to be offered in the house of the Lord. But to the texts of Law by which shameful pacts are declared void, he responds: Nor does the text there openly say that a promise made to a man on account of a preceding shameful cause is not valid, but only... concerning a future shameful cause... It seems otherwise when the baseness has already passed and is as it were purged.

The things which are brought forward from Medina do nothing to the matter. For he only (Cod. *De Restit.*, page 156), by force of the law (L. *Lucius* 9, ff. *De Iure Fisci*), which orders that goods acquired by inheritance by a wife through poison given to her husband be ceded to the fisc, contends that whatever is acquired by a delict punished by the laws is to be adjudged to the fisc. Whence he concludes that the gains of a hidden prostitute are to be adjudged to the fisc, but not of a public one, whom the laws tolerate. And indeed let that heteroclite conclusion be dismissed, which no other person has deduced from that text (see Covarruv., In C. *Peccatum*, *De Reg. Iur. in VI*, § 2, n. 3). But indeed what will you extract from these things for our matter? Indeed from the fact that he wishes only gains from delicts which the law avenges to be restored, by that very fact he concedes that other gains from delict can be retained. Nay, he openly teaches that dominion of gain from delicts which the law punishes is acquired by the delinquent, saying: The laws nevertheless place a difference between this woman, that is, a public prostitute, and that one, that is, a hidden one. For if they are hidden prostitutes, the gains which they thus acquire they deserve to lose, and an action is given to the fisc, so that it can take them away from such persons. But before the sentence of condemnation has been passed against them, the dominion of the gain is with them.

Finally, so that the sentence of Navarrus may be clear, it will suffice to have brought forward these things from *Man.*, Cap. XVII, n. 34: I say fourth principally, that what has been accepted by a prostitute on account of the shameful cause of fornication does not necessarily have to be restored even in the forum of conscience. In this conclusion almost all, both Theologians and Canonists and Jurists, agree; which last words again prove with how great levity Comitolus boasted that the opposite sentence was that of almost all doctors. Moreover the reason displeased Navarrus, which, as he says, St. Thomas also and all others after him follow. Because, he subjoins, it seems to be repugnant to itself, since it presupposes that it is shameful to prostitute oneself, and that it is not shameful to take a wage for prostitution; when, as he explains below, n. 41, reception of the wage is approval of the committed sin, and therefore a new sin. Wherefore he at least exacts this (ibid., n. 41): that the delict not be the principal cause of seeking the things promised, but an impulsive cause and occasion without which he would not seek: as if, for example, shoes made wickedly on a feast day could not be the cause, but only the occasion, on account of which a wage or price is paid to shoemakers. But since finally he agrees in the same

conclusion with the common sentence of the Doctors, the remaining things, altogether singular, which even Thomas Tamburini himself (*Decal.*, Lib. 7, Cap. 5, § 3, n. 20) affirms to be far from the truth, and which Navarrus himself sincerely confesses that he brings forward against the common sense of all, are easily to be condoned to an otherwise excellent man.

And indeed these are the more important things which are brought forward for the defense of this kind of cause. For the things which Collet heaped together for the same matter (*De Iust. et Iur.*, P. 4, Cap. 1, art. 4) seemed so wretched even to him that, although he was most devoted to this kind of opinion, they could not draw him further than that he said he inclined toward it. I said Collet was most devoted to this opinion; for he was so consumed with abandoned love for it that, since he had at hand no more than four writers whom he might oppose to the most common and nearly certain sentence of all the Doctors in Theology and in both laws, this was enough for him to pronounce intrepidly: In this point there is a twofold opinion even of sounder Theologians! But otherwise, who are those sounder Theologians for his part? Comitolus, namely, the condemned work of Henry of St. Ignatius, an unknown anonymous author of *Collat. Paris.*, with the compendium of Sambovius! And indeed, what is even greater, he did not dare to bring these forward as if contending for that opinion, but, as he himself says, they hold this, or approach it; and then, and this is still more wondrous and worthy of an iron forehead, he says that John Pontas favors them, who otherwise, he himself not denying it, plainly teaches the opposite! Truly a patronage worthy of this cause, and a patron worthy of it!

Finally, so that nothing which pertains here may be omitted, some advert (see St. Alph., Lib. 3, n. 712, q. 1) that this opinion was held as probable both by Lessius and by Diana; but Tamburinus (*Decal.*, Lib. 7, Cap. 5, § 3, n. 20) adds that not ignoble Doctors teach it, and that it pleased many Canonists apud Azor (P. 3, Lib. 4, C. 21, q. 2).

But as regards Lessius, he affirmed this only concerning crimes which are punished by positive law, for example, if examiners of parish priests received something from candidates by reason of the examination (see Lib. 2, Cap. 14, n. 60, and Cap. 18, n. 20). But these things pertain nothing to the general question according to natural law.

But as regards Diana, let it be enough to observe two things: 1. This probability, whatever it may be, for he calls the opposite more probable and common, he himself (Tom. 8, Tr. 7, R. 59, n. 3) attributes to the authority of Durandus, Medina, Navarrus, Comitolus, and Valerus. But Medina, Navarrus, and Comitolus are wrongly called into patronage, as we have seen. Durandus, whose allegation Diana took from Valerus, merely contends (In 3, Dist. 39, q. 4) that no obligation arises from an oath or vow concerning an illicit thing, as if this were pleasing to God; which things, as is plain, do not touch the matter. Finally Valerus (*Differ. utriusq. Fori*, V. *Promissio*, Diff. VIII) concedes that the use of the body is sellable, although he denies that the price must be given, lest this seem to be paid for sin. But at the same time (ibid., Diff. IX, n. 1) he establishes that in the forum of conscience he who promised a hundred for committing homicide is held to paying after the work has been completed, although in the external forum the other cannot exact them. Therefore the authorities by which Diana bound that probability, whatever it may be, vanish. - 2. Diana (l. c.), from the mind of those whom he alleges, urges one reason only, that sin is not sellable or worthy of a price. But he himself (Tom. 6, Tr. 7, Res. 140, n. 4) contends that this reason is false. Therefore he himself of himself destroys that empty probability, which rests upon no reason except a false one, nor upon any authority except a fictitious one.

Finally, as regards the Doctors not ignoble whom Tamburinus mentions, he in fact remembers no one else except the accustomed Navarrus, Comitolus, and Valerus, whose names he says he borrowed from Diana. But the opinion which according to Azor (l. c.) is common to many older Jurists and Canonists differs nothing from that which above we saw handed down by Medina, namely that the price is permitted by the laws to prostitutes publicly exposed, but not to other women. And from these things, just as Medina does, Azor concludes: Therefore the only difference is that by the laws, in those things which are given to public prostitutes, repetition of the price is not given in the exterior forum... But truly in other women, by the laws, the right of repeating what was given to them is conceded. Wherefore Azor also, equally with Medina, subjoins: Whatever, therefore, may be the case concerning the exterior forum, gain accepted in any other copula on account of a lustful act perpetrated is not to be restored in conscience, because no law compels to this. Therefore the assistance which someone might think to be present in the not ignoble Doctors and in the Jurists and Canonists mentioned by Tamburinus falls back in vain.

Moreover these things had to be set forth a little more diligently, after that fictitious probability, which some have seemed to attribute to this opinion, has been conspicuously abused by others for defending that immense paradox concerning there being no obligation of marriage as regards him who violated a girl under a given pledge of marriage. Concerning which matter this also happens to be observed: there are those who narrate, indeed also congratulate themselves, that somewhere it was sanctioned by episcopal law that promises of marriage for obtaining defloration, even perhaps confirmed by oath,

should be judged invalid; and they report Collet as the author of this history, as is to be seen apud St. Alphonsus (Lib. 3, n. 641). Nevertheless Collet, in the place alleged by them, does not have those things; but he merely hands down that, for casting delay upon this very evil abuse, which in some parish had very widely prevailed, it was agreed between the pastor and the Bishop that thereafter one would not proceed to the proclamations of marriages which such a crime had preceded unless the Bishop had first been consulted. For otherwise, the question being now omitted whether the power of a Bishop extends so far that he can render invalid a promise of marriage, there will certainly be those who easily see that from that certainly most imprudent counsel this one fruit alone can be expected: that wicked men, now certain of impunity for the crime, may take a bolder spirit for seducing weak women, who otherwise, carried away as they are accustomed to be by a most burning desire of marrying, will never fail to give fullest faith even to the lying promises of seducers.

** The VV. wrote fifty-four columns (pages 334-361) against this Note; to which three others must be added, which elsewhere (pages 570-371) the same VV. opposed to the last part of this Note. Would that that heap of things brought some light to the questions!

First of all let us dispatch that which pertains to the last part of this Note. The VV. fasten the charge of falsehood (page 371) in these words: By no means does St. Doctor say that somewhere it was sanctioned by episcopal law that promises of marriage for obtaining defloration should be judged invalid, as P. Ballerini falsely attributes to him... St. Alphonsus, with Collet, brings forth only pious wishes and proposes a remedy by which seduction of virgins under hope of marriage may be met in a better way. - Resp. P. Ballerini, for the sake of reverence, had written, "there are those who narrate," and had kept silent about the author of the narration; but the lust of contradicting drove the VV., although there was no need, to publish abroad that St. Alphonsus was the author of the narration. Moreover behold the words of St. Doctor Alphonsus (Lib. 3, n. 641), which the VV. also report (page 370): Here in passing it is useful to note with Tournely, that is, Collet, that it would be very useful for avoiding sins of this kind if promises of marriage for obtaining defloration, even perhaps confirmed by oath, were declared invalid by Bishops; as the aforesaid Author reports was reduced to practice in a certain Gallican diocese with great profit. Now I ask: what is that which, from the testimony of Collet, St. Alphonsus says was reduced to practice in a certain Gallican diocese? Were merely pious wishes elicited from the heart? Or is it not most openly said to have been reduced to practice that in a certain Gallican diocese promises of marriage, even perhaps confirmed by oath, had been declared invalid by the Bishop? But Collet does not say this. Therefore rather than the VV. accusing P. Ballerini of falsehood, let them in the new edition of St. Alphonsus which they are preparing compose the words of St. Doctor more suitably, so that they may fully answer to the truth.

But nearer to the proper argument of the Note. As regards rule 18 of law: That is not strengthened by the passage of time which by law does not subsist from the beginning, the VV. contend (page 337) that it is falsely asserted by P. Ballerini that no one of the older authors alleged it for this matter; and they object that St. Alphonsus says (Lib. 3, n. 712): It is a common rule that that which does not subsist from the beginning cannot grow strong by passage of time. - Resp. It is a common rule, as all rules of law indeed are most common: I concede. Therefore it is alleged by the older authors for this matter: I deny the consequence. Therefore let the older authors be produced who used that rule in this controversy.

2. The VV. contend (pages 337-338) that P. Ballerini says undeservedly that this rule is brought forward altogether outside the matter. But with Comitolus they object that in the case a stipulation always precedes; and since the stipulation is null before the disgraceful deed, it ought to be null even after the deed. For the same matter they describe an entire paragraph of De Lugo (Disp. 22, n. 19), which is alleged above in the Note. Resp. That paragraph of Lugo is alleged in the Note for this reason alone, that it intimates the common doctrine, namely that innominate contracts are not perfected except by delivery having followed, and by the contract having been completed on the part of one. For the things Lugo discusses there concerning the special contract of exchange pertain nothing here. I said that the common doctrine is intimated there, which Molina sets forth thus (Tr. 2, *De Contr.*, Disp. 254, n. 14): Finally, other contracts are those which are perfected by the thing itself, or by delivery, nor before that are they judged consummated... And the same is true concerning the other respective innominate contracts. And Laymann (Lib. 3, Tr. 4, Cap. 3, n. 2): Contracts are perfected by the thing, or by delivery, which by their very name signify giving or doing... Such are exchange, lending... and every innominate contract. But the contract about which there is speech for us here is, by the consensus of all, an innominate contract. Therefore it is perfected, not by stipulation, as Comitolus reasons sophistically, but by the thing itself or by delivery at least of one part. But what it is for a contract to be perfected, it is better to hear from Lugo, to whom the VV. were pleased to appeal. Thus therefore Lugo (Disp. 22, n. 15): It must be known that contracts are perfected in four modes; but the speech is concerning perfection not as to effect, but as to the essence of the contract itself. For as to effect, a contract is then perfect when that to which it obligated is fulfilled; nevertheless this is not something belonging intrinsically to the contract itself, but is its effect... Now therefore

we speak concerning the intrinsic complement by which a contract in itself is called perfect and essentially entire. Whence thus: that by which a contract is perfected is of the essence of the same contract; but any innominate contract is perfected by things, or by delivery; therefore delivery pertains to the essence of this contract. But a contract does not subsist without its essence; therefore this contract does not subsist before the delivery of the thing. Therefore Rule of Law XVIII is alleged outside the matter, when it is supposed that here this contract consists in any preceding agreement. - The Salmanticenses (Tr. 14, C. 1, n. 5) propose this common doctrine of all no less clearly, saying: You will ask in how many modes contracts are perfected. And we speak of substantial perfection as to the substance of the contract, when namely all necessary things are placed, so that it subsists according to its own species. Therefore without those things by which a contract is perfected, a contract in no way subsists. Hence as regards the present matter the Salmanticenses (ibid.) rightly conclude: Contracts which are perfected by delivery of the thing are not judged to be celebrated before delivery of the thing... nor do they beget any obligation. Even Concina himself consents in this, who, after he premised (*De Contr.*, Disp. 1, C. 3, n. 1) that certain contracts are perfected by delivery of the thing, soon (ibid., n. 2) subjoins that contracts which are perfected by delivery of the thing induce an obligation binding the contracting parties not before, but after, delivery. But, as has been said, an innominate contract, of which kind the present one is, is perfected by delivery of the thing. Therefore both the contract and the source of the obligation proper to this contract are imagined outside the matter to subsist before delivery of the thing. Therefore Rule 18 of Law is alleged outside the matter. Reiffenstuel, among others, explains the legitimate sense of this Rule thus (Tom. VI, ad Reg. 18, *Iur. in VI*, n. 4): The true sense of the Rule is the following: "No act which, while it is perfected, is by the law itself invalid and null, grows valid by the mere passage and lapse of time without another support, so as to have the force and effect of an act validly performed from the beginning." But, again, this innominate contract is perfected by delivery. Therefore the nullity of the preceding promise is objected in vain. And concerning this enough.

3. The VV. contend (pages 338-340) that Roncaglia is alleged not falsely, but rightly, for the sentence which denies the value of the contract about which we are treating; which certainly ought to seem wondrous, since his words alleged in the Note for the affirming sentence are clearer than sunlight. But the VV. object that Roncaglia said those things with attention to natural law; but that he thinks otherwise if something is given against that which positive laws dispose. Hence they bring forward this resolution of his (Tr. 13, *De Restit.*, C. 6, q. 4): It seems that what has been given by a donation illicit and reproved by the laws can in no way be retained. - Resp. That Roncaglia excepts from the general thesis which he had most clearly established a donation reproved by positive laws detracts nothing from the truth of his thesis, indeed confirms it according to the saying: The exception confirms the rule. Moreover, in reality nothing can be devised more wretched than that paragraph of Roncaglia. But to dwell upon these things now does not pertain to the matter.

4. Likewise the VV. contend (pages 340-342) that Comitolus is alleged not falsely, but by right, for the same denying sentence. For he holds that all agreements concerning a shameful thing, except prostitution, are void. - Resp. The thesis of the Author, to which the Note is subjoined, is most general, concerning a thing accepted from a shameful contract; and Comitolus is alleged for this thesis, as the VV. themselves advert. Therefore, since, by the admission of the VV., Comitolus as regards prostitution in some way affirms that the accepted price can be retained, by that very fact he is falsely alleged for the general denying thesis. Moreover, whatever finally may be the sentence of Comitolus concerning this question, that immense heap of sophisms and of false allegations and assertions is certainly in no way equal to conciliating any probability, by which he so confounds all things above and below that even the very proposition of the question bears absurdity before itself, when he asks: Whether from a shameful promise or some stipulation any obligation arises. For no one dreamed that, in innominate contracts of this kind, the perfection whence there is obligation must be sought in words, of which kind is a promise, or in stipulation. And indeed the VV. did not doubt to defend even the discordant reason on account of which Comitolus said that the price must be paid to the prostitute, although even Comitolus himself, fearing the novelty of that paradox, wrote (l. c., n. 13): It follows that I myself should explain my sentence, whose explanation I fear may seem less probable to someone by its very novelty. Nor does it touch the matter that the VV. bring forward from Lessius, saying that the mind of the laws is that he who gave should not be able to recover, as a penalty for the crime. For the laws concerning which Lessius is speaking there pertain to the question where the cause of each, namely both of the one giving and of the one receiving, is shameful, and they define that the possessor is the stronger in such a way that no action is conceded either to one seeking what was promised or to one repeating what was given. Moreover, as Lessius there also adverts (Lib. 2, c. 14, n. 58), the laws concede to a prostitute an action for acquiring the price. Therefore the argument about which Lessius is there speaking is another. And here it will be useful not to have omitted that even Concina, who otherwise names Comitolus with great honor, could not but note the false testimony of Comitolus, about which it was said in the Note. Paulus Comitolus, says Concina (*De Iust. et Iur.*, Disp. 2, Cap. 10, n. 8), contends that this is the sentence of all the Doctors, with two exceptions, Soto and Cajetan... The Most Distinguished Comitolus is mistaken when he ascribes the

opposite sentence to Soto and Cajetan only. For it is ascertained that the greater part of Theologians comes together in the same opinion. But concerning this writer, enough and more than enough; one must come to the allegations of others.

5. And first indeed the VV. complain (page 342) that in the Note the allegations of Adrian, John Medina, and Navarrus, which St. Alphonsus also reports, are said to seem gathered from Comitolus. But falsely, they say (page 342), is this asserted. - Resp. In the Note this is said by opining; for the word "seems," as St. Thomas says, belongs to one opining. But this could lead one to this opinion, that in each place, both apud St. Alphonsus and apud Comitolus, this erroneous allegation of Law is seen: L. *Mercedem* C. *De Condict.*, when one must read *Mercalem*, as the distinguished P. Haringer corrected well in the Ratisbon edition, 1846. Moreover, since this same erroneous allegation of Law recurs apud Concina (l. c., n. 7), but the words by which both this citation of law itself and the allegations of Adrian, Medina, and Navarrus are reported apud St. Alphonsus are much more similar to the words by which they are alleged by Concina than to those which Comitolus uses, it indeed seems more probable that those allegations were drawn from Concina rather than from Comitolus.

6. Moreover the VV. (ibid.) charge as a crime that in the Note Comitolus is represented as criminal, because it is said there that in these allegations a deed worthy of Comitolus is discerned. - Resp. *Facinus* for the Latins, just as the Greek *andragathema*, means some distinguished deed, an action worthy of a strong man. And indeed among the Latins it is accepted both in a good and in an evil part; but from this it is wrongly concluded that someone is represented as criminal when some *facinus* is attributed to him; for the word *facinerosus* is used only in the evil part.

7. But to come to the alleged Authors, there are two things which the VV. (pages 342-343) advert as regards Adrian: 1. that Comitolus affirms only this concerning Adrian, that prostitutes can retain what has been accepted, not as a debt from justice, but only as donated. - Resp. Let it pass. For first, although Comitolus uses a false reason in some way, nevertheless he does not reject, indeed he admits, that Adrian holds the thesis against which he is alleged, namely that what has been accepted from a shameful contract is not to be restored. Therefore Adrian is wrongly alleged against the thesis. But then it is false that this reason is given by Comitolus; for, as the VV. themselves have in the same place, according to Comitolus the prostitute accepts as gain attributed to her by the law, nor does Comitolus attribute to Adrian this reason, which he says was invented by himself.

The VV. add 2. (page 343) that Adrian brings forward several cases in which he teaches that restitution must be made on account of injured justice; but that there is no need to seek out the senses of Adrian concerning prostitution, which otherwise St. Alphonsus excludes. Resp. That restitution must be made on account of injured justice is not, and cannot be, the question concerning which St. Alphonsus said (Lib. 3, n. 712) that there is a twofold probable sentence; for that what would be retained unjustly cannot be retained is certain apud all. And if indeed in this place St. Doctor is not treating of gain injuring commutative justice, nor again of gain from prostitution, and otherwise not even the VV. themselves find anything apud Adrian which looks to gain from an act indeed shameful, but nevertheless not unjust, to what purpose therefore does St. Alphonsus allege the text of Adrian, § *Restat inquirere*, where there is treatment of concussion or extortion, that is, of sin against justice? Therefore let them concede that Adrian is brought forward gratis and outside the matter, and that St. Alphonsus transcribed that allegation in good faith, whether from Comitolus or from Concina matters not. But moreover the VV. would have served the rights of truth much better if they had not kept silent that Adrian thought plainly the same thing concerning any other shameful gain not injuring justice as he did concerning gain from prostitution, and therefore in the question which St. Alphonsus treats he held a sentence plainly opposite to that which St. Doctor ascribes to him. And indeed Adrian, in the question also alleged by Comitolus, which begins *Oritur alia quaestio* (fol. 76, Roman edition, 1522), after he said that a prostitute licitly can hold what she has received, and can dispose of those things at her judgment, and that the same must be held concerning a non-public prostitute, subjoins: I think the same concerning those who by their crimes have procured for themselves the favor and gifts of others. Here, as is plain, the speech is about delicts diverse from prostitution. Why therefore did the VV. conceal this? Again, in the Note are seen the things which Adrian responds to the texts of law by which shameful pacts are declared void. For he responds: Nor does the text there openly say that a promise made to a man on account of a PRECEDING shameful cause is not valid, BUT ONLY... CONCERNING A FUTURE SHAMEFUL CAUSE... It seems otherwise when the baseness has already passed and is as it were purged. Moreover Adrian here is speaking neither of a crime against justice, because elsewhere he denies that unjust gains can be retained, nor of prostitution, for which even Comitolus admits that an action for recovering the price was not customarily denied by the judge; therefore he treats of gain received from other shameful deeds besides prostitution. Why therefore did the VV. conceal this also? Therefore let them concede that St. Alphonsus in good faith alleged Adrian for an

opinion whose contrary Adrian teaches; and at the same time let them concede that from allegations of this kind no probability accrues to opinions, except a fictitious one.

8. Let us pass over to John Medina, concerning whom, no less than concerning Adrian, the VV. leave to be desired that sincere zeal for truth without which no discussion of this kind ought to be.

Concerning Medina, in the Note subjoined to the Author, the only care was to touch that particle from which certain persons had taken occasion to oppose him to the common sentence of the Doctors. Therefore it is better here to set forth his mind; for from this every doubt will vanish. And in the first place there is certainly something in which Medina seems to depart from others; but that does not look to the question whether shameful gain can licitly be accepted and retained, but merely to rendering the reason; just as St. Alphonsus (l. c.), while he follows the common sentence, which he calls more probable, nevertheless preferred to adopt another reason than certain others had brought forward. Therefore Medina (Cod. *de Rest.*, page 133, Ingolstadt edition, 1581) thinks that the title of the contract ought not to be called the price of the wicked work, but rather donation. Thus he: A prostitute, neither public nor hidden, can receive or retain the price of prostitution as a price corresponding to that wicked work, unless another cause concurs, such as the donation of the one giving, who freely wishes to donate to her, notwithstanding that the work itself is shameful and is the cause without which there would not be such a donation. Nor does the sentence of those please me who say that a prostitute can licitly receive the wage of prostitution by way of wage, even the way of donation being excluded. Thus Medina, namely lest he should say that sin is sold. Nevertheless, since the notion of a donation which imposes a burden upon another is absurd, Medina finally explains the matter more or less as others do, and adopts the reason which afterward also pleased St. Alphonsus. For (page 134) he thus objects to himself: But you will object, because in gain from prostitution there does not seem to concur a liberal donation, but another contract of leasing, by which the body is leased for fornication use, or an innominate contract, namely, I will give so that you may do or consent in this, as appears in the example cited above from Genesis, in which Judah and Tamar expressly agreed concerning the price. What does Medina say to these things? Namely, it was necessary for him to concede the objections, although he studies somehow to reconcile those things with the preceding theory. Thus therefore he himself: It is answered: Grant that it is so, that such a contract and pact intervenes; still in that contract there is mixed a donation, such as is found in the act of buying or leasing, in which someone gives a price exceeding the value of the thing, in whose giving neither fear, nor coercion, nor ignorance intervenes, but spontaneous will. Let us not now ask in what way, according to Medina, the part which holds the place of wage can be separated from that which holds the place of donation; meanwhile this is manifest, that something is attributed which has the account of price or wage. Therefore Medina finally receives himself back to the common sentence; but the explanation which is added by him finally looks to this, that whatever is given not be called the price of sin, because, as he himself repeats with others, sin, as such, is unsellable. For this reason St. Alphonsus also (l. c.) wishes that the title of the price not be sin, but the work, as laborious, as ignominious, as dangerous.

Nor let the VV. object here that these things are said by Medina concerning prostitution, which St. Alphonsus excludes in the question, but not concerning other delicts. For then Medina also concerning other shameful causes (fol. 134) adds these things: From what has been said it is plain how procurers, actors, flatterers, and the rest hired for wicked works, as for killing, striking, defaming, and inflicting other injuries, can be excused from the debt of restoring things shamefully acquired. Therefore let the VV. concede that Medina also in this question is wrongly alleged by St. Alphonsus for the opposite opinion, from wherever finally St. Doctor drew that allegation; let them also concede that the allegation of Medina cannot conciliate probability to that opinion, except only fictitious probability. But it is not worth the labor to be detained by the very slight little questions with which the VV., the knot of the controversy having been omitted, dwell at greater length around the distinction of a hidden or public prostitute.

9. As regards Navarrus, the VV. write (page 346): P. Ballerini perversely alleges the sentence of Navarrus, as will be permitted to see from the following propositions. - Resp. The few things said in the Note concerning the sentence of Navarrus are contained in these: 1. that what has been accepted by cause of crime or shameful work can be retained even in the forum of conscience, nor is it necessarily to be restored, contrary to what St. Alphonsus affixes to Navarrus himself; 2. that the reason which all give concerning this doctrine with St. Thomas did not please Navarrus. But the VV. produce nothing through those five columns of theirs which contradicts these things.

And in fact, I. from *Man.*, C. 17, n. 32, the VV. object these things of Navarrus (l. c.): Although the pact or agreement by which something is given on account of crime is not valid in that form which the parties alone pretend to make, nevertheless it is valid as a certain virtual donation, or as a certain act of holding as abandoned. - Resp. These things

confirm that which is said in the Note, namely: 1. that things accepted on account of crime can be retained; 2. that Navarrus, the reason brought forward by others having been left behind, devised another, whatever it may be.

II. The VV. bring forward (l. c.) from n. 38 that Navarrus does not admit what Soto has, namely, that foul work, although it is of no price insofar as it is sin, nevertheless can be estimated by price insofar as it is a certain thing accommodated to human use. And the reason of Navarrus is that every exterior work by which a sinner works sin is for the most part such, that is, accommodated to human use; and yet none of the Catholics ever said that some wage can licitly be taken for it, at least when it is intrinsically evil. - Resp. These things confirm that which is said in the Note: that the reason brought forward by others did not please Navarrus, who never fails to urge that sin, as such, is not sellable. Moreover the VV. would not have uselessly noted here, also for defending St. Doctor Alphonsus, the sophistical manner of acting in Navarrus, when from this, that no Catholic said that sin, AS SUCH, merits a wage, he concludes the same thing against Soto concerning a sinful work even insofar as it is useful. For does not the reason which Navarrus himself admits is commonly brought forward by all with St. Thomas, and upon which St. Alphonsus also insists, point to this? To the same point look those things which the VV. bring forward (page 347) from n. 40, where Navarrus concludes: Thus, therefore, the act of sinning, although it is in itself sellable, nevertheless joined with sin, which is indivisibly unsellable, cannot licitly be sold. Concerning which same matter Navarrus (n. 38) had already written: Although the argument of Medina does not conclude that that work is unsellable of itself and in the genus of being, nevertheless it concludes that it is unsellable in the genus of morals, because namely sin is of no price, as he had premised in the same place with Soto; and (n. 40) he adds in the same sense: although something is sellable in itself, nevertheless it cannot be licitly sold when it is mixed with an unsellable thing. Namely the string always wanders over the same thing: sin is not sellable; while otherwise, by conceding that the work of itself is sellable, he furnishes weapons against himself to the adversaries, who to the instance that that work is not sellable in the genus of morals perhaps will respond that the work itself is sold in itself and a price is exacted for the work, but not that the morality of the work is sold; and indeed if a work sellable of itself cannot be sold because, as Navarrus says, it is indivisibly joined to an unsellable thing, namely to the morality of the work, perhaps it will seem that not even a work rightly done can licitly be sold, lest namely its morality be sold; for good morality does not seem more sellable than evil morality. But now setting these things aside, it is sufficiently plain that the VV. have produced nothing thus far which shows that in the Note the sentence of Navarrus was perversely alleged.

III. Finally the VV. bring forward from n. 41 what Navarrus says must be counseled to those to whom something has been promised for a shameful work. And this had already been indicated by us in the Note, namely, that the delict not be the principal cause of seeking the things promised, but the impulsive cause and occasion without which he would not seek. To this also pertains what the VV. bring forward from n. 40, where Navarrus, speaking of the sentences retracted by himself, warns that it is wrongly accepted as if he were admitting that what was promised for a shameful cause can be sought. Wherefore neither as regards this can the VV. accuse the Note, as if the sentence of Navarrus is there alleged perversely. On the contrary, it was to be desired that they not cut short the response of the same Navarrus to him who objected to him his retraction. Someone, he says (n. 40), here objects that I first held in the Spanish Enchiridion that married women and women consecrated to God sin by accepting shameful gain for the cause of shameful concubitus; the VV. do not rightly substitute here, "cause of fornication." Second, etc. And to this first head he replies: It is answered first, that it was superfluous to note the first..., since I myself assert with full mouth that I made the aforesaid change. And in fact just as (n. 34) he writes concerning a prostitute: What has been accepted by a prostitute on account of the shameful cause of fornication is not necessarily to be restored even in the forum of conscience; so he extends this to other crimes (n. 31), saying: A prostitute is not held from precept to restore that which she accepts as the wage of prostitution, and neither are other women, unmarried, married, or sacred. Likewise (n. 41), speaking of a homicide who, enticed by promises and with part of them accepted, had committed the crime, We counseled, says Navarrus, that he take care lest he seek the remaining things, namely those promised but not yet paid in part, as owed to him by legal justice; but concerning restoring those things which he had accepted, Navarrus, cohering wholly with himself, is altogether silent. But this had to be noted, so that it would be clear that Navarrus, where he denies that things accepted on account of a shameful cause are to be restored, established this not only concerning prostitution, but also concerning other crimes, about which St. Alphonsus discusses.

Therefore let us conclude concerning Navarrus that which we said concerning Adrian and Medina: namely, as regards the controversy whether what was accepted for other shameful causes besides prostitution can licitly be retained, Navarrus is alleged by no right, and therefore an allegation of this kind cannot add probability, except fictitious probability.

10. The VV. carp at (page 348) the example brought forward in the Note, of the shoemaker making shoes by wrongdoing on a feast day, as if the shoes cannot be the cause, but only ought to be called the occasion of paying the price, as Navarrus said

concerning crimes; and they subjoin: The example does not fit, because it concerns a work which in itself is not evil and illicit, and the shoemaker has a just title for exacting the price of the work, namely a just and valid contract which obliges the other party from justice to paying. - Resp. I ask: Is the contract of making shoes by wrongdoing on a feast day valid or void? If it is called valid, therefore will it oblige the shoemaker to sin? If void, by what title does the shoemaker exact the price? Therefore one of two things must be defined: Either with the common sentence it must be said that an innominate contract of this kind, *I give so that you may do*, is perfected only by delivery of the thing or placing of the work, and after the fact an obligation of paying is present, although the other sinned in placing the work, and the work is judged worthy of a price, as St. Alphonsus says, insofar as laborious; or with Navarrus it must be said that the work indeed is in itself sellable, but since it is joined indivisibly with an unsellable thing, that is, with sin, by that very fact, as being of no price, it cannot licitly be sold; therefore a sinful work, as Navarrus concluded, cannot be the principal cause of seeking the things promised, but only the impulsive cause or the occasion without which it would not be sought. Namely the VV. here use common principles in reasoning; but one who uses common principles can with difficulty render a reason for the anomalies of Navarrus, who in this controversy professes without circumlocution that he departs from the common principles of all. Moreover the VV. find a just title of exacting in the shoemaker for this reason, that the labor of sewing shoes is suitable matter of a contract. But indeed is the granted use of the body not suitable matter of a contract? Certainly we all say that this is the matter of the matrimonial contract, and indeed in such a way that if a spouse denies this use to a spouse, or makes availability of himself or herself to another besides the spouse, we say that he or she sins gravely against justice. Therefore Navarrus also could not deny that this work of itself is sellable.

11. The VV. are greatly moved on account of those things which are said in the Note concerning Collet, and through six columns (pages 348-351) they undertake, as they say, to vindicate him from the undeserved rebukes of P. Ballerini. But in this matter there intervenes no light difficulty. For the things which are said in the Note are from Collet's Paris edition; but the VV. use the Venetian edition, which differs greatly from the Paris edition as regards this argument; indeed the VV. themselves (page 349) warn that there is a twofold work written by Collet. And if the matter has itself thus, must their rebuke of those things which stand forth in the Paris edition therefore be held undeserved because those things are read differently in the Venetian edition? Moreover as regards our question, what now matters to know is not whether Collet is worthy of some rebuke, but whether anything can be extracted from him for the cause. But he brings forward nothing which is of any moment; indeed the times through which something was deferred to the authority of Collet and writers of this flour have now passed, since divine benignity, especially through St. Doctor Alphonsus, has led moral discipline back to the older way. Add to these things that Collet restricts the question whether shameful gain can licitly be retained to prostitution; concerning which St. Alphonsus (l. c.) writes: As regards prostitutes, it is common and certain among the Doctors that they can retain the price of the prostitution furnished. What probability, therefore, except altogether fictitious probability, can be drawn from the allegation of Collet apud St. Alphonsus himself, when Collet does not touch even the least part of the question about which St. Alphonsus treats?

12. As regards Lessius it had been said in the Note that he is alleged in vain apud St. Alphonsus, so that the denying opinion may be judged probable, both that what was accepted for a shameful cause can be retained, and that a promise on account of a shameful cause is valid. The reason was given: because Lessius affirms this only concerning crimes which are punished by positive law; which indeed pertain nothing to the general question according to natural law. But behold, the VV. (pages 351-352) aim against the Note an accusation of false allegation or interpretation, and conclude somewhat charmingly (page 352): If false allegation or interpretation of some author were a crime, as P. Ballerini said above... the distinguished Professor himself certainly would have committed no light crime by this interpretation of Lessius.

Resp. As regards crimes of this kind, this is truly to be grieved over: that the VV., men otherwise excellent, prove themselves to all to be so foreign to the Latin tongue. But, these things being passed over, let us come to the matter.

The VV. allege (l. c.) these things from Lessius (Lib. 2, C. 18, n. 20): Note, however, that it is probable that he who promised something for an evil work WHICH IS PUNISHED BY LAWS, as for homicide, adultery, theft, and the like, is not held to fulfill the promise even after the work has followed, because it is the common sentence of the Doctors of each law, as Covarruvias teaches above, n. 6. And they subjoin: Therefore with clear and explicit words he speaks of crimes opposed to natural law... and therefore he says the very same thing that St. Alphonsus says: But for other crimes... there is a twofold probable sentence. - Resp. Lessius discusses an obligation which proceeds not from the law of nature, but from positive law; and therefore he apposed those words which are also seen expressed expressly in the Note: an evil work WHICH IS PUNISHED BY LAWS. But the thesis of St. Alphonsus is another, and not restricted by this special limit; therefore he also lists fornication among those crimes, concerning which Lessius is silent, because, namely, it is not a crime that is punished.

For this reason Lessius soon subjoins: Although it can be answered that THOSE LAWS AND THE LIKE are to be accepted thus, that they signify that such stipulations are not valid before the fact, nor that after the fact is a right of seeking what was promised given in the external forum; but it is not their mind TO TAKE AWAY THE NATURAL OBLIGATION WHICH ARISES FROM OBLIGATIONS OF THIS KIND. See above, Cap. 14, Dub. 8. Thus Lessius, whose text therefore also ought not to have been cut by the VV. through the omission of these things, lest perhaps someone turn back upon them that no light deed which they themselves thrust upon P. Ballerini. And indeed this mind of Lessius shines out even more to one inspecting what that common sentence of the Doctors is, for which he sends one to Covarruvias. For in that place (In C. *Peccatum*, Part 2, § 2, n. 6) he proposes these conclusions: Before an exterior judge it is licit for no one to act for the wage or price of that work which has a crime to be punished by the same judge with an exterior penalty. But as regards the internal forum he subjoins another conclusion thus: Although repetition of that which was given on account of crime and misdeed is denied by human law, nevertheless the one accepting will not on that account be safe in the judgment of the soul if otherwise, either by reason of the matter, which was not sellable, or from this, that the agreement was iniquitous, he is held to restitution; by which words he teaches that what has been accepted can be retained, unless perhaps justice was injured in it. For otherwise, he himself subjoins, from this it would follow that an artisan or worker hired to make that which exists forbidden by law... would be held to restitution of that which he accepted as wage for the labor; so also a soldier hired for an unjust war, and one which he himself certainly knows to be most iniquitous, would be held to restore the wage furnished to him by right of hiring; and nevertheless I would condemn neither the artisan nor the soldier to restitution..., nor would I compel him in the judgment of the soul, nor do I think he can be compelled. A thousand examples certainly could be proposed for these. Therefore let it be concluded that the question of Lessius is altogether diverse from the question of St. Alphonsus, and therefore this allegation of the same contributes nothing to asserting the probability of the opinion for which he is alleged.

Again concerning Lessius the VV. write (l. c.): Cap. 14. Lessius treats the question, Whether what has been accepted on account of a shameful cause is necessarily to be restored. First he sets forth and approves the negative sentence; and then, n. 60, he adds: I say third. Although this sentence is truer, nevertheless the contrary, which judges that what was accepted on account of a crime punishable by the laws, unless it is judged donated, must be restored, is not improbable, as Covarruvias teaches above, n. 6... and it has reasons sought from the laws which are somehow probable. And after these things they immediately conclude that in the Note Lessius is falsely alleged or explained. - Resp. The same response as above recurs; and in fact Lessius there (Cap. 18, n. 20) refers readers to this place (Cap. 14, n. 8). Therefore one must answer that Lessius did not say these things with respect to natural law, but with respect to merely positive law. And in fact as regards natural law, he had absolutely established beforehand (n. 52) this thesis: I say first: If only the law of nature is considered, what has been accepted on account of a shameful cause, or on account of a work which is sin, the work having been fulfilled, is not necessarily to be restored, whether that work is against justice or not. Passing then to positive law, less absolutely he thus proposes (n. 56) the second thesis: I say second: It seems truer also that by positive law this is not necessarily to be restored. Finally, after the objections against this second thesis have been solved, he thus proposes (n. 60) the third thesis: I say third: Although this sentence is truer, nevertheless the contrary, which judges that what was accepted on account of a crime punishable by the laws... must be restored, is not improbable. Moreover those words: Although this sentence is truer, manifestly refer not to the remote first thesis, which treats the matter according to natural law, but to the proximate second, which treats of positive law; and this is confirmed from this, that the third thesis is restricted by Lessius to crimes punishable by the laws, which has no place as regards natural law; and finally the same thing is proved from the citation of Covarruvias, to whom Lessius also sends the reader here. But St. Alphonsus disputes concerning this question according to natural law, and does not discuss the exception of crimes which are punished in the external forum by positive laws. Therefore the conclusion returns: that the allegation of Lessius apud St. Alphonsus can introduce a merely fictitious probability.

13. As regards Diana, whom the VV. (pages 352-354) rightly contend is alleged apud St. Alphonsus, the matter can be dispatched very briefly.

For 1. Diana (Tom. 8, Tr. 7, Rel. 59) makes the question only concerning prostitution, as is manifest also from the text produced by the VV. But St. Alphonsus (l. c.) disputes only about other crimes, not about prostitution, which from his controversy, as the VV. themselves not once admit, he positively and expressly excludes. Therefore the allegation of Diana pertains nothing to the question of St. Alphonsus. Therefore the probability which is sought from the allegation of Diana is altogether fictitious. - 2. Diana builds that probability, whatever it may be, upon the authority of Durandus, Medina, Navarrus, Comitolus, and Valerus. But from the premises it is plain that Navarrus, Medina, and Comitolus are invoked in vain; but as regards the sentence of Durandus and Valerus, as being in a manifest matter, not even the VV. themselves

attempted to cast in doubts. Therefore as regards the extrinsic argument, no probability can be extracted except fictitious probability. - 3. But as regards intrinsic arguments, Diana himself, as we said in the Note, nor did the VV. dare to call it into doubt, elsewhere contends that the reason which he brings forward here is false. Therefore, as has already been said in the Note, Diana himself of himself destroys that empty probability, which rests upon no reason except a false one, nor upon any authority except a fictitious one.

14. The VV. advert (pages 354-355) that Concina, whom St. Doctor alleges with the foregoing, is passed over in silence in the Note; and then his doctrine from from the Compendium. - I reply. Concina rests upon allegations of which, partly in the Note, partly in this addition, it has been shown that there is no force, nor does he bring other reasons than those which are refuted by St. Alphonsus. Besides, as has already been said elsewhere, St. Alphonsus calls Concina most rigid; therefore here also it must be repeated that the vote of a rigid author is of sufficient weight when he grants indulgence, but not likewise when he condemns. Therefore it is superfluous to discuss Concina here.

15. Finally, when in the Note it was said: As regards the not ignoble Doctors whom Tamburini names, he in fact mentions no one else besides the usual Navarrus, Comitolus, and Valerius, whose names he says he borrowed from Diana; the Vindicators add (p. 355): Hence it will not be beside the point to answer this observation also; for besides the authors whom St. Alphonsus, Collet, and Concina cite for the same opinion, with prostitution excluded, there are in fact many not ignoble doctors who hold and defend this opinion either indistinctly, or as regards sins committed against justice, or at least judge it probable.

But two things occur to be observed concerning these points. For first, Collet, like Diana, treats the question only concerning prostitution; but the Vindicators expressly here seek authors for a question which excludes prostitution; therefore they seek beside the point the Doctors alleged by Collet. Then, indeed, no less beside the point are invoked the authors who either hold that opinion or judge it probable as regards sins committed against justice. For, passing over for the present in what sense this question is to be taken, and whether others have rightly understood the state of the question, meanwhile this is manifest: that this is an altogether special controversy, which must be decided by special reasons, and therefore at most can present an exception to the general thesis. But the present question is general, and is not concerned with some case perhaps excepted for a special reason. Therefore the four authors whom the Vindicators bring forth in this matter (pp. 356-357) are alleged beside the point.

Therefore there remain thirteen others alleged by the Vindicators (pp. 356-360), namely Henno, Amort, Trullench, Dicastillus, Mastrius, Bassaeus, Tamburini, Herincx, Wigandt, Billuart, Gotti, Struggl, and Cuniliati.

But from these thirteen eight must be wholly deleted, namely Trullench, Dicastillus, Mastrius, Bassaeus, Herincx, Billuart, Gotti, and Struggl. The reason is that, as the texts of these authors alleged by the Vindicators themselves openly make clear, these authors do not there set up the general question according to the law of nature, such as is the question which St. Alphonsus treats, but they treat the special question concerning a crime or evil work which is punished by laws; and when the controversy is thus proposed, they indeed, just as we saw Lessius affirm above, attribute some probability to the opinion received especially by jurists and Canonists, namely that, with positive law considered, the wages of a base work cannot be retained, but must be restored either to the giver, or to the fisc, or to the poor, concerning which the Doctors then dispute among themselves. But any probability whatever of this sort concerning this special opinion detracts nothing at all from the certitude of the sentence concerning the general question decided from natural law; rather, since it is an exception to the general thesis, according to the well-known saying, it confirms the rule to the contrary. Therefore.

In this matter that is less to be approved, that the Vindicators derive the sentence of Trullench from the Summary prefixed to dub. 2, ch. 17, book 7, where it is read: 1. Before the perpetration of the work neither the promisor nor the promisee is bound; indeed the promisor is bound to revoke the promise; but once the evil work has been perpetrated, he is bound by justice to pay what was promised; 2. the opposite is probable. These last words the Vindicators eagerly seize upon (p. 358), as though there that opinion opposed to the general thesis were called probable. But the matter is not so. For what in section 2 pertains to that rubric of the Summary is this: Lessius says it probable that he who promised something else for an evil work which is punished by laws, as for adultery, homicide, theft, and the like, is not bound to fulfill the promise even after the work has followed. Therefore, as was said above, here only an exception is proposed concerning a special case, not according to natural law, of which there is question in the first thesis, but according to positive laws; but the contradictory of the proposed thesis is by no means there declared probable. Nay rather, Trullench, after Lessius, adds in the same place that the mind of these laws is not to remove the natural obligation which arises from onerous promises of this kind.

Five of the authors whom the Vindicators brought forth remain; and of these Henno and Amort truly stand for the opposite opinion. But by what reasons do they prove the matter? Let Henno be heard (De Restitutione, disp. 6, q. 5, concl. 1): "Those contracts," he says, "inasmuch as they are onerous, ought to oblige both the promisee and the promisor.... But they do not oblige the promisee, since no one can be obliged to sin; therefore neither do they oblige the promisor." Thus the text of Henno related by the Vindicators themselves. But this is, as is clear, either to have been ignorant of, or to have set aside, the first elements of this matter, which teach that innominate contracts of this kind are not perfected by promise, but are perfected, and therefore beget obligation, only after the handing over of the thing, or of the work, or its performance. Are these things such as to give even the least probability to the thesis? But Amort also fights with the same arms (tract. 6, sect. 1, q. 7, prob. 3): "If contracts," he says, "concerning a base work were valid and obligatory, then they would oblige either both of the contracting parties, or one only; neither can be said; therefore." He proves the minor. "If both are said to be obliged, then it would be manifest that one party of the contracting persons is obliged to sin; but this implies contradiction; therefore." Thus Amort, trampling upon the first principles of moral discipline. But that some opinion may be judged in some way probable, even St. Alphonsus requires that it rest upon some grave and solid reason. But is that a solid reason which has its birth from forgetfulness of the first principles? Let us therefore conclude, and indeed with St. Alphonsus as guide, that these authors add as much probability to that opinion as those sophisms have of value.

The remaining ones from the thirteen alleged are now these three, namely Wigandt, Cuniliati, and Tamburini. And concerning Tamburini it is not relevant now to repeat those things which are said in the Note, namely that he fortified his assertion with no authority except false authority; and indeed this has here been confirmed more evidently by the fact itself. This may be added, that he no less falsely joined Valentia to other false allegations. For Valentia, who (In 2. 2, disp. 5, q. 7, punct. 5, sect. 2) defends the common sentence, never said that the opposite opinion is probable. Moreover Valentia discusses only this: whether public prostitutes can accept and retain something as wages for a base act. Therefore Valentia would be alleged here beside the point, since the controversy of St. Alphonsus expressly excludes the case of prostitution, as we have already said several times. I would add that it scarcely appears how the Vindicators, while they gather authors in order to show that Tamburini rightly said that not ignoble writers are not lacking, and so forth, enumerate Tamburini himself among these writers.

As regards Wigandt, he (tract. 8, exam. 4, n. 54) can seem to have attributed some probability to the opposite opinion to the extent that he says the common sentence is more probable; for in fact he does not even mention the opposite opinion, nor does he suggest that there is a twofold sentence concerning this matter. But some weight could be conceded to this argument if it were granted to us to divine that Wigandt perhaps was led by some new reason, or by some vote of authority still unknown to us. But so long as that does not appear, surely it will be permitted to hold that assertion of Wigandt in that place in which something gratuitously asserted is held.

Finally Cuniliati remains, to whom we shall join Mastrius also; since each, no differently than Wigandt, could be thought to have judged the opposite opinion probable because they too call the common sentence, which they defend, more probable. But whatever vote of Mastrius this is betrays itself as sufficiently miserable. For the opposite opinion he brings that poor argument which we have already seen his confrere Henno use, and after them also Amort. Here is Mastrius's argument, as it also stands in the Vindicators (p. 358): A contract concerning a base thing before the deed is null; otherwise it would oblige one to sin...; therefore also after the deed. But what will anyone answer to this argument, if he is not ignorant of the first elements concerning contracts? He will say: I concede the antecedent, and I deny the consequence; because innominate contracts of this kind do not consist essentially and are not perfected by words and promise, but by things, or by the handing over or performance of the work, and only then do they assume the force of obliging.

Nor must the allegation of Cuniliati be called less miserable, which the Vindicators (p. 360) say that they took from the Venetian edition of the year 1796. For first the true Cuniliati (tract. IX, ch. V, sect. 10) teaches the common doctrine absolutely, and casts in no mention of the opposite sentence. But the things which are brought forward by the Vindicators are not Cuniliati's, but belong to an addition which manifestly appears to be an assumption by another hand. And indeed this unknown author of the additions, if he departs somewhat from the sentence of Cuniliati, does not conceal the reason by which he was moved. For there see the usual allegations: of Comitolus and Collet, together with the condemned work of Henry of St. Ignatius, and the unknown anonymous author of the Collationes Parisienses alleged by Collet; to these he then appends in summary form what Concina and Antoine said concerning this argument. What therefore is this worth, resting on foundations of this kind? But then, as regards the cause of the Vindicators, they limp from another side. For we have already observed above that both Concina and Collet, with their own, dispute only concerning prostitution. But the Vindicators seek probabilities from writers not ignoble, not in the cause of prostitution, which they themselves with St.

Alphonsus maintain does not pertain here, but in the cause of base profit sought and received from other crimes. Therefore these allegations also are not fit for producing probability, unless fictitious probability.

Therefore let it at last be permitted to conclude that through those fifty-four columns the Vindicators have brought forward nothing at all suitable for weakening what was said in the Note, namely that the probability of the opinion which St. Alphonsus also sets aside is wholly fictitious, inasmuch as it rests upon no reason except a false one, and upon no authority except a feigned one.

Q. 7. If a man has given something to a woman for seducing her, whether she, consent having been denied, can retain the thing?

Resp. Affirmatively, because no pact concerning the sin to be perpetrated intervened, and therefore the donation is to be held altogether liberal, since the woman promised absolutely nothing on her part. - St. Lig., n. 712, and others commonly. De Lugo, however (Disp. 18, n. 50), thus tempers the matter: It is also certain to me that it is not a sin against justice, although the woman has the intention of not consenting to the desired baseness; because the acceptance of the gift does not include a tacit or express promise of consenting, but includes only a moral obligation of gratitude in licit and honorable things. But the too credulous lover, who hoped for more than he ought, must impute it to himself. Nevertheless it is difficult for her to be excused from the sin of scandal and against charity; because the acceptance itself is the cause that he gives, and it is certain that he would not give without a new sin. - See *Casus*, n. 762 and following.

Article II. On the Subject of a Contract

761. ○ I. By natural right, all and only those who have free use of reason can contract, because these alone can transfer dominion of their goods and undertake obligations. Hence the following cannot contract: 1. infants not yet having the use of reason; 2. the insane and the furious; 3. the perfectly drunk.

II. By positive law, besides the use of reason and the free will of contracting which are exacted by natural law, it is also required that the contracting party have free disposition of goods, and not be declared by law incapable of making a contract. But those incapable of contracting, at least in many things, or firmly, are: 1. minors; 2. wives; 3. the civilly dead; 4. interdicted persons and prodigals. A few things concerning each.

§ I. On Minors

762. ○ Minors are called those who have not reached the age fixed beforehand by law, so that, the authority of the father, or of a tutor or curator, being excluded, they may be able to act civilly. In Roman Law sons are minors up to the age of 25, and daughters of 21 years [1]. But in Gallic Law sons under paternal power of both sexes are minors until they have completed the age of 21 years. Nevertheless, with respect to contracting marriage, men who have parents or ascendants are not reputed majors unless they have arrived at the age of 25 years.

[1] The old Roman law assigns the twenty-fifth year indiscriminately both for males and for females as the year after the completion of which one ceased to be a minor; but the recent law published under Gregory XVI defines the twenty-first year indiscriminately for both sexes. Nevertheless, from the old law, leave of age granted to females is found two years earlier than to males.

1. Some minors are not emancipated, but others are emancipated. The former are simply subject to the authority of the father or tutor. But the latter are those who have been freed from the aforesaid authority by the benefit of emancipation according to the forms prescribed by law. In Roman Law and in Canon Law, some minors are puberes, and others impuberes. Boys who have reached the age of 14 and girls of 12 years are called puberes. The rest are called impuberes. Impuberes deprived of a father and placed under the authority of a tutor come under the name of pupilli. From the same Roman Law, a tutor is given to pupilli for all things, but a curator is given to puberes for the administration of goods only. With these things set down,

I. From Roman Law

763. ° 1. A filiusfamilias who is impubes, even if he contracts with the consent of the father and concerning castrensian goods, is not obliged; on the contrary, if a pubes son contracts concerning castrensian and quasi-castrensian goods, he is obliged, provided it is not a question of alienating immovables or precious movables; but he can by no means dispose concerning profectitious and adventitious goods, because regularly he does not have their administration.

2. A pupillus, or impubes deprived of a father, with the authority of the tutor, but a minor with the consent of the curator, contract validly, unless it is a question of immovables or precious movables, for which a decree of the judge is required [2].

[2] Nevertheless a pupillus can, for his own advantage, oblige another to himself (e.g. by accepting a donation), even without the authority of the tutor, as is clear from sect. Pupillus, Instit. De inutil. stipul. - Lugo, De Iust., disp. 22, n. 283.

II. From Gallic Law

764. ° 1. A non-emancipated minor cannot contract firmly without the assistance of the tutor. Nevertheless, if a contract is made in such a way, it will be valid of itself, but rescindable, unless it favors the minor. Hence, if from a contract of this kind lesion follows, the minor is admitted to the benefit of restitution; otherwise, if no lesion has followed. Hence the axiom: A minor is restored, not as a minor, but as injured.

2. An emancipated minor is able to make all acts of administration determined by law. But for the rest the assistance of the curator is required.

Restitution has no place: 1. if the minor by fraud, but not if by mere affirmation, persuaded another that he was of age; 2. if the lesion comes from a fortuitous and unforeseen event; 3. if the obligation arises from a delict or quasi-delict; 4. if, while exercising commerce or an art, he contracted for matters of his commerce or art; 5. in certain other cases excepted by law (Arts. 450..., 476..., 1304 and following).

765. You will resolve. - 1. A minor can in safe conscience use the benefit of the law, the case of bad faith being excluded, since the law was enacted in his favor. Nevertheless he cannot seek rescission in order to be exempted from restitution of the money which he received as a loan

and squandered, although he derived no profit from it; for he is bound to fulfill the obligation which he certainly knew when he was asking for and receiving the money. From another side, it must be attributed to his own fault if he perceived no advantage from it. - Pothier (Traite des obligations, n. 52), with whom Toullier agrees together with other jurists, and Gousset (n. 747).

2. He who contracted with a minor can stand by the contract until the nullity is invoked by the minor, or by his father or tutor. Nevertheless a private petition suffices for him to be held to rescission when the lesion is altogether open.

3. The minor alone, both by himself and through others by whom he is represented, can seek rescission of the contract; hence those who contracted with him cannot oppose his incapacity (Art. 1125).

4. A minor can no longer impugn an act performed during minority when, having already been made major, he has ratified it; because he was fully able to contract when he ratified the act (Art. 1311). - See Cases, n. 770 and following.

§ II. On Wives

I. From Common Law

766. ° 1. A wife cannot contract or dispose concerning her dowry and its fruits, nor concerning the goods of the family, when the husband is present and able to administer these goods, when he is reasonably unwilling. It is otherwise if the husband is absent, insane, or foolish, or if he consents expressly or tacitly, or if he is not reasonably unwilling.

2. A wife can, as she pleases, contract or dispose, even when the husband is unwilling, concerning paraphernal goods, that is, concerning goods which she brought besides the dowry and reserved to herself. - Recall the things said concerning the dominion of wives, n. 548 and following. - See Billuart, Reuter, etc.

II. From Gallic Law

767. ° 1. A wife generally cannot contract without the special consent of the husband, and in the absence of this without the authority of the judge, as was said in the Treatise on Justice, ibid. - (C.C. 217, 219). And therefore the acts which she placed without such authority must be rescinded if the wife herself, or her husband, or their heirs, but not others, oppose the nullity.

I said, 1. without the special consent of the husband; because a general consent given in the contract of marriage is not sufficient, but it is required that it be special for the individual acts of the wife, and indeed given in writing.

I said, 2. or without the authority of the judge; because the wife can have recourse to the judge if the husband is unwilling to consent, or even cannot consent, e.g. if he is absent, if he is interdicted, etc.

2. Nevertheless a wife can contract without the special consent of the man: 1. when she is engaged in public and separate commerce, because then the husband is judged to consent, except for the alienation of immovables; 2. when she purchases those things which are necessary for the support of the family.

3. According to the general laws, a wife can, as she pleases, dispose of her goods by testament without any intervention of the husband. The reason is that it matters little to the husband, insofar as lord of the woman, what the future testamentary disposition of the wife will be, since a testament obtains its effect only after the dissolution of the marriage.

768. ○ It is asked: Whether the nullity which affects the contracts of wives is of full law, or ipso facto, or has force only after the sentence of the judge?

I reply. The nullity is not to be held as of full law, since the sentence of the judge is required to declare it. Nor is it absolute, but only relative, or it can be pronounced only in favor of certain persons who alone can invoke it, namely in favor of the wife, the husband, and his children.

769. You will resolve from Gallic Law. - 1. If a wife contracts without the consent of the husband with lesion of his rights or goods, e.g. with respect to the goods of the community, or the revenues to be received by the man, the contract is wholly void. But a wife of bad faith, although in that case she cannot oblige either the husband or the goods of the community, nevertheless is bound to repair the damage inflicted on the other. - Carriere, n. 203, and others commonly, against others who say that the other contracting party ought to impute it to himself that he contracted with her and was thus deceived.

2. The nullity of the contract of a wife can be invoked by the man in conscience, even if he has not suffered lesion properly so called, because the nullity was sanctioned chiefly for his sake.

3. The wife herself also can invoke the nullity of the contract, as it seems, although the law does not precisely intend to favor her; because there does not seem a sufficient motive for excluding her from the benefit of the law, provided she has not deceived the other party. - Carriere, ibid., against others. But she must return all that in which she has become richer, and things must be restored into the same state as they were before the contract, provided she herself was not injured and deceived. Often, however, by reason of fraud she must be excluded from the benefit of the law.

4. A wife who asks another for money as a loan for her husband, obliging herself to restore it in default of the husband, is bound to restore it if the man cannot or will not make restitution; for she was the absolutely determining cause of the contract. Therefore she ought to fulfill the obligation freely undertaken, especially after the man has died; otherwise she would turn out to be of bad faith. A fortiori a wife must restore money borrowed by herself for her own utility, without the husband's knowledge. For thus natural equity cries out. - See Cases, n. 773 and following.

§ III. On the Civilly Dead

770. ◦ Those are called civilly dead who have been condemned to death, to perpetual galleys, or to deportation. But these are the chief effects of civil death: 1. to lose the property of goods, which pass to the heirs, without the testament being valid, if they have made any; 2. not to be able to receive an inheritance or donations, except that which is destined for their support; 3. not to be able to donate goods which they have acquired, whether among the living or by testament. - These things generally seem to have effect in the forum of conscience. Nevertheless, according to the common interpretation, the civilly dead are not prohibited from receiving any manual donations whatsoever. For they are incapable only for those things which are determined by law; hence they validly enter most contracts, and are not incapable of conducting commerce. - Thus Roman Law.

§ IV. On Interdicted Persons and Prodigals

771. ◦ Interdicted persons are those who by sentence of the judge are declared incapable of exercising civil acts because of a state of weakness, or dementia, or madness. Moreover, someone is designated for them as tutor, and all their acts are void by law; nevertheless they are not to be esteemed absolutely null before the sentence of the judge. Interdiction ceases when the cause ceases; the cessation of which must be declared by the judge, so that the interdicted person may again be able to act civilly. Prodigals juridically denounced are incapable of entering certain contracts determined by law, without the assistance of a counselor constituted by the judge.

Moreover, the nullity of contracts entered by interdicted persons and prodigals can indeed be opposed by them or by those conducting their cause, but not by those who contracted with them, just as was said concerning minors.

Article III. On the Required Consent

1. Its endowments; 2. the opposed vices.

§ I. On the Endowments of Legitimate Consent

772. ◦ Consent must be external, internal, mutual, free, and deliberate.

1. External, that is, manifested, because it must be manifested to the counterparty; but it cannot be made open to the other party unless it comes forth outwardly by some visible sign.

2. Internal, because the obligation of the contract arises from the will alone of the contracting party. - Thus commonly.

3. Mutual, because a contract is an agreement of two or more; hence if it is onerous, cession and acceptance are required on each side. If it is gratuitous, cession is required on one side and acceptance on the other.

4. Free and deliberate, so that the contracting party is not only master of himself, but also acts with that deliberation which is required for grave sin; otherwise the will would be imperfect, and therefore the act imperfect, which could not beget a perfect obligation.

773. Questions. - It is asked, 1. Whether a contract entered into [1] without the intention of obliging oneself, or without the intention of fulfilling it, is valid?

[1] Understand a contract entered into with the intention of contracting, although without the intention of obliging oneself, etc. For otherwise the question will return to the one contracting fictitiously, concerning whom the Author treats afterward in the first Resolution.

I reply to the first. More probably it is not valid, because the condition attached is contrary to the substance of the contract [2]. St. Lig., n. 710. - Others say that the contract is valid according as the volition of the contract prevails or does not prevail. - Lacroix.

[2] Certain ones (apud Lugo, disp. 22, n. 38) affirm, because whoever wills the cause wills also the effect, and he who gives the form wills the consequences belonging to the form. But others deny, both because in contracts an obligation cannot arise except from one's own will, and because (which the Author also touches on) a condition which is contrary to the substance destroys the contract; to which pertains cap. Si conditiones, fin., De conditionibus appositis.

Nevertheless, the solution of the question will be more apt if you use suitable distinctions. For either the promise and the intention of not obliging yourself are concerned with wholly the same object and under the same respect or sense; and then the promise is altogether illusory, since a promise is an obligation of faith, and nevertheless by hypothesis you do not will this obligation. But if the promise and the intention of not obliging yourself are referred to an object which has a multiple consideration, then again one must distinguish with De Lugo (disp. 22, n. 39). For it is necessary to inspect which of the two contrary wills must be said to prevail; but that one ought to prevail which is more efficacious and absolute, or which has a more universal mode of willing and with formal or virtual reflection upon the other. Therefore, if the will of promising and contracting is more efficacious and absolute than the will of not obliging yourself, an obligation will arise, even if from error you think that an obligation does not arise from the contract or promise, and therefore you do not will to oblige yourself. Thus one who absolutely wills religious profession, being otherwise ignorant of some burden attached to it. But if the will of not obliging yourself is more efficacious and absolute than the will of contracting or promising, an obligation will not follow. For truly there is not present an efficacious and absolute will of promise, but only a conditioned one, namely if that obligation does not arise from it. But if you suppose that each will is equally efficacious, the act would be null, as intending an impossible effect. And since you do not have the will of promising unless it lacks obligation, in reality there is no absolute will of promising, but only a chimerical one.

I reply to the second. The contract is valid. The reason is that a will not to fulfill can consist together with a will to oblige oneself. - St. Lig. and others commonly.

It is asked, 2. Whether the consent of each party must be elicited simultaneously?

I reply negatively, because the consent of one person, once given and not revoked, morally perseveres, so that when the consent of the other accedes, the contract is immediately perfected.

774. You will resolve. - 1. He who fictitiously consents to a contract is bound in the forum of conscience to make the deceived party unharmed, and, if another means of repairing the injury is not at hand, to furnish internal consent and to stand by the contract. - Hom. apost., tract. 10, n. 93.

But if the contract entered fictitiously has been put into execution, no dominion has in reality been transferred. Hence, by reason of the thing received, the deceived person is to be held as possessor in good faith, but the deceiver as possessor in bad faith.

2. If I offer you a house for sale for 100 gold coins, and you accept, the contract is perfected not when you consent internally, but when your acceptance outwardly comes forth to me by some

sign. But my consent is sufficiently intimated to you by this, that I offer you my house for the price appointed.

3. If you contract with me through a procurator, the contract is perfected when your procurator accepts, although you have not yet accepted, because the acceptance of your procurator is morally yours.

4. Silence is regularly reputed as consent if the matter is favorable to the one keeping silence. Hence the rule of law: He who is silent seems to consent.

5. If Paul says in the presence of John: I give 100 gold coins to Peter; and if John, not commanded, reports this to Peter, and Peter says: I accept; Paul is not judged bound, because the intimation of the promise was not made to Peter by the mandate of Paul, who moreover by the words reported shows nothing else than a mere purpose of giving. - See Cases, n. 776.

§ II. On the Vices Opposed to Consent

The principal ones are error, fraud, force, and fear, which are reduced to error and fear [1].

[1] It is wholly due to the study of brevity in the Compendium that the Author said all these things are to be reduced to error and fear, and therefore touches them in such a way that he passes over several things, and those of grave moment. And indeed, that he reduces force to fear in such a way that he is wholly silent concerning it, no one will disapprove. For now, as St. Thomas teaches (4 Dist. 29, q. 1, art. 1), the question is about internal consent, into which coercion or force does not fall, which is distinguished from fear; and therefore, as regards the proposal, coercion is the same as fear. But the same judgment cannot hold when fraud is so reduced to error that the things which pertain more specially to the former can be omitted. For, as Lugo observes (disp. 22, n. 68), it matters very much whether the contracting party is deceived by the other contracting party, or by some third party without fault of the other contracting party, or even by himself, who erroneously thought the thing to be better or more useful, and therefore buys it, or buys it for more, when otherwise he would not have bought it, or certainly would not have bought it for so much; and again, whether, when he is deceived by another, this happens with the other's fault or without fault. This is to be noted because, although each deception diminishes the voluntary in the other contracting party, nevertheless each does not beget the same obligation in the deceiver.

Point I. On Error

775. ◦ Error in contracts can be concerned: 1. with the substance of the thing, as if you buy copper for gold; 2. with the nature or species of the contract, e.g. if you take lease for sale; 3. with the quality or accidents of the thing, suppose if a horse is slow while it is reputed swift; 4. with the person, e.g. if someone were to give to Peter, wishing to give to Paul; 5. with the motive, e.g. if you were to give something to Caius on account of poverty or piety, while he is rich or impious.

Nevertheless, error concerning quality, although accidental, can be the cause of the contract.

776. Principles. - I. Every error concerning the substance of the thing or the nature of the contract renders the contract null. The reason is that then there is no consent, which regards a wholly diverse thing. - St. Lig., n. 714.

II. Error concerning quality alone does not of itself invalidate the contract, at least if, once the error was known, the contract would nevertheless have been entered. For consent wholly voluntary

concerning the principal object of the agreement is had. - But if, once the error was known, the contract would not have been entered, it is controverted, as we shall say immediately.

777. Questions. - It is asked, 1. Whether error concerning a quality giving cause to the contract invalidates a contract, whether onerous or gratuitous?

I reply, 1. More probably negatively as regards onerous contracts, because such error does not impede cognition, nor consent as regards the substance of the thing. Otherwise scarcely any contract would be valid, which would tend to the overturning of human commerce. Make exception if the quality is expressly intended as a condition without which not, because then it passes over into the substance of the thing.

I reply, 2. As regards gratuitous contracts, more probably affirmatively. The reason is that such contracts of their nature require a full voluntary and every sort of spontaneity; but this was plainly lacking when the cause moving one to give is supposed to be lacking. - Thus commonly, against some who, since they otherwise admit that these contracts are rescindable at the will of the donor thus deceived, scarcely differ in practice, one sentence from the other [1]. - See St. Alph., nn. 714, 715; Hom. apost., nn. 124, 125. It is asked, 2. Whether error concerning the person invalidates the contract?

[1] Nevertheless, between two sentences, of which one says that certain contracts are void of themselves, the other only rescindable, a difference of great moment can be present as regards effects. Thus, e.g., if the discussion is about betrothals, according to this diversity of sentences it will be defined whether from the contract the impediment of public honesty has been introduced or not.

Moreover, the same dissent of sentences, and the same character of difference between them, is to be seen among the Doctors also as regards onerous contracts to which, nevertheless, the fraud of one or the other contracting party has given cause; of one or the other contracting party, I say; for if fraud is employed by some third party, and the other party of the contracting persons is not a participant in the fraud, the contract is held valid without controversy, although an action is given to the deceived person against that third party who employed the fraud (see Molina, tract. 2, disp. 352, n. 7).

Therefore, when fraud giving cause to the contract is employed by the other of the contracting parties, or if it is employed by a third party, yet the other party is a participant in it, the Doctors agree that contracts of strict law are to be sustained as valid; but as regards contracts of good faith they differ among themselves. And Molina indeed (disp. cited, n. 2), with most of the older authors, contends that they are void; but more recent authors (see Lugo, disp. 22, n. 70) have more commonly held them as valid, although afterward they must be rescinded at the choice of the deceived person. But among the dissenting parties Cardinal De Lugo intervened as a sort of arbiter, about to reconcile them somewhat. "Each sentence," he says (disp. 22, n. 73), "can perhaps be reconciled, if we say that contracts of this kind are by natural law, and also by positive law, indeed partly valid, partly void, and altogether to be annulled at the will of him who suffered the fraud." The excellent theologian entered upon this way especially so that a reason could be given why it is in the free power of the deceived person to stand or not stand by the contract, while the deceiver is bound to stand by the contract according to the choice of the deceived person.

And indeed let it suffice to have indicated these opinions of the Doctors; for the brevity of a Note does not permit their force and reasons to be weighed. Nevertheless, we do not judge that the conclusions which pertain to practice are to be passed over, and this the more because all the sentences agree in them, however much each may perhaps differ somewhat according to its own principles in giving their reason. Therefore have these from Molina (l.c., n. 16):

Either someone is deceived while the other contracting party is ignorant of it; and then, if no inequality arises in the contract because no transgression of the limits of just value has been made, the contract in each forum is valid and firm, in which no change must be made. But if inequality arises, because either something was received beyond the strict just price, or something was given below the just and lowest price, then in the forum of conscience it must be reduced to equality only down to the limits of the just price, and also in the external forum if the transgression was within or beyond one half of the just price.

But if the deception is known indeed to the other contracting party, but without fraud, and without concealing things which he was bound to manifest, then altogether the same things must be said as we said just above, when someone was deceived while the other contracting party was ignorant.

But if lies and fraud have intervened, a distinction must be made. For either someone was induced to contract, or to increase the price or recompense, or not, because he did not give faith, knowing that this is the custom of those celebrating similar contracts; or, even if those lies had not been used, he would have contracted similarly: and then altogether the same thing must be said as in the two preceding events, because the fraud employed was neither the cause of the contract, nor of increasing the recompense or diminishing it. And hence often merchants who lie and affirm by oath either that the thing is worth more, or that they bought it more dearly, and who invent many other things, both so that they may sell or sell more dearly, and so that they may buy or buy more cheaply, will be excused both from the burden of rescinding contracts of this kind and also from restitution of part of that which they thus received.

When by lies or other frauds someone was induced to contract, or to increase the price or recompense, fraud is said to intervene in the contract in the sense in which thus far in this disputation we have been speaking. But if then the fraud gave cause to the contract, it is invalid in the forum of conscience if the deceived person so wills, and also in the external forum if the contract was of good faith, even though no inequality has arisen from it.

Observe nevertheless that, when there is no inequality, regularly it is not a mortal fault not to rescind that contract, or not to offer this to the deceived person; and, when the thing is no longer intact so that the contract can be dissolved, regularly no obligation arises of restoring something under mortal fault. And hence those who, lying that wine is of many years, or is of one place, sold it to him who, if he knew that it was not of so many years or not of that place, would by no means have bought it, or would not have bought it at so great a price, will be excused from mortal fault and from the burden of restoring under mortal fault, when the wine in itself, all circumstances being computed, was equally good and of equal value. And likewise when he would not have bought it for so much, and the increase of price was not so great as is required for mortal fault.

Nevertheless, while the matter is intact, then there is always an obligation under venial fault of rescinding the contract, or of offering this to the deceived person, or of restoring to him what he would have given less, at least when he would have bought from another at a lesser price, unless he had been deceived by this one in such a way, even though he bought from this one within the limits of the strict just price; for when from no other would he have bought better wine or at a cheaper price, then, although an injury had been done to him by selling to him in this way, nevertheless, because no damage, even of cessant gain, would have followed from it for him, no obligation of restoring would arise.

I said, regularly mortal fault does not intervene by not rescinding similar contracts or by not restoring; because if the thing were of great value, and especially if otherwise he was going to buy an equally good thing at a lesser price, so that this decrease in price would suffice for mortal fault, then indeed both to enter that contract with fraud intervening, and, while the thing is intact, not to rescind it, and finally, when the thing is now no longer intact, to omit restitution of the damage following from that contract to him thus deceived, would be a mortal fault.

I reply, 1. Negatively, speaking generally, as regards onerous contracts, because in these an error of this kind is merely accidental; and surely it is of little interest both to the seller to whom he sells the thing, provided he receives a fitting price, and to the buyer from whom he buys, if the thing is suitable to him. The contract of marriage must be excepted, in which the consent affects the very person who becomes at the same time both the contracting party and the object of the contract itself.

I reply, 2. Affirmatively, for the most part, as regards gratuitous contracts, because in these the person of the donee is usually specially intended by the donor. Nevertheless, the circumstances of the things must be considered, from which the will of the benefactor can be better recognized.

778. ○ It is asked, 3. Whether error concerning the motive invalidates a contract?

I reply, 1. Affirmatively, if the error falls upon the final motive; e.g. if you were to give alms to Titius because you reputed him poor, when he is rich; for your consent is lacking as regards the very

substance of the thing.

I reply, 2. Negatively, if the error falls only upon the impelling motive; e.g. if you were to give alms to poor Peter, whom you believe very upright, when he is less upright; for this error is merely accidental. - St. Lig., n. 737; Hom. apost., n. 137.

779. You will resolve. - 1. If a priest by night buys cloth for himself, thinking it to be black in color, while it is green or violet, the contract is not valid if he expressly declared that he wished cloth of black color; for although color in itself is a mere quality, in this case it passes into substance, and therefore the error becomes substantial.

2. If Burgundy wine is offered to you when you wish to buy Bordeaux wine, the contract is valid of itself, notwithstanding error or fraud, because the error is not substantial. But justice is injured accidentally if Bordeaux wine is dearer; and therefore the seller will be liable to restitution. But if the price of each wine is equal, or if the price is diminished in proportion to the excess, the seller will be immune from injustice, although not from the sin of lying. I said, of itself; because the error could easily be substantial, as, e.g., if the buyer had attached his intention by express words to Bordeaux wine on account of a certain end to which any other wine would not conduce. - Reuter, n. 113 and following.

3. He who buys a book at a bookseller's, which he judges good, and afterwards discovers it to be bad, nevertheless contracted validly, because he wished to buy this present book absolutely and without restriction, although certainly he would not have bought it if he had known it was bad. But it is otherwise if a false title had been inscribed on the book, because then the title would have furnished the cause of a substantial error. - See Cases, n. 779 and following.

4. Fraud differs from simple error in this, that error proceeding from fraud has been produced by artifices employed for this end. Error which of itself would not be sufficient for invalidating a contract can give place to nullity if fraud has intervened on the part of the other contracting party.

Point II. On Fear

Fear is: 1. either grave or light; 2. induced by an intrinsic or extrinsic cause, necessary or free, just or unjust; 3. struck in order to contract, or for another end. - Recall the things said in the Treatise on Human Acts, n. 17 and following.

780. Principles. - I. Any fear whatever so disturbing the use of reason that it excuses from grave fault wholly invalidates the contract which follows from it by every law. The reason is that then the consent required for contracting is lacking, whether fear altogether takes away the use of reason or so impedes it that consent cannot be called full and perfect.

II. No contract from fear arising from an intrinsic source, or from a necessary, or natural, cause is invalid, unless perhaps he who contracts from fear was not master of himself. The reason is that no injury is inflicted upon the contracting party, and from another side he preserves sufficient liberty. The same must be said if fear has been struck by a free cause, or by a man, for a just cause; hence a deflowerer compelled by grave but just fear to marry the girl whom he seduced contracts validly.

III. More probably [1] no contract, at least an onerous one, entered from light fear is invalid, nor rescindable at the will of him who suffered the fear. The reason is that fear light from whatever source is reputed as nothing in law, since it can easily be contemned. - For otherwise very grave inconveniences would follow in human commerce, since light fear is most frequent. Thus St. Lig., Hom. apost., tract. 10, n. 125, etc. Lugo contradicts, however, with others whose sentence is called probable by St. Alphonsus, especially if the fear, although light, is the sole cause of contracting.

[1] Since the Doctors dispute concerning these matters on each side, this matter perhaps claims for itself a more fitting place among Questions than among Principles.

I said, at least an onerous one; for if it is a question of gratuitous contracts, contracts of this kind more probably seem void whenever light fear has been unjustly struck for extorting consent of this kind. For it is essential to these contracts that they proceed from benevolent and spontaneous liberality. Nevertheless, the opposite sentence has seemed probable to others [2].

[2] If probability requires a prudent judgment, and therefore one resting upon some solid reason, it scarcely appears whence probability can be procured for this opinion. For since a gratuitous contract proceeds by its own nature from spontaneous liberality, therefore consent extorted by fear, which on that account someone unwillingly elicits, is repugnant to the nature of the same.

781. Questions. - It is asked, 1. Whether grave fear struck by the counterparty in order to contract invalidates a contract, if it by no means disturbs reason?

I reply, 1. By the sentence of all, contracts of this kind are rescindable, whether they are gratuitous or onerous.

I reply, 2. As regards gratuitous contracts, affirmatively. For this is clear a fortiori from what has been said concerning light fear. And surely if a contract of this kind were valid, he who strikes fear would acquire a right in the thing handed over or promised to him; but this is repugnant, both because the intention of giving gratuitously is lacking, and because right cannot arise from injustice [3]. - Thus commonly. - St. Lig., n. 716, admits this as probable.

[3] Understand that he who inflicts injury cannot through this acquire a right against the injured person, since rather he contracts the obligation of repairing the injury.

I reply, 3. As regards onerous contracts, it is very much controverted, and a twofold probable sentence is given.

The first, more common sentence affirms that contracts of this kind are valid. For he who suffers fear truly and absolutely wills to contract from the motion of his own will. - Thus St. Lig., ibid. - Lugo, and others.

The second sentence teaches that those contracts are plainly void from natural law. The reason is that otherwise right would arise from injustice; and accordingly he who strikes fear could retain the thing extorted without injustice up to the sentence of the judge, which nevertheless nearly all the adversaries deny. Nor should you say that compensation is given in an onerous contract through money paid or an equivalent handed over; for often it is harder for the proprietor to alienate his own thing from himself than to grant money gratuitously from fear. Moreover, in practice these sentences do not differ very much, since each finally resolves the question in favor of the coerced person, as we have already said concerning a similar case, n. 777.

Notice nevertheless that from canon law contracts elicited from grave fear are certainly invalid where the question is: 1. about marriage, and probably also about betrothals; 2. about the handing over of things of the Church and the renunciation of a benefice; 3. about a vow and religious profession; 4. probably also about ecclesiastical jurisdiction and absolution from censures [4].

[4] The question concerning ecclesiastical jurisdiction extorted through fear must be distinguished from the question concerning absolution from censures. For this latter is manifestly declared void in law, just as Gregory X decreed in the Ecumenical Council of Lyons (cap. unic. de iis quae vi metusve causa fiunt in VI): "The benefit of absolution from a sentence of excommunication, or any revocation whatever of it, or of suspension, or even of interdict, extorted by force or fear, by the authority of the present constitution we wholly empty of force" (see Lugo, disp. 22, n. 129). But it must be said otherwise concerning the former, for whose invalidity only L. 2 De Iudic. is brought forward, which law does nothing to the matter, since it speaks about a judge to whose jurisdiction litigants are not subject, which it declares to be null if, when any one of the litigants had resisted, he was compelled by the powers of the Praetura. Hence De Lugo (disp. 22, n. 131) calls more probable the sentence of those who hold jurisdiction of this kind to be valid. This sentence can sometimes be of use, so that, a reasonable cause requiring it, someone may use this less certain jurisdiction for absolving, even if he suspects that jurisdiction has been conferred by a superior on account of some fear.

782. ○ It is asked, 2. Whether a contract entered because of reverential fear is rescindable?

I reply negatively, more probably [5], because it does not seem of itself a sufficient cause for rescinding a contract, unless at the same time it includes grave fear, suppose of long-lasting indignation, etc. Likewise even most importunate prayers do not constitute grave fear, unless perhaps they are joined with reverential fear toward a Superior. - Sanchez. - Salm. and others commonly. - See St. Lig., n. 717.

[5] It could be answered more briefly and clearly: affirmatively, when reverential fear can be held grave; otherwise, negatively. But when reverential fear is equivalent to grave or light fear is supposed to have been handed down in the Treatise On Human Acts.

It is asked, 3. Whether a contract is void, or rescindable by private authority, if grave and unjust fear is struck by a third party only, so that the other party is not a participant in the injury?

I reply. It is controverted. The first probable sentence affirms, because by reason of the injury, even inflicted by a third party, the thing remains bound to the prior owner, and consequently passes with that burden to any persons whatever; nor is it fitting that someone should lose every right in his own thing through another's injury. - Billuart, etc.

The second sentence, and itself probable, denies; because, since neither party committed injury, no reason from the nature of the thing is present why the contract should be void, and why it could be rescinded at the pleasure of one party when the other is unwilling. - Lugo, disp. 22, n. 117 [6]. - Reuter, n. 126.

[6] Lugo (l.c.) holds, speaking of natural law, that it cannot be rescinded unless he who inflicted the fear somehow makes one thing with the contracting party against whom it was to be rescinded, but that an action is given to the one who suffered fear against him who inflicted the fear, for the damage inflicted. These are Lugo's views, with natural law considered; for (ibid., n. 118) concerning positive law he holds, with the common sentence, that the contracts are valid but to be annulled, excepting some which by the same positive law are void.

783. ○ It is asked, 4. What if grave fear indeed was unjustly struck, but not for extorting consent?

I reply. It is controverted, but it seems that one must distinguish thus: 1. If fear has been struck by the other of the contracting parties, the contract is not valid, or at least is rescindable, because he

who strikes fear is bound to remove all the inconveniences which proceed from the injury. Reuter, n. 127. - Lugo, disp. 22, n. 177, etc.... - 2. It is otherwise if the fear comes from a third party, because none of the contracting parties inflicted injury; but the third party who inflicts fear cannot take away the obligation of the contract by consenting to its rescission, since the contract was not entered with him; nevertheless he is bound to induce toward rescission, so that he may avert the injury from the innocent person, if the latter wishes. Hence a purchase of a sword made from fear of your enemy is valid. Lugo, n. 178, excepts the contract of marriage, which he thinks is invalid if entered from such fear. Others except also gratuitous contracts, because thus better provision is made for the innocent person, and the other cannot complain, since he is deprived only of gain and remains in the state in which he was before; and just as he himself would not wish to be obliged in those circumstances, so also he ought not to oblige the other.

784. You will resolve. - 1. If you threaten someone caught in theft that you will report him to the injured master, or to the guard, or to the judge, unless he promises you a certain gift, the promise holds, nor are you bound to return the gift received, unless perhaps in the judgment of a prudent man it seems excessive [7]. This is also true even if you had not had the intention of reporting him, but only of frightening him, because you would cede from your right of doing that, which is estimable by price. - Elbel, n. 307. - Reuter, n. 120.

[7] Concerning this case Roman law has thus: If the thief gave something lest he be betrayed, since the baseness of each one (namely, of the giver and of the receiver) is involved, repetition ceases, that is, an action is denied for recovering what had been given. And again: If you have received something from my fugitive slave, lest you reveal him, I can condict this from you, as from a thief (L. Idem 4, sects. 1 and 4, De condictione ob turpem causam). To these things Johannes Voet (book 12, title 5, n. 3): "To him whose interest it was that something was not given for a base cause, condiction of the things given is read as granted; as, for instance, to the master from whose fugitive or thieving slave you had received money lest you reveal him." From these things it is sufficiently gathered that this question almost falls back into a contract concerning a base thing. Therefore, rather than saying that he who promises silence to the thief cedes from his right, perhaps it must be said that he departs from an office either of justice, or charity, or legal justice or charity toward the republic; and that no other title of receiving or retaining things received from the thief is at hand for him, except that he exposes himself to some danger or damage, whether spiritual or temporal. Compare De Lugo (disp. 19, nn. 103-104) and Molina (De Iust. et Iur., tract. 2, disp. 735, n. 3), who deny that promised silence, if the aforesaid dangers of damage are absent, is estimable by any price and therefore that the accepted price can be retained.

2. If Titius inflicted fear upon you so that you would hand over some thing to Caius, the contract does not hold. For if Caius, at the time at which he accepts the thing from you, knows the injury inflicted on you, he himself is judged to inflict fear through Titius. But if he knows it afterward, he is to be assimilated to a possessor in good faith, who must restore the thing possessed as soon as he discovers it is another's. - Billuart, diss. 1, art. 4.

3. If someone prepares damage for you from mere malevolence, and therefore asks nothing from you, but you of your own accord promise money so that you may escape unharmed, you are not bound to hand it over; because although fear was not in order to contracting, nevertheless it has for its object only the cessation of unjust vexation. But the vexer cannot sell this cessation; therefore whatever he acquires in this way he receives as a possessor in bad faith, and therefore he must restore it. - Billuart, ibid.

4. If a traveler, oppressed by a robber, calls upon a passing man for help by promising him money, the promise is valid, because fear is not its cause, but only the occasion; and from another side the help furnished by the passerby is estimable by price. Nevertheless, if the sum were enormous, it would have to be diminished. - See Cases, n. 785 and following.

Chapter II. On the Obligation of a Contract

The obligation of a contract is the bond by which someone by force of the contract is bound to give, do, or omit something.

785. Principles. - I. Any contract duly entered begets an obligation in the forum of conscience, at least on the part of one of the contracting persons; because in a contract some right is granted to one or both parties; but to every right there corresponds its obligation; therefore, etc.

II. A contract duly entered, unless the laws establish something else for a particular case, has force only among the contracting persons alone, or others who either hold their place or have cause with them, such as heirs, mandators, etc. The reason is that no private person can impose a burden on another unwilling person, or confer a benefit; nor otherwise do contracts have force except from the private will of the contracting persons.

III. A contract duly entered obliges not only to that which is expressed in the pact, but to all the consequences which equity, law, or usage require according to the nature of the agreement. The reason is that the contracting parties are judged to act with good faith, and for this reason to will not only what is expressly included in the stipulation, but also what is usually born from it.

Hence the intention of the contracting persons must be carefully investigated, if it can be clear and expressly established concerning it. But if it remains obscure and ambiguous, it can be explained both from the matter of the agreement, and from the usage of places, and from the character of persons. Finally, if after all things have been weighed the doubt cannot be removed, an amicable settlement is to be advised.

786. Questions. - It is asked, 1. To what does a contract liable to rescission oblige?

I reply. That contract can be called conditionally obliging, namely if the nullity is not invoked. The reason is that the legislator, for the good of peace, did not will that contracts of this kind be judged and be invalid except when their nullity was expressly invoked and obtained. This follows from the things said concerning the contracts of minors, wives, and interdicted persons, n. 762 and following.

It is asked, 2. Whether contracts entered without the formalities prescribed by law for their validity are valid and oblige in conscience?

I reply. There is a threefold probable sentence:

The first sentence affirms, because by natural law the consent alone of the parties suffices for inducing obligation, and human law does not remove a natural obligation between persons otherwise capable, although it denies a civil action. - Molina, etc.

The second sentence denies, because laws invalidating the aforesaid contracts are founded in the presumption not only of fraud, but also of common danger; since the common good requires that an

occasion for any frauds whatsoever be removed; and therefore the law can and ought to remove also the natural obligation of a void contract in the external forum. - Lessius, book 2, ch. 19, etc.

The third sentence holds that in these contracts the possessor must be preferred until by sentence of the judge he is condemned to restore [1]. - Thus St. Lig., n. 711, where he adds: "This sentence must altogether be held in practice, from the fact that, since possession grants a certain right, the possessor cannot be despoiled of the thing unless the right of the other is established."

[1] More clearly Lugo (disp. 22, n. 251), who proves that this opinion is in reality futile. "The third, middle sentence says that a testament or contract made without any solemnity is not altogether null; but is valid for this, that the possessor can retain until he is condemned by sentence; but after the sentence he is bound to restore. It denies, therefore, that some right comes to be from possession; but," as he adds, "this seems to be the sole intention of the legislator, and thus by law and the usage of upright men it seems to have been received, that only a right of petitioning in judgment and of obtaining against testaments and contracts of this kind is given, but not that he himself who possesses ought to despoil himself, which would be too rigid."

787. ○ It is asked, 3. How does the obligation of contracts cease?

I reply. The obligation of contracts ceases: 1. By payment, or by the furnishing of any thing owed, or also by execution of the promised or otherwise owed object.

2. By novation, or substitution of a new debt for an old debt, which is thus extinguished; e.g. I promised you to give ten barrels of wine each year; now I agree with you that I am no longer bound to give wine, but a thousand francs: then the obligation of giving wine is extinguished.

3. By condonation, or the act by which the creditor, with full liberty, remits the debt to his debtor. For each one can cede from his right in all those things which do not regard the public good, provided he was not incapable of contracting.

4. By compensation, or a fictive and reciprocal payment, which has place when persons are debtors toward one another in turn.

5. By confusion, which has place when the obligation of the debtor and the right of the creditor are united in the same person, e.g. if the creditor becomes heir of his debtor, or the debtor of his creditor, or the same person becomes heir of the creditor and at the same time of the debtor.

6. By destruction or loss of the thing owed, which sometimes frees the debtor from obligation, as in merely gratuitous contracts, and sometimes in others, where fault of the debtor does not occur... But sometimes it does not free, e.g. if it has happened by fault of the debtor, or he has been in culpable delay... etc.

7. By rescission, or rescindability, which has place when a contract consisting of the essential conditions is dissoluble because of some defects. That contract is valid until it is rescinded, as was said above (C.C. 1234).

8. By prescription, concerning which it was said above, Treatise on Justice, n. 580 and following [2].

[2] Among the modes by which the obligation of contracts ceases, besides others of lesser moment, the mutual dissent of the contracting persons can also not incongruously be numbered.

788. ○ It is asked, 4. Whether cession of goods frees from entire payment?

I reply, 1. Negatively as regards voluntary cession, excluding a special agreement between the creditors and the debtor, by force of which the latter would be wholly freed. The reason is that the creditors have not been made wholly unharmed by it, and therefore there still remains an inequality to be repaired. - St. Lig., n. 669. - Gousset, n. 772. - Vogler, n. 542. - See above, On Justice, n. 719.

I reply, 2. Negatively, even as regards judicial cession; for the privilege of cession consists only in this, that the unfortunate and good-faith debtor can no longer be urged judicially; therefore, if he acquires new goods, he must satisfy the creditors up to entire payment. St. Lig., ibid. Make exception if, from the circumstances of things, the creditors seem to condone all the old debts.

It is asked, 5. Whether one about to cede his goods can secretly reserve something to himself?

I reply, 1. Certainly he sins against justice if he retains things of great value, because he inflicts damage on the creditors.

I reply, 2. He who cedes his goods, if he is in great need, does not sin against justice if he keeps certain goods by which he may be sustained with his family until provision has been made for him through the judge. But after the fact those are not to be disturbed who retained for themselves things truly necessary to them, of modest value. - Vogler, n. 542. - Gousset, n. 772.

789. ○ It is asked, 6. By what signs can it be distinguished whether the law invalidates a contract ipso facto, because of defect of solemnity, or only after the sentence of the judge?

I reply. Scarcely, and not even scarcely, can wholly certain rules be given in this matter; nor do either theologians or jurists agree among themselves. Nevertheless, generally the law seems to invalidate ipso facto in conscience and before the sentence of the judge:

1. When the invalidation is founded in a law determinative of property; because it pertains to the Prince, by force of supreme power, to determine the dominion of things. Hence dispositions by which the reservation of necessary heirs is injured are void ipso facto.

2. When the invalidation regards an act harmful to the public good; because the Prince must have the power of impeding, and therefore of invalidating in conscience, civil acts harmful to the common good; otherwise he would not efficaciously impede disorder in society. Hence agreements on account of a base cause are void ipso facto on each side.

3. When the invalidation is directly founded on the motive of the public good; because otherwise the legislator would not sufficiently obtain his end. Thus dispositions of dotal immovables are void ipso facto.

But when it is difficult, as often happens, to apply the aforesaid rules, one must have recourse to the interpretation of Doctors and to custom.

Chapter III. On the Modifications of Contracts

By the name of modifications are designated certain clauses added beyond the nature and essence of contracts, so that now they strengthen the obligation of the same contracts, now also they increase or determine it, now they suspend or destroy it.

But the principal modifications of contracts are: 1. oath; 2. modes; 3. conditions. - These three must be treated briefly.

Article I. On the Oath Added to a Contract

790. ○ An oath, as it is taken here, is the calling of God as witness of those things which are promised through a contract. The obligation of an oath also differs from the obligation of a contract in this, that the obligation of an oath affects and binds immediately the person of the one swearing, whence it does not pass to heirs; but the obligation of a contract confers on another a strict right, or right of property, affecting the goods of the contracting person, and therefore the obligation passes entire to the heirs.

791. Principles. - I. Contracts void by natural law are not strengthened by an oath. The reason is that an oath is an act wholly extrinsic to the contract, and therefore can in no way supply its force. Hence the axiom: An oath follows the nature of the act. - Billuart. - Reuter, etc.

II. Nor are contracts ipso facto void by positive law strengthened by an oath. The reason is that the invalidating law rests on a motive of the common good and public order; therefore the oath would be against the common good, and therefore an immoral bond, which God, author of society, cannot sanction. - Thus more commonly with Billuart.

III. An oath is always invalid whenever it cannot be observed without the sin of the one swearing. The reason is that an oath cannot be a bond of iniquity, nor can it oblige against good morals. - Thus all Theologians.

792. Questions. - It is asked, 1. Whether an oath strengthens contracts which are not indeed void by positive law, but only rescindable?

I reply, 1. More probably negatively, when rescindability is introduced with a view to the public good. The reason is clear from what has been said. Hence the oaths of minors, wives, and the like do not avail for strengthening contracts void by law, although the law has been established for their utility; indeed perverse men would always exact an oath from them, which would tend to the detriment of society.

I reply, 2. But more probably an oath is valid if the rescindability has been introduced for the private utility of the contracting persons; because each one can renounce a benefit established in his favor; but the interposition of an oath in that case is a certain renunciation of the benefit of rescission introduced in favor of the contracting person. Hence the oath seems to stand by which someone freely promises another that he will not revoke a testament or legacy made in his favor, because the one swearing can cede from his own right. - Thus more commonly. - Lugo, etc.

793. ○ It is asked, 2. Whether oaths extorted by fear are valid for strengthening contracts invalid of themselves because of fear?

I reply. A twofold probable sentence is given:

The first, more common sentence affirms, because from the motive of Religion the oath must be observed whenever it can be observed without sin. - St. Lig., De Iuram., n. 174. - Lugo, Billuart.

The second probable sentence denies, because the oath ought to follow the nature of the act; for an oath cannot confirm an act null by nature. Besides, the oath would be an act wholly useless, indeed ridiculous. For, e.g., after the handing over of money made by you to a robber by force of the oath, you could immediately recover the same money from the robber, even by employing force; which would be wholly illusory. - St. Antoninus. - Sanchez, etc.

Article II. On Modes Prefixed to a Contract

794. ○ A mode is an added quality, for the most part not suspending the contract, but adding something for the burden or favor of one of the contracting parties.

Modal contracts are made chiefly: 1. to a day; 2. under a cause; 3. under a penalty; 4. under a demonstration; 5. under a disjunction.

You will resolve. - 1. The mode must be observed from justice, unless it is repugnant to the substance of the contract.

2. Its violation ordinarily, and unless otherwise agreed, does not invalidate the contract, because it is held as something merely accidental.

3. If the mode is base or impossible, it is held as not added; nor is the contract invalid unless the mode is repugnant to its nature, or unless the will of the contracting person was wholly restricted to it.

4. In a contract to a day, the obligation arises immediately, but the effect is suspended to the determined day.

5. In a contract under a cause (because), or under a demonstration (I sell this or so much), error does not invalidate unless it pertains to the essence of the thing.

6. If the error is in quantity, the whole thing is owed if the quantity was designated demonstratively; but if taxatively, as they say, the excess of quantity is not owed. Moreover, the thing is judged designated demonstratively if the thing is expressed in the first place, and afterwards its quantity; e.g. I bequeath to Titius my farm of thirty acres; but taxatively if in the first place the quantity is expressed, and then the thing; e.g. I bequeath three gold coins in such a box. But the circumstances of the things must be weighed.

7. In a contract under a penalty, that is, whenever a penalty is imposed on one withdrawing, this penalty is owed from justice if it is requested, at least if the contract has not been fulfilled culpably. Nevertheless the penalty must be moderate; otherwise it would not oblige.

8. In a contract under a disjunction, e.g. I promise an ox or a horse, no determined thing is owed, and the payment of one removes the whole obligation. The choice of the thing of itself belongs to the debtor.

Article III. On Conditions Attached to a Contract

795. ○ A condition is a quality [1] added to a contract, which for the most part suspends it until it is fulfilled. It is usually expressed by the particle: if, unless, provided that..., etc.

[1] Here you will define condition, rather than quality, as being a circumstance added to a disposition or contract, upon whose existence we will the validity of that disposition or contract to depend (Schmalzgr., book 4, title 8, n. 1).

A condition which can be attached to contracts is multiple, namely: 1. express or tacit; 2. concerning the present or the future; 3. possible or impossible; 4. necessary or merely contingent; 5. honorable or dishonorable; 6. potestative or casual, according as it is in the power of the contracting person or not [2]; 7. positive or negative; 8. contrary to the substance of the contract, or not.

[2] To this partition others add a third member, namely a mixed condition, which depends partly on the choice of the contracting person and partly on an uncertain event.

796. You will resolve. - 1. All conditions must be fulfilled in that sense in which the contracting persons are prudently judged to have wished to oblige themselves.

2. A condition concerning a base or impossible thing renders the contract null both by natural and civil law. The reason is that no one can oblige himself to something base or prohibited. Nevertheless, in civil law, both common and Gallic, donations among the living and by testaments are excepted, in which base conditions are held as not added. - Cod. civ. 900. - The same must be said of a base or impossible condition added to marriage, provided it is not contrary to the substance of the contract. - Thus from Canon Law.

3. A condition concerning the present and the past does not suspend the obligation, but either at once brings it in or does not induce it, because it either exists or does not; and therefore here and now the contract is either valid or null.

4. A condition must be fulfilled not only equivalently, but in its proper form. Some except the condition, if you marry, which they say is fulfilled through entrance into Religion; for otherwise the condition would be base. - See St. Lig., n. 930. Make exception if the condition were determined to some person, e.g. if you marry Paul; because a just and honorable reason can then be present.

5. Potestative conditions, or those which depend upon the will of one of the contracting persons, are judged fulfilled not only when that is furnished which was enjoined after the manner of a condition, concerning which there can be no controversy, but even if it is not in reality furnished, namely when he who obliged himself either 1. impeded the condition from being fulfilled [3]; or 2. was impeded by the other from satisfying the condition [4]. - See Cases, n. 787 and following.

[3] This does not always happen in this way; for someone can attach to a contract a condition which to fulfill or not fulfill is in the free power of the one attaching it. Thus, e.g., someone can promise marriage unless he prefers to be initiated into sacred things. Indeed this condition is tacitly understood in the contract of betrothals, namely, unless I prefer to enter religion, or receive sacred orders, etc.

[4] You have a twofold case in which, even if that is not furnished which had been provided by the pact, nevertheless the condition is judged fulfilled: 1. if a third party, whose interest it was that it not be fulfilled, impeded the fulfillment of the condition, when the contracting person wished to fulfill it; 2. if the fulfillment was impeded by the act of a third party, in whose person the condition was to be fulfilled. - See Voet, book 28, title 7, n. 19.

Second Part. On Contracts in Particular

Namely, 1. on gratuitous contracts; 2. on onerous contracts.

Section I. On Gratuitous Contracts

Namely: 1. on promise; 2. on donations; 3. on commodatum and precarium; 4. on deposit and sequestration; 5. on mandate and management of affairs; 6. on loan...

Chapter I. On Promise

797. ○ A promise is a contract by which someone freely and spontaneously obliges himself to furnish or omit something gratuitously in favor of another. The conditions required for the obligation of a promise are: 1. That there be present a will of obliging oneself, at least virtual and implicit, which anyone is judged to have who seriously wishes to promise, even if he does not advert to the obligation.

2. That the consent of the same promisor be fully free and spontaneous, and therefore that all error and fraud concerning the substance and final cause, and all coercion or unjust fear, be absent.

3. That the promise itself be outwardly manifested and accepted, since every pact must consist of the mutual consent of two or more persons concerning the same object; and from another side no one is judged to wish to oblige himself toward someone unless that person accepts.

798. Questions. - It is asked, 1. What and how great is the obligation of a promise once accepted?

I reply. It is controverted among Theologians. A threefold probable sentence is given, according to St. Lig., n. 720 [1].

[1] Certainly this distinction of three diverse sentences is seen in St. Alphonsus (book 3, n. 720), just as also among the Salmanticenses (tract. 14, ch. 4, nn. 78-83), from whom the Holy Doctor took it. Nevertheless, among these the three sentences are proposed in another order. For they place first the one which the Author has in second place; second, the one which the Author relates last; but third, the one which the Author exhibits first.

Moreover, the Salmanticenses all but destroy this their own construction. For the first sentence (the second according to the Author) they propose thus (l.c., n. 79): The first sentence says that it is a mortal sin not to fulfill an accepted promise, and that the promisor is obliged from justice, even if no other damage comes to the promisee. But then, where they discuss the second (the third according to the Author), they add (l.c., n. 81) that very many cited for that sentence rather stand for this one. Thus they say: "And from the authors of the first sentence several in reality adhere to that one (that is, the second), since they reduce that same grave obligation in a promise to the intention of the promisor, and we ourselves, many

times in this Course when treating this matter incidentally, have conformed ourselves to this most probable opinion." But if the matter stands thus, why therefore do the Salmanticenses allege those authors for that first sentence, and why did they not rather cite them for the second? Add further, that others alleged by them for that first sentence dispute concerning promise insofar as it also has place in an onerous contract, as, e.g., Sylvester (v. Pactum, q. 4), Soto (De Iust. et Iur., book 7, q. 2, art. 1, ad 1), St. Antoninus (part 2, title 10, ch. 1, sect. 4), and Covarruvias (In C. Quamvis pactum, part 2, sect. 4, n. 15), which last two allegations St. Alphonsus adopted, just as also the others which he has (l.c.). But indeed, since in a true onerous contract the obligation of justice necessarily intervenes, while the Salmanticenses are not disputing concerning promises proper to an onerous contract, now these authors also are cited beside the point. And so that first sentence, as it is exhibited by the Salmanticenses, appears almost as a fiction devised by them.

But again, when they come to the third (it is the first according to the Author), they describe it thus (l.c., n. 82): "The third sentence, which we now embrace, ... asserts that, speaking of itself, a simple and gratuitous promise obliges only under venial sin." Nevertheless behold (l.c., n. 83), they add: "Nor do the things which the second sentence adduces for its part stand in the way; for we do not deny that anyone can oblige himself from justice, no debt preceding, just as he can gratuitously go surety for another, because suretyship in becoming is gratuitous, and once made obliges to payment from justice." Therefore here they confess that a promisor can oblige himself from justice, which of its kind imports a grave obligation, and whose violation of its kind is a grave sin. Therefore finally the Salmanticenses fall back into the second sentence (the third according to the Author), which is thus described by them (l.c., n. 80): "The second sentence says that it depends on the intention of the promisor whether an accepted promise in grave matter obliges gravely or not; for if the promisor wished to oblige himself from justice and gravely, he will remain bound by this obligation; if only from honesty and fidelity, as frequently happens, he will be bound only lightly; and thus it asserts that one must judge whenever the contrary is not established."

Therefore it will finally be permitted to conclude that both the first (the second according to the Author) and the third (the first according to the Author) sentence of the Salmanticenses, from their own confession, fall back into their second (the third according to the Author); whence it follows that this distinction of three diverse sentences is a certain fiction, which its own fabricators destroy with their own hands.

That seemed difficult to the Salmanticenses (l.c., n. 83), that someone would wish to promise nakedly, nothing else added, and that he would wish to oblige himself further than from fidelity. But this did not seem likewise difficult to Lugo, who explains the matter thus (disp. 23, n. 91): "It does not appear why you cannot gratuitously and without any preceding debt will to oblige yourself from justice toward another to give or do something afterwards in his favor. For just as you can gratuitously give him a house, and therefore transfer to him some real right in your house, which is the object of proper justice, why will you not be able to transfer to him gratuitously a right, not in a thing but to a thing, and constitute yourself his debtor from a debt of justice? The whole question is: what can be given for a price can also be given gratuitously; and just as you can sell a house for a price, so also you can give it gratuitously, and so in each case you equally give a proper right of justice in the house. Therefore, just as after a price has been accepted you can oblige yourself from justice to do or give something afterwards, from which obligation you give a right from proper justice against yourself, so you will be able to give this very right gratuitously and constitute yourself a debtor from justice, as if you had accepted a price for this obligation."

But the same Lugo had proposed the distinction between a promise which obliges from justice and one which obliges from mere fidelity in this way (l.c., n. 14): "I reply that there is a great difference as regards this (namely, the force of a promise according to the diverse intention of the promisor) between justice and fidelity. For justice obliges only to not injuring another's right, or to not usurping that which is another's without his consent. But when there was not a will in the promisor of giving a right to another, such a right was not transferred, because our thing cannot be transferred without our consent; whence justice cannot oblige one to preserve another's right which in reality does not exist, because I owe him nothing when the promise was merely gratuitous and without other prejudice to the promisee. But fidelity, as it is commonly said, does not oblige me to that which I owe to another, but to that which I owe to myself. For it is usually said that God, who is obliged not from justice but from fidelity, does not owe anything to another from His promise, but to Himself; because that obligation does not arise from a right which the promisee has and which the promisor must preserve uninjured, but from the obligation which he himself has of preserving fidelity in promises. For just as the obligation from veracity to speak the truth does not arise from the right of neighbor, but from the debt which I have of not impeding human commerce for myself, and of not taking away faith from myself in assertions; so the obligation from fidelity does not arise from another's right, but from the debt by which I owe it to myself not to impede human commerce for myself, and the

trust of others from my words." The same Lugo elsewhere expresses this more briefly in this way (l.c., n. 91): "We have shown that the difference between fidelity and justice is in this, that fidelity gives no right to the promisee, but obliges only from this, that each one must conform his deeds to his promises, insofar as it is necessary for human living together, not only that words agree with the mind, which pertains to veracity and is opposed to lying, ... but also that deeds agree with promises, which pertains to fidelity and is opposed to infidelity."

And indeed this doctrine must be called truly most common, as it was also permitted to gather above from the Salmanticenses. For if any disagreement appears among the Doctors, it is to be referred rather to the manner of speaking than to the substance of the matter. Namely, there are some who call a true promise, as they say, or one properly or strictly so called, only that promise which obliges from justice and therefore brings in an obligation grave of its kind; but they distinguish this from a promise not true, or less properly and broadly so called, which they also call an assertion, which binds the promisor from fidelity only. Thus, e.g., Laymann (book 3, tract. 4, ch. 12, n. 1): "Promise is twofold: one improperly so called, when the intention of the one saying that he will do something in favor of another man is only to oblige himself from the virtue of fidelity and veracity, according to which we ought to be constant, truthful, and faithful in words; the obligation of constancy and fidelity of this kind of its kind and speaking of itself is light, only under venial sin.... But the other is a promise properly so called, when the intention of the promisor is to oblige himself from justice, so that to the other accepting the promise there is acquired a right and action, as of demanding something truly owed, at least in the forum of conscience...; and such a promise of its kind obliges under mortal sin." You have nearly the same things in Lessius (book 2, ch. 18, nn. 55 and 58), Sanchez (De Matrim., book 1, disp. 5, n. 20), Palaus (De Matrim., disp. 1, part 2, n. 14), Trullench (book 7, ch. 16, dub. 6, nn. 2, 3), etc.

The first sentence holds that a promise, of itself, obliges only under venial sin, from mere fidelity. The reason is that a gratuitous contract obliges only by the bond of fidelity, and fidelity does not seem to oblige under mortal sin if other inconveniences are absent. - Salmant. - Saettler, and others.

The third sentence, more common and more probable, teaches that the obligation of a promise depends on the intention of the promisor. Hence if he intends to oblige himself from justice, he is obliged under mortal sin in grave matter; but if he intends only to oblige himself from fidelity, he is obliged only under light sin. - Lugo. - Billuart. - Sporer. - etc. Moreover, for grave matter in a promise they require a quantity four times greater than in mortal theft. - St. Lig.

And indeed these things concern promise properly taken. For often promises, such as are commonly made, oblige neither from justice nor from fidelity, because the promisor does not intend to bind his faith strictly, but merely to state his purpose.

799. ○ It is asked, 2. What is to be said in doubt whether someone wished to oblige himself under grave or under light sin, according to the patrons of the third sentence?

I reply. More probably one must stand for the least part, because in doubt a certain burden is not to be imposed, especially in a promise, which requires the greatest spontaneity. - St. Lig., n. 720. Besides, it is certain that a promise seriously made and accepted in a grave matter can, per accidens, oblige under grave sin from justice, as if there should intervene the reason of enormous damage coming to the neighbor from the promise not kept. - Scavini.

It is asked, 3. Whether someone can accept a promise through another?

I reply affirmatively. Someone can accept a promise through anyone chosen for this, or through a familiar, because he is judged morally to constitute one person with him. He can also accept a promise through another who manages his care, e.g. a father for a son under paternal power, a Religious for a monastery, a Prelate for his Church, a wife for her husband.

It is asked, 4. When does the force of an accepted promise cease?

I reply. 1. If the promisee spontaneously condones it or cedes from his right. - 2. If the thing promised becomes illicit or useless. - 3. If the promisee does not stand by his own promises. - 4. If the state of things or persons is so changed that the promise does not seem to comprehend that event. - 5. If the cause which moved one to promise does not subsist in any way [2]. - St. Lig., ibid.

[2] This last point, if taken universally, is not true. For a past cause, however false, generally speaking does no harm and is held as not added. See Voet, In Pand., book 35, title 1, n. 9.

800. ○ It is asked, 5. Whether, or to what extent, a promise obliges if before execution the promisee or the promisor dies?

I reply to the first by distinguishing. It obliges in no way if the promise was made principally for the sake of the promisee; because, when he has died, the end intended in the promise ceases. But it is otherwise if the promise was made chiefly with a view to the family of the promisee, or his heirs.

I reply to the second. When the promisor has died, a promise clothed with the due conditions must be fulfilled by his heirs; because every real obligation must pass to the heirs in the same way and by the same title by which the promisor was obliged. Therefore the heirs will be held under grave or under light sin, from justice or fidelity, just as the promisor, while he was living, was held. Nevertheless, they will be able to be freed from every obligation if, from the circumstances of the thing or from signs, it is manifest that the promisor wished to oblige only himself personally. - Lugo. - Reuter, etc.

Case. Sylvinus sometimes says repeatedly to his maidservant Perpetua that he will pay to her, beyond the annual wage, a hundred scuta, or that in his testament soon to be drawn up he will leave the same sum of money as a legacy. But behold! Sylvinus is seized by sudden death before he could complete his purpose. But Perpetua without delay hastens secretly to take the money promised to her. Was this rightly done? I reply: By no means. For a promise does not give a right in the thing, nor therefore any faculty of occupying the promised thing by one's own authority [3]. - See above, On Justice, n. 521. - Moreover, commonly these promises are nothing except a mere signification of purpose, and only state the will of giving something. - Gousset. - See Cases, n. 797 and following.

[3] Nevertheless, a promise, if it is made from justice, gives the promisee a right to the thing (De Lugo, disp. 23, n. 100). See besides the things which the Author has below, n. 836. But in the case, this too must be observed, that the promise of Sylvinus is judged remunerative; and remunerative donations (which the Author also notes below, n. 828) display rather a certain payment of a debt than a gratuitous cession.

Chapter II. On Donations

And 1. on donations in general; 2. on the various species of donations.

Article I. On Donations in General

801. ○ Donation in general is the gratuitous cession of some thing in favor of another. It can be made chiefly in two ways, namely among the living and by testament, as we shall say in the following article. But now it occurs that we must speak: 1. concerning the conditions of donation; 2. concerning certain cases in which donations, although valid, do not obtain their full effect.

§ I. On the Conditions of Donation

802. Principles. - I. On the part of the donor it is required: 1. that he not be incapable de facto, that is, that he be sound in mind when either the donation among the living is perfected or the testament is drawn up, and that he act with sufficient liberty; 2. that he not be incapable by law when he perfects the donation or makes the testament.

[1] *On the title above.* According to the mind of the Author, that donation in general is to be understood here which a little before he defines as the gratuitous cession of some thing in favor of another. And since the same Author, following the Gallic Code (art. 893), establishes a twofold mode of this gratuitous cession, namely by donation among the living and by testament, therefore in this paragraph he wished to embrace the things which pertain to each of these genera of cession. But indeed this disposition of the matter introduces no small confusion, as is easily clear to the reader, since the things which regard one or the other mode of cession are handed down as pertaining to the generic nature of gratuitous cession. Since this confusion of things could not have escaped the perspicacity of the Author, we shall say that he clearly trusted the judgment of the readers and therefore judged that no account should be taken of the danger threatening from this confusion.

II. On the part of the donee there is required ability to receive. But all human beings are able who are not constituted by law as incapable of receiving donations. Nor are infants, the insane, or others lacking the use of reason to be held incapable, since they are capable of dominion and can accept or occupy things through others, e.g. through parents, tutors, etc., according to the things said in the Treatise on Justice, n. 542.

803. Questions. - It is asked, 1. Who by law are incapable of donating?

I reply, 1. From Roman Law the following are incapable: 1. those deaf and at the same time mute from birth, unless they know how to write; 2. those condemned for a capital crime; 3. pupilli or impuberes, unless it is a question of things of small moment; 4. spouses between themselves, unless the donation is of modest moment; 5. a father toward a son remaining under his power, except for the cause of marriage, war, studies, and the like [2].

[2] The things contained in this response are to be taken concerning donation among the living, but not concerning donation in general, which includes also cessions by testament. For spouses and a father in reality are not incapable of those donations by testament. But also that which is said concerning impuberes is not true from every angle. For it holds, speaking absolutely, concerning testaments; but a donation properly so called is not prohibited to impuberes where the authority of the tutor accedes and whatever else is required for the alienation of pupillary goods. Say the same also concerning those things which are added in the second response according to Gallic law. For apart from the fact that minors cannot dispose of anything even by testament unless they have arrived at the sixteenth year, the remaining things pertain only to donations among the living.

I reply, 2. From Gallic Law the incapable are: 1. minors, unless by reason of a conjugal contract; 2. interdicted persons, who need the assistance of a counselor granted by the judges; 3. wives without the consent of the husband or authority of the judge; 4. merchants who are unequal to fulfilling obligations in cases determined by law. - Art. 446, Cod. comm.

804. ○ It is asked, 2. Who are unable to accept a donation?

I reply, 1. By common law the following would accept invalidly: 1. all those accepting from those who are unable to make donations, according to the things said above, n. 803; 2. those accepting from those who are burdened with debt; and indeed these, according to the truer sentence, are held to

compensation for the damage thence coming to the creditor. - St. Lig., n. 722; 3. those accepting in defrauding of the legitimate portion which is owed to necessary heirs. - St. Lig., nn. 722, 740, etc.

I reply, 2. By Gallic Law the incapable are: 1. those who had not been conceived at the time of the donation, or, as regards a testament, at the time of the testator's death; 2. a tutor with respect to his pupillus, before he has given account of the administration of the goods, unless he is one of the ascendants; 3. adulterine and incestuous children, except for the cause of aliments; 4. natural children, even legally recognized, beyond that which is conceded to them by right of succession; 5. physicians, surgeons, pharmacists, who cared for the deceased in his last illness, and also Confessors, if the donation was made during the illness, certain cases excepted; 6. any Communities whatever [3], without the approval of the Prince or of the Prefect, if the donation exceeds 300 fr. (C.C. 25, 762, 338, 906 and following).

[3] A law of this kind is owed chiefly to hatred against the Church of Christ and against those professing the evangelical counsels, namely the religious Orders. For it was not enough for the most unjust wickedness of those men (which found no place even among pagans) to have sacrilegiously plundered all the goods of the communities sacred to the worship of God, unless besides they provided by law that goods by which those communities might be restored and sustained could not freely be left to them. And while they were passing these laws, applying a notable hypocrisy to iniquity, they boasted that they wished to protect the rights of all and the common liberty of all! These laws, of course, oblige consciences no differently than a law which perhaps would forbid anyone to bestow alms on a poor man without the approval of the Prince or Prefect.

805. ○ It is asked, 3. What quantity of goods can be given by those who are able to donate?

I reply. If they have no necessary heirs, they are constrained by no limits. But if they are by no means lacking necessary heirs, it will be permitted to them, by way of donation among the living, to pay out to others that quantity of goods which one who makes a testament can bestow through legacies. Therefore compare the things to be said concerning testaments, n. 825. See Cases, n. 802 and following.

§ II. On the Cases in Which Donations Do Not Obtain Their Full Effect

806. ○ If someone becomes heir of him from whom he previously accepted something, and the deceased established nothing expressly by which equality among the heirs would be derogated from, every disposition, whether direct or indirect, by which that equality is injured, is supposed in his intention to have been only a temporary concession of the fruition of the thing given. Therefore, when the donor has died, the thing itself must be brought back or reduced into the succession in proportion to the right injured, unless nevertheless the donee, content with it, should prefer to renounce the inheritance. This is what the law calls collation. - Art. 843 and following [1].

[1] Since the Author is accustomed to bring forward what things are to be held according to Common or Roman Law, someone could suspect that those things also which are contained in this little part are common to each law, Roman and Gallic. But the matter is not so, since those things pertain to Gallic law alone. But in Roman law, if certain outsiders have been mixed with descendants instituted, or called to the inheritance together with descendants, neither do the children confer to these outsiders, nor the outsiders to the children; but rather, before any collation, only that which was truly left by the deceased is to be divided among the children and the instituted outsiders according to the will of the testator; then afterwards, the outsiders now having been dismissed, the descendants confer among themselves and divide the things

which are to be conferred, as if no outsider had been joined to them from the beginning. See Voet (In Pandect., book 37, title 6, n. 6).

Collation therefore is the act by which one of the heirs brings back to the sum of goods which the testator left to be divided among the heirs those goods which he accepted from the donor, so that they may be divided equally among all.

Reduction, however, as they say, of a donation or legacy is its rescission in proportion to the excess above the disposable quantity; which rescission indeed must be made by public authority.

807. Principles. - I. Every heir coming into the succession must bring back whatever he accepted from the deceased through a gratuitous disposition among the living, unless there is an express dispensation on the part of the donor. Thus from Roman and Gallic Law. - St. Lig., n. 954.

II. Collation can be made in two ways: 1. in kind, that is, by bringing back the donated thing itself; 2. by receiving less. - The former mode is made ordinarily in immovables, but the latter in movables. Cod. civ. 858 and following.

III. Various donations are exempted from collation, namely: 1. if the testator gave any things by expressly exempting the heir from collation, or by title of a preferential right within the limits of the part concerning which he could dispose; 2. if expenses were made by the donor in favor of someone, e.g. for aliments, clothing, customary gifts, etc. Likewise expenses of nourishment, education, weddings, learning an art, and similar things. - St. Lig., n. 955. - Cod. civ. Gall. 843, 852.

Nor are manual donations necessarily to be brought back, unless they are of the greatest moment. - Gousset, n. 794, etc.

808. Questions. - It is asked, 1. Whether the fruits of bring-back-able things which the donee perceived before the death of the testator must be brought back?

I reply negatively, because they are not subjected to collation except from the day on which the succession was opened; otherwise the donation would have been altogether useless. - Cod. civ. 856.

It is asked, 2. Whether a son is held to bring back those things which he spent badly from paternal goods, e.g. in games, drinking, etc.? I reply negatively, unless the expenses were excessive; by no means, however, if he did not spend more than the father would have been content that he spend on honorable recreations. - St. Lig., n. 957.

It is asked, 3. Whether expenses made by the father for the sake of the son for a doctorate, benefice, studies, books, etc., etc., must be conferred?

I reply negatively, because these tend to the common good of the family, namely to its honor, advantage, etc. From another side, they are judged gratuitously given by the parents to the son. - St. Lig., n. 955. Make exception, however, if extraordinary expenses are made [2].

[2] They can deservedly be judged extraordinary even if there was merely bestowed upon the son that by which he was scantily supported in a distant city by reason of studies, provided that this, although modest and scanty in itself, nevertheless in comparison with the slender resources of the family must be held as something great, e.g. if the question concerns the son of a woodworker.

809. ○ It is asked, 4. Whether money employed to redeem a son from military service must be conferred?

I reply affirmatively, if he is redeemed for his own utility, because equality seems to require it; otherwise, if the son is redeemed for the utility of the father, e.g. infirm, old, or poor, or for sustaining the family, because the family which receives the advantage must also bear the burden. - Rogron, in art. 851, Cod. civ. - Gousset, Cod. civ. commente, art. Cod. civ. 852.

Article II. On the Various Species of Donations

Namely: 1. on donation among the living; 2. by testament; 3. by reason of death; 4. through fideicommissum.

§ I. On Donation Among the Living

This donation is an act or contract by which the donor actually and in an irrevocable manner deprives himself of some thing in favor of the accepting donee.

810. ○ Donation among the living, even merely verbal, clothed with the due conditions, of itself or by natural law, immediately transfers dominion irrevocably, as is clear from the things said in n. 802. But by positive law donations must be drawn up according to the forms prescribed by law, at least so that they may obtain effect in the external forum.

But as regards Gallic Law these things chiefly are to be noted: 1. the acts by which donations are made are to be drawn up by notaries; 2. acceptance of the donation must be made either in the very act of donation, or must be announced to the donor by another authentic means; otherwise the donation would not be judged perfected; 3. future goods are donated invalidly. Nevertheless this does not prevent someone from being able to donate that which he has in a determinate hope, e.g. fruits to arise from a certain field this year, fish which he will bring back from fishing. - Exception is made for the hope of a future inheritance, concerning which every pact is prohibited (943). 4. From the principles of law it is concluded that manual donations are valid without writing.

811. Questions. - It is asked, 1. What is required that a donation in favor of an absent person be valid?

I reply. A donation, just as also a promise, made to an absent person by letters written expressly to him, or by a messenger or procurator, must be accepted before the messenger or him who represents the donor, or by other letters sent to the donor on the part of the donee; for otherwise the mutual consent of the donor and donee concerning the same object of pleasure cannot be established. - St. Lig., Hom. apost., n. 130 [1].

[1] The question is usually moved here whether a promise or donation begins to be valid as soon as the promisee or donee has accepted, or only then when the acceptance has been signified to the promisor or donor, who therefore can revoke it before he knows anything of the acceptance.

Concerning this matter St. Alphonsus (book 5, n. 728) writes: "If a donation is offered by letters, Vira says it suffices that the letters arrive at the donee. But Lessius (book 2, ch. 18, n. 45), and the Salmanticenses (ch. 4, n. 73) say that more is required, that letters or a messenger of acceptance be sent back, so that the donation may be valid."

And indeed the Salmanticenses, from whom St. Alphonsus took these things, seem to have attributed that opinion to Lessius, because in him these things are read (l.c.): "If by letters you have offered your promise to an absent person, in order that his acceptance may be valid, so that you cannot go back, it is required that it become known to you in turn by letters or by a messenger sent to you." But 1. it had to be observed that Lessius immediately added (ibid.) that this chiefly has place in respective promises, which require a counter-promise; for all these have this tacit condition: If he to whom you promise in turn promises back and obliges himself: which is done by an external sign directed to the promisor. Although Lessius had also premised the same thing concerning onerous contracts (ibid.): "It is not of the essence of a contract that the consent of the absent person with whom you contract has become known to you. For if your mind is that the contract be valid immediately once the consent of the other has been placed, even before it becomes known to you, it will be valid immediately. Nevertheless this is not presumed unless it is clearly expressed."

2. But besides, now it is not a question of an onerous contract, but of a gratuitous one. But concerning this case Lessius very clearly (ibid.) hands down the opposite of what is attributed to him: "In gratuitous promises or donations," he says, "I do not think it necessary that the letters of acceptance or the messenger have arrived at the donor, because it is not of such great interest to him who gives gratuitously to know that his donation is accepted as it is to him who offers something under a burden and expects a counter-promise to know that the other promises back; of which the sign is that the donor is not much solicitous about knowing it. But it is otherwise in him who enters an onerous contract." Lessius also adds another reason thus (ibid.): "Finally, he who gives gratuitously does not seem to wish to restrict his benefice to this, that it have no force unless he has received letters concerning the acceptance; but rather he desires that it be efficacious as soon as it has been accepted in the due manner." See the same things in Lugo, disp. 22, nn. 33-34, as regards onerous contracts, and nn. 29-30 as regards gratuitous ones.

It is asked, 2. What if the donor, after sending the messenger, revokes the donation?

I reply, 1. If the donor revokes the donation before it is accepted, and the revocation becomes known to the messenger whom he sent, now the messenger can effect nothing further, since all power of offering or handing over has been taken away from him. - Hom. apost., ibid. I reply, 2. But if the revocation does not become known to the messenger before execution, then one must distinguish: either he acts only after the manner of a messenger reporting another's donation, or handing over a thing, or he has a mandate of making the donation. If the former, by the revocation made the subsequent donation is invalidated, because consent on the part of the donor is wholly lacking. If the latter, his acts are valid, and the donation can be validly accepted. For the mandator is bound to hold ratified that which in good faith was done in his name by force of the mandate.

812. ○ It is asked, 3. Whether a donation is valid if the donor dies before acceptance?

I reply negatively, if he has only given a mandate of making the donation. - St. Lig., n. 730 [2]. Nevertheless several probably affirm [3], if the donation has already been made, and the donor before death sends a messenger or letter to manifest it. Nevertheless this is not admitted from Gallic Law.

[2] If nevertheless both the mandatary and the donee are ignorant of the death of the mandator, the donation must be said to be valid. For acts done through a mandatary, as long as either revocation or death of the mandator is unknown, are valid, from sect. 10, Instit. De Mandato, and L. Inter causas 26, ff. Mandati, where it is said: "If nevertheless through ignorance (of the death) it has been fulfilled, an action is said to be competent for the sake of utility." And again in the same place, sect. 1: "If someone has commanded his debtor to pay Titius, and the debtor, after he has died, when he was ignorant of this, paid, he ought to be freed." See St. Alph., n. 730, at the end.

[3] Others, namely, prefer as probable, indeed even more probable, the opposite opinion, led finally by this single reason (see St. Alph., book 3, n. 729), that after the death of the donor his will cannot be united with the consent of the donee, as is required for acceptance: as if, namely, that were lacking which in a contract is as it were the essence, namely the consent of two persons in the same object of pleasure. But indeed this reason can seem almost futile. For, as Lugo has it (disp. 23, n. 81), is the will of the testator more joined with the will of the heir or legatee, who often have not even knowledge of the testament except after the death of the testator?

It is asked, 4. When the donee has died before acceptance, can his heir accept the donation?

I reply negatively, more probably, because the heir indeed succeeds to the real rights of the deceased, but not to personal rights, of which sort is the right of accepting a donation; unless perhaps he is the son of the donee [4], because then it would be presumed that such is the mind of the donor, as certain ones admit, if not by strict law, at least from a certain equity. Nevertheless some will that the donation can also profit other heirs.

[4] Lessius, asking (book 2, ch. 12, n. 35) whether an heir can accept a donation, replies: "From the rigor of law he cannot, because it was not directed to them (the heirs). Nevertheless he seems able from a certain equity, because heirs represent the person of the deceased; and it is to be presumed that this is the mind of the donor, that if the deceased cannot enjoy his benefit, it may profit his heirs, unless the contrary is established." Understand this if his heirs are children; otherwise, if they are outsiders.

It is asked, 5. Whether an oath-bound donation, but not accepted, obliges? I reply negatively, because an oath follows the nature of the act; but a donation before acceptance is not firm. Therefore... - St. Lig., n. 727. Nevertheless Laymann affirms, saying that the oath must be observed as long as it can be observed without sin.

813. ○ It is asked, 6. For what causes can a donation be revoked?

I reply. The donor can obtain this revocation: 1. if the conditions attached are not furnished; 2. if the donee exhibits himself ungrateful toward the donor in cases determined by law (953, 955), unless nevertheless they are donations by reason of marriage (959).

It is revoked by the law itself if to a donor who had no living descendant at the time of the donation a son, even posthumous, is born, or if he legitimates a natural son born after the donation. Certain donations by reason of marriage are excepted [5] (960 and following).

[5] Namely, exception is made if something has been given to spouses by reason of marriage by their ascendants, or to either of them by the other.

It is asked, 7. What can spouses give to each other in turn?

I reply, 1. From Roman Law, generally the reciprocal donations of spouses are invalid. Make exception: 1. unless the donation has been confirmed by oath; 2. if the death of the donor intervenes, who dies before the donee, provided the thing was handed over in life; 3. if the donation is remunerative, or is made by reason of death; 4. if the wife gives to the husband so that he may obtain some dignity. - St. Lig., n. 723.

I reply, 2. From Gallic Law, spouses generally can give to each other mutually among the living, or by testament: 1. if there are no descendants, whatever they could give to an outsider as regards property, and besides the usufruct of the part of the inheritance reserved to the ascendants; 2. if descendants are present, either a fourth part of the goods as regards property, and at the same time another fourth as regards usufruct, or the usufruct of only half the part; 3. if the spouse has children from a preceding marriage, he cannot give to the new spouse beyond the part which falls to the child receiving less than the rest, nor exceed a fourth part of the goods (C.C. 1093-1098).

Moreover, all donations even among the living, made by either spouse to the other, can always be revoked (C.C. 1096). - See Cases, n. 802 and following, n. 822 and following.

§ II. On Testaments

Namely: 1. on the nature, division, and form of testaments; 2. on the testator and heirs; 3. on testamentary dispositions; 4. on the revocation of testaments; 5. on the executor of the testament.

Point I. On the Nature, Division, and Form of Testaments

814. ○ Definition. A testament is a legitimate disposition concerning those things which someone wills to be done with his goods after his death, with the direct institution of an heir. - St. Lig., n. 919. - Or from Gallic Law: It is an essentially revocable act by which the testator disposes of his goods for the time that will follow his death [1].

[1] But from Roman Law: "A testament is the just sentence of our will concerning that which someone wills to be done after his death." From Modestinus, L. 1, ff. Qui testamenta etc.

Division. A testament is distinguished in various ways:

I. From Common Law

1. Solemn, in which all the conditions prescribed by laws are observed. But it is twofold: 1. Closed, which, signed with a seal, is handed over to be subscribed by seven witnesses, suitable, male, puberes, etc., with whom the testator subscribes, if he can; but if he cannot, an eighth witness must accede; 2. Open, which is made before seven witnesses, whether by open writing or by living voice [2]. - More things among the Jurists.

[2] More received and more congruent is the distinction into written and nuncupative testament. For although common usage brings it about that this latter is called open, but the former closed (see Lugo, disp. 24, n. 2), nevertheless it is not necessary that any testament whatsoever in writing be closed, as below also is sufficiently gathered from the Author's context.

2. Privileged, which is valid without solemnities: such is a testament made by a soldier, or by others in time of plague, or the remaining circumstances of this sort.

II. From Gallic Law

1. Holograph, which is written entirely by the hand of the testator, with indication of the year, month, day, and addition of the name.

2. Public, or solemn, which is written by one notary before four male witnesses, puberes, etc., or by two notaries before two witnesses (Art. 971).

3. Mystic or secret, which the testator, closed and signed with a seal, hands over to the notary before six witnesses, asserting that this is his testament written by himself or by another and subscribed by himself. This attestation must be inscribed upon the codex of the testament and subscribed by the notary, witnesses, and testator. If the testator could not subscribe the testament, mention of this must be made, and another witness is added besides the six required (Arts. 976, 977).

Conditions of Testaments

815. ○ In order that a testament be firm and valid, it is required: 1. that it have the conditions required for gratuitous contracts, and especially free and spontaneous consent; 2. that the disposition of goods be made according to the reservation or legitimate portion assigned by law to the heirs; 3. that it not be made by one incapable of testating, nor in favor of one incapable of receiving, or of succeeding to the rights of the deceased; 4. that the substantial formalities prescribed by law be observed.

816. Questions. - It is asked, 1. Whether the faculty of testating arises from natural law, or only from civil law?

I reply. According to the more common and more probable sentence, it is to be traced primarily to natural law, because such is the common persuasion, which holds last wills as something sacred, and because the right of testating precedes every civil law. For from natural law each one can dispose of his goods as he wishes, even after death, and this is a private right. But the State also has its rights, and among others the right of prescribing norms concerning contracts; this right is natural, inasmuch as it is necessary for the good of society. But if there is a collision of rights, the private right, as lower, must yield. - See the things to be said below, q. 4.

It is asked, 2. What sort of witnesses are required in testaments?

I reply, 1. From Roman Law they must be males, puberes, free, not deaf, not mute, not blind, not intestable by law [3], not heirs from the testament, nor domestics of the testator or heir; nevertheless legatees are not excluded. - St. Lig., n. 919.

[3] Those are called intestable by law who according to the laws do not have the right of giving testimony.

I reply, 2. From Gallic Law are required males, majors, subjects of the State, enjoying civil rights, not clerks of the notaries who draw up the act, not legatees or heirs, nor their blood relatives or relations by marriage within the fourth inclusive degree, that is, within the second according to canonical computation for the transverse line. Nevertheless, in a mystic testament legatees or their relatives are not excluded. - Arts. 975, 980.

817. ○ It is asked, 3. What things are required for validity in a holograph testament?

I reply. Three things are required and suffice, namely: 1. that it be written entirely by the proper hand of the testator; 2. that the day, month, and year in which it was drawn up be added; 3. that the proper name of the testator be subscribed in the form of a chirograph at the foot of the testament and in whole letters. Thus from art. 970. Moreover: 1. The addition of the day, month, and year can be made by arithmetic marks and placed in any part of the testament, but it is safer to write it out in whole letters; 2. the inscription of the place where the testament is drawn up is judged by no means necessary, for from art. 999 a testament is valid wherever it has been made; 3. any paper suffices, although not sealed; if nevertheless the matter is carried before a judge, a fine will have to be paid by the heir (30 fr.); 4. a holograph testament, before it can be put into execution, must be presented to the judge in the Tribunal of first instance; but the judge, after sufficient examination, will order that it be kept with some notary (art. 1007). But this form is altogether accidental. - See Cases, n. 829 and following.

It is asked, 4. Whether testaments for profane causes, destitute of legal forms, are valid in the forum of conscience?

I reply. There is a threefold probable sentence, as was said above, n. 786, generally concerning contracts drawn up apart from the prescriptions of law. Therefore the first sentence admits that testaments of this kind can be held valid according to natural law. - The second sentence teaches that by force of positive law they are to be held wholly void. - The third sentence pronounces that the possessor must be favored until the matter has been decided by the judge [4]. And this third opinion, according to St. Lig., n. 927, is to be held in practice before the rest. But when a judicial decree intervenes, according to the sentence of all, one must adhere to it. - See Cases, n. 857.

[4] Concerning this third sentence, see the things noted above (at n. 786).

818. ○ It is asked, 5. Whether testaments for pious causes are valid if they lack legal forms?

I reply affirmatively, and this sentence is most common and certain: 1. because it is clear from Canon Law, Decret., book 3, title 26, ch. 2, etc.; 2. because pious causes pertain to the Church and are subject to her jurisdiction. But the Church is free and immune from civil power in all those things which are directly subject to her jurisdiction. Wherefore it was thus established by the Council of Trent: "Let Bishops, also as delegates of the Apostolic See, in cases conceded by law, be executors of all pious dispositions, both in last will and among the living." Sess. 22, ch. 8, De Ref. - Thus St. Lig. - Less. - Ronc. and others. - The Sacred Penitentiary, being questioned several times, replied that this sentence must be adhered to.

Therefore the probability of the other opinion does not appear, which otherwise even its patrons reduce almost to nothing in practice. For they think that pious legacies of this kind are valid if it is reasonably presumed that they had been destined both for fulfilling restitution and for prayers for the soul of the deceased.

Nevertheless I add that the Confessor, having regard for the ignorance of the faithful, who often with difficulty persuade themselves that the aforesaid assertion is true, for the most part ought to leave them in good faith [5]. But if he is asked, as was said above, he will reply. - See Cases, n. 1859 and following.

[5] This doctrine rests on the common principles concerning the opportunity of warning or not warning penitents, even when obligations of justice are at issue.

819. Cases. - 1. Leander accepts from Liborius, his familiar friend about to depart from the living, a notable sum of money, after the manner of a gift from hand to hand, as they say. When Liborius has died, Leander, doubtful and uncertain whether he can keep the gift in safe conscience, does not know. What will the Confessor reply to one asking? I reply. There is nothing for which Leander should doubt concerning the value of the donation, namely that it is valid as a donation among the living. Make exception: 1. unless the donation evidently injures the right of the heirs; 2. unless the donee is incapable [6] of accepting the donation. - Gousset, n. 796, etc.

[6] Understand: unless he is incapable also in the forum of conscience.

2. Polydorus, dying, says to Paul, the natural heir: Promise me that you will pay these legacies. But Polydorus, trusting in the promises of the heir, abstains from drawing up or changing the testament, or from inscribing the same legacies. Paul, bidding farewell to his promises, refuses to pay the legacies because they were not inscribed in the testament. What is the law? - I reply. From natural law Paul in the forum of conscience is held to paying all the promised legacies, notwithstanding the defect of forms. The reason is: 1. because he accepted the testament only on that condition; 2. because by his promise he impeded the drawing up or changing of the testament.

3. Gabinus, heir from an informal testament, accepts and retains the inheritance as legitimately acquired for himself, but abstains from paying the legacies because of the defect of form in the act of the testator. What must be thought of him? - I reply. How unjust and ridiculous such a way of acting and reasoning is, is clear and evident from common sense. - Voit, De Conscientia, n. 104. - Elbel, De Consc., n. 190. - LaCroix, book 1, n. 573.

4. Anatolius, after making a holograph testament, dies before he could subscribe it. Sabinus, the heir named in this testament, simulates the subscription of the testator so well that it was truly seen as having been made by him. Nevertheless, when suspicion of fraud had arisen, the testament had been brought to the judicial forum, and was declared valid by the judge. What judgment? - I reply. Sabinus is held to restitution, because through fraud he vindicated the inheritance for himself; for, the fraud being removed, certainly by sentence he would have been excluded from the inheritance. Therefore the sentence ought not favor Sabinus, since it rests on a false fact.

Point II. On Testators and Heirs

820. ○ I. Those can be testators: From Roman Law, all having the use of reason, except deaf-mutes from birth, impuberes [1], prodigals, those condemned to civil or natural death, and also professed Religious. But from Gallic Law: 1. all who can make donations among the living; 2. wives, who, although they cannot pay out donations among the living without the special consent of the husband or the authority of the judge, nevertheless need neither of these in order to be able to dispose freely by testament (art. 905); 3. minors from the sixteenth year can testate only concerning half the part of their goods concerning which majors are able to dispose (art. 904); but interdicted persons cannot testate.

[1] According to the Institutes (book 2, title 12), add all those who are subject to another's law..., and indeed to such an extent that, even if their parents have permitted it, they can by no means testate by law. These indeed (ibid., sect. 1) are openly distinguished from impuberes.

821. ○ II. As regards heirs: 1. Those can be instituted as heirs who are not specially prohibited by positive law, although they lack the use of reason, as was said concerning donation, n. 802.

2. But from Roman Law there are prohibited those condemned to death, both natural and civil, traitors, and their spurious children, according to the restrictions to be placed below. But from

Gallic Law, those are prohibited who cannot receive donations. - See above, n. 804.

3. Any heir can renounce an opened inheritance according to the axiom: No one is heir unless he wills. Thus from any law whatsoever. The reason is that no one is held to accept a benefit, of which sort especially is a testament, which is often burdened with great burdens. But renunciation is not presumed, but must be made with juridical form. From Gallic Law it is to be made in the record office of the tribunal of the territory in which the succession has occurred, and in the special codex of acts which is preserved there for this end.

822. Questions. - It is asked, 1. Of how many kinds is an heir distinguished?

I reply. 1. Legitimate, who succeeds by law from intestacy;

2. Necessary, who cannot be excluded by the testator;

3. Voluntary, who is called as heir from the free will of the testator.

Hence it is clear that one must also distinguish an heir from testament, if he has been designated by testament, and an heir from intestacy, if by law he succeeds the deceased who made no testament or an imperfect testament.

It is asked, 2. Who are necessary and legitimate heirs?

I reply, 1. In each law necessary heirs are all relatives in the direct line, namely: 1. descendants in the nearer degree; 2. in their absence, ascendants, both on the part of the father and on the part of the mother, likewise in the nearer degree. I reply, 2. Legitimate heirs are besides all blood relatives of the nearer degree also in the collateral line up to the tenth degree in Roman Law, that is, the fifth as regards canonical computation, and the twelfth from Gallic Law.

823. ◦ It is asked, 3. What are the rights and obligations of heirs?

I reply. Generally heirs succeed to all the rights and burdens of the deceased, because they represent his person; only those things are excepted which by their nature or by pact were affixed to the person of the deceased. Hence they acquire the dominion of the goods of the deceased by full right, they take upon themselves his obligations and debts, and they must fulfill his will in legacies.

As regards the mode of paying debts left by the deceased, each pays in proportion to his hereditary portion, and if because of a hypothec they are compelled to pay more, they have recourse against the rest. - C.C. 873.

An heir can accept an inheritance under benefit of inventory, namely so that, once an inventory of goods has been made according to legal form, he is not obliged beyond the resources of the inheritance. If he has not accepted in that way, in the external forum he is held to pay all debts, even if they exceed the resources of the inheritance. But it is controverted among Theologians whether in this case the heir is held in the forum of conscience to pay debts as regards the excess beyond the goods accepted. - But more probably and more commonly this is denied. - Salmant. - Reuter. - Gousset, Code commente, art. 302.

824. ◦ It is asked, 4. Whether necessary heirs can be disinherited?

I reply, 1. From Roman Law, sons can be disinherited by the sole authority of the father in the following cases: 1. if a son lays hands on a parent, or treats him contumeliously; 2. if he is his accuser or witness in criminal causes; 3. if he has relations with his wife; 4. if he refuses to stand surety for freeing the father from prison; 5. if he has prohibited the father from making a testament; 6. if a daughter, an honorable marriage having been refused, lives luxuriously [2]. - St. Lig., n. 948 and following.

[2] The Author enumerates only certain principal causes of disinheritance, and those more frequent in practice. But Roman law has altogether more (Novell. 115 and 22), since it enumerates fourteen in children, eight in parents, finally three in brothers, to whom otherwise the complaint of an undutiful testament would belong. These indeed you have comprised in these little verses (see Ferraris, Biblioth. Can. Iur. Mor., v. Exheredatio):

As regards children -

For fourteen causes let the son be disinherited: If he strikes his father, or speaks evil to him. If he neglects him thrust into prison, or mad, Accuses him of a crime, or prepares snares. If he has given grave damage, if he has not redeemed him from the enemy, And forbids him to testate, and associates himself with evil persons. If he follows actors, and violates the bed of his parents, If he changes the faith, if the daughter is a prostitute.

As regards parents -

If the father accuses of a capital crime, or Joins himself to his daughter-in-law, he has plotted against life, He forbids the son to testate, and prepares poison for the mother, Neglects one enclosed in prison or mad, And contemns the true Religion.

I reply, 2. From Gallic Law heirs can never be disinherited by private authority. Nevertheless, by law they are excluded from the inheritance as unworthy in a threefold case, namely: 1. if they plotted against the life of the testator; 2. if they denied him aliments; 3. if they gravely reviled his memory. - See art. Cod. 727, 955, 1046, 1047.

825. ○ It is asked, 5. What is the reservation or legitimate portion owed to necessary heirs?

I reply. It is diverse according to diverse laws. From Roman Law: 1. As regards ascendants, a third, or third part, is reserved if descendants are lacking.

2. As regards legitimate children, a third, if there are not more than four children; and a half, or half part, if there are more.

3. As regards natural children, they succeed to the mother by equal right with legitimate children. But they do not succeed to a father having legitimate children, although they can receive from him a twelfth part of the inheritance. But if the father lacks legitimate children, natural children can succeed to him in all goods [3]. - See St. Lig., nn. 947-951.

[3] The Author, as is clear, in this third paragraph mixes in certain things which do not pertain to the proposed question concerning the legitimate part. But the things which he has you will understand more clearly from Cardinal De Lugo (De Iust. et Iur., disp. 24, nn. 88-90) thus: First, it must be said that a natural son, legitimate descendants and ascendants being lacking, can receive from his parents (namely, by testament) all goods.... But by the same common law, when legitimate descendants exist, only a twelfth part of the goods can be given to natural children and their mother together by the father (by testament); but to the mother alone surviving can be given half of the twelfth part. Whence Covarruvias, whom Molina brings forward and follows, disp. 166, infers that to natural children, when their mother has died, the whole twelfth part can be given by the father. But when legitimate descendants are lacking, and legitimate ascendants exist, to whom by common law a third part of the goods is owed, the remainder can be given (by testament) to natural children.

Second, it must be said that natural children by the same common law, legitimate descendants being lacking, and no legitimate wife surviving, succeed by intestacy to the father in a sixth part of the goods, to be divided by equal parts among themselves and their mother, if she is surviving; but as regards the rest, the other heirs by intestacy succeed. If nevertheless either legitimate children or a legitimate wife remain, they succeed in nothing, but competent aliments are owed to them. But whether the same thing must be said when there are legitimate ascendants, that even then natural children succeed by intestacy in that sixth part of the goods, some deny; but Molina better affirms it in the said disp. 166. And these things which have been said concerning the succession of natural children by testament or by intestacy have place also in grandsons and great-grandsons with respect to grandfather and great-grandfather, and proportionally also have place in natural ascendants themselves, who succeed in the same way to descendants in the absence of descendants who are preferred to ascendants; which is true in the same way as regards aliments.

Third, it must be said: by the same common law natural children not only can succeed to the mother by testament, but also by intestacy in equal portions with legitimate children...; and the same must be said of the mother with respect to a natural son, succeeding in the same portion to a son who does not have descendants.

As regards brothers -

For three causes he may drive away an ungrateful brother: If he brings snares and destruction to his brother. If he invents crimes to be expiated by sword and fire, Or if he attempts to destroy his brother's wealth.

From Gallic Law, whether for a testament or for a donation among the living: 1. As regards the reservation owed to legitimate children, if there is one, half the goods is reserved; if two, two thirds; if three or more, three fourths.

2. As regards the reservation to be attributed to illegitimate children legally recognized, if other legitimate children are present, there is reserved to the illegitimate children a third part of the portion which they would have reserved if they were legitimate; if, children lacking, there are ascendants, brothers, or sisters, half of the aforesaid portion; but if there are only other blood relatives, three fourths of the said portion are reserved; if there are no blood relatives, they have the same reservation as if they were legitimate.

3. As regards the reservation owed to ascendants, if legitimate children are present, they have no right; if brothers or sisters are present, father and mother each have a right to a fourth part [4]; the remaining ascendants are excluded by brothers. In the remaining cases they have a right to a second or fourth part, according as they are from each side or from one only [5].

[4] These things seem to pertain to succession *ab intestato* according to articles 748-751. For in the hypothesis of a testament, the portion of which the son may not dispose is sometimes reserved to the father and mother alone, the brothers being excluded. See art. 915.

[5] Perhaps the Author, following Art. 915, wished to signify here that if the father and mother are lacking, the other ascendants also have a right to the legitime, so that this portion is a half, or the moiety (and not a second part), if they survive from both lines at once; but a quadrant, or fourth part, if they survive from one only.

A wife does not come among necessary or legitimate heirs by intestacy, unless the remaining legitimate heirs within the degrees established by law are lacking. Thus from each law, namely Roman and Gallic. Nevertheless, on account of the very close bond between husband and wife, by natural law the testator must assign some part to the surviving spouse if that spouse does not have sufficient goods of his or her own. - Scavini. When even the wife is lacking, the State enters upon the inheritance by law. Hence the axiom: The fisc after all. Thus also in each law.

A natural son from Gallic Law must be recognized by an authentic act, unless he has been recognized in the very act of birth; but adulterine and incestuous children cannot be recognized.

826. ○ It is asked, 6. Whether by natural law a testator is held under grave sin to leave goods to relatives who are not necessary heirs?

I reply, 1. As regards brothers, affirmatively, if they are in grave necessity; otherwise, there will be only venial sin; indeed no sin, if the motive is reasonable. - Thus commonly. - St. Lig., n. 946. - Laymann. - Lugo..., etc.

I reply, 2. As regards other more remote blood relatives, according to the more common sentence there is not a grave obligation of preferring them to the rest, even if they are poor; nevertheless venial sin will not be lacking if they are passed over altogether without reasonable cause. - St. Lig., etc.

827. ○ It is asked, 7. Whether parents sin in the forum of conscience against justice if they injure the legitimate portion of children by testament, or donations among the living, or simulated contracts?

I reply affirmatively, of itself, with the more common sentence. The reason is that the law enjoys all the conditions required for obliging in the forum of conscience, namely, it is just, useful to the public good, and invalidating ipso facto. - Reuter, n. 286. - Gousset. - Bouvier.

I said, of itself, because parents do not seem to sin in any way who for a just cause partially injure the legitimate portion of children in some particular case. For then the end of the law ceases, which does not intend to touch those particular cases which profit the family and do not harm the common good; e.g. if a father were to bestow certain donations on an upright son by reason of remuneration, whence less would come to a dissipating son. - Gousset, n. 794.

After the fact, children who have accepted a greater part of the paternal inheritance, not without detriment to another heir, are not easily to be disturbed, when from the circumstances of things it can be conjectured that the parents favored them from some just cause; especially if they are in good faith, and it can deservedly be feared that they would refuse to fulfill the obligation. Indeed it seems to not a few theologians that civil law cannot so oblige parents to preserve equality among children. And so they of themselves exempt them from fault, if otherwise they have sufficiently provided for the honorable support of the children, and are not moved by a depraved end.

828. ○ It is asked, 8. Whether parents can pay out manual donations to some one of the children, or to outsiders, or to pious causes?

I reply. Parents can licitly make the following donations: 1. donations which are accustomed to be made among relatives and friends of equal condition, as little gifts, etc.; 2. remunerative donations according to the quantity and quality of merit, according to the estimation of prudent persons, because these ought rather to be called payment of some debt than a gratuitous donation; 3. any donations whatever, of themselves, from mere revenues, the capitals intact, which constitute the patrimony properly so called [6], because parents of themselves are held by no right to increase the patrimony from revenues or labor.

[6] It by no means appears why a donation cannot also be made from those things which constitute the patrimony, provided the legitimate portion of the children is not injured. Lugo (disp. 23, n. 147) writes thus concerning this matter: "Parents, if they have donated undutifully, that is, to the prejudice of the legitimate portion of the children, their donations can be revoked by the children. Nevertheless the donation is not invalid, but can be annulled." And surely who would contend that a father of a family, having several farms, cannot give, for example, part of a garden (which surely is not computed among the revenues of the patrimony) or even a whole garden to the Capuchins, if this donation leaves the legitimate portion of the children intact?

Point III. On Testamentary Dispositions, or on Codicil and Legacy

829. ○ I. A codicil, or little codex, is the last will of the deceased, less solemn and expressed outside the testament, by which he declares what he wishes to be done after his death concerning his things, without the direct institution of an heir. But a codicillary clause is a clause inserted into the testament itself, by which it is declared that if the testament is not valid because of some defect, nevertheless it ought to be valid by force of the codicil.

For a codicil, whether nuncupative, that is, had by living voice, or written, five witnesses suffice, even not asked, and even women. Thus from Roman Law. But in Gallic Law a codicil is not admitted.

II. A legacy is a certain donation left directly by the deceased to someone, and to be furnished by the heir.

A legacy can be: 1. pure or absolute, or conditioned; 2. universal, or particular; by universal title, e.g. I bequeath all movables; or by particular title, e.g. I bequeath such a sum. From Gallic Law no legacies are admitted unless they are included in the testament itself.

830. Questions. - It is asked, 1. Whether a legacy left to girls so that they may marry can by natural law be given to those who become Religious?

I reply affirmatively, if it was left to a determined person, unless it is otherwise established concerning the mind of the testator. - But negatively, if the legacy was left to indeterminate persons, because then testators rather intend to provide only for girls wishing to marry, lest they be exposed to seduction. Thus more commonly with St. Lig., n. 930, against others [1].

[1] It will not seem idle to have observed that, even as regards this second member of the response, the affirmative sentence was approved by authors certainly grave. Add that the reason by which most were led into the negative sentence, as Cardinal De Lugo admits (disp. 24, n. 293), does not seem sufficiently efficacious. Whether he himself supplied a more efficacious one for this sentence which he set aside, let it be the judgment of the wiser. Surely, if an argument must be sought from the Authentic of Justinian, which all bring forward here, Lugo sincerely admits that the scope of the law is manifest, namely favor toward Religion. But if you turn to the scope of the testator establishing these dowries, namely, they say, so that girls might be rescued from the danger of prostitution who on account of poverty could not marry, indeed, are they any less freed from the same danger who on account of poverty could not enter a monastery? Or shall we say that the mind of the testator looked to this, that girls who are pressed by the evil-persuading hunger and straits of poverty could not withdraw themselves from this danger unless, the proposal of sacred marriage with Christ having been cast aside, they turned themselves to secular vows?

It is asked, 2. Whether a legacy left to girls so that they may marry can be given to girls who have already married without a dowry?

I reply affirmatively, if it is a question of determined girls, because it is presumed that the testator wished to provide for them altogether because of a special affection toward them, or so that, once

married, they may live decently. - Otherwise, if it is a question of indeterminate girls, because then the testator is judged rather to have wished to assist those marrying, so that they may avoid the danger of prostitution. - St. Lig., ibid.

831. ○ It is asked, 3. What comes under the name of movables, or movable goods, in legacies?

I reply, 1. Movable goods are generally those which can be moved from place, such as clothing, animals, money, etc. Movable goods, movable things, movable, or even movables with opposition to immovables, sound the same.

I reply, 2. Movables, without addition and without determination, from Gallic Law are said to be all goods which are not immovables, except money, books, gems, coins, active debts, instruments of arts, linens for the use of the body, horses, arms, grains, wine, hay, and other similar things. Add those things concerning which particular commerce is exercised.

I reply, 3. From the same Gallic Law, furniture or movables precisely furnishing a house are wholly restricted to those things which are ordered to use or the ornament of habitation, such as seats, tables, cupboards, etc.

Hence: 1. The following are movables simply, or from the second class: silver furniture, animals except horses, linens except those which are applied to the use of the body.

2. If the testator says: I bequeath the movables to Caius, and the immovables to Sempronius, Caius has a right to all movable goods, because the mind of the testator is clearly evident from the opposition of movables to immovables. - Gousset, Code commente, art. 553. - Rogron, ibid.

3. If the legacy bears thus: I bequeath to Titius all my movables, or movable goods, or the totality of movables, Titius has a right to all goods not immovable, because the word movables here is not taken without addition. - Gousset, n. 807, and Code commente, art. 533. - Rogron, ibid.

832. ○ It is asked, 4. Whether the Supreme Pontiff can commute legacies and other last wills of testators when the question concerns pious causes?

I reply affirmatively, if there is a just reason, because he was instituted by Christ as administrator of pious causes, so that he can dispose concerning them according as necessity and spiritual utility require. The same must be said of the Prince as regards profane legacies constituted in favor of the State. - St. Lig., n. 931.

It is asked, 5. Whether Bishops can commute pious dispositions for a just cause?

I reply negatively, speaking generally. The reason is that from Trent, sess. 22, ch. 8, the solicitude of diligently executing last wills is imposed on Bishops. - St. Lig., n. 591. - Nevertheless, more probably, cases must be excepted which, if they had been foreseen by the testator, certainly would have made him dispose otherwise; e.g. if he left money for sacred vessels for a Church, and this Church does not need vessels, or if the legacy cannot be applied to its end because it does not suffice, or because it cannot serve the intended use.

Point IV. On the Revocation of Testaments

833. ○ I. A testament, under whatever form it has been made, can always be revoked at the will of the testator, because a testament by its nature is an essentially revocable act; therefore the testator retains dominion of his goods up to death. - Thus from every law.

[1] *On the title above.* Concerning another cause on account of which testaments are weakened, namely the passing over of children, see the Jurisconsults.

II. Revocation of a testament can be made in a twofold way:

1. Expressly, or: 1. by destruction of the testament; 2. by an act drawn up before a notary, by which a change of will is expressed; 3. by a new testament contrary to the former. But then the revocation is not judged complete unless the dispositions of the new testament are contrary to all the dispositions of the former.

2. Tacitly, by donation, sale, exchange, destruction, or any disposition whatever of the thing bequeathed, by which the change of the testator is manifested [2].

[2] Even with Gallic law considered, which the Author follows in this place, these things do not pertain to tacit revocation of a testament, but to the withdrawal of legacies.

The lapse of a testament is referred to revocation of the testament; this is had when testamentary dispositions, although valid from the beginning, nevertheless become infirm because of certain circumstances: e.g. if the legatee dies before the testator, or before the execution of some condition, if the thing bequeathed perishes, etc.

Point V. On the Executor of a Testament

834. ○ The executor of a testament is he whom the testator has named for executing the testamentary dispositions. But when no one has been named, the execution of the testament pertains to the heirs. Concerning the execution of a testament these things are to be held [1]:

[1] The things which the Author adds in this place pertain almost entirely to Gallic law.

1. In order that someone be executor of a testament, it is necessary that he have the capacity of obliging himself. Hence interdicted persons, minors, even with the tutor consenting, and, from Gallic Law, wives without the consent of the husband, cannot be executors. Religious can be executors by permission of their Prelate, unless the Rule of the Order stands in the way.

2. Several executors of a testament can be instituted, and when one is absent, the other can proceed to the execution of the testament. The executor of a testament does not transmit this office to his heirs.

3. The executor ought to watch carefully: 1. that seals are affixed, if among the heirs there are minors, interdicted persons, or absent persons; 2. that an inventory be made, with the nearest heir present or duly summoned; 3. that movables be sold, if money is lacking for the payment of legacies; 4. that he urge the execution of the testament.

4. Expenses which are made by the executor for the sake of fulfilling his office must be paid from the hereditary things. No one can be compelled to accept that office; but if he accepts, he is held to an account of the administration.

§ III. On Donation by Reason of Death

835. ○ Donation by reason of death is that which is made with a view to death; moreover, by its nature it is revocable.

By common law a donation by reason of death is valid, provided it is clothed with the due conditions, namely: 1. it must be made with a view to death; otherwise it would be judged a donation among the living; 2. it must be accepted before the death of the donor by the donee himself; 3. if the donee dies first, it is revoked ipso facto [1], nor does it pass to his heirs [2]. - St. Lig., ibid., n. 741.

[1] Nevertheless see the things said about these above, n. 812.

[2] Likewise a donation by reason of death is revoked if the donor has survived the danger.

By Gallic Law donation by reason of death is not admitted. For it is declared in art. 893 that no one can dispose of his goods gratuitously except by a disposition among the living, or by testament in the forms prescribed by law. Hence it seems that one must speak concerning it as concerning testaments which lack formalities. Nevertheless, it seems certainly valid as a manual donation among the living, which the law does not affect, but only denies the action regarding it. And therefore the same seems to be said of donations by reason of death. - Gousset, Code commente, art. 8, and various Jurists.

836. Questions. - It is asked, 1. Whether he to whom a movable thing has been given by reason of death can receive it secretly when the donor has died?

I reply affirmatively, at least more probably, provided he is certain of the donation and of the last will of the deceased; for he has a right in the thing donated; therefore he uses his right. Then the thing was not donated as to be paid, but as to be accepted by the donee himself.

It is asked, 2. Whether a manual donation made by him under this condition, that the donated thing be restored to him if he recovers, is valid?

I reply affirmatively. For: 1. it is valid as a donation by reason of death, even by Gallic Law, which does not stand in the way of manual donations; 2. it is valid also insofar as it is a donation among the living, if it is not revocable at the will of the donor, but only upon the event of health; because then it can be held as a conditioned donation among the living.

It is asked, 3. Whether the same donation is valid under the condition that it be restored if it is asked back?

I reply affirmatively, more probably, although it is not valid as a donation among the living, which requires that the donor irrevocably despoil himself of his thing. Nevertheless it can be valid as a donation by reason of death because of the real handing over, which ought to have no less strength, although no mention of death is made.

837. You will resolve. - 1. A disposition by which someone now and irrevocably gives to another the dominion of a thing, whose use or usufruct he reserves to himself until death, is not a

donation by reason of death, but among the living.

2. Nor are dispositions by which the sick actually and irrevocably give to persons present, e.g. relatives, servants, friends, movable things or even immovable things without any condition regarding death, to be held as donations by reason of death, but among the living.

3. Promises which are accustomed to be made in life concerning some thing to be given in death to relatives, servants, friends..., do not have the force of a donation by reason of death, nor by force of such a promise will anyone be able to claim even the least thing; because those promises are accustomed to denote nothing other than a mere purpose, or good intention, of making a donation at another time. Therefore one must beware lest servants and friends, etc., more easily interpret the will of the deceased in their own favor, and therefore secretly carry off any things whatever under the pretext of promise or donation. Recall the things said above concerning promise, n. 800. - See Cases, n. 811 and following.

§ IV. On Substitution and Fideicommissa

838. ○ Although substitution sometimes obtains the name of fideicommissum, nevertheless it extends more broadly, since, taken generally, it is defined: a disposition by which someone is called to an inheritance or legacy in default of another.

Substitution is twofold: one fideicommissary, which is the same as fideicommissum; and another direct, by which someone directly and in his own name is called to the inheritance in place of another, if indeed the latter is unable or unwilling to accept the thing.

A fideicommissum, or better, fideicommissary substitution, is that by which the heir instituted by testament or coming by intestacy is burdened and obliged by the deceased to restore or hand over the whole inheritance, or a part of it, to another. - Schmalzgr., book 3, title 26, n. 126.

Questions. - It is asked, 1. What substitutions are prohibited by Gallic Law?

I reply. All dispositions are prohibited by which someone is called to receive something under the burden of preserving it and then handing it over to a third party [1]. Hence substitutions are not prohibited in which the goods ought not to be preserved for some time, but are immediately transmitted to the third party.

[1] Gallic Law (art. 896) does not forbid these dispositions in the sense that the institution of the heir or legatee is altogether void, but it exempts the legatee from the burden of preserving and handing over the things accepted to others.

839. QUESTION 2. What substitutions are permitted by Gallican law?

I answer. 1. Direct substitutions are valid, that is, a testament by which a second legatee is instituted in default of the first, if the first should be unwilling or unable to accept the legacy. Thus art. 898.

2. Donations by which the usufruct is given to one person, and the ownership of the thing to another, are not to be considered as substitutions [2]; for each immediately becomes the proprietor of the thing bequeathed to him. Thus art. 899.

[2] By force of art. 898, those dispositions which the Author notes in the first place are not to be considered as substitutions. Therefore in reality only those things which he soon gives in the third place belong to this question.

3. Dispositions are valid by which one donates goods of which he has free disposition to another, with the burden of transmitting them to one or more of the descendants of the donee, provided only to the second degree. Thus the law of May 17, 1828, modifying art. 1048 and following of the Civil Code.

QUESTION 3. Are fideicommissary substitutions prohibited by law valid in the forum of conscience?

I answer. The same is to be said concerning these as concerning testaments lacking formalities. Therefore the possessor is to be favored before the sentence of the judge [3].

[3] Compare what was said above, n. 786.

840. QUESTION 4. Are hidden fideicommissa for pious causes valid in conscience, under the form of a simulated donation or testament, or of a fictitious legacy in favor of a private person?

I answer affirmatively, if they are manual donations, or concern things which need not be kept long before they are handed over; or even probably if they are not to be kept until the death of the donee, because they are not forbidden by law [4].

[4] For if such dispositions are not prohibited by the laws, no reason remains by which they can be attacked by those whose interest perhaps it would be that they not be executed.

2. For other fideicommissary donations, the answer is to be given as concerning testaments for pious causes lacking the required forms, as we have said above; but recall what was said at n. 818 [5]. See Cases, n. 867 and following.

[5] A declaration of the Sacred Penitentiary of June 23, 1844, should be noted here. This case is proposed: Eudorius, unmarried and lacking necessary heirs, having fallen gravely ill, in order to provide for the good of his soul, determined to leave part of his goods to pious works. To this end, therefore, having made a testament valid according to the laws, he instituted Boniface as universal legatee. But, lest from this disposition his intention be known to the civil authority, he gave Boniface a private writing, in which he manifested to him his pious will and earnestly begged him to fulfill it faithfully. Boniface, after the death of Eudorius, vindicated the whole inheritance for himself, because of the valid testament. It is asked, therefore, whether he can be safe in conscience. The Sacred Penitentiary, having maturely considered the matter, replied: In the proposed case, Boniface is bound in conscience to fulfill the certainly known will of Eudorius, in the forum of conscience.

Chapter III. On Commodatum and Precarium

841. Commodatum is a contract by which a thing is granted gratis for use alone [1] for a certain time, with the burden of restoring the same thing in its individuality [2].

[1] Others, however, in defining commodatum say: "for the sake of a certain use," or, "with the end and mode of using prescribed," by which they also embrace the time, and therefore they do not think that it must always be expressly determined.

[2] The Author uses more the mode of philosophers than of jurists, when he says that a thing is to be restored in its individuality if it is loaned, but in the same species if it is lent by mutuum. For jurists express themselves otherwise, and say that in the first case the thing is restored in the same species, but in the latter in the same genus.

Precarium, closely related to commodatum, is a contract by which the use of some thing is granted to one who asks, revocable at the will of the grantor. It differs, therefore, from commodatum in this, that it is revocable at the discretion of the grantor.

Commodatum differs: 1. from lease, because in the latter also the use of a thing is given, but not gratis; 2. from deposit, because in deposit a thing is not delivered for use, but only for custody; 3. from mutuum, because in mutuum the thing is restored only in the same species.

The object of commodatum and precarium can be any things, whether movable or immovable, placed within civil commerce, provided they are not consumed in the first use to which they are destined.

Obligations of the Borrower

842. In general, the borrower must use the loaned thing as a good father of a family. In particular:

1. He cannot use the thing except for the use for which it was granted, or for one to which he prudently judges the lender consents, or to which the thing is destined by its nature. Otherwise he abuses another's thing, and must make good the damages that have arisen.

2. He must bear the necessary expenses for the preservation of the thing, for example, to feed a borrowed horse; but not extraordinary expenses, for example, to cure the horse laboring under a grave illness, and this without his own fault.

3. He is bound to return the thing loaned at the appointed time, and indeed at his own expense, even if he is not asked; for the appointed day summons on behalf of the owner. If, however, no time has been fixed, it is to be returned as soon as the use for which it was granted has been completed.

4. If the thing loaned suffers detriment from the use granted, without the fault of the borrower, the borrower is not held to compensation for the damage. But if it has become worse by his juridical fault, he is held to compensation in the external forum, and, according to many theologians, also in the internal forum, since the contract is entered into for his utility alone. Others, however, probably deny this, unless some particular agreement has intervened [3].

[3] Compare what has been said above, n. 661 and following, concerning the faults from which an obligation of restoring flows even in conscience.

Obligations of the Lender

843. 1. The lender is bound not to ask back the thing before the fixed time, or at least, if no time has been fixed, before the borrower has been able to use the thing. Otherwise he is held for the damage which arises from the untimely revocation, since he violates the right acquired by the pact. An exception is made if the loaned thing was in favor of the borrower alone, and the borrower dies before the fixed time; or if the lender himself has need of the thing, immediately and from an unforeseen event.

2. He is bound to restore extraordinary expenses, urgent and necessary for conserving the thing, which the borrower incurred when he could not easily warn the lender.

3. He is bound to disclose the harmful defects of the thing loaned, if he knows them; otherwise he must compensate the damage.

4. Finally, he must sustain the dangers and detriments arising from a fortuitous case, with delay, fault, pact, and a special law excluded; for a thing perishes for its owner. See Cases, n. 869.

Chapter IV. On Deposit and Sequestration

I. On Deposit

844. Deposit is a contract by which, gratis, a thing is committed to be kept, and accepted, to be restored whole when the depositor pleases.

Obligations of the Depositary

1. The depositary is bound to preserve and keep the thing deposited with that care and diligence which diligent men are accustomed to apply in preserving similar things belonging to themselves; for he accepted that custody for himself. Hence, if the thing perishes through his fraud, or through carelessness theologically culpable, he is bound to restitution.

2. The depositary cannot use the thing deposited without the express or tacit consent of the owner, or at least a consent prudently presumed; for it is not lawful to use another's thing without consulting the owner.

3. He is bound immediately to return the deposited thing to one asking for it; otherwise he would have another's thing while the owner is reasonably unwilling. Except, unless the depositor asks for it to his own or another's damage; or unless the thing is stolen, and the owner asks for it; or also, at least in conscience, unless the depositary has a just cause of compensation. Moreover the thing deposited must be returned in that state in which it is found at the time of restitution, and with the fruits received from it. But if by the fault of the depositary it has been made worse, he is bound to repair the damage.

Obligations of the Depositor

The depositor is bound to pay the expenses which the depositary underwent in preserving the thing deposited, and to render him unharmed for all things which he suffered by occasion of the deposit. Thus, for example, if you should deposit a horse in another's stable, you must pay the expenses of its feeding; and if that horse should labor under a contagious disease, by which the horses of the depositary are infected, you are bound to render him unharmed. Hence the saying: One's office ought to be damaging to no one. See Cases, n. 875 and following.

II. On Sequestration

845. Sequestration is a species of deposit, by which a controverted thing is deposited with a third person, so that after the sentence of a judge or arbitrator it may be handed over to the victor.

A twofold sequestration is distinguished: conventional, which is made by the mutual agreement of the contenders; and judicial, which is decreed by the sentence of the judge. Concerning each it will be

enough to note the following:

1. The object of sequestration, both conventional and judicial, can be a movable or an immovable thing.

2. Conventional sequestration can be not gratuitous, and then it is a hiring of services, and is subject to the laws of that contract. But if it is gratuitous, it is subject to the same rules as deposit. It is not dissolved, however, unless by mutual consent of the parties, or if a legal cause supervenes.

3. In judicial sequestration the custodian must exercise the care of a good father of a family; but the one committing the custody is bound to pay the depositary the wage established by law. Thus from natural and positive law.

Chapter V. On Mandate and Management of Affairs

I. On Mandate

846. Mandate is a contract by which the obligation of doing something for the advantage of another is undertaken gratuitously, for example, of transacting some business, of buying something, of selling, etc. I said, gratuitously; for if it is undertaken for a fixed price, it is rather called a hiring of work [1].

[1] Above, in the note to n. 673, we observed that from the nature of mandate what should be called a wage properly so called is excluded, but not a salary or honorarium. Moreover, others are not pleased by this definition of mandate, in which no account is had of the mandator, but only of an obligation assumed by the mandatary. Therefore they think it is better defined thus: It is a good-faith contract, consisting in consent, by which an honorable business is committed to another accepting it, to be conducted gratis. Voet, book 17, title 1, n. 2.

Obligations of the Mandator

1. He must fulfill all obligations contracted by the mandatary and consonant with the mandate; but not that which has been done beyond the mandate, unless he has expressly or tacitly ratified it.

2. He must furnish the mandatary those things which are necessary for the execution of the mandate, and refund the legitimate expenses which he made by occasion of the mandate, even if he has not brought the matter to a happy outcome.

3. He is bound to provide indemnity to the mandatary by reason of damages which, culpable imprudence being excluded, he has suffered by occasion of the mandate; for no one is bound, nor is he judged to wish, to confer a benefit on another with his own loss.

Obligations of the Mandatary

847. 1. He is bound to manage the business of the mandator diligently and as his own. Hence he is held at least for fraud and for carelessness theologically culpable.

2. He must keep himself within the limits of the mandate. Hence he can buy nothing for more, or sell for less, than what has been prescribed to him; for otherwise he would not act by force of the mandate.

3. He cannot demand a wage, unless it has been promised, or he himself had asked for it beforehand; nor is it lawful for him secretly to compensate his own labor.

4. He cannot by himself retain a profit for himself, if he sells, nor an excess of price, if he buys below the determined price, unless the owner consents. Yet accidentally the mandatary or broker can retain for himself an excess of price: 1. if the thing has become better by his special industry and undue labor; 2. if he tacitly agreed with the owner that he would give him nothing beyond the determined price or value; 3. if, for his favor, the seller lowers the price, or the buyer offers a greater sum. St. Lig., n. 825. See Cases, n. 885 and following.

Mandate is broken off in three ways: 1. by revocation of the mandate, which the mandator can do at will; 2. by renunciation of the mandatary, notified in due time; 3. by natural or civil death, or by interdiction, whether of the mandator or of the mandatary.

II. On Management of Affairs

848. Management of affairs is a certain quasi-contract, by which someone undertakes the business of one absent and ignorant of it, to be usefully managed, without an express mandate, but from his commission reasonably presumed.

1. The manager of the business, just as a mandatary, is bound to administer another's affair as a good father of a family, and to repair damages inflicted on the absent person by his own fraud, negligence, or fault. Yet in many circumstances the obligation of compensating damages can be tempered, even in the external forum, especially when those damages arise from the inexperience or negligence of the manager who undertook the affair of another in the absence of a more skilled person.

2. The absent person, whose business is managed, is bound to observe agreements duly made by the manager, and to repair the expenses and damages arising from such management, even if the matter has turned out badly.

More probably he has a right to a congruent wage; for otherwise few would be found who would voluntarily undertake to manage the affairs of an absent person. Thus Antoine, c. 4, at the end, and others. See Cases, n. 889.

Chapter VI. On Mutuum

To be treated: 1. the nature of the contract of mutuum; 2. profit received from mutuum, or usury; 3. titles excusing from usury.

Article I. On the Nature of the Contract of Mutuum

849. The word mutuum, according to the force of the name, signifies that something from mine becomes yours [1]. Sometimes it is taken for the very thing handed over in mutuum; but

sometimes, and more often, for the contract by which that thing is handed over to another for use. Here it is accepted in this latter sense.

[1] Donellus observes (De Iur. Civ., book 14, c. 1, n. 6) that mutuum is so called not simply because from mine yours comes to be, as is stated in L. 2, De reb. cred.; otherwise a donation and a condition or exchange made for the sake of permutation would be mutuum; but because, conversely, this also is done, that what was yours, which you had accepted, again becomes mine. For there is in this word a reciprocation of mine and yours, that is, this force: that mine becomes yours, and in turn yours mine.

Mutuum is usually defined as a contract by which a thing consumable by first use is handed over to another, with the obligation of restoring a similar thing at a fixed time, and in the same species and goodness. Things consumable by first use are considered to be all those which by their nature are destroyed and consumed in supplying human needs, such as bread, grain, wine, oil, salt, fruits, etc. According to the laws, moreover, such things are considered to be whatever consist in weight, number, or measure (L. 2 ff. De rebus creditis).

Hence mutuum differs from commodatum, lease, and deposit: 1. because in mutuum the thing must be consumable by first use, otherwise in the others; 2. because the thing is to be returned not in its individuality, but only in the same species; 3. because in mutuum the dominion of the thing is transferred [2], and not in the others; 4. wherefore in mutuum the thing perishes for the receiver, but in the others for the giver.

[2] This transfer of dominion is not to be understood absolutely, but in a certain circumscribed sense. For dominion is not transferred in mutuum in the same way as in donation, but rather as in a thing credited; for mutuum is related to credit as species to genus. Two things are therefore to be reconciled here, namely both that money given in mutuum becomes the receiver's by right (Inst. 2, Quibus modis re contrahitur obligatio, and L. 13, ff. De rebus creditis), so that by no means could money given in mutuum be considered from the side of the borrower truly to be another's debt; and on the other hand that from the side of the lender it is a thing credited, of which he can dispose by right of dominion according to his pleasure, by donating, bequeathing, selling, etc. You have an example of a similar thing in dotal goods. For if these consist in money and are handed over to the husband, he indeed becomes so much the owner of them that he may consume them at will; nevertheless the wife is not therefore judged to lose all dominion of her dowry. For in these cases the dominion of property in the monies is lost, insofar as they are a mass of metal or a sign of value; but by no means over the value itself, the mere use of which is ceded. Hence, as often as some sum is handed over in mutuum, or for use - for from this comes the name of usury - it is by no means necessary that a metallic mass be given to another, as is clear from Law 15, ff. De rebus creditis; but, if such is the case, with the common trust favoring, and deferring to it, the placing of the name on letters of exchange which are handed over to another suffices, just as now the handing over of paper money suffices as a sign of value, for whose use it matters little whether or not it is converted into metallic money.

The reason, moreover, why in strict and proper mutuum the dominion of the thing is said to be transferred is that, since the borrowed thing is consumable by first use, such use would not be lawful without dominion itself. Hence all expenses and dangers of the thing handed over fall to the borrower, as to the true owner.

850. Principles. I. There is a strict precept of lending with respect to the poor who are situated in extreme necessity, and who will have that from which they may restore. The reason is that there is present a strict obligation of charity to help a neighbor placed in that necessity, according to the rules and principles established where charity toward one's neighbor is treated.

More often the precept of mutuum is absent with respect to the poor, because they are not presumed to have that from which they can return an equivalent. But then the precept of giving some alms to them is urgent. I say some; because you are not bound to provide as much in alms as the poor man was asking for by mutuum. For there are also others who can and are bound to help.

II. There is a precept of granting a mutuum even to the rich, who because of by a particular circumstance are in very great need of it; but not to those rich persons who ask the same thing in order to increase their wealth. The first reason is that the precept of charity binds us toward all men, even the rich, and requires that we gladly furnish this which in a like case we would wish to be furnished to ourselves, at least if without inconvenience [3] we can assist them by a mutuum. But the second reason is that rich persons of this kind are constituted in no necessity, and consequently no precept of charity urges toward them.

[3] Before the confessor urges this obligation of lending, he certainly must weigh that the precept of charity does not bind with grave inconvenience; but grave inconvenience is very rarely absent from this office of lending, and very grave troubles generally remain for those who wish to recover credit according to their right. "He will defraud him," says the Holy Spirit, Ecclus. 29, "of his money, and he will possess him as an enemy for nothing. And with reproaches and curses he will repay him, and for honor and benefit he will repay him with insult." Hence he concludes: "Many have not lent, not because of wickedness, but because they feared to be defrauded for nothing."

851. Questions. QUESTION 1. What are the obligations of the lender and of the borrower?

I answer to the first. The obligations of the lender are the following:

1. He is bound to warn the borrower concerning a defect of the thing handed over, if there is one; likewise concerning imminent damage, ceasing profit, or danger of the principal, unless he wishes to lend gratis [4]. Otherwise the borrower does not consent, and sustains an injury, which the lender will be bound to repair.

[4] That is, unless he wishes to remit that which, under the title of emerging damage, ceasing profit, etc., with the gratuity of the mutuum preserved, he could justly exact. He is considered to have remitted these things, and he would exact them by injury unless he had forewarned, because, unless pacts concerning these things are first established, the borrower will deservedly deny that he would have consented to them; or certainly he can with full right object that liberty of consenting or not consenting had been taken away from him.

2. He is bound not to ask back the thing before some time to be defined by the judgment of prudent men, with the circumstances and the end for which the thing was given in mutuum considered. Yet he is bound to receive the thing, if it is brought before that time, because the time was granted in favor of the borrower [5].

[5] Perhaps you will say better: when the time was granted in the mere favor of the borrower. For it is not repugnant that the loan can also be made in favor of the lender. It can happen besides that a premature restitution of the mutuum yields, at least in part, to the loss of the profit which the lender had given up on account of that loan.

3. He is bound, of itself, not to receive more than the borrowed thing was worth when it was given in mutuum; because mutuum of itself is a gratuitous contract in this sense, that it imposes no other burden on the borrower than that he return in species, at the due time, that which he received [6]. St. Lig., n. 755.

[6] This reason presents no difficulty if money is in question; for since the whole consists in value, certainly value is to be considered in restitution. But if the matter of the mutuum consists in other things, difficulties will now meet you, concerning which the Author says some things in the response to Question 2. Meanwhile it helps to have before one's eyes what is provided in Roman law (L. 3 ff. De rebus creditis): "When we have given something in mutuum, even if we have not stipulated that something equally good be returned to us, it is not lawful for the debtor to return a worse thing which is of the same kind: for example, new wine for old; for in contracting, what is being done is to be held as stipulated; but what is understood to be done is that payment be made of the same kind and the same goodness as that which was given."

I answer to the second. Concerning the obligations of the borrower:

1. However the borrowed thing perhaps perishes, the borrower is not freed until the lender has received his own, either by himself or through another designated by him. The reason is that the debt is not concerning the thing in its individuality, but in species, or concerning value, if money was handed over in mutuum.

2. He must return the thing at the established time, and in the same physical species, measure, number, and weight. But concerning money, which is considered to perish only morally, it suffices, unless it has been agreed that the same species of money must be returned, that it be restored according to the same value; because in money attention is paid more to value than to species. Indeed several deny that money is a thing consumable by first use when it is handed over in mutuum to rich persons or merchants for carrying on commerce; hence they also deny that from this there is a mutuum properly so called. It is otherwise, however, in other things.

852. QUESTION 2. Can you receive the borrowed thing in the same measure and quantity, if at the time of the mutuum its price increases? Can you ask for more if it decreases?

I answer 1. If, when the thing is handed over in mutuum, there is equal doubt on each side whether at the time of restitution the thing will be worth more or less, it is lawful to agree that, with the same goodness and measure preserved, it must be returned at its time, even if its price has greatly increased. The reason is that, since there was equal danger on each side, equality is already preserved by that very fact. St. Lig., n. 782.

I answer 2. The aforesaid pact is not lawful of itself, if it is certain, or much more probable, that at the time of payment the value will be increased. The reason is that thus equality is not preserved, but more is exacted than is given at the time of the mutuum. Hence if a measure of wheat is now worth three francs, and will be worth four at the time of restitution, it is not lawful to agree that the same amount be paid. Except, however, unless you had determined to keep the thing until the time of the increased price; because then more is exacted by reason of ceasing profit. Lacroix, n. 910 and following; St. Lig., n. 782, etc.

I answer 3. If you foresee a diminution of value or price, you can ask for, and the borrower must pay, as much as the thing was worth when it was handed over in mutuum; because in reality you do not exact more than you gave. St. Lig., ibid.; Reuter, etc. [7].

[7] Pertinent to the present question is what is found thus in L. 22 ff. De rebus creditis: "Wine which had been given in mutuum was sought through a judge. It was asked at what time the valuation should be made: whether when it had been given, or when issue had been joined, or when the matter was judged. Sabinus answered, if it had been said at what time it should be returned, as much as it was then worth; if not, as much as it was worth when it was sought. I asked what place's

price ought to be followed. He answered, if it had been agreed that it should be returned in a certain place, as much as it was worth in that place; if it had not been said, as much as it was worth where it was sought."

Article II. On Usury, or on Profit Received from Mutuum

Usury, taken in a broad sense, is called every profit received from mutuum, or by occasion of it, whether with or without a legitimate title. But usury in the stricter sense is profit immediately proceeding from mutuum, that is, precisely by force of the mutuum, and without another just title. Nevertheless the crime of usury is not present if someone expects something for a mutuum, not as a debt, but from mere benevolence, provided implicit usury does not underlie it; or if he exacts a thing already owed elsewhere from justice, since thus in fact no new burden is imposed. St. Lig., n. 774, 777 and following. If it exceeds the limits of a just title, or is exercised toward the poor, it is called oppressive usury [1].

[1] The case is not equal, that profit exceeds the limits of justice, and that profit in itself just is sought from the poor. For in the first case justice is injured, but in the second charity alone is injured, as the Author notes below. Therefore, since the obligation of restitution follows a violation of justice, and by no means merely the violated office of charity, for that reason the burden of restitution can indeed be urged in the former case, but not in the latter, at least if the matter is considered merely according to natural right.

853. Principles. I. Usury received by force of mutuum in a thing consumable by first use, as in wine, wheat, etc., is altogether illicit. The reason is that the use of such a thing is scarcely appreciable by price independently of the borrowed thing itself; but that thing furnishes title only to the restitution of a similar thing, nor is there a permanent use which can be equivalent to price [2]. Thus commonly.

[2] The intrinsic reason why usury received by force of mutuum is altogether illicit, if it is to be solid and so unshaken that it always retains its force, cannot be sought elsewhere than from the nature of this contract, which, by the certain opinion of all, is and must be gratuitous. And in fact, even if you suppose, which is false, that wine, wheat, etc., have no other use except that they are consumed, is it not some advantage which is procured for you, that here and now you can consume? But further, as will be said below, the reason why it is appreciable by price to grant one's own money or anything else to the free use of another is not to be sought, according to the very common sense of the Doctors, from the advantage which another receives from it, but rather from the inconvenience which, from the very nature of the thing, he undergoes who deprives himself, in favor of another, of the advantage of using his own thing. Therefore, just as, when treating of commodatum or donation, we certainly do not seek the reason why the donor or lender can lawfully exact nothing from justice from the fact that no utility appreciable by price accrues to the donee or borrower, or that the donor or lender assumes no burden appreciable by price for himself, but rather we must seek it from the nature of a gratuitous contract, by force of which one by spontaneous liberality renounces the right of exacting the deserved price for the use or full dominion of some thing granted to another; so also it seems it must be determined concerning the contract of mutuum, unless one wishes to be entangled and wrapped up in inextricable difficulties.

II. Oppressive usury is repugnant to natural law, whether it is done toward the poor or toward the rich: 1. if it is done toward the poor, because the lender is bound from charity [3] to give the mutuum gratuitously; 2. if it is done toward the rich beyond the limits of a just title, or at least of the legal rate, because justice requires that there be proportion between this title and the profit received from it, or between profit and the value of use [4]. This is clear from various texts of Scripture.

[3] If oppressive usury is said to be that which also exceeds the limits of some extrinsic title, the reason of guilt here arises not only from violated charity, but also from injustice; for the laws of justice must be preserved no less with the poor than with the rich.

[4] A little before, in Principle I, the Author had determined beforehand that the use of the thing is in no way appreciable by price; but here, as it were, he proposes the value of use as a just title of profit. Thus, of course, and not otherwise, it must happen whenever, for asserting the gratuity of mutuum, you wish to use some reason other than that which you have in the preceding note to that first principle.

III. Usury can be excused from all injustice if a just title is present, for example, emerging damage, etc. The reason is that then the profit is received not by force of the mutuum, but by reason of an extrinsic title. For it is lawful for you to receive as much as you handed over; moreover, if from a hundred coins given you lose ten, in some way you disburse one hundred and ten. Therefore you can receive one hundred and ten.

IV. Usurers and their cooperators are bound from justice to restitution, since they injure commutative justice no otherwise than thieves themselves; therefore the rules handed down in the Treatise on Restitution are to be applied to them.

854. Questions. QUESTION 1. In doubt whether the borrower gave something above the principal gratis or not, can you retain it?

I answer affirmatively, with the common and more probable opinion, unless something else must be determined from the circumstances [5]. St. Lig., n. 761.

[5] Namely, what was received can be retained when, all things considered, it can prudently be judged from the circumstances that the borrower repaid it merely from a liberal gift. When the confessor sufficiently learns this, he will determine that the gift can be retained, both if the lender accepted it in good faith, and if in doubtful or even bad faith, namely as if it were owed to him from justice. For in the latter hypothesis he will indeed be bound to put aside the erroneous persuasion, as it were, of a debt paid to him, and his depraved disposition; but not likewise to lose that which has been conferred upon him by the legitimate title of donation.

Moreover, those words of St. Alphonsus contribute to the prudent judgment of which we have spoken (book 3, n. 761, question II): "In doubt, the borrower is regularly presumed to have given under compulsion, because men give their own things gratis with difficulty." Thus the holy Author, who nevertheless soon adds: "But in this doubt deference must be given to that party for which the stronger presumption stands; hence the Salmanticenses, Sporer, Lessius, say that it is to be presumed that the borrower with moral certainty donated, if he is not poor or avaricious, or did not give impelled by fear, nor from vexation or the request of the lender, or," add, "if the little gifts are of slight moment, as the Doctors commonly hold, even when the crime of simony is in question.... But the opposite is presumed if the lender before the donation signified that he wished something as owed to himself, or if the borrower is poor, or not accustomed to give, or if he pays before the return of the mutuum; because then he is easily presumed to give lest he soon be compelled to restitution." Nevertheless this question will rarely have place in practice, since in the common custom pacts are established beforehand.

QUESTION 2. Can the lender retain what the borrower gave from fear lest otherwise the mutuum be denied to him?

I answer affirmatively, more probably. The reason is that, for usury, it is required that it be given by force of a pact, or as a debt from justice. Thus more commonly. St. Lig., n. 763, inclines to this opinion.

855. QUESTION 3. Is it usury if you lend on this condition, that the borrower buy the things necessary to himself at a just price in your shop?

I answer affirmatively, if this is brought into a pact. The reason is that a burden is imposed on the borrower, and his liberty is restricted, which is illicit and unjust [6]. St. Lig., n. 780, etc.

[6] Although from a pact of this kind no damage or inconvenience comes to the borrower, nevertheless the pact will be repugnant to the nature of this plainly gratuitous contract, and therefore it will not lack some injustice. The same would have to be said if someone, with such a pact, gave another a vineyard; for in the same way pacts imposing a burden are repugnant to donation, which by its own nature is a gratuitous contract.

QUESTION 4. Can an antidoral donation, or one which is made from a grateful mind, be brought into a pact?

I answer negatively. The reason is that from pacts there necessarily arises a title of justice, but not a donation bestowed merely from a grateful mind. St. Lig., n. 764, and others commonly.

Article III. On Titles Excusing from Usury

Five principal ones are enumerated, namely: 1. emerging damage; 2. ceasing profit; 3. danger of the principal; 4. conventional penalty; 5. civil law.

The first four are very commonly admitted; concerning the last a dispute is carried on. We shall say a few things concerning each.

I. On Emerging Damage

856. Emerging damage is the detriment which the lender suffers by occasion of a mutuum furnished to his neighbor [1].

[1] Take care to note the distinction which custom has introduced between contracts equally gratuitous, namely commodatum and mutuum. For although by occasion of commodatum some account could be had of emerging damage or ceasing profit, either because the thing loaned is worn down by use, or becomes worse in any way whatever, or because the lender loses profit which otherwise he certainly could receive from the use or leasing of the thing loaned; nevertheless titles of this kind, on account of which something would be received from commodatum, are not usually admitted, and are judged repugnant to this contract. We see that the contrary has been done concerning the contract of mutuum. But I said that this was introduced by custom. For that formerly the gratuity of mutuum also excluded compensation for emerging damage, John Duns Scotus stands as witness. In 4, dist. 15, q. 2, art. 3, where he condemns usuries, he proposes to himself this difficulty to be solved: "If it is argued against this, that it is lawful for each one in contracts to preserve himself unharmed, as was said before, that one selling can sell more dearly by attending to his damage in selling; ... therefore in the same way, if he is induced by another to lend to him, it is lawful for him to preserve himself unharmed, which he cannot do except by accepting something above the principal." Moreover he adds this response: "I answer: if he does not wish to be damaged, let him reserve for himself the money necessary to him, because no one compels him to show mercy to his neighbor; but if he wishes to show mercy, he is compelled by divine law not to make it vitiated." And St. Thomas also testifies that this opinion was received in his own age. In De Malo, q. 13, art. 4, ad 14, he objects these things to himself: "Interest is twofold: one from the fact that something is not present, because namely someone did not acquire what he could have acquired; and to this interest no one is obligated. Another interest is from the fact that something is absent, because namely something has been taken away from someone from what he had; and from such interest an obligation arises. But sometimes it happens that from money lent someone is damaged in that which he has; therefore it seems that on account of this interest he can accept something without sin." But behold what he answers: "It must be said that from money lent, he who lends can incur damage of a thing already possessed in two ways. In one way, from the fact that the money is not returned to him at the appointed term; and in such a case he who accepted the mutuum is bound to the interest. In another way, within the appointed time; and then he who accepted the mutuum is not bound to the interest. For he who lent the money ought to have taken care for himself, lest he incur detriment. Nor ought he who accepted in mutuum to incur damage from the foolishness of the lender. And it is also similar in buying. For he who buys some thing justly gives for it as much as it is worth, but not as much as he who sells is damaged by lacking it." But as to ceasing profit, Francis Zech also sincerely admits (Rigor moderatus, etc., dissertation 2, section 27) that the more ancient Doctors "did not wish to acknowledge the title of ceasing profit, nor to permit a pact concerning compensation for it, when neither force in extorting the mutuum nor culpable delay in restoring had been admitted, but the money had been credited most freely."

Indeed you see this opinion expressed and admitted most explicitly in the objection which St. Thomas proposed to himself above, although the holy Doctor softened these doctrines somewhat in the Summa Theologica, II-II, q. 78, art. 2. From these things surely much light shines upon this matter. For that emerging damage and a relinquished hope of profit are something appreciable by price, and that therefore a just reason is present from which to exact congruent compensation, not only common sense holds, but also the judgment of the Apostolic See confirms in the letters of Benedict XIV. Therefore, that the old Doctors denied that some compensation was to be sought on account of these things very clearly confirms the doctrine which must never be absent from view in this matter: that the gratuity of these contracts is not to be derived from there being no price of the work which is furnished, but from the nature of a gratuitous contract, by force of which the spontaneous liberality of one, in favor of another, renounces compensation for work which, of itself, as being appreciable by price, would admit compensation without injustice. And since the mode and measure of exercising liberality, with the obligation of charity now omitted which perhaps demands otherwise, is in the free power of each one, therefore according to the judgment of the contracting parties the contract can, without injustice, be more, less, or not at all gratuitous, the nature of the contract being varied according to their judgment. Thus, for example, Titius can transfer the dominion of his vineyard to Caius either by exacting a just price, and thus it will be a sale; or wholly gratis, and thus it will be a donation; or merely by exacting that a dinner be prepared for himself and a few other friends in the same vineyard twice during autumn; and it will be something mixed, which, although it seems to detract something from perfect donation, nevertheless contains no injustice, as depending wholly on the judgment of the contracting parties. But it would be alien to justice if, after a donation plainly offered and accepted gratis, he then exacted those dinners as owed to him from justice.

I. If by reason of the mutuum the lender suffers damage, there is a legitimate title of receiving something above the principal. The reason is that it is not equitable that you bear damage from a mutuum; for no one is bound to provide a benefit with his own damage, except in the necessity of a neighbor. Thus all. St. Lig., n. 768.

II. For this, however, the following conditions are required: 1. that the mutuum be the cause of the damage; 2. that nothing be exacted except compensation [2]; 3. that the increase be brought into a pact from the beginning. St. Lig., n. 769.

[2] If some increase is justly repaid to the lender, because equity does not permit that from this benefit conferred on others he himself should incur damage, therefore the measure of the increase must be taken from the quantity of the damage to be undergone. It can certainly happen that this measure exceeds, indeed sometimes far exceeds, the limits of profit which either the laws or the common custom of places prescribe. Thus, for example, if someone gives in mutuum money with which otherwise at an opportune time he would procure oil, wine, grain, and other things necessary for domestic use, from which it happens that afterward he is compelled to buy those very things even at double price. What, then, will the confessor do with a penitent exacting an increase of this kind in those circumstances? Indeed, unless the circumstances demand an office of charity even with the damage of the lender, and the borrower, all things weighed, has judged the contract burdened with so great a charge to be nonetheless advantageous to himself, he could in no way condemn the penitent as guilty of injustice.

The same, moreover, can also be transferred to the title of ceasing profit; except that, since these profits are wont to be subject to uncertain events, and to be diminished and hindered, therefore the measure of the increase must be measured not from the hoped-for profit, but from the value of a prudent hope. See below, n. 872.

857. Questions. QUESTION 1. Can a lender exact compensation for emerging damage if he of his own accord offers himself for lending?

I answer affirmatively, more probably, with St. Lig., n. 769, etc. The reason is that even then the borrower, when he accepts the mutuum, is the true cause of the emerging damage. For the lender does not offer absolutely, but conditionally, namely under the condition of obtaining compensation.

QUESTION 2. Is it lawful for the lender from the beginning to agree concerning a certain profit to be received, if the emerging damage is only probably going to occur?

I answer affirmatively, provided proportion is preserved according to the probability of the damage. St. Lig., n. 770. Salmant., c. 3.

While we establish these things concerning emerging damage, we entirely abstract from the title of civil law and from the various contracts by force of which perhaps some profit could be legitimated from money lent to another, as will be clear from the things to be said. This same observation must also hold for the other titles soon to be explained, of ceasing profit, etc.

II. On Ceasing Profit

858. I. Ceasing profit is that which the lender would have gained, while preserving his thing or his money, if he had employed it in another lawful contract.

Ceasing profit is a legitimate title of exacting something above the principal. The reason is: 1. because then there is truly emerging damage [3]; 2. because the hope of profit is extrinsic to the mutuum, and at the same time appreciable by price.

[3] You will perhaps compose this answer with difficulty with the second of the conditions set forth above, namely that there ought to have been in the lender an intention of receiving profit from his money in some other way. Besides, if mutuum of itself is the true cause why profit ceases, would it not follow that there is embedded in the very nature of mutuum a cause why profit can always be exacted from mutuum? By what agreement, then, does the nature of this contract stand consistent with itself, which ought to be gratuitous, and rejects all profit of itself, no less than donation rejects price? These and other things of this kind, less coherent with themselves, which not rarely occur among writers, certainly show that it is altogether necessary that the whole matter be recalled to more solid principles, and that, when the discussion is of gratuitous contracts, the relinquishing of profit which otherwise the work furnished, if considered in itself, perhaps admits of itself, be referred back, as we have often already said, to no other cause than to the nature of the gratuitous contract into which the spontaneous liberality of the lender consents. And indeed, if you hope for and exact profit from the mutuum because the mutuum is the true cause of ceasing profit, you will not have the contract of mutuum, which rejects profit, but another contract, concerning the justice of which it will remain to inquire according to other principles.

II. The required conditions are: 1. the same as in the preceding title; 2. the lender must have had the intention of investing his money in business; otherwise the profit would not cease. St. Lig., Hom. apost., n. 149 and following.

QUESTION. Can you exact something by reason of ceasing profit on account of a mutuum of money, if you keep other idle money?

I answer 1. Certainly affirmatively, if you have reserved this for the use of the family, or lest you expose your state to danger, because by reason of the mutuum you are not bound to neglect your own thing. St. Lig., n. 771.

I answer 2. Probably affirmatively also in other cases, because the mutuum is the true cause why the profit ceases [4]. St. Lig., ibid.

[4] St. Thomas (De Malo, q. 15, art. 4, objection 4) preserves the distinction between ceasing profit and emerging damage in this way: in the one, someone has not acquired what he could have acquired; in the other, someone is damaged in that which he had.

III. On Danger of the Principal

859. Danger of the principal is a prudent fear lest the principal cannot be recovered. Danger of the principal, according to the more common and more probable opinion, is a legitimate title of

some profit. The reason is, both because if a relinquished hope of profit is appreciable by price, a fortiori the danger of probable damage will be appreciable; and because things placed in safety are valued more highly than things placed in danger; and also because this is clear from the decision of the Sacred Congregation of Propaganda for the Chinese Missionaries, approved by Innocent X in the year 1645 [5]. See St. Lig., n. 765.

[5] The declaration which the Sacred Congregation issued with the approval of Innocent X is reported thus by St. Alphonsus: "The Sacred Congregation of Cardinals of the Holy Roman Church judged that by reason of mutuum immediately and precisely nothing is to be exacted beyond the principal sum; but if they receive something by reason of a danger probably imminent, and of the quality of the same, and with proportion preserved between the danger and that which is received, etc., they are not to be disturbed." To these last words the same St. Alphonsus adds this gloss: "These words certainly signify not mere toleration, but positive permission."

Except: 1. if the borrower is poor [6], because then the precept of lending urges from charity; 2. if the borrower secures the principal by pledge, because thus the danger ceases. St. Lig., ibid.

[6] To this pertain the words of Benedict XIV (Const. Vix pervenit, section 5): "For no one can at least be ignorant of this, that in many cases a man is bound to assist another by a simple and naked mutuum."

860. You will object: Either the principal will perish, or it will not. If the former, the lender will receive nothing, namely neither the principal nor the stipulated increase; if the latter, in fact he will suffer no detriment. Therefore he ought to exact nothing.

I answer 1. Even if the principal is going to perish, it does not necessarily follow that the lender will receive absolutely nothing; for it can happen that the principal does not perish immediately, and then the interest which meanwhile is paid will be had as a certain compensation for the principal.

I answer 2. Although in fact the lender suffers no damage, nevertheless he can receive something above the principal; for he truly undergoes a danger appreciable by price. By wholly equal right, one who agrees with another concerning a price for insuring a ship can certainly exact that price, although in fact the ship has not perished. Therefore by parity, etc.

IV. On Conventional Penalty

861. A conventional penalty consists in this, that the borrower obliges himself to pay something above the principal if he does not restore it at the prefixed time.

I. A conventional penalty is a legitimate title of accepting, besides the principal, that concerning which agreement has been made. The reason is that thus provision is made for the firmness of the contract, and at the same time the negligence of the borrower is guarded against. St. Lig., n. 766, etc.

II. The required conditions are: 1. that the delay of the debtor be notable and culpable; 2. that the penalty be moderate and proportioned to the fault. St. Lig., n. 766, and others commonly.

See more, if you please, concerning the preceding titles among the authors. We have touched on very few things only, because, when the title of law is added, the others will now occur more rarely in practice [7], as will be clear from what is to be said.

[7] That is, the necessity of seeking these titles urges more rarely.

V. On the Title of Civil Law

862. Formerly there already existed among various peoples laws by force of which a certain profit could be received from mutuum, especially among the Romans, and more recently among the Germans. See Mastrofini, c. 4, 8, 9. But in our times laws of this kind have been received by general use among most peoples. From these, moreover, it is rather commonly permitted that an annual profit be received from a mutuum of money on this condition: that five for each hundred may be received in civil matter, and six in matter of commerce. In France, moreover, profit is granted whether from money, or grain, or another borrowed thing. But by the law of September 3, 1807, it was decreed that the profit to be received from mutuum should not exceed 5 per 100 in a civil matter, and 6 per 100 in a matter pertaining to commerce. From the same law, if anyone is convicted of having violated the established rate, he is condemned to restore the excess. But if he has done this more often, it is decreed that he is to be punished by a fine. Whether, however, that law creates a legitimate title in the forum of conscience for receiving profit from mutuum is disputed. The affirmative opinion is more probable and more common. Hence the following

Proposition

The title of civil law is more probably a just and honorable reason for receiving some moderate profit from mutuum [8], even with any other title whatsoever excluded.

[8] You already see that some stain of confusion is not lacking in this very thesis of the more recent authors. Namely, it should have been asked beforehand whether by this pact the nature of mutuum is preserved, or whether in truth a change into another contract is made. And indeed, if he who grants his money to the free use of another wishes from this furnishing to acquire profit for himself, and profit, certainly, is wholly distinguished from compensation of damage or danger, and therefore hands over money by this pact, that he may receive at least the rate of profit prefixed by the laws, then indeed he neither does this gratis, nor intends to do it; therefore he does not make a contract of mutuum, which from its essence is gratuitous. This is no different, namely, from anyone who exacts a price for the use of a horse: he does not make a contract of commodatum; and one who exchanges a horse for a mule does not make a contract of donation. The question, therefore, will remain how profit, not indeed received from the contract of mutuum, which can in no way produce profit, but from this furnishing of money, can in some way be reconciled with the law of justice. Moreover, if for the solution of this question it is also pleasing to employ the authority of civil laws, perhaps there will be someone who thinks it must be inquired, not indeed whether legislators wished to transfer the dominion of gratuitous, that is, not deserved, profit from one to another, which there is no indication had come into their mind, since laws of this kind are very ancient, while the notion of such a transfer was devised more recently by only a few writers; but rather whether those laws, which have never been regarded as unjust, indeed have also been defended by theologians, each according to his own measure, as just, suppose that the furnishing of a thing also, as they say, fungible, of itself is not lacking a title on account of which it is appreciable by price, which therefore anyone who does not consent to furnish it from gratuitous liberality can exact without injustice; so that the laws finally merely took up this office for themselves, that they might establish an equitable measure of some profit, otherwise just, to be received from the furnishing of fungible things. And indeed, in favor of this sense of those laws is the fact that the Doctors are accustomed to invoke the sense and practice of pious men for the defense of this profit. See Schmalzgrueber, book 5, title 19, n. 146, and Reiffenstuel, the same title, n. 62. And since not only the more recent authors, as the Author discusses in the following section VI, but also the ancients had seen through such a title, perhaps it will seem superfluous to search out this new, very remote origin of some profit, escaping the eyes, when otherwise we have it inherent and present in the nature of the thing itself.

863. It is proved, first, from reason. For the title of law removes from the middle that which, with the law excluded, could taste of usury, since for this it suffices that the legislator make the cession of profit from mutuum just and legitimate. But the matter stands thus. It is proved. The legislator makes this cession just and legitimate if he can and wills to transfer the dominion of that profit from one to another. But concerning both it is plainly established [9].

[9] The force of this argument perhaps can be weakened by the fact that civil law somewhere permits the measure of profit to be received from the furnishing of money to the free will of the contracting parties, and compels the payment of whatever finally has been agreed upon. Shall we dare to attribute this also to the supreme civil power, that it wills to transfer the dominion of profit however most unjust?

1. He can. For by force of high dominion the prince can, when the common good demands it, transfer some goods of subjects from one to another, or to the utility of the republic, as all admit; thus, for example, he justly requires taxes, even sometimes extraordinary ones, or a moderate furnishing of works [10]. Why, therefore, when the common good requires it, should he not be able to establish a law permitting profit from mutuum? For such a disposition is of the highest utility, and indeed of moral necessity in society; since, with the circumstances especially of our times considered, commerce would flourish less, indeed would almost perish, and industry would languish, unless the furnishing of money were fostered. For without doubt all would prefer to keep their money rather than hand it over in mutuum to others without any profit. Besides, by such a law widows, wards, male servants, female servants, and others are helped, who cannot trade, and who otherwise would be compelled to consume their modest monies. Nor is distributive justice injured by such a statute [11], since the law is enacted for the future, and can successively favor all. If today the burden falls upon you, tomorrow the advantage will favor you. Today to me, tomorrow to you. Hence true compensation is given in society considered generally. Therefore there is no injustice in such a law.

[10] Elsewhere we have noted that the imposition of taxes or of works pertains nothing to that which is customarily called high dominion, since an imposition of this kind looks merely to an equitable distribution of those burdens which subjects are bound to undergo for the common good. Add that no one has ever attributed to this power of high dominion even this, that it can knowingly despoil certain citizens conscious of that injustice, so that it may enrich others likewise conscious of the injustice. Add finally that the supreme power, if at any time, with the necessity of the republic and the common good requiring it, it disposes of the goods of subjects, also always takes this care upon itself by due office, that it preserve all unharmed by congruent compensations. On this argument take care to consult Schmalzgrueber, book 5, title 19, nn. 11-15.

[11] Distributive justice in reality seems to have nothing to do with this. But what is added, that compensation is had because burden and advantage become common, is chimerical. For even if there are a certain few who are accustomed to grow rich by monies accepted and then given in mutuum, nevertheless their accumulated riches would by no means compensate the detriment of those very many who have no faculty of seeking this profit.

2. He wills. For that will of transferring the dominion of the profit is manifestly included in the very fact of the law. For the legislator wills whatever depends on his will, and is required for the necessary efficacy and honorableness of the law, if indeed he wishes to establish a law honorable and efficacious [12]. Therefore that will of transferring the dominion of the profit exists implicitly in the law itself; therefore nothing is lacking for the justice and honorableness of the law. Therefore, once the law is posited, profit received from mutuum is no longer received by force of the mutuum, nor immediately from the mutuum, but only mediately; it proceeds from the mere occasion of the mutuum, for the statute of the prince is wholly extrinsic to the mutuum.

[12] We have already said that there is nothing which persuades that legislators ever thought about transferring dominion by their own proper authority. Moreover the argument sought from this, that otherwise they would have enacted an unjust law, limps altogether, when another reason is at hand on account of which the law does not indeed make just the profit received from the furnishing of money, but finds it just.

Indeed, the law can be just and honorable independently of a transfer of dominion. For that law is universally accepted in the community, and brought into practice even by timorous men; therefore it includes a voluntary cession of their right on the part of subjects [13]. Therefore independently of a transfer of dominion, justice is by no means injured by this law.

[13] This reason wholly weakens the preceding argument, the whole force of which resides in this, that without the will of the legislator transferring dominion, the law would be neither honorable nor just. Moreover, this cession of one's own right on the part of the subjects also seems to have to be relegated to dreams, no less than that will of the prince transferring dominion. For certainly there will exist no voluntary cession of right unless that right is known. But what, I ask, is that right which all subjects are imagined to have ceded? Is it that others enter into some gratuitous contract with me? Is it that they give me gratis that which can be appreciable by price? Let us conclude that in all these things nothing else appears except a certain heap of ideas coherent neither with themselves nor with common principles.

864. It is proved, second, from the authority of the Holy See. For the Holy See, having been asked several times in these our times whether absolution should be denied to those who accept profit conceded by law, without any other title, has always replied: They are not to be disturbed, until the Holy See shall have defined something concerning this. Therefore it is lawful to conclude from the aforesaid responses that the opinion consonant with law is at least probable. For how could the Holy See have been able to respond, "They are not to be disturbed" [14], unless it were truly at least probable that the law is just and honorable? For if it is not probable, they ought to be disturbed. Nevertheless it must be admitted that the Sacred Congregations, by so responding, did not wish to render a definitive judgment concerning so arduous a matter. But true and solid probability suffices, so that the faithful receiving profit from mutuum according to law may be immune from sin and from the burden of restitution.

[14] We have already said elsewhere that St. Alphonsus, concerning this formula, "They are not to be disturbed," and indeed with respect to this very matter, adds this gloss (book 6, n. 765): "These words signify not mere toleration, but positive permission." Moreover, as regards that response of the Apostolic See, it is most worthy of note that entirely the same response was made to the doubts both of the Bishop of Rennes by the Congregation of the Holy Office, August 18, 1830, and of the Bishop of Verona by the Sacred Penitentiary, August 14, 1831, although in the proposed questions not even a word occurred concerning the title of civil law, by force of which profit might lawfully be received. And what is of greater moment, when afterward the Bishop of Viviers proposed new doubts to the Congregation of the Holy Office on this account, namely doubts arising from this: 1. that in the question of the Bishop of Rennes no mention was made of the said title of law; and 2. that the law in France gives no right of receiving usuries, but rather supposes that the lender has a certain right to profit of this kind, and the sole reason why the law said that it was lawful to stipulate interest for mutuum alone was given by the legislators as this, that profit of this kind would be an equitable compensation for the advantage of which he deprives himself who hands over his monies to another for use; the Sacred Congregation on August 31, 1831, replied: "Provision has been made in the decrees of Wednesday, August 18, 1830, and let the decrees be given": namely referring the petitioner to that response rendered to the Bishop of Rennes, which had existed as the cause of this new doubt. From these things it is certainly sufficiently gathered that the reason why the Sacred Congregation decreed that those who receive profit from monies handed over at interest, as they say, are not to be disturbed, is not to be sought from the authority of civil law which makes profit of this kind lawful. And therefore this argument also, which is customarily employed to build up the force of a title sought from civil laws, concludes nothing of itself. See the decrees of the Sacred Congregations here mentioned below, in the note to n. 878.

Hence Bouvier rightly concludes: "The resolutions of the Holy See, although approved by the Supreme Pontiffs Pius VIII and Gregory XVI, and perfectly concordant with one another, do not contain a definitive decision of the Holy See, as is clear from their form, nature, and terms; nevertheless those who know the customary way of acting of the Roman Church ought to have persuaded themselves that the Holy See will never issue contrary decisions.... Led by all these

considerations, I firmly have persuaded myself that profit rated by law from a mutuum not owed by charity is not now to be prohibited, and that timorous persons are to be wisely directed, lest from their simplicity and the excessive rigidity of the confessor they suffer detriment." Bouvier, Appendix to the Treatise on Contracts.

Besides Bouvier just cited, more commonly the more recent theologians hold this opinion, with Gousset, n. 823; Rousselot in edit., etc. Already earlier the Wurzburgenses thought thus, De Contr., n. 201; Saettler, De Contr., p. 2, c. 4; Reuter, n. 201; and many others cited by the Wurzburgenses, especially Zech, Ledesma, Tanner, Haunold, Toletus, etc.

865. Objections. Objection 1. The legislator, by force of high dominion, cannot take away the property of private persons without due compensation; but no compensation is given in the aforesaid law. Therefore, etc.

I answer 1. I distinguish the antecedent. When compensation can be made, conceded; otherwise, denied. How, therefore, is the property of things transferred in a law establishing prescription? What compensation is bestowed in that case?

I answer 2. I deny the minor. True compensation is given in this, that the law is very useful to all, even to those who pay the increase, since they can more easily find the money which they need. Besides, he who today pays interest will in turn be able to receive it tomorrow.

866. Objection 2. The prince cannot make lawful what is of itself unlawful; but usuries are unlawful by natural and divine right, since they are prohibited by both rights. Therefore....

I answer 1. I distinguish the antecedent. If the prince cannot place a condition which removes the injustice, if there is any, conceded; otherwise, denied. Moreover, that the prince can place such a condition is clear from what has been said.

I answer 2. I distinguish the minor. Usuries are prohibited by natural and divine right if they are usuries properly so called, for example, excessive, or required from the poor, or usuries without title, or proceeding from mutuum by force of the mutuum itself, conceded; otherwise, denied. For if every profit received from mutuum is prohibited by natural and divine right, how does the Holy See not know this, and decree that the faithful using the benefit of the law are not to be disturbed [15]?

[15] The Apostolic See in reality did not decree, as we have already noted in the preceding note, that the faithful are therefore not to be disturbed because they use the benefit of law for receiving profit; much less does it consent that profit received from mutuum is not prohibited by natural and divine right. Namely, the reason why the Apostolic See, through the organ of the Sacred Congregations, several times responded that those faithful are not to be disturbed, it itself did not state. Therefore that one thing seems capable of being gathered with certainty from these responses, which the Author also notes below at n. 869, response 3, that in the proposed cases there is a contract which is not condemned in the constitution of Benedict XIV, Vix pervenit, November 1, 1745. But the reason why this contract is not repugnant to the aforesaid constitution is permitted to be investigated by the schools in such a way that, from the response to the Bishop of Viviers, which you will find below, it shines out sufficiently that it is not necessarily to be sought in the title of civil law.

These things, moreover, are confirmed from the letter which Cardinal De Gregorio, Major Penitentiary, gave on March 7, 1835, to the Bishop of Viviers (see L'Ami de la Religion, vol. 84, pp. 433, 434), in which these things also are found: "Therefore the Sacred Penitentiary by no means wished to define the question debated by theologians concerning that title taken from the law of the prince, but only to propose a norm which confessors might safely follow toward penitents who in good faith accepted moderate profit established by the law of the prince," etc.

867. Objection 3. Money is sterile from its nature; therefore it cannot produce fruit; therefore it is not lawful to require profit from it [16].

[16] To what purpose is this objection, when the justice of the profit received is owed wholly to the will of the prince transferring dominion of the profit, or to the cession of right on the part of subjects? But we have already said several times that coherence is desired in vain in all these things.

I answer. I distinguish the antecedent. Money is sterile from itself alone, let it pass; when the work or industry of man is joined to it, denied. Let merchants be consulted on this. Is not even a field of itself sterile and fruitless, unless it is cultivated?

Indeed several, especially more recent authors, not only contend that money is not sterile, but reject all the aforesaid titles founded upon a mutuum of money, as being useless, and in place of these substitute the universal title of the fecundity of money. According to them money can produce fruit. Hence they conclude concerning money that, unless it is handed over to the poor, a true mutuum is not always given. Their reasons, moreover, which seem by no means to be despised, are contained in the following heads [17].

[17] Here chiefly the hinge of the controversy truly turns, whether it can and ought to be said concerning mutuum what is most manifest concerning commodatum and donation: namely, that the obligation of exacting nothing as owed from justice is not to be derived from this, that the matter of these contracts is not appreciable by price, since the matter of donation and commodatum, for example a house or a horse, can likewise be, as we all admit, the matter of sale and lease; but that the spontaneous liberality of the donor or lender, by force of the contract, renounces the right which the granting of the dominion or the use of both the house and the horse would of itself furnish for justly exacting a congruent price. Namely, it is asked whether also the contract of mutuum rejects any remuneration owed from justice for this reason only, that the lender by a contract of this kind spontaneously gives up the right of exacting the price which otherwise, the matter of the contract considered, he could justly exact.

This is the controversy which the Author also treats in this place. In it, however, perhaps it will be less pleasing to someone that the authors cited by him recall the whole matter to the question of the fecundity of money, placing a sufficient title of some profit in that alone. For this labors under this inconvenience first of all, that the solution of the question extends itself only to the furnishing of money, but not to the furnishing of the other fungible things, as is clear from those things which the Author himself soon adds in the first head of this doctrine. Then, indeed, the solution will not seem to pertain to all furnishments of money; for in the same place the reason of the solution is sought from the value of money, which does not perish when it is expended to increase the fortune of the borrower. But does not this reason vanish if you suppose, for example, that three thousand scudi are furnished to a noble citizen to be consumed in one night, with which namely, on some day of carnival, he may prepare a most sumptuous banquet for the nobility of the whole city amid the joy of dances and musical concerts? Indeed, according to those things which the Author reports in the same place, n. 4 and 5, you would already conclude that the increase of principal becomes lawful from this, that either you sell the ceasing profit which you could hope for from a partnership entered into, or to be entered into, with a merchant, or you contract a census, etc.; and these things either recall the honorableness of the aforesaid increase to a certain few cases, or rather so change the question that they transfer it to another wholly different one.

Therefore, in order to persuade that to hand over one's things, even those which are called fungible, to another for use is something so appreciable by price that by its own nature it admits compensation, and indeed one commensurable by money (St. Thomas, In 4, dist. 25, q. 3, art. 3, 0), perhaps it will seem more fitting to insist upon a principle which is both consonant with common sense and is found commonly received by the Doctors. And this principle indeed is extant in the difficulty which the Doctors commonly propose to themselves to be solved, while they strive to prove that the exaction of any usury is repugnant to natural law, and therefore intrinsically evil. Although they had an easy solution of this difficulty in the nature of a gratuitous contract, of which kind donation also is, and commodatum, to which in reality a debt of compensation from natural law is repugnant, nevertheless, as not a few expressly admit, they set it aside, lest the question seem now to be made about the name alone. See Lugo, De Iust., disp. 25, n. 17. They did not notice, namely, that this very thing could have been objected when by the mere change of the name of commodatum into lease, or of donation into sale,

it is effected that for the use or full dominion of a thing granted to another a price can justly be exacted or cannot be exacted; and therefore that the matter is not merely about names, but about the diversity of contracts. From this diversity, therefore, diverse rights and diverse obligations are born from the will of the contracting parties.

The principle, then, which the Doctors, even unwillingly, held fixed, is this: that an obligation by which someone, when he hands over his thing to another to be used, binds himself to lack his own thing and the use of it, or, in other words, an obligation by which someone deprives himself of the advantage of using his own things, is appreciable by price. Thus Lugo (disp. 25, n. 18): "He who obliges himself to this, by that very fact deprives himself of something appreciable by price." And again (ibid., n. 24): "Although we admit that this obligation is appreciable by price," etc. So also Molina (De Iust., tract. 2, disp. 304, n. 5): "The use of which the lender is deprived for a time is appreciable by money." So the Salmanticenses (tr. 14, c. 3, nn. 25, 26): "It is appreciable by price to become surety in the name of another..., therefore also to lend with an obligation of not asking repayment for one year," etc. So also John Salas (De Usur., dub. 3, n. 4): "The liberty of not paying that principal for a year is something peculiar, appreciable by price.... The obligation to wait for payment seems appreciable by price." So also Becanus (De Iust. et Iur., c. 78, q. 6, n. 1): "To become surety in the name of another for one year for so great a sum is appreciable by price; therefore also to lend with an obligation of not asking repayment..., because this is more difficult than that." And lest more be gathered together without cause, let this suffice for the present, that by the consent of all the exaction of a mutuum for a spiritual thing is considered simoniacal. For how would we have simony, unless lending of itself has something which is appreciable by price? See what has been said concerning this matter above, in the note to n. 288.

And indeed the most solid firmness of this principle is shown especially by the fact that nothing could be brought forward by any of those Doctors by which he might solve this difficult knot by some probable reason. In place of all let there be Cardinal De Lugo, who, with the matter weighed most diligently, after he had to admit sincerely with Molina (tract. 2, disp. 304, n. 14) that several solutions of this difficulty devised by others are in reality ineffective, himself found nothing more solid to answer than to concede that what the lender by obligation deprives himself of, namely the advantage of using his own things, is indeed appreciable by price; but that this deprivation of advantage is compensated when the same advantage, together with the thing borrowed, is restored at its own time to the lender himself. Thus he says (disp. 25, n. 21): "This whole thing," namely the burden undertaken by the lender, that by obligation he lacks his own thing and the use of it, "is paid to equality by paying the mutuum and afterward returning as much to the lender. For if the lender, by giving 100, deprived himself of the faculty of trading and profiting with that money, afterward equal money is returned to him with the faculty of trading and profiting with it; and this faculty is equivalent to that faculty of which he previously deprived himself for a time, just as the money returned is equivalent to the money given. Therefore that whole thing is paid and compensated by returning as much to him," etc. And when he had objected to himself (ibid.) that if he had not given the money in mutuum, nor bound himself not to ask repayment this year, he would have had this year the power of profiting, and he would also have had it in the following year; but now, because he gave in mutuum with such an obligation, he will indeed have the faculty in the following year, when the mutuum is returned, but not this year; what does he answer? Finally this one thing: "It is answered that money returned in the following year with the power of using it throughout the whole following time is worth no less than the money given this year with a similar faculty would be worth." What these things are worth, learn from the example of a house, of the use of which someone deprives himself, so that he grants it to another to inhabit for a year. From the theory set forth it will be established that such an inconvenience undertaken and advantage granted to another are indeed appreciable by price; and that these things are sufficiently compensated, and the price of the lease is sufficiently repaid, since the house, and the advantage of inhabiting it, are restored to the owner after a year! To whom indeed could these things be pleasing? But neither did Molina have anything better, by which he might meet this difficulty. And when, in the place cited, he had objected to himself that it is not proved that for the use of a thing, which is appreciable by money, and of which the lender is deprived for a time, something cannot lawfully be accepted, he replies, ibid., n. 7: "To the objection I say that for the thing which is given in mutuum, an equal thing is paid not only with respect to property, but also with respect to use; for a thing of the same use is paid." And finally Sporer also was led to this, who says, tr. 6, in Decal., c. 4, n. 112: "Do you bring forward, on your part, the lack of money, the obligation of not asking repayment, the inability of using, enjoying, or taking utility meanwhile? But all these things... are adequately compensated to you by returning equivalent money with an equal faculty of using and enjoying it; for whether someone can use money for a longer or shorter time, it is not for that reason worth more." But if that most penetrating mind of Cardinal De Lugo, if before him Ludovicus Molina, were brought by their opinion into these straits, that either they had to deny that the cession of one's own thing for the use of another is appreciable by price, or had to admit this as an equal payment of that price, that the thing is restored to the owner at its own time, and finally were compelled to seize upon this last, surely poor and

tottering response as though the best of all, it is very clearly evident that the first point appeared so tested and unshaken that there is nothing which can be objected against it even with the slightest appearance of any verisimilitude.

Let us conclude, therefore, that a sufficiently firm and clear principle is at hand by which, concerning the matter of the contract of mutuum, it can be decided in the same way as concerning the matter of commodatum and donation: namely, that it is not of itself that which is of no price, and for that reason cannot admit compensation without injustice; but that it is furnished gratis only for this reason, that the spontaneous liberality of the giver, by force of these contracts, renounces the right of compensation. Thus also with respect to mutuum the exclusion of any profit, for we do not call the just compensation of emerging damage or ceasing advantage, etc., profit, is to be derived solely from the nature of the contract, since by its own nature and essence it must be gratuitous.

To this matter Filliuccius speaks well, tract. 34, part 2, c. 6, n. 102: "You will say: some price can be imposed on other burdens; therefore also on the burden of lacking one's money," namely handed over in mutuum, "for so long a time. I answer that the reason is unequal, because some price can be imposed on other burdens, because it does not come from the nature of the contract; but in mutuum the lack of money and the obligation of not asking repayment before the time come from the nature of the contract." In the same way Becanus, in the place cited, replies to the objection which we reported above: "The lack of money and the obligation of not asking repayment before some time is something intrinsic to the notion of mutuum; otherwise mutuum would not differ from precarium; but MUTUUM OUGHT TO BE MADE GRATIS; therefore nothing is to be sought for this lack or obligation." Reiffenstuel uses the same argument, Ius Can., book 5, title 19, n. 21, saying: "It is clear that mutuum by its nature DEMANDS TO BE MADE GRATIS, that is, by asking nothing more by force of the mutuum than was given." And before all these, Albert the Great, in 3, dist. 37, art. 13, ad q. 1, uses this one argument several times for excluding any profit from mutuum. "It is not similar," he says, "concerning trade and mutuum, because trade is not among those things to be done gratis from natural and divine right; but MUTUUM IS AMONG THOSE THINGS TO BE DONE GRATIS from natural and divine right." And below: "An obligation cannot be brought into a pact, because it is contrary to mutuum with respect to the gratuity on account of which it must be made because of love of neighbor." And again, to question 2, when an objection of this kind is proposed, "I give you a mutuum so that you may give something to the poor," he replies: "Such a pact cannot be made, because IT IS CONTRARY TO THE GRATUITY OF MUTUUM."

The Author of the little work On Usuries, which among the opuscule works of Doctor Aquinas obtained the 73rd place in the Roman edition of the year 1570, also proposes the same doctrine altogether splendidly. For thus he says, c. 3: "Only that superabundance which proceeds from mutuum by reason of mutuum corrupts liberality and justice. It corrupts liberality, because MUTUUM OUGHT TO BE MADE GRATUITOUSLY BY THE NATURE OF MUTUUM.... Likewise it corrupts justice, because in mutuum the return of what was given is designated. And therefore where more is returned, inequality is produced." These things, indeed, the Author soon declares more clearly thus, c. 4: "By another reason we can show that in usury evil enters especially ON ACCOUNT OF THE NATURE OF THE PROPER ACT from which it enters, which is to give in mutuum. For since to give in mutuum is the proper act, from whose corruption the vice of usury is generated..., and an act of this kind IS AN ACT OF LIBERALITY AND GRATUITY..., necessarily whatever accedes to the act which takes away liberality TURNS THE ACT AWAY FROM ITS NATURE, and consequently corrupts the virtue of universal justice. Wherefore it has the notion of injury, and thus the notion of fault. But that to give one's thing in mutuum to another IS THE PROPER ACT OF LIBERALITY AND GRATUITY is clear first from the genus of the act, which is the very giving, which designates the liberality of the giver.... Wherefore in that transfer in which the act of giving properly ought to be attended to, liberality must in no way be corrupted; but an act of this kind, namely of giving, is truly attended to in the act of mutuum.... Wherefore, if some circumstance is added to an act of this kind which corrupts the liberality of giving, such an act will be evil and vicious and a sin. But such a circumstance is added whenever the giving of mutuum is made for some profit, either in hope or in fact, because that which is done for profit is not done for pure liberality. From this it follows that there is always evil and sin there, not only from the nature of the end and of its matter, but also FROM THE NATURE OF THE PROPER ACT about which it is to be done."

Thus indeed these Doctors, to whom others can easily be added, and indeed all those must be added who, distinguishing a twofold genus of contracts, of which some are gratuitous and others onerous, reckon the contract of mutuum in the former genus. But these are plainly all theologians. Moreover, if the reason excluding any profit or hope of profit from mutuum is sought wholly, in the end, from the nature of the contract, which spontaneous liberality admits; and the office and exercise of spontaneous liberality, with the obligation of charity excluded, resides in the free power of each person; then the reason easily shows itself why, just as with a house or a horse, so also in handing over to another for use a thing which they call

fungible, although from liberality I can gratis renounce any just compensation, nevertheless, with the nature of the contract changed, I can exact this compensation without injustice. Others had already noted that a twofold diverse contract could be entered upon concerning this matter, whom Peter de Ancharano reports, In V Decret., title 19, c. 1, saying: "Some say that either usuries are sought from another contract than mutuum, or they are sought from the contract of mutuum. In the first case they are permitted.... In the second case, when from the contract of mutuum, they are not permitted..., and thus the divine law is understood," etc. And in the same way Alphonsus Tostatus, In c. 25 Matt., q. 181, discusses: "If for the use of a thing something is sought, either money is accepted or another thing. If another thing, it is an unnamed contract, namely I give that you may give, I do that you may do. But if money is received, it will be a contract of lease.... And therefore since mutuum ought to be gratuitous, if it is not, it ceases to be mutuum and is another contract," etc. That this opinion was approved by others is indicated thus by Cardinal Hostiensis, Summa, book V, De Usuris, section 1, where he brings forward reasons on account of which the vice of usury accedes to mutuum. "Others," he says, "give this reason: BECAUSE MUTUUM OUGHT TO BE GRATUITOUS; but from the fact that money intervenes, it passes into lease, as we noted above concerning commodatum." And very opportunely indeed he refers the reader to what was said concerning commodatum, where, book 3, De Commod., n. 2, after having given this definition of commodatum: "A gratuitous concession made of some thing for some certain use," he thus gives a similar reason for the word gratuitous: "It is therefore called gratuitous, because if a wage intervenes, it passes into lease.... But it ought to be gratuitous, just as also mandate, which is from friendship," etc. "And if a species were given, it would pass into an unnamed contract, I give that you may do...." These things clearly show how the very same work, since it is appreciable by price, and no one denies or can deny that the office of lending is appreciable by price, can be the matter both of a gratuitous contract, if it is furnished from mere liberality and gratuity, and of an onerous contract, if the wage which liberality renounces in the first contract is justly exacted and accepted in the second.

This principle, moreover, is shown by many reasons to be much more fitly applied to this matter than the principle introduced by the more recent authors concerning the fecundity of money. First, indeed, it is more universal, and therefore embraces the lending, for we shall use this word abusively or in a broader sense to designate any furnishing, even not gratuitous, of things for the use of another, not of money only, but of any fungible thing whatsoever. For otherwise no reason appears why in one case, and not in the other, the inconvenience of lacking one's thing, and the burden of not asking it back for a certain time, would be appreciable by price. Next, because this principle is more consonant with the laws of justice. For justice demands that the right and norm of compensation in contracts be taken, not indeed from the advantage which someone perhaps will receive from the thing to be acquired, but rather from the burden which the other undergoes by depriving himself of his own thing. See below, nn. 891-892. Finally, because this principle is not only more firm and certain in itself, and much more received and approved by the Doctors than that new principle concerning the fecundity of money, but also because it passes over with impunity those obscure disputes, full of trifles and troublesome with innumerable equivocations: whether money is sterile or fruitful, whether the fruit belongs to the thing or to industry, whose fruits they are, and whose is the dominion of the principal, etc., etc., etc. While these questions vex minds wearied among uncertainties, they scarcely grant a firm judgment in which conscience may rest tranquilly.

To this principle is added besides the support of St. Alphonsus, book 3, n. 760, where namely he asks whether, for the obligation to which the lender subjects himself of not asking repayment of the mutuum except after a long time, he can exact something beyond the principal, even if no inconvenience comes to him from the delay. For the most wise Author could not conceal that he wholly adheres to the affirmative opinion. Concerning it, although it is against the more common opinion, he nevertheless determines that "this opinion TRULY does not seem to lack its probability," and he seeks help from those things which we too borrowed above from Cardinal De Lugo, saying: "If the lender accepts something for such an obligation, he accepts rightly... by reason of the burden imposed on him from the pact, which burden is certainly appreciable by price, as Lugo himself admits... with others." Besides, he also uses this argument for the same matter: "For if," he says, "one who is bound to lend after a long time can lawfully exact something, as the Doctors teach more commonly..., why cannot one who is bound not to ask for his own except after a long time?" In place of this argument, another stronger one can be brought forward for our matter after the common doctrine, that it is not lawful for a mutuum to exact that the borrower give me another thing in mutuum. For if I therefore cannot exact for a mutuum that the other in turn give me a mutuum, because I would impose for the mutuum a burden appreciable by price, why will the burden which I assume toward him not likewise be appreciable by price? Moreover St. Alphonsus asserts this only concerning the obligation of not asking repayment of the mutuum for a long time, as though this special obligation were something extrinsic to mutuum. But it is manifest, as Lugo rightly observes, disp. 25, n. 19, that the obligation of not asking repayment of a mutuum for some time is intrinsic and essential to this contract, as is clear from its very definition. And if

that obligation, as Lugo has it, ibid., is truly something appreciable by price, this burden appreciable by price will indeed be greater or less according as one imposes that obligation upon himself for a longer or shorter time; but since more and less do not change the nature of a thing, the assumption of a burden appreciable by price will never be absent from the lender. Therefore in reality you will never escape the difficulty unless you recur to the nature of this contract, of which, no otherwise than of commodatum and donation, it is necessarily proper that one party assume for himself a burden indeed appreciable by price, but at the same time bind himself from pure liberality to furnish it entirely gratis.

And with these principles employed, the difficulty which St. Alphonsus, in the place cited, proposes to himself to be resolved will also be better solved, namely that sought from the condemnation of proposition 42 proscribed by Alexander VII: "It is lawful for the LENDER to exact something above the principal, if he obliges himself not to ask repayment of the principal until a certain time." St. Alphonsus answers: "The said proposition was deservedly condemned, because by those too general words the waiting of any time whatsoever was comprehended, even that which is intrinsic to mutuum; but it is not prohibited that something be exacted for the obligation of waiting through an extraordinary time, which obligation is extrinsic to mutuum." But those things which we have just brought from Cardinal De Lugo clearly prove that this reason for avoiding the condemnation is less efficacious, since the nature of mutuum is in no way changed according to a diverse measure of time. On the other hand, the vice which was the very just cause of condemnation you will find only and at the same time manifestly in that word "lender." For the LENDER, as all admit, by force of the contract obliges himself to exact nothing for the mutuum. But the obligation of not asking repayment of the principal within a certain time is intrinsic and essential to the contract of mutuum, into whatever and however much time the lender by contracting finally consented. Therefore, whenever there is truly discussion of a LENDER, it can never be lawful for him to exact something above the principal, however he has bound himself not to ask repayment of the principal until whatever certain time; and therefore that proposition was deservedly struck down, which, against the nature of the contract, admitted profit repugnant to the gratuity of the contract under the pretext of time.

Again, from the fact that the obligation of not asking repayment of the principal for some certain time is intrinsic and altogether essential to the contract of mutuum, on account of which it is also distinguished from the contract of precarium, from this, I say, there arises a new and indeed peremptory and evident argument for our matter, by which the things said thus far are confirmed. And indeed by all, whether theologians or jurists, it is retained as a most firm principle that any civil obligation is appreciable by price, and therefore can be compensated by money. From this, moreover, to the questions, to use the words of Dominic Soto, De Iust. et Iur., book 6, q. 1, "whether by reason of the mutuum you can bind the borrower to cultivate your field at a just price, or to frequent your mill, or oven, or shop," they reply with unanimous opinion that it is not lawful, although otherwise they suppose, as Soto has it there, that the lender gives no damage and extorts no price, because namely he proposes to you at a just price that the field be cultivated, the mill, oven, or shop be approached. But why will these things not be lawful, where nothing unjust is exacted? And they answer unanimously: "Because that civil obligation is appreciable by money. For there is no doubt that the deprivation of liberty by its own nature is worthy of price." Thus Soto with others, following his master St. Thomas, who, using the same principle, II-II, q. 78, art. 2, ad 4, denies that for a mutuum an obligation to make a mutuum in the future can be imposed upon the borrower, because, he says, "even such an obligation can be estimated by money." And from these same things Cajetan argues, Commentary on St. Thomas, in the place cited, with respect to the proper obligation of a surety: "A surety can exact something in order that he may become surety, because by becoming surety he obliges himself civilly to pay for another, which is no less than to oblige himself to lend; and by this, because the obligation of lending can be sold, as is in the text, it follows that the obligation to pay for another can be sold, as being appreciable by money." And for this reason he denies thus that an obligation of this kind can be imposed for a mutuum: "A civil obligation is appreciable by money; and by this, with whatever conditions it may be made, he exacts by pact more than the principal, and it is usury." But does not the lender freely assume this civil obligation for himself, when, giving his money or any other thing whatever in mutuum, he binds himself not to be able to ask it back before some prefixed time? Does there not intervene, as Soto says, that deprivation of liberty which by its own nature is worthy of price? Therefore it is manifest, according to the principles most constantly admitted by all, that there underlies the contract of mutuum that matter which can likewise be the matter of an onerous contract; since by the unanimous consent of the Doctors it is worthy of price, appreciable by price, appreciable by money, and, as Cajetan after St. Thomas said, able to be sold. St. Thomas indicates this last point to us by another and very elegant reason, 4, dist. 25, q. 3, art. 3, where he asks concerning the matter of simony. "Buying," he says, "or selling consists not only in the giving and accepting of money, but of all those things whose price can be measured by coin; for in these things there is liberality, according to the Philosopher. But it is clear that liberal giving and sale, which is contrary to it, are in the same things." There you see, according to St. Thomas after Aristotle, that the same matter underlies liberality as underlies sale, namely

that whose price can be measured by coin. And this indeed is most wisely said. For who would attribute the praise of liberality to him who confers a thing having absolutely no price, and therefore no utility and no advantage? Moreover no one can deny this, which Albert the Great, as we saw above, inculcates so often, that the granting of mutuum is an act of liberality and gratuity. Therefore the conclusion returns: that the matter of mutuum, as being the matter of liberality, can likewise be the matter of sale or of another onerous contract, no otherwise, namely, than the matter of donation can become, with the nature of the contract changed, the matter of sale, or exchange, or lease.

Yet someone perhaps will think that what has been said thus far is opposed by the fact that those things seem to depart far from the doctrines on account of which theologians labored so greatly, and almost toiled, in attacking cloaked usuries. And the matter is easily clear. For why were so many and such varied contracts devised in past times, except because those who credited monies, or anything else from fungible things, to another, or furnished them for use, by no means consented to this gratis, but wished to receive some profit from it? Moreover, if those things are admitted which were disputed above, it is plainly clear that they used their right. For since we contend that the title of some just profit is inherent in the work itself, and that otherwise to furnish gratis to others what can be sold for a just price, with the obligation of charity excepted, if at any time it is present, is an act of liberality to which no law binds anyone, they could by no means be prohibited from seeking and receiving some profit. Yet who is ignorant how keenly and at the same time subtly theologians commonly attacked, indeed also detested, these profits as cloaked usuries? But things which seem to depart from doctrine commonly received in Catholic schools ought never not to seem suspect.

Certainly it must not be denied that this difficulty has its force, which perhaps only those will not feel who do not know how much deference is to be given to the authority of the schools.

Nevertheless, in the first place it may be noted that these things could have been objected with stronger right when, in the past century, Scipio Maffei and others with him began to contend for the honorableness of some profit to be received from the furnishing of money, provided the nature of the contract were changed. And we know that then a very sharp battle was joined among the learned, in which surely this very grave prejudgment of authority was fighting against the views of the more recent authors. Yet history teaches that this argument did not seem to be of such strength that, on account of it, those marks would be branded upon the more recent opinion which could be expected from the common doctrine of the schools being put aside and in some way contemned. Indeed it is most well known that Benedict XIV did not refuse that opuscule works be dedicated to him in which the more recent theory was defended, and that Mastrofini, with legitimate authority consenting, was able to commit his work for the same opinion to the press in the very city of Rome; just as we all now also know that, from that age even to ours, powers have not failed this more recent doctrine, indeed greater ones have daily accrued, so that it now seems to have obtained its place among the probable opinions of the school.

Next, it must be noted that this doctrine did not come forth in the past century as altogether new. For that it had already elsewhere been heard and admitted in Catholic schools is sufficiently proved by those things which above we reported from Peter Ancharano, from Tostatus, and from Cardinal Hostiensis. Nor, moreover, does what Cardinal Hostiensis objected against it seem sufficiently efficacious: namely, that in lease, unlike what happens in the furnishing of money, the dominion of the thing is not transferred. For also in the furnishing of money, the dominion which is transferred must be understood in an entirely circumscribed sense, as we have already seen above in the note to n. 849. Then the supposition can be denied, namely, that the reason of some profit which is sought must be sought from the fruit which the borrower is going to receive from the money, as is manifest from what was said above.

Besides, whatever ways others have finally entered upon for proving the honorableness of the contract by which some profit from money furnished to others for use can justly be received, nevertheless we use, as is clear, no other principles than those which Catholic doctors unanimously approve and constantly defend. Therefore those questions would be moved wrongly against us which are accustomed to be raised concerning the abstruse and subtle theories of Mastrofini. And this one thing will finally remain to be inquired: whether the conclusion which we ourselves deduce from those principles which we too profess and defend with the Catholic schools appears more consonant with them, or in truth the opinion opposed to our conclusion. Moreover even those few things which we saw brought forward above by Cardinal De Lugo and Molina, in order that they might disentangle themselves and their theorems from the difficulties induced by those principles, which they could deny by no reason, are enough and more than enough for judgment to be made between each opinion.

Finally, this must especially be weighed, that we are now situated in a wholly different condition from the Doctors whom we must always look up to as our fathers and teachers. For it was always solemn for truly Catholic Doctors to keep their eyes fixed upon the Apostolic See, from which surely the light of all doctrine, and therefore the safest norm of thinking in

all things, ought to be sought and expected. But who is ignorant that they by no means had at hand the responses of the Apostolic See which, under the Supreme Pontiffs Pius VIII and Gregory XVI, came forth through the Sacred Congregations, both of the Penitentiary and of the Holy Inquisition, from which otherwise each one can safely learn what in the present matter must be held as defined, and what is still left to be freely discussed in the schools? For would anyone indeed think that those Doctors would have attacked any profit in these matters as at least the stain of cloaked usury, if they had known that, by the judgment of the Apostolic See, those are not to be disturbed who either pursue profits of this kind, or teach that they may lawfully be sought? Therefore we neither ought nor can regard as opposed to us those who surely, if they had known what is now known to us, would themselves have thought the same things which we think.

Moreover, that each of us should confer his studies, labors, and whatever industry according to his powers for unfolding these questions, no one indeed will fail to see that this is especially consonant with the obsequium which we all owe to the Apostolic See and to its responses concerning this matter.

Namely, although it ought to be most certain and well known that the responses of the Apostolic See under the late-memorable Popes Pius VIII and Gregory XVI do not differ even the least from the doctrines which Benedict XIV had decreed in the constitution Vix pervenit to be held by all; nevertheless, if we inspect the nature of the doubts which, as we have said elsewhere, were proposed to the Apostolic See concerning this argument, we shall find that there were some to whom it happened with difficulty to reconcile these later responses with the aforesaid letters of Benedict XIV. Therefore it is exceedingly fitting to reverence and filial zeal toward the common Mother and Teacher of all that we, insofar as it is in us, dispel doubts and suspicions of this kind by proposing the most suitable reasons that we know, by which the oracles of the Apostolic See may appear consonant with themselves. But this will be able to be achieved once it is made plain that the later responses pertain not to the doctrine defined in the aforesaid letters, but to questions which Benedict XIV himself in the same letters openly professed that he did not wish to settle. For the Supreme Pontiff clearly indicates that he did not wish to settle certain questions concerning this matter, nor even to call them into examination, thus, section 2: "Nevertheless we did not request from them," the consultors, "that they render judgment concerning the contract which at the beginning had furnished the cause of the controversy." Indeed the same Pontiff, section 10, indicates thus that some contract diverse from mutuum can be established, from which some profit could lawfully be received: "In the fourth place we exhort you not to leave entrance to the inept speeches of those who say that, in this time, a question is instituted concerning usuries which is contained in name alone; since from money which is granted to another by any reason whatsoever, fruit for the most part is procured. For how false this is, and alien from the truth, we plainly perceive if we weigh that THE NATURE OF ONE CONTRACT IS ALTOGETHER DIVERSE AND SEPARATE FROM THE NATURE OF ANOTHER; AND LIKEWISE THOSE THINGS WHICH FOLLOW FROM CONTRACTS DIVERSE AMONG THEMSELVES DIFFER GREATLY AMONG THEMSELVES. In reality a most open distinction intervenes between the fruit which by lawful right is taken from money..., and the fruit which is illicitly procured from money, and therefore is decreed by the judgment of both forums to be restored." Therefore, since the Supreme Pontiff manifestly declares that it is to be derived from the diversity of contracts that fruit may be received lawfully or unlawfully from money granted, note well that he does not say loaned, and that these things are not to be referred to those which he had established beforehand concerning the titles of emerging damage or ceasing profit, etc., it is plainly inferred that there can be a contract diverse and separate from mutuum by which fruit is lawfully procured from money. Since indeed what kind of contract this is is indicated in no way either in the letters of Benedict XIV themselves or in the later responses of the Apostolic See, and therefore this is left to be investigated by the studies of the schools, surely it yields to the obsequium of each oracle that, submitting all our things to the judgment of the Apostolic See itself, and insisting upon principles more commonly received in the Catholic school, we diligently inquire what contract of this kind can be had in this matter, which may more fully satisfy both the sense of the Benedictine constitution, and the practice prescribed by the responses of the Sacred Congregations, and the reconciliation of each oracle. Whether this has in any way been obtained in the few things disputed in this note, I most willingly submit both to the judgment of the Apostolic See and to the opinion of the wiser.

But it must in no way be passed over here that, however it may seem to someone that this other principle is to be preferred to the principle laid down beforehand by others concerning the fecundity of money, namely that to grant one's money or other fungible things to the use of another for some established time is a work of itself appreciable by price, nevertheless these things pertain nothing to practice, but merely to polishing theory somewhat, so that a more fitting reason may be rendered for those things which we see approved not only by common sense and use, but also among those most wise Roman jurists. For I use the words of Cardinal De Lugo, disp. 25, n. 11: "who judged usuries," understand profit, as the word usury notes, exacted for the use granted, not for the gratuitous contract of mutuum, which iniquity surely could not have come into the mind of those most wise men, "lawful in a moderate sum, and granted actions for exacting them, and

denied action for recovering them once paid." For as to practice, namely as to the measure of compensation to be rendered, the matter stands in the same way whichever principle you employ. For, with the circumstances of emerging damage or ceasing profit omitted, which, if not in the external forum, then at least in the forum of conscience, perhaps allow that it can sometimes be decided otherwise, that law which is observed in any compensation must always be said to hold. Either the measure of this profit is prefixed by the laws, and to pass beyond this will be unlawful; or the laws predefine no measure, and then one must stand by the common price, which nevertheless also in the present matter can have diverse limits of lowest, middle, and highest.

1. Mutuum, according to all, cannot be made except concerning a thing to be consumed by first use, which is proved from the nature of mutuum itself. But money is not consumed by first use, unless it is furnished to a poor person who is going to spend it for his own support. For in the handing over of money only the value is transferred, and it is the object of the contract; but value does not perish when it is expended for increasing the fortune of the borrower. Therefore....

2. Hence the contract by which money is handed over to a rich person is not a mutuum properly so called, but rather commodatum or lease, according as it is given gratis or for a price; and therefore the dominion of the money is not transferred.

3. That contract of the lease of money is lawful in itself; for a price is justly exacted for a thing which has intrinsic value. But the use of money, which is not consumed by first use, has intrinsic value, which can be appreciated by price, and in human commerce it becomes the cause of many advantages. Therefore the increase of the principal is the just price of that use.

4. Money, as is clear from the experience of merchants, produces fruit, and is multiplied of itself, independently of human industry; therefore it is not to be regarded as altogether sterile. For the same merchant, in the same circumstances and with the same degree of industry, makes a much greater profit if he can invest a much greater sum in commerce; therefore the faculty of investing money in commerce is truly appreciable by price.

5. That increase of the principal can be regarded not only as the price of value leased, but also as the price of profit sold, which was hoped for from a partnership entered into; for a commercial mutuum is assimilated to the threefold contract of partnership, concerning which below, n. 862, and of insurance both of the principal and of profit. But that threefold contract can probably be considered legitimate according to Benedict XIV, St. Lig., and others. Mastrofini, Maffei, Rossignol, Cardinal de la Luzerne, and others hold this doctrine, to whom not a few more recent authors assent.

868. Objection 4. Christ the Lord in the new law prohibited all profit from mutuum; for he said: "Give mutuum, hoping for nothing from it." Luke 6:35. Therefore....

I answer. These words certainly are not to be understood of a rigorous precept, at least with respect to all men and all cases. For in the cited chapter several things are reported which are of mere counsel, for example the following: "But give to everyone asking you; and from him who takes away what is yours, do not ask it back." Luke 6:30.

869. Objection 5. Benedict XIV, in the encyclical letter Vix pervenit, condemned as usurious every profit received from mutuum. Therefore....

I answer 1. It is not established among theologians concerning the true sense of the Benedictine constitution, as is witnessed by the controversy so much agitated about this among authors.

I answer 2. Benedict XIV reproved only profit from mutuum received by force of the mutuum, abstracting from various titles. Therefore from this constitution nothing can be deduced against profit received from some title. Add that the Pontiff openly declared that he did not wish to settle controversies agitated in the schools, for example concerning the lawfulness of the triple contract.

I answer 3. If the illustrious Pontiff had defined anything, ought it not be known by the Holy See better than by others? And if it were true, how could the Pontiffs Pius VIII and Gregory XVI have rendered an opposite decision? Would those not have to be disturbed who acted against the dogmatic constitution of the Supreme Pontiff?

870. Questions. QUESTION 1. To whom is it lawful to receive 6 per 100 by reason of commerce according to civil law?

I answer 1. It is certainly lawful for merchants lending money to other merchants, because the matter is wholly about commerce.

I answer 2. It is lawful also for merchants with respect to others who are not merchants, because the law intends to favor commerce; but it favors it by permitting merchants to receive a greater revenue from money lent.

I answer 3. If the question is about others who are not merchants with respect to merchants, it is disputed. More commonly they deny that it is lawful, and they bring forward that such is the decision of the tribunals. The reason is that the law which intends to favor merchants would rather be harmful to them if they had to pay greater interest.

Yet several, even among jurists, affirm. Their reason is: 1. because the words of the law are general: "in matter of commerce"; and it is not established what the genuine sense of those words is; 2. because it is expedient for commerce that the law be understood thus, for in this way merchants much more easily find money with greater utility to themselves and to commerce, etc. But, they say deservedly [18], not for that reason could each of the non-merchants exact 6 even from another non-merchant, on the ground that he could have lent to a merchant; for he in no way places the money in commerce; nor could he rely upon the reason of emerging damage, since the law intends only to favor commerce.

[18] If it is not a mere pretext, but a merchant with whom one could contract were at hand, the question would seem to have to be solved from those things which the Author has below, n. 872.

871. QUESTION 2. Whether or to what extent is good faith required for receiving profit from mutuum under the title of civil law?

I answer 1. With respect to avoiding sin, good faith is required, which consists in the good testimony of conscience, or in a conscience formed at least from probable and solid reasons, or from the authority of theologians. Therefore the confessor himself can furnish this good faith to his penitents

who ask, by teaching them concerning the controversy of theologians not easily settled, and also concerning the responses of the Holy See. This is clear both from the nature of the thing and from the responses themselves, to be reported below.

I answer 2. With respect to justice, the question of good faith is something merely indifferent. For just as, apart from the cause of prescription, a right cannot intrinsically be conferred by good faith, since the possessor in good faith can by no means be exempted from restitution, so also the right of one contracting in bad faith cannot be taken away; since bad faith cannot make a contract which is at least probably just in itself become usurious. Nor should you say that no one can enter possession with bad or doubtful faith, nor retain this possession. For where contracts are concerned, every agreement which certainly is not unjust in itself, but probably just, becomes certainly just by the consent of the parties [19]. It is established besides from the response of the Holy Office to the Bishop of Nice. Thus also the Doctors Devie, Bishop of Belley, in the encyclical letter On Mutuum; Gousset, n. 822.

[19] Namely, there remains only a false persuasion to be corrected; for the preceding bad faith in the case can no more compel to restitution than if someone had stolen his own thing which he had thought to belong to another.

872. QUESTION 3. Is it lawful to exceed the legal rate in mutuum by reason of emerging damage or ceasing profit?

I answer 1. Negatively with respect to the poor or others who seek a mutuum in necessity, and who would be oppressed by a greater increase, as is clear from what has been said. Yet you do not seem to be bound to grant a mutuum to them with great inconvenience to yourself [20].

[20] Namely, if the detriment which you must undergo because of ceasing profit or emerging damage is not light, you are not bound to give a mutuum even to a poor person, because charity alone then obliges you; but charity does not oblige with grave inconvenience.

I answer 2. If money is handed over for the utility, but not the necessity, of another, it is disputed, and a twofold opinion is brought forward. The first opinion affirms, by reason of indemnity or just compensation. Thus, among others, Kenrick and Pages of Lyons, although in the matter of usury he became very well known by a reputation for severity. The second opinion denies. The reason is that compensations for damages proceeding from a pecuniary obligation can be exacted according to the legal rate. This opinion can have place if the lender compels or obliges another to accept a mutuum from him; otherwise there appears no reason why the lender should undergo, in favor of another, the detriment of emerging damage.

873. QUESTION 4. Is it lawful to receive interest from the interest itself, les intérêts des intérêts?

I answer 1. Affirmatively from civil law. But it is required: 1. that the term of the contract have elapsed by at least one year; 2. that there have been a special agreement, or judicial petition. Indeed, elapsed revenues of leases or of censuses, whether perpetual or life-rents, produce interest from the very day of petition or agreement.

I answer 2. It also seems to be affirmed for the internal forum: 1. if an agreement preceded, whether explicit or implicit, because the revenues, once the term has elapsed, are added to the capital sum; for it is entirely the same whether I leave to the debtor my money, which he already has from mutuum,

or hand over another sum to him; 2. if damage comes to the creditor from the delay of payment. Gousset, Cod. Civ. commenté, art. 1154.

QUESTION 5. Is it lawful to receive the legal increase where it exceeds 5 or 6 per 100?

I answer affirmatively, if the law, after all the circumstances have been weighed, seems just, that is, if equality appears between the profit permitted by law and the value of the use of money or the dangers of the principal, etc. For no absolute rate can be established, but attention must be paid to the various circumstances of places, and also to the scarcity of money, from which its price and consequently its use increases, as in Africa, in India, etc.

874. QUESTION 6. What is to be said concerning institutions which are commonly called Savings Banks (Caisses d'épargne)?

I answer. Institutions of this kind are not only to be tolerated, but also praised, since they help widows, male servants, female servants, and the poor, while their modest money is in some way accepted in mutuum and revenue is repaid to them.

875. You will resolve: 1. They can be absolved, indeed they are to be absolved, who do not exceed the rate of civil law by reason of profit received from mutuum; since it is by no means established that they are guilty of injustice, and therefore they cannot be bound to make any restitution.

2. Therefore, although each one can defend the opposite opinion concerning profit proceeding from mutuum as speculatively more probable, nevertheless he cannot condemn the adverse opinion as contrary to Catholic doctrine, nor exact restitution, with absolution otherwise denied. Indeed he who urged a penitent to restitution would himself have to be compelled to repair the damage of the penitent; since, according to the commonly received doctrine, a confessor who rashly prescribes undue restitution is bound to repair the damage inflicted. Thus expressly and rightly Bouvier, De Contr., p. 2, c. 8, art. 4.

3. Nor are those penitents bound to restitution who accepted profit according to law with bad faith, that is, thinking that they could not receive such profit; because from the fact that they sinned by acting against conscience, it does not follow that they were guilty of injustice.

4. Penitents, from the clause added in most responses of the Sacred Congregation, must always be prepared to submit themselves to the judgment of the Holy See; but they are not necessarily to be questioned by the confessor concerning such a disposition: 1. because this is not required in the aforesaid responses; 2. because the confessor ought to presume that the penitent, as a good Catholic, is in such a disposition, unless the contrary is established. Thus Bouvier, ibid. Indeed, says Kenrick, the Holy See has already become accustomed to omit this condition, and he adds, t. 1, De Usura, n. 101: "Whenever someone is not held by consciousness of sin in this matter, nor is he in bad repute among others, nor is anyone known to complain of injustice done to himself, he does not seem to be disturbed, since he can be excused by good faith and by the common manner of acting and thinking, and otherwise scarcely any fruit is hoped for from correction; nor will he easily assent to the confessor reproving prevailing customs."

876. 5. Profit received from money lent even to a poor person who is not suffering grave necessity, and who does not rashly hope that with the help of that money he will become so rich that he can easily restore the principal with a moderate increase, is not to be condemned of injustice. For the precept of lending gratuitously then does not urge, and even then money retains utility and its own price.

6. If no profit ought to be received from money lent to a poor person for support, this happens not because money then loses its price, but because the lender by force of the precept of charity is bound to will that the money lent by him be applied to the sole support of the poor person.

7. Profit exceeding the rate of civil law is illicit and unjust, and consequently subject to restitution. Except, unless the reason of greater emerging damage or ceasing profit counsels otherwise, or also a notable advantage of the borrower follows from the mutuum [21]. Thus commonly the more recent theologians.

[21] This last reason will perhaps seem less firm to someone. For the fact that the borrower or buyer obtains a more or less notable advantage from money accepted, or any other thing, is not owed to the lender or seller. Otherwise even the buyer or borrower, from the notable advantage which the lender or seller is going to obtain from the price, will have a right of exacting something for himself, and of gaining.

877. 8. A fortiori double profit cannot be exacted because of another title besides the title of civil law; for example, if profit ceasing from mutuum is for you five, you cannot exact ten because of the title of law being added, because according to all, at least when ceasing profit or emerging damage does not exceed the legal rate, nothing can be accepted besides this, since this is evidently opposed to the end and intention of the law.

9. Likewise, one who accepts money in mutuum according to the rate of law cannot for that reason exact ten by relending the same money to another, because the title is lacking for accepting the five superfluous. Yet several permit bankers, who from their state frequently accept mutuum, to be able to relend something beyond the rate of law, for example, 1 per 100 by reason of labor, time, expenses, etc.; hence according to them they could accept 7 per 100, for they are considered as merchants, and as such can already accept 6 per 100. At least the custom of many places favors them. Likewise it does not seem contrary to civil or natural law of itself that someone accept money in mutuum for 3 or 4 and relend the same for 5 in 100.

10. Nothing at all can be exacted from the poor who seek mutuum from necessity, notwithstanding the title of civil law; and therefore, if any profit has been received, it must be restored [22], since civil law, which cannot destroy the obligation of natural right, is not considered to comprehend this case, and therefore neither to transfer the dominion of the profit to the borrower. See Cases, n. 890 and following.

[22] It must be restored from the office of charity, but not from a debt of justice. For in the case I ought to renounce profit from charity alone.

Of the Sacred Congregation of the Holy Office, approved by the Supreme Pontiff Pius VIII on August 31, 1830, concerning the following doubts.

878. 1. Whether a confessor can in conscience deny absolution to priests who contend that the law of the prince is a sufficient title for receiving something beyond the principal without a title either of ceasing profit or of emerging damage?

2. Whether he ought to?

The response to each: They are not to be disturbed until the Holy See shall have issued a definitive decision, to which they are prepared to submit themselves; and therefore nothing stands in the way of their absolution in the Sacrament of Penance.

We pass over several other decisions of this kind, whether of the Sacred Penitentiary or of the Holy Office, both because they are sufficiently known and because they report exactly the same doctrine [23].

[23] Yet it is useful to add here a certain petition, in which there is no question concerning the title of civil law. Thus, then, the petition of the Bishop of Rennes: The Bishop of Rennes in France explains to the Sacred Congregation of the Inquisition that there is not the same opinion among the confessors of his diocese concerning profit received from money given in mutuum to traders, so that they may grow rich.

The sense of the encyclical letter Vix pervenit is sharply disputed. From each side arguments are brought forward for defending the opinion which each one has embraced, either favoring or opposing such profit. From this arise complaints, dissensions, denial of the Sacraments to very many traders adhering to that manner of growing rich, and innumerable damages of souls.

In order to meet the damages of souls, some confessors think that they can hold a middle way between each opinion. If someone consults them concerning profit of this kind, they try to deter him from it. If the penitent perseveres in the plan of giving money in mutuum to traders and objects that the opinion favoring such mutuum has many patrons, and moreover has not been condemned by the Holy See, which has more than once been consulted concerning the matter, then those confessors require that the penitent promise that he will obey with filial obedience the judgment of the Supreme Pontiff, if it intervenes, whatever it may be; and when this promise has been obtained, they do not deny absolution, although they believe the opinion opposed to such mutuum to be more probable. If the penitent does not confess concerning profit from money thus given in mutuum, and seems to be in good faith, those confessors, even if they know from elsewhere that profit of this kind has been received by him or even is now being received, absolve him, without any interrogation made concerning the matter, when they fear that, once warned, the penitent may refuse to restore or to abstain from such profit.

Therefore the said Bishop of Rennes asks:

I. Whether he can approve the manner of acting of these latter confessors.

II. Whether he can exhort other more rigid confessors who approach him for the sake of counsel, to follow their manner of acting until the Holy See renders an express judgment concerning that question.

Wednesday, August 18, 1830.

Our Most Holy Lord, Pius VIII, Pope by divine providence, in the customary audience granted to the Reverend Father Assessor of the Holy Office, after hearing the relation of the above doubts together with the vote of the Most Eminent Lord Cardinals, General Inquisitors, responded:

To I. They are not to be disturbed.

To II. Provision has been made in the first.

The same thing is to be seen in the doubts which the Bishop of Verona proposes to the Sacred Penitentiary in the fourth place, namely in these words:

I. Whether the manner of acting of those confessors can be approved who, while they hold as more probable the opinion contrary to profit from money given in mutuum to traders, nevertheless absolve penitents receiving profit in that way so that they may grow rich, when namely these penitents, objecting that the opinion favoring profit has not been condemned by the Holy See, nevertheless promise to obey the judgment of the Supreme Pontiff if it should intervene; and similarly act when penitents receiving profit in good faith do not confess concerning it, although from elsewhere they know that they receive profit, as above, no interrogation having been made concerning the matter, when they fear that penitents, once admonished, may refuse to restore or to abstain from such profit.

II. Whether the bishop can exhort more rigid confessors who approach him for the sake of counsel to follow the manner of acting of the former confessors, until the Holy See renders an express judgment concerning that question.

It is answered:

To I. They are not to be disturbed.

To II. Provision has been made in the first.

Given at Rome, in the Sacred Penitentiary, on August 14, 1831.

Moreover, the petition of the Bishop of Viviers, insofar as it raises a doubt concerning the response made by the Congregation of the Holy Office to the question of the Bishop of Rennes, because in that question no trace appears of the title sought from the law of the prince, is as follows:

In the exposition of the Bishop of Rennes, no mention is made of the said title which certain theologians wish to be found in the law of the prince, but only of mutuum given to traders, and of the sense of the encyclical Vix pervenit concerning such mutuum made to traders.

Hence some say that the judgment of the Most Holy Pontiff Pius VIII is to be attended to in itself alone and separately from the responses given by the Most Eminent Cardinals, so that the sense of that judgment is that the opinion favoring mutuum made to traders has not been condemned by the Holy See, which has more than once been consulted concerning the matter; and therefore, if penitents promise that they will obey with filial obedience the judgment of the Supreme Pontiff if it should intervene, confessors who do not deny them absolution are not to be disturbed. Those who interpret the judgment of the Supreme Pontiff thus turn their ears away from the encyclical letters of Benedict XIV, as well as from books I and II of On the Diocesan Synod of the same Pontiff, to which several responses of the Holy See refer, from the instruction given to Father Carlo Felice on April 17, 1749, and from diverse responses given by the Apostolic See.

Others, not understanding by what way the aforesaid judgment of Pius VIII can be reconciled with the said decisions of Benedict XIV and of other Supreme Pontiffs concerning mutuum made to traders, if it is thus considered separately, think that the said judgment is not to be understood thus, but conjointly with the responses given by the Most Eminent Cardinals, to which the Supreme Pontiff seems to refer... and that the judgment is to be referred to the doubts concerning the title of the law of the prince, which title was not condemned by the Holy See....

Therefore it is asked:

I. Whether the aforesaid judgment of the Supreme Pontiff Pius VIII is to be understood as the words themselves sound, and separately from the title of the law of the prince concerning which the Most Eminent Cardinals speak in these responses, so that the question is only of mutuum made to traders.

II. Whether the title from the law of the prince, concerning which the Most Eminent Cardinals speak, is to be understood in such a way that it suffices that the law of the prince declare it lawful for each one to agree concerning profit from mutuum alone, as is done in the Civil Code of the French, without saying that it grants the right of receiving such profit.

Wednesday, August 31, 1831.

In the General Congregation of the Holy Office, after the above petitions of the Reverend Father Lord Bishop of Viviers had been proposed, the same Most Eminent and Most Reverend Lords, the Cardinals, the votes of the Lord Consultors having first been had, said:

Provision has been made in the decrees of Wednesday, August 18, 1830, and let the decrees be given.

On the same day and weekday, Our Most Holy Lord Gregory XVI, Pope by divine providence, in the audience granted to the Reverend Father Assessor of the Holy Office, approved the resolution taken by the Most Eminent Lords.

Moreover the decrees of August 18, 1830, are contained in the response related above, which the same Sacred Congregation, with Pope Pius VIII approving, had rendered to the Bishop of Rennes, and which, since it makes no mention of the title of the law of the prince, plainly appears to have been the cause of doubting.

Appendix. On Montes Pietatis

879. A Mons Pietatis is called a heap of money or of other lendable things collected for this purpose, that the poor, after giving a pledge, may be able to receive in mutuum from it the things necessary to them.

I. Its conditions are these: 1. whatever is given in mutuum from it must be given for a certain time, for example, for a year, but nothing for an indeterminate time; 2. it is lawful to give in mutuum from a Mons Pietatis only to the poor, unless it is so abundant that without damage to the poor others also can be satisfied; 3. the borrower must give something above the principal for the expenses necessary for the wage of the ministers and the administration of the house; 4. he must also hand over a pledge equivalent to the thing borrowed, which, unless he returns what he accepted at the appointed time, must be sold. Thus commonly. St. Lig., n. 756, at the end.

II. Montes instituted under these conditions are lawful, and in no way usurious, independently of any other title whatsoever to profit. The reason is that, even independently of any other title whatsoever, they savor of no stain of usury; since satisfaction must be made for the expenses of the Mons and for the ministers, whose labor and care is truly appreciable by price. St. Lig., ibid.

880. QUESTION. Can Montes Pietatis be instituted by private persons?

I answer affirmatively, more probably with Lessius. The reason is that it matters little to the notion of usury whether the institution is public or private, provided the private person receives no more than what is necessary for preserving himself unharmed.

Section II. On Onerous Contracts

Namely: 1. on sale and purchase; 2. on partnership and the triple contract; 3. on lease and hiring; 4. on exchange; 5. on census; 6. on suretyship, pledge, and hypothec; 7. on insurance, wagering, drawing lots or lottery, and gaming.

Chapter I. On Sale and Purchase

It will be said: 1. concerning the nature of sale and purchase; 2. concerning the just price; 3. concerning the principal species of sales and purchases.

Article I. On the Nature of Sale and Purchase

881. The contract of sale and purchase is defined: the exchange of price with merchandise, or conversely; or: an onerous contract of giving a determinate and just price for merchandise, or conversely. Thus each law, Roman and Gallican. Principles. I. From Roman Law. Sale is perfected by the consent alone of the parties, unless the parties agree concerning the making of

a writing. But the dominion of the thing does not pass to the buyer unless delivery has been made. Indeed, dominion of the thing, even of a thing handed over to the buyer, is not transferred until the price is paid by the buyer, or offered, or at least either suretyship or credit concerning it is furnished. Hence before that, there belongs to the buyer only a right to the thing, but not in the thing. St. Lig., nn. 795 and 796.

II. From Gallican Law. 1. Any sale is perfected by the consent alone of the parties, without any legal formality. Therefore three things are required and suffice, namely the thing, the price, and consent. Consequently a writing is required only for proof. Hence dominion is transferred immediately and before the delivery of the thing. Nevertheless, an exception is made when the matter concerns things which are sold according to measure, or are customarily tasted; for then the sale is not perfect unless the thing has been measured or tasted. 2. When the sale exceeds the sum of 150 francs, so that it can be proved in the external forum, it requires an authentic or private writing (art. 1341).

882. Questions. QUESTION 1. Is the seller bound to disclose the defects of the thing?

I answer. A distinction must be made; for defects are: 1. substantial, or only accidental; 2. hidden, or manifest; 3. besides, either the seller is questioned concerning them, or not. Hence:

I say 1. The seller in every case is bound to disclose all substantial defects of the thing, both in itself and relative to the known end of the buyer, or all those things which make the thing another thing, or render it harmful or notably useless; otherwise he is held concerning the price. Thus from every law.

I say 2. The seller, when questioned, is bound to disclose all hidden defects, even if they do not render the thing harmful or useless; for otherwise he would commit fraud. Therefore if the fraud was the true cause of the purchase, the contract is rescindable. But if the fraud was only incidental, so that the buyer, the defect having been known, still would have bought, but not at so much, the seller must restore only as much as the buyer would have bought it for less; because otherwise almost no sale could be made. But if the seller is not questioned, and the hidden defect does not render the thing useless, he must diminish the price in proportion to the defect. The reason is that otherwise the thing would be sold for more than it is worth.

I say 3. The seller is not bound of himself to show accidental defects of the thing which are of themselves manifest, provided he diminishes the price according to the proportion of the defect. The reason is that then no injury is done to the buyer, neither by reason of the price, which is diminished, nor by reason of the defect, which, if the buyer has not seen it, he ought to impute to himself. Except, however, unless the buyer is very ignorant, because with respect to him the defect is considered hidden. Except also if the seller is specially questioned concerning such a defect. St. Lig., n. 823.

883. QUESTION 2. Is the seller held for all damages following from a defect of the thing sold?

I answer. He is not held except for foreseen damages, because he could not undertake an obligation concerning those things which he did not foresee even confusedly, as is clear from what has been said in the Treatise on Justice, n. 658.

QUESTION 3. To what is the seller bound with respect to the delivery of the thing?

I answer. 1. He must hand over the thing and its accessories to the buyer in the place and manner concerning which agreement was made in the contract; 2. he must hand over the thing at the appointed time at the appointed time; otherwise the buyer can seek rescission of the contract or indemnity [1]; 3. he is bound to hand over the thing free from another's possession and from other unusual burdens.

[1] The Author in this place sets forth the dispositions of Gallican law. For Roman law merely condemns to interest, but not to rescission of the contract.

884. ○ Q. 4. To what is the seller bound, if the thing perishes before or after delivery?

Resp. 1. He is bound to nothing if the thing perishes before delivery by a fortuitous event. The reason is, from Gallican law, because a thing perishes for its owner, that is, for the buyer. Thus also, unless it shall have been otherwise agreed, it must be held from Roman law, although the seller keeps the ownership of the thing until it shall have been delivered [2]. - St. Lig. n. 828.

[2] The risk of the thing belongs to the buyer from Roman law, both because every advantage of the thing also follows him, and because immediately from the perfected sale the seller begins to be debtor of the species (A. would have said, of the thing in its individuality), whom it pleased the law to free by the destruction of the thing. See Voet (Book 18, Title 6, n. 1).

Resp. 2. If the thing perishes before delivery through the fault of the seller, he is bound concerning the price and the expenses of the contract [3], because he ought to have guarded the thing as his own.

[3] The seller is bound not only to those things, but also to that which is of interest. See Voet (Book 18, Title 6, n. 2). Note this same thing with respect to the following Resp. 3.

Resp. 3. If the thing perishes after delivery from an intrinsic defect which existed at the time of delivery, he is likewise bound to restore to the buyer the price received and to pay the expenses of the contract, if there are any [4]. The reason is that he sold a useless thing, or a thing of no value; therefore there was in the buyer an error concerning the substance of the contract; therefore the contract is null by defect of consent and of the matter itself, which was appreciable by no price.

[4] Here also must be recalled what we noted in the note to the preceding n. 883. Compare Voet (Book 19, Title 1, n. 21).

885. ○ Q. 5. What are the special obligations of the buyer, or to what is he bound by reason of the price, its interest, or expenses?

Resp. 1. He is bound to pay the price in the place, time, and manner determined in the contract; otherwise the seller can seek rescission of the contract, or, if he prefers, compel payment of the price.

Resp. 2. He is bound to pay interest for the unpaid price from the day on which he possesses the thing, if the thing is fruit-bearing, although accidentally it may have produced no fruits from the time of sale, unless the seller has given the buyer a delay for paying; because it is not equitable that the buyer have both the thing and the price at the same time. But if the thing is not fruit-bearing, he is not bound to pay interest, unless he has been in culpable delay and it has not been otherwise agreed.

Resp. 3. He is bound to pay the expenses made for carrying away the thing sold, for writings [5] or authentic acts; likewise for the expenses necessary for the preservation of the thing from the day of sale, unless it shall have been otherwise agreed.

[5] What A. says concerning expenses for writings is proper to Gallican law, but not to Roman law, which provides nothing of this kind.

886. ○ Q. 6. Whether the purchase of a movable thing sold to another, but not yet delivered to him, is valid [6]?

[6] The question here usually is not really about the validity of each sale, but which buyer is to be preferred. See Lugo (Disp. 26, Sect. XI), who most rightly set up the question in the title itself: To whom is the thing owed, which was sold, the same thing, to two buyers at an interval?

Resp. 1. Affirmatively, if the thing is delivered to the second buyer, provided this one was in good faith. Thus from every law. But then the seller is bound concerning damages, if any have been inflicted on the former owner. - St. Lig. n. 827.

Resp. 2. Negatively, if the buyer was in bad faith, or if the thing has not yet been delivered to the second buyer. The reason is clear from the very terms of the law, from which the second buyer in good faith cannot prevail over the first except by reason of possession. - St. Lig. ibid.; Civil Code 1141.

887. ○ Q. 7. What force do earnest monies add to a sale?

Resp. 1. If they are attached only to the promise of sale, they do not confirm the contract, but each one of the contracting parties can withdraw. But in this case, if the one who handed over the earnest monies to the other withdraws, he simply loses them; on the contrary, if the one who received them withdraws, he must restore double, that is, the earnest monies received and, besides, a value equal to them.

Resp. 2. If they are attached to the sale itself, they do not make it conditional, but are an argument that the sale has been contracted; for they are computed as part of the price, or are given as security for payment; whence none of the contracting parties can withdraw when the other is unwilling. But in doubt whether they were added to the promise of a contract or to the contract itself, the lesser must be stood by, or they are judged to have been added only to the promise of sale. From Gallican law a promise of sale is not distinguished from the sale itself.

Q. 8. Whether, and how, incorporeal rights, certain or uncertain, or litigious, can be sold?

Resp. to the 1st. Incorporeal rights, such as notes, credits, usufructs, a right to an opened inheritance, if they are certain, can be sold or transmitted to another by any other title, just like other rights. Their delivery, moreover, is made by remitting the notes or other authentic writings.

Resp. to the 2nd. Litigious rights, or rights concerning which lawsuits are moved, can likewise be sold according to the proportion of the probability of a favorable outcome. - Thus all.

888. ○ Q. 9. When is the seller bound concerning eviction of the thing?

Resp. 1. He is bound concerning eviction as often as the buyer is juridically disturbed from possession of the thing bought [7]. Except unless it shall have been otherwise agreed in the contract. The reason is that the seller then cannot transfer ownership of the thing (1626).

[7] Understand this of a buyer disturbed from possession of the thing after the judicial taking away of the thing from a preceding right, either of ownership or of pledge, on the part of the claimant.

Resp. 2. He is also bound to refund the price to the buyer when it is discovered that the thing sold certainly belongs to a third party here and now claiming it; for the reason is the same: the seller could

not transfer ownership of the thing which he himself did not have. But he is not bound to this in conscience before the sentence of a judge, unless it is wholly certain to him that the thing really belongs to that third party; nor is he bound easily to give faith to others asserting that it is so, since presumption favors him, and no sentence of a judge has otherwise intervened. - Recall what was said concerning eviction in the Treatise on Justice, n. 638.

Article II. On Just Price

889. ○ It is twofold: 1. legal, which is determined by law; 2. natural or common, which corresponds to the value of the thing according to the common estimation of men.

But the natural price is 1. the highest, above which the thing is not customarily estimated; 2. the lowest, below which the thing is generally not estimated; 3. the middle, which is placed between the two.

890. Principles. - I. The legal price, or the price constituted by civil authority, must be held as adequate to the value of the thing, and therefore must be observed under the burden of restitution. The reason is that it belongs to the civil authority to establish whatever pertains to public commerce, since it can make laws for the common good. - Thus all.

Yet sometimes it is lawful to exceed the legal price, namely 1. if it is not observed by the greater part of men, while the Prince is silent; 2. if, circumstances being changed, the rate becomes unjust; 3. if the goods are notably more precious than usual, or worse.

II. When the legal price is lacking, only that is to be held as just which is determined as such by common estimation, if there is question of merchandise which has valuation among the multitude; because the adequate price of things of this kind is deduced from their utility for common uses. Moreover, the valuation of such utility cannot be had better than by common estimation. - Thus all.

But if the things do not have a common estimation, as are gems, precious little pictures, etc., more probably they are to be estimated according to the judgment of experts in that matter, with the circumstances attended to, and with regard had to the novelty, antiquity, rarity, etc., of the thing. The reason is that in matters of this kind they are reputed suitable judges, just as the common people are in common matters. Yet the opposite opinion appears as probable, because in that case the just price seems to be that concerning which the contracting parties agree. Thus with respect to each opinion St. Lig. n. 807. - In practice those are not to be disturbed who in good faith and freely, according to their own judgment, agree in such things. - Thus Salmant. - Gousset, n. 842. A fortiori that price is to be reputed just concerning which each party agrees, if the price is wholly unknown, because each is then exposed to danger. - St. Lig. n. 802 at the end.

891. Questions. - Q. 1. Whether the seller can sell a thing more dearly on account of the special affection which he experiences toward it, or the advantage which he derives from it?

Resp. to the 1st. Affirmatively. The reason is that the affection of an owner toward his own thing is truly appreciable by a price, since the deprivation of the thing is greater for him. - Thus commonly. - St. Lig. n. 807.

Resp. to the 2nd. Affirmatively, even a fortiori; since the deprivation of a special advantage renders the thing much more precious to the seller, and it is equitable that the price increase by reason of the greater loss which he suffers. - St. Thomas, II-II, q. 77, art. 1 and following, and others very commonly.

892. ○ Q. 2. Whether the seller can sell a thing more dearly on account of the affection or special utility of the buyer?

Resp. Theologians commonly deny it, because the greater utility or affection is not the seller's, and therefore cannot be sold by him; otherwise he would sell what is not his. - Thus St. Thomas, q. 77, art. 1: If someone is helped much by another's thing which he has received, but the one who sold is not harmed by lacking that thing, he ought not to over-sell it; because the utility which accrues to the other is not from the seller, but from the condition of the buyer; and no one ought to sell what is not his. - St. Lig. n. 806 and Carriere, n. 692, are in agreement.

Yet some affirm it, on the ground that the seller procures that advantage for the buyer; but this reason seems altogether weak, as is clearly plain from the doctrine of St. Thomas.

893. ○ Q. 3. Whether it is lawful to buy more cheaply in favor of a seller seeking a buyer?

Resp. Affirmatively. The reason is that unsolicited things become cheap, and the price of a thing decreases when the thing is of little use to the buyer and he buys in favor of the seller. - Thus commonly with St. Lig. n. 802.

Q. 4. Whether it is also lawful to buy more cheaply where goods are sold because of poverty?

Resp. Affirmatively, probably. The reason is that an unsolicited thing decreases in price according to common estimation. But the need of the seller does not bring it about that the common estimation is changed. Yet others probably deny it.

894. ○ Q. 5. Whether it is lawful to sell more dearly because of delay of payment of the price, or to buy more cheaply because of anticipated payment?

Resp. Affirmatively, at least probably, provided the legal rate for a mutuum, or the reason of some title, is not exceeded. The reason is clear from what was said above concerning usury, n. 863 and following [1].

[1] Namely, the lack of the price during the time in which payment is deferred is a burden appreciable by price. But the words of mutuum or of the thing or money lent are employed abusively according to those things which were said at length above. For the contract from which profit is sought from these things is to be judged to be of a different nature.

Q. 6. Whether notes and credits also can be bought more cheaply because of anticipated payment?

Resp. 1. Affirmatively altogether, if they are uncertain or of difficult payment, because then they become notably cheap.

Resp. 2. Affirmatively probably, even if they are certain and of easy payment. The reason is 1. because money is not bought, but an action to it, and therefore that price is judged just which is commonly paid for such notes. - Thus St. Lig. n. 829, etc.; 2. because they are equivalent to money lent;

therefore, from the same reason as in a mutuum, it is lawful to receive a moderate profit according to the legal rate. - Thus now the common practice.

895. ○ Q. 7. Whether someone can buy for much less credits of payment very difficult in themselves, if because of a circumstance special to himself they become easy of payment?

Resp. Affirmatively, more probably. The reason is that the facility of obtaining payment does not depend on the thing which is sold, but on the buyer himself; moreover the value of any thing is determined by common estimation, not by the particular circumstance of the buyer. - St. Lig. n. 829.

Q. 8. Whether you can sell at the current price a thing which you know will soon be worth less?

Resp. Affirmatively, more probably and more truly. The reason is that the present price is just and has not yet been changed, provided, however, that this knowledge is private; for if it were common, the price would already be changed. Yet sometimes you could sin against charity. - St. Thomas. - St. Lig. n. 824. - Hom. apost. n. 188.

896. ○ Q. 9. Whether you can sell at the current price a thing mixed with another cheaper thing?

Resp. A distinction must be made, namely 1. if the mixture is harmful or renders the thing notably worse or less useful, you sin against justice, as is clear; 2. if your thing is of extraordinary goodness, you can probably sell it, mixed with the cheaper thing, at the common price; 3. if by skill you so mix the cheaper matter with the better that it is better tempered, you can sell it at the customary price. But in practice this should not easily be permitted because of the danger of hallucination. - St. Lig. n. 820-823.

897. ○ Q. 10. Whether merchants are bound to restitution who by fraud or a lie induce buyers to buy their goods at a higher price than they would have bought them, although they do not exceed the highest price?

Resp. 1. As to fraud, affirmatively. The reason is that fraud is an efficacious and unjust cause of the damage which the buyer suffers; moreover, everyone has a strict right not to be induced by fraud or deceit to suffer some damage. Therefore...

Resp. 2. As to a lie, per se the same would have to be said, since it also is of itself an unjust cause of damage. Nevertheless, ordinarily lies or even perjuries by which merchants affirm that goods cost them so much, or that such a price was offered to them, are not to be held as frauds really causing damage; the reason is that these things are so frequent among them that almost no one gives them faith. Yet an exception must be made if, at any time, because of special trust in the seller, the lie must be judged the cause of the contract. - St. Lig. n. 805. - Lacroix, n. 956. - Reuter, n. 223.

898. ○ Q. 11. Whether or how merchants sin who, when asked concerning the price of goods, notably exaggerate it?

Resp. 1. If they truly intend to sell at this price, they sin against justice by unjustly coveting another's property; and they are bound to restitution if in fact that price is paid to them.

Resp. 2. But if they intend only to give the buyer a place for offering his own price, so that thus they may come to the just price, they are excused, because it is known and customary for merchants to speak thus, so that they may lead buyers to the just price.

Q. 12. Whether they sin against justice who, before delivery, diminish or adulterate a thing sold at the lowest price?

Resp. Affirmatively, because they act against the pact entered into with the buyer. For although it is lawful to sell at the highest price, nevertheless it is not lawful for a merchant who sells at the lowest or middle price secretly to procure for himself the middle or highest price by diminishing the quality of the merchandise, or by subtracting from the measure or from the weight; otherwise agreements would be altogether useless.

899. ◦ Q. 13. Whether European merchants sin against justice who sell among the Indians, at the maximum price, knives, mirrors, and other things of this kind, which among us are held to be of a cheaper price?

Resp. Negatively, because although these things are cheaper in our regions, nevertheless they are commonly esteemed highly by Indians or Chinese, etc.; moreover the common price is determined from the common estimation of the men of the region. Therefore... - Carriere, n. 699.

900. ◦ Q. 14. Whether they sin against justice who buy precious things at a cheap price when they are exposed for sale among dealers in old things?

Resp. Negatively, because those things are judged to have lost their old price and to receive another by custom, or by the agreement of the contracting parties. Whence things of this kind receive the greatest latitude by reason of price. - St. Lig. n. 807. - Thus sometimes books are bought for a few coins which could have been sold for five or ten francs. The same must be said concerning the purchase of old furniture, which are called in French de rencontre, because these are commonly held to be of lesser value. - Carriere, n. 695, 699.

901. Resolves. - 1. Merchants who sell in small quantities can sometimes sell more dearly than those who sell in great quantity; because they must spend greater labors and expenses, and greater time, in preserving them and distributing them to buyers. Thus innkeepers, stable-keepers, etc., who sell oats, hay, straw, and other things more dearly, are excused from injustice. - St. Lig. n. 809.

2. It can also be sold more dearly if the price must be handed over by the buyer at the time when the thing will be worth more. Thus likewise it can be bought more cheaply if the thing must be delivered at the time when it will be worth less.

3. If the seller and buyer are ignorant of the price of the thing and contract for a certain price, the contract is valid, provided each proceeds according to equity and good faith; because if each is ignorant of the just price, each exposes himself to equal danger of damage and voluntarily yields concerning his own right.

4. A thing cannot be sold beyond the just price for this reason, that the seller, from his own ignorance or imprudence or even from a fortuitous event, bought it at a higher price, or underwent greater expenses than others commonly pay or undergo. The reason is that the prices of things do not increase or decrease from this, that it happens to one or another, but from that which commonly happens. Nor from the fact that some private merchant suffered theft or shipwreck is the price of things customarily increased in the estimation of the people; just as the price of grain is not customarily increased because one or another farmer lost the fruits of his fields by fatal hail. - But it would have to be said otherwise if many merchants had lost their goods in shipwreck, because the goods, having been made rarer, would by that very fact increase in price. - Elbel, n. 587.

902. ○ 5. The practice of merchants or craftsmen is not to be approved who, in order to attract more persons to their shop, are accustomed to give gifts to maidservants, servants, sons of families, etc.; but afterwards they try tacitly to compensate expenses of this kind by increasing the price of things beyond justice. For thus they secretly compel the masters themselves unjustly to refund those donations. - Elbel, n. 583. - But it is otherwise if they preserve the just price with them.

6. Likewise the practice of those merchants is to be reproved who expose their goods for sale at the very cheapest price, so that they may attract buyers to themselves; but afterwards they corrupt the weight or measure, etc. The reason is that thus buyers are deceived unjustly. - Elbel, n. 523. - Lugo, D. 26, sect. 8, etc.

7. A fortiori the practice of those is to be reproved who refuse to restore to the owner appearing things belonging to another which were bought in good faith, unless he first refunds the price spent for them. - Elbel, n. 691. Except, however, with respect to France, unless the thing was bought in a public market or from a merchant selling such things (Art. 2280). - See above n. 644.

8. Generally, in making restitution because of injury to the just price, these things are to be held: 1. if there is question of the seller, the unjust excess must be computed from the highest price, because he could have sold at this price; whence the buyer was not injured except in that which surpasses the highest price; 2. but if there is question of the buyer, the defect of the price must be computed from the lowest price, because he could have bought at such a price; whence the seller was injured only in that which is below this price. I said generally; because if profit was obtained by fraud, it would have to be restored, even if the highest price was not exceeded, or the lowest was reached, according to what was said above n. 897. - See Cases, from n. 900 to n. 944.

Article III. On the Principal Species of Sales

Namely 1. concerning retrovendition; 2. concerning sale under the spear, or by bidding; 3. concerning monopoly; 4. concerning sale through brokers.

§ 1. On Retrovendition and Mohatra

903. ○ Retrovendition is a contract [1] by which the seller reserves to himself the right of redeeming his own thing, under the condition that he repair expenses, improvement, or similar things.

[1] The word retrovendition in reality of itself does not signify a contract by which something is sold or bought with a pact of reselling or redeeming, but merely signifies the act of reselling, both if this is done from a preceding pact, and if it is done with no preceding pact.

Mohatra is a species of retrovendition, or a contract by which someone sells a thing at a higher price on credit, with a pact that the buyer resell it to him at a lower price, with money counted out. - See below Q. 3.

I say I. The contract of retrovendition is wholly lawful. This is clear from Sacred Scripture, which testifies that such a pact was imposed on the Jews. Then it has nothing which contradicts natural right: for provided that a true purchase is made, and no cloaked usury intervenes, the seller is free to dispose of his own thing as he wills; nor does he inflict any injury on the buyer, since the latter freely agrees concerning retrovendition and does not otherwise suffer damage in this. - St. Lig. n. 812 and all others.

I say II. The conditions required for this are 1. that the price be diminished according to the estimation of the burden which is imposed on the buyer; 2. that there not be a pact concerning retrovendition to be made at a higher or lower price: a pact is lawful that it be resold at the same price, although the thing increases in price; 3. that it not be exacted by pact that the risk of the thing sold fall to the damage of the seller, since of itself that pertains to the buyer; unless, however, the price is increased according to the estimation of the risk; 4. that the thing be resold as it is handed over, vacant or with fruits; add from Gallican law, that it not be done beyond five years. - Civil Code 1660.

904. Questions. - Q. 1. By how much must the price decrease in a contract of retrovendition?

Resp. A precise rule cannot be determined, but the decision for the most part depends on various circumstances; hence authors disagree on this: for some say that the price decreases up to the fourth part, others up to the third, others better to the judgment of prudent men. - See St. Lig. n. 812.

905. ○ Q. 2. Whether a pact of redeeming the thing at the judgment of the buyer is lawful?

Resp. Affirmatively, more probably, provided there is a true intention of buying and selling, and the buyer pays a greater price according to the estimation of that burden, and the seller is not obliged to redeem at a price greater than he received. - St. Lig. ibid. - Lugo, D. 26, n. 200.

906. ○ Q. 3. What must be thought concerning mohatra?

Resp. It is a contract usurious per se, and therefore illicit and unjust. Hence it was proscribed by Innocent XI in the condemnation of prop. 40, which lies thus: The contract mohatra is lawful, even with respect to the same person, and with a contract of retrovendition previously entered into with the intention of gain. But the reason for the condemnation is that in that contract cloaked usury lies hidden; but if the thing is resold without any previous pact, even at the lowest price, to the same seller, it is not illicit per se.

Yet that contract is not to be condemned if the profit received from it does not exceed the legal rate for a mutuum, because then it would fall back into a legitimate mutuum [2]. - See Cases, n. 945.

[2] Elsewhere we have already warned that the word mutuum is used here in an abusive or broader sense; for otherwise, although perhaps it would be employed among the ancient Roman jurists, certainly in the ecclesiastical sense, which thereafter everywhere prevailed as the only proper one, it signifies a gratuitous contract.

A certain recent mercantile operation occurs, which is referred to retrovendition; it is called report (report). Such a manner of trading consists especially in rights, or shares (actions), to money placed with mercantile companies, being sold and bought again. That kind of commerce has not yet been weighed by theologians. It is also practiced here and there by upright men, nor is it apprehended by them as usurious, because it is true trade, to which laws are not opposed, indeed to which public authority gives patronage. Therefore this species of retrovendition does not seem to be condemned per se. Yet it would easily savor of the stain of usury and smell of mohatra, unless it were confined within just limits. - See Cases, n. 917.

§ II. On Sale Under the Spear, or by Bidding

907. ○ Sale under the spear is that which is made through a herald, and in which the thing is assigned to the last bid.

It is lawful, whether it is done with the owner consenting or unwilling, or by public authority, whether it is bought below the lowest price or sold above the highest; because the public power approves the just price publicly constituted from the concurrence of buyers. Hence if buyers concur, the thing becomes more estimable; if they do not concur, it is held cheaper. - St. Lig. n. 808. (Civil Code art. 1686.)

908. Questions. - Q. 1. Whether the seller can withdraw his thing, once the bidding has begun, if a lower price is offered?

Resp. Negatively, per se. The reason is that buyers publicly called to the auction acquire a certain right to the thing for sale, insofar as a tacit stipulation is made that it yield to the one offering more. Nevertheless, the rigor of this doctrine seems to be tempered where perhaps a contrary custom is in force, by force of which the contracting parties consent in this. For it seems hard to condemn for injustice a universal practice which the learned and even the pious hold without any scruple. - Thus Billuart, etc.

Q. 2. Whether the seller can send fictitious bidders, so that the price of the thing may increase?

Resp. It seems that it must be denied. The reason is that this appears too fraudulent to be excused, since it tends to deceiving sincere buyers and therefore inflicts injury on them, while they are the cause that the price increases from fraud, and not from the natural concurrence of things, namely from the free concurrence of buyers [1]. - St. Lig. n. 808. - Hom. apost. n. 175.

[1] If the seller does not wish to sell his own thing at a lower price, let him expressly set beforehand the price which he wants; otherwise let him keep his own thing for himself and not commit it to an uncertain lot. This indeed can also be noted with respect to the preceding question.

909. ○ Q. 3. Whether he whose goods are sold in favor of creditors can send friends to buy them in his own name?

Resp. 1. Affirmatively, at least with attention to common usage, if the bidding is voluntary, because this seems to follow from the fact that the seller can withdraw his own thing.

Resp. 2. Affirmatively a fortiori, if the bidding is compelled, or if it is done by public authority; for he whose goods are sold ought not to be of worse condition. Otherwise, he himself is not properly the one selling, since the sale is made while he is unwilling. Therefore.

910. ○ Q. 4. Whether the buyer can make a pact with others that they not bid, or not offer more?

Resp. Negatively, at least in the case of a compelled subhastation. The reason is that the seller has a right that the buyers be perfectly free, and that the increase of the price not be impeded. - St. Lig. n. 808. [2].

[2] But indeed, if it is lawful to ask friends not to bid or not to offer more, as is said below (in the following number), it scarcely appears why the same friends cannot lawfully agree among themselves concerning that matter. For these do not impede others from bidding; if they are not present, this surely happens per accidens, just as it also happens per accidens that some one person, with no one at the same time concurring and contending, acquires a thing at a cheap price. See Diana, Tom. 6, Tr. 3, Res. 72-73.

Yet many except the case if the buyers are joined in society, or as if joined, as brothers, friends, etc., because they make as it were one moral person, and it cannot be required that they bid against themselves. Others also probably except the case if a usage is in force that the seller withdraw his own thing when a lower price is offered to him; because if he himself can impede the price from being too small, equity also demands that he not complain that the buyers agree so that the price may not be too greatly increased. - Bouvier, etc.

911. ○ Q. 5. Whether the buyer can ask others not to bid?

Resp. Affirmatively, because in this the right of the seller is not violated, since the liberty of bidding is not taken away, and the buyer uses his own diligence in order to consult for himself. Nevertheless, the requests ought not to be importunate. - See St. Lig. ibid. - See Cases, n. 951 and following.

§ III. On Monopoly

912. ○ Monopoly is the power of selling existing in the hands of one or of a few only; or it is a manner of acting by which one or several bring it about that they alone sell or buy something. One kind is legal, which is granted by public authority from a reasonable cause; another private, which is exercised by the work of one or of several merchants.

I say I. A legal monopoly is lawful, provided it is made with a just price. The reason is that, on account of a just cause of the public good, the Prince can grant it as a privilege, or for exacting tribute from merchants.

I say II. A private monopoly is illicit in the following cases: 1. if a merchant impedes by fraud or a lie that other goods be brought in, so that he himself may sell his goods more dearly with common

detriment; 2. if one or a few buy all the goods, so that afterwards they may sell them more dearly; 3. if workmen or craftsmen agree that they will not teach their art except for an unjust price, or that no one will complete a work begun by others. - St. Lig. n. 815.

913. Questions. - Q. 1. Whether merchants sin against justice and charity who conspire not to sell their goods except at the highest, although just, price?

Resp. 1. As to justice, there is a twofold probable opinion.

I. OPINION affirms it, because merchants of this kind by an unjust means compel others to buy at the highest price. - Laymann, etc.

II. OPINION, the more probable, denies it, because if others are compelled to buy at the highest price, they are not compelled by the sellers, but by their own necessity, which cannot be called true coercion on the part of the sellers. - St. Lig. n. 817. - Lugo, etc. [1].

[1] Cardinal De Lugo nevertheless notes two things (Disp. 26, nn. 172 and 173). The first is that these things hold unless, however, someone of those merchants is impeded by others through force, deceit, or fear from selling the goods at a cheaper price. For injury is done to buyers when other sellers are unjustly impeded from selling at a cheaper price.

The other regards rightly finding this just measure of the highest price. For, to use the words of De Lugo, concerning this there seems to be a difficulty: how that highest just price must be understood, in which merchants conspire without injustice; namely, whether it is the same highest just price which would exist if the monopoly were not made, or rather that which, with that difficulty and conspiracy of sellers supposed, would be estimated as just. For it seems that that conspiracy cannot be made without the just price by that very fact being varied, since the justice of the price is taken from the facility and abundance, or difficulty and rarity, of sellers. Nevertheless, the answer is that, without doubt, it is understood in the first sense, concerning the highest just price at which, with that monopoly set aside, those goods would be sold, and thus the aforesaid Doctors suppose, namely those who stand for this negative opinion; for the just price ought not to be taken from the state introduced by the monopoly itself, but from the state which, with it set aside, the goods would have; the reason for which we will give immediately.

Resp. 2. As to charity, affirmatively, because although you are not obliged by charity to sell below the highest price, nevertheless you seem to be obliged not to dissuade others from selling at a lower price. Thus, although you are not bound by charity to give alms to such a poor man, nevertheless you are prohibited from dissuading others, if there are any who wish to give it: therefore by parity... - St. Lig. ibid.

914. ° Q. 2. Whether merchants sin against justice or against charity who, at the time of harvest or vintage, buy all the wheat or wine of the region at the cheap price then current, so that afterwards they may sell more dearly?

Resp. 1. Negatively, more probably, as it seems, as to justice, provided they do not sell above the highest price which would be current with the monopoly set aside. The reason is that they violate the right of no one. - Thus Lugo. - St. Lig. n. 817.

Resp. 2. Negatively also, probably, as to charity, provided they do not induce others to sell more dearly, nor themselves sell above the highest price which, with the monopoly cut away, would have place, because they use their own right; for no one is bound to neglect his own advantage in order to avoid another's damage, when he is not obliged to avert it. - Lugo. - Lessius, etc., against others.

Q. 3. Whether, once a monopoly has been made with an unjust price by some merchants, it is lawful for others to sell goods at the same price?

Resp. Negatively, because a price increased by injustice always remains unjust, and should not be called common estimation, but fraud and deception. - Thus commonly with St. Lig. n. 817. - See Cases, n. 958 and following.

§ IV. On Sale Through Brokers

Sale through brokers is that which is not made immediately by him to whom the things belong, but through others by commission, and these are called brokers. Brokers, moreover, can be either only friends, or hired for this by a special wage, or hired for diverse works at an annual price.

915. Questions. - Q. 1. Whether a broker who sells above, or buys below, the price designated to him can retain for himself the excess of the price?

Resp. Negatively, generally speaking. The reason is that he has no title for retaining anything. For 1. not by reason of the thing, because it is not his, but the owner's; 2. nor by reason of labor and skill, at least as owed under the strict title of justice, because if he is hired by a stipend, he has a right to nothing else; but if he furnishes his skill gratuitously, he has already renounced the wage [1]. - St. Lig. n. 825 and others commonly.

[1] Understand that through this the wage has been abdicated, at least the wage which is owed by the strict title of justice.

Except 1. if by extraordinary and undue labor, or by wholly special skill or diligence, he has made the thing better; 2. if the owner has expressly or equivalently declared that he exacts nothing beyond the determined price: for then the excess can be retained; 3. if the owner has known the broker's manner of acting and has ratified it. - Thus commonly the Theologians.

916. ○ Q. 2. Whether a broker can buy for himself a thing to be sold at the price determined for him, and afterwards sell the same thing as his own at a higher price?

Resp. Affirmatively, with two conditions posited, namely 1. that, moral diligence having been applied, he does not find a buyer who offers more; for otherwise he would act against his office and the certainly known will of the mandator; 2. that he buy the thing for himself not fictitiously, but truly, so that he undergo its risk; and if by chance he does not sell it for so much, nevertheless he pay back the determined price; for otherwise equity is not preserved. - Thus commonly.

Q. 3. Whether a broker can retain for himself those things which the seller gratuitously gives solely on account of him?

Resp. Affirmatively, if there is certainty concerning a true donation; because, speaking absolutely, a merchant can yield something from his own profit to some broker, so that he may bring him to his own shop; but for this it is required that he be really disposed to sell to any other person at the higher price, and in fact ordinarily sell thus. But the confessor ought not easily to give faith to brokers asserting that such donations were made to them. - St. Lig. n. 825. - Hom. apost. n. 189.

Chapter II. On Society and the Triple Contract

Article I. On Society

917. ○ A contract of society is an agreement concerning some thing to be possessed in common for a common good, or for profit to be received according to a proportional share.

I say I. Every society must be made concerning a lawful and honorable thing, and also for the common good of the contracting parties. Moreover, individual partners ought to bring into the society money, or goods, or industry, or work. - Thus from every law.

I say II. A contract of society is a legitimate mode of doing business. It is clear 1. from the civil laws of all nations; 2. from the universal usage of all peoples; 3. from natural right: for it is no less lawful for many jointly than for individuals to make profit from their own things, provided due equality is preserved.

I say III. The required conditions are 1. that there be equality, that is, a division of profit according to the proportion of the thing contributed; 2. that the society be entered upon for a certain time, and before that it is not lawful to reclaim one's own; 3. that the risk of the capital pertain to the owner, unless another pact has been entered into; 4. that each undergo the burden of damages and expenses which arrive by reason of the society; 5. that each apply the same diligence in the society as in private business. - St. Lig. n. 905.

918. Questions. - Q. 1. How is a society dissolved?

Resp. A contract of society is dissolved 1. by lapse of the time for which it was made; 2. by the destruction of the thing, or by the end of the business; 3. by the natural or civil death of one of the partners; 4. by interdiction of either partner, or by bankruptcy or subversion of goods; 5. by impossibility of furnishing the promised thing [1].

[1] Through these things the Author does not wish to exclude that the society can also be dissolved legitimately by the mutual consent of the partners.

Q. 2. What if someone, while his partner is unwilling, withdraws from the society before the time?

Resp. He is bound to compensate the damage, namely to pay the profit ceasing from the money to be furnished by him, or to render the profits of his own industry. - See Cases, n. 981 and following.

Article II. On the Triple Contract

919. ○ The triple contract is that by which someone contributing money makes an agreement with another partner that, whatever may happen, the entire sum be restored to him with a certain profit, yet a profit less than that which he probably could hope for; or it is a contract of society to which two other contracts are joined, namely of insurance of the capital and of insurance of the profit, or of sale of the hope of receiving a greater profit for a smaller profit certain and insured. It is thus instituted. I contract, for example, with Peter, by giving him a sum of money for trading. But since a hope of gaining 15 for 100 shines upon me, and I fear on the other side lest I lose the capital, I enter into a second contract with Peter, by paying him 5 for 100, if he is willing to take upon himself the

insurance of the capital. This second contract having been entered into, only 10 for 100 now remain to me to be gained. But I would prefer a profit still less but certain, than a greater and uncertain one. Therefore I propose to my partner that he give me only 5 for 100, but restore it certainly, whatever may come upon us. Hence a triple contract is given, namely of society, of insurance of the capital, and of insurance of profit.

Q. Whether the triple contract is lawful?

Resp. There is a twofold probable opinion among Theologians.

I. OPINION denies it. The reason is 1. because thus the society is destroyed, of whose nature it is that the risks be common; therefore it is a true mutuum; therefore the title or foundation of receiving profit is lacking, at least above the rate of the law for a mutuum; 2. because, they say, the opposite doctrine was reproved by Sixtus V through the Bull Detestabilis, in the year 1586. - Collet. - Habert, etc.

II. OPINION commonly affirms it, provided the money is expended in trade. The reason is 1. because these individual contracts separately and with diverse persons are of themselves lawful and just; therefore also if they are made together and with the same person; 2. because there is nothing against equality: for compensation is given, and the risk is equivalently sustained by the one giving the money; 3. because Benedict XIV declares, in the work On the Diocesan Synod, Book 10, that the triple contract was not condemned by Sixtus V, nor did he intend to condemn it. And in the Encyclical Vix pervenit he says that he does not wish to condemn contracts concerning which there is dispute among Theologians. - See St. Lig. n. 908.

Chapter III. On Lease-Hire

920. ◦ Lease-hire is a contract by which the use or fruits of a thing, or the work of a person, is received by one and granted by the other for a certain wage and for a time. He who hands over the thing for the use or utility of another is called the lessor; the other is named lessee or hirer. Moreover, various species of lease-hire are enumerated: 1. lease of buildings; 2. of fields; 3. of animals; 4. of labor and service. - Gallican Civil Code, art. 1711.

To the contract of lease-hire emphyteusis and fief approach in some measure. Emphyteusis is a contract by which an immovable thing is granted to another as to useful ownership, either in perpetuity or at least for 10 years, with the burden of paying an annual pension to the direct lord. But fief is a contract similar to emphyteusis, or the handing over of an immovable thing for useful ownership, with the burden of exhibiting service or fidelity to the direct lord. Yet emphyteusis and fief differ from lease-hire because they cannot be constituted except in an immovable thing, nor for a shorter time than a decade.

I. General rules of lease-hire.

921. Principles. - 1. Lease-hire can be made in writing or by word; but if it is made by word alone, proof by witnesses is not admitted in Gallican law unless execution has already begun; yet an oath can be exacted from the party denying. - 2. The lessee can sublease, unless something else

has been stipulated, or detriment is thereby caused to the lessor. - 3. Lease-hire is not dissolved by the death of the contracting parties, but passes to the heirs. - 4. If the time of lease-hire was not determined, it can cease at the judgment of either contracting party, provided he warn the other at a suitable time according to the custom of places and the nature of the thing leased. - 5. If the lessor has sold the leased thing, the lessee cannot be expelled, but the term of the lease-hire must be awaited [1].

[1] This fifth principle holds according to Gallican law (Art. 1745), but not generally according to Roman law (L. 9, C. De locato et conducto). See Lugo (Disp. 29, n. 16).

II. Obligations of the lessor.

922. ○ 1. He is bound to disclose harmful defects of the thing to be leased. - 2. He ought to provide that the lessee enjoy it tranquilly. - 3. It falls to him to sustain the necessary expenses for repairing the leased thing. Yet he is not bound to small expenses, as will soon be said. - 4. He cannot change the form of the leased thing without the consent of the lessee. Nevertheless, he can make necessary repairs even while the hirer is unwilling, nor is he bound to compensate whatever damage arises from this (Art. 1724).

III. Obligations of the lessee.

923. ○ 1. He ought to use the leased thing as a good father of a family, for the sole end of the lease-hire. - 2. He is bound to restore or repair those things which have perished or have been made worse by his fault. - 3. Indeed in the external forum he is held concerning all damages which the leased thing undergoes, unless he proves that they happened with his own or his subjects' fault set aside. - 4. Moderate repairs, which are called locative, pertain to him, for example, to repair windows, etc.

924. Questions. - Q. 1. What of the law, if the leased house perishes by fire?

Resp. 1. In the forum of conscience the lessee is bound to nothing if it was burned without any fault of his, even juridical; indeed probably even if it perished from juridical fault alone.

Resp. 2. In the external forum the lessee is bound concerning the damage, unless he proves that it happened without any fault of his, even juridical, as was said above (Art. 1734).

Q. 2. What specifically concerning the hiring of works?

Resp. 1. The hirer of a servant or worker is bound to agree with him concerning a just wage, such as is commonly accustomed to be given to such persons.

Resp. 2. If the determination of the wage was left to the judgment of the hirer, he ought to give a just wage, at least the lowest. But a master dismissing a servant before the time without a sufficient cause is bound to repair the damage arising from it.

Resp. 3. If a servant or worker offers himself of his own accord, and you do not need him, but receive him only from charity, recall what was said concerning Justice n. 625 as to what you ought to give

him, and see St. Lig. n. 522.

925. ○ Q. 3. Whether the lessee of fields is bound to the entire rent rent in the case of sterility because of hail, or some other extraordinary misfortune?

Resp. Negatively. For although in the rigor of justice by natural right he seems to be bound to this, nevertheless it has been introduced by general custom that, if the loss is immense, something be remitted, and the damage be undergone equally by both. Except, unless from the fruits received through other years an equitable compensation is given. - St. Lig. n. 860; and it is confirmed from both Roman and Gallican law.

Q. 4. Whether the tax must be paid by the lessor or by the lessee?

Resp. 1. Per se, with a special agreement set aside, the lessor ought to pay taxes; because he is not only the owner of the thing, but he did not even transfer usufruct except in a successive manner and from day to day. But it is otherwise concerning full usufruct properly so called, as was said above, n. 593.

Resp. 2. From Gallican law, the lessor pays only taxes imposed on the land. But taxes for doors and windows must be paid by the lessee; yet if he who ought to pay does not pay, the fisc has an action against the other, with recourse, however, saved to the latter against the former.

926. ○ Q. 5. Whether a messenger going to a certain place can lawfully receive an entire wage from several persons?

Resp. 1. Concerning drivers there is no difficulty, because such is the custom. - Thus commonly the Theologians.

Resp. 2. Concerning a messenger there is a twofold probable opinion. - Recall what was said above, n. 757. - See Cases, n. 973 and following.

Chapter IV. On Exchange

927. ○ Exchange is the permutation of money with some profit of the money-changer. Yet exchange in general sounds the same as permutation, whether in money or in other things.

Exchange is variously distinguished, namely:

1. Manual or small exchange, and local exchange or exchange by letters. The former is made when money of one form or material is permuted with money of another form or material. The latter has place when present money is commuted with absent money to be paid in another place.

2. Real or true exchange, and fictitious or dry exchange. The former is that by which money is in fact commuted with another. But the latter is that by which a permutation is feigned, but it is nothing other than a cloaked mutuum, as, for example, when money is given as if to be received in another place, which nevertheless is received in this very place.

3. Fictitious exchange is customarily made thus: for example, Titius, needing money in this present place, asks 100 coins from a money-changer. But the money-changer does not give otherwise than as to be paid in a distant place, and he seeks from him the price which is exacted for similar places. But Titius receives the money and nevertheless does not think of money to be repaid in such a place, and this is manifest to the money-changer. Whence that contract is a mere cloaked mutuum [1].

[1] There is now no custom of this contract, nor necessity or occasion.

928. Principles. - I. Real exchange is lawful, whether small or local, provided equality is observed, or the profit does not exceed the just price determined by law or by the custom of places. The reason is that there are various titles from which the money-changer can receive profit, namely 1. insurance of the money up to the place of insurance; 2. hiring of work and office for counting and transmitting the money; 3. emergent damage from misfortunes of debtors; 4. expenses and cares in keeping the exchange-office. - St. Lig. n. 851-852, and others.

II. Fictitious exchange is illicit per se. The reason is clear; for there is in it no title of accepting profit, since no exchange properly so called is made, since there is no real transfer of money, but only a fictitious one, whence it is nothing but a cloaked mutuum. - Thus all. - St. Lig. n. 853. - I said per se, because by reason of a mutuum it is lawful to follow the laws of this contract, according to what was said above, n. 863.

St. Pius V in the Bull on exchanges placed various restrictions concerning exchange: Haunold, however, testifies that it is in force in few places, at least as to all things contained in it. St. Lig. n. 852 speaks of it.

929. Questions. - Q. 1. Whether exchange is lawful for those who do not have the public office of exchanging?

Resp. Affirmatively. The reason is that the same reasons are operative; for everyone has a right to profit for his labor and skill. But these money-changers ought to beware lest they exact profit greater than equitable. - Thus St. Lig. n. 851. - Salmant. c. 4, n. 8. - Carriere, n. 1038.

Q. 2. Whether the exchange commonly called Frankfort exchange is lawful, in which the money-changer gives money to be repaid at the next fairs, so that greater profit is exacted for greater delay?

Resp. 1. Affirmatively, if there is a title of ceasing profit, emergent damage, etc. - St. Lig. n. 854.

Resp. 2. Otherwise it is disputed; but probably it is lawful in this to follow the civil laws for a mutuum, according to what was said above where treating of Usury, n. 863.

930. ○ Q. 3. What can money-changers receive by reason of a mutuum?

Resp. They can receive 6 for 100, according to the legal rate for merchants, because they exercise a certain commerce of money. For ordinarily money-changers need much money, so that they may be able to discharge such an office, and many servants, and they are exposed to various dangers. Indeed in various places they are permitted to accept 7 for 100 on account of the dangers and labors which

they must undergo in transferring money elsewhere and insuring it. - See Cases, n. 988 and following.

Chapter V. On Census

931. ○ Census is the right of receiving an annual pension from a thing or person. Census can be manifold, namely:

1. Reservative, that is, an annual pension to be received from a thing alienated as to the land.

2. Consignative, that is, an annual pension to be received from a thing or from a person from the title of purchase.

3. Real or personal, according as the pension is constituted on a fruit-bearing thing, or on the labor and skill of a person.

4. Temporary, or perpetual, or for life, according as it is constituted for a time, for example, for 20 years, or in perpetuity, or for the life of a man.

5. Redeemable from one or each side, according as it can be redeemed at the nod of either party or of both; or irredeemable, if by pact the seller or censuary cannot free himself through restitution of the capital: then the buyer, or censualist, necessarily preserves his right to the census.

932. Principles. - I. Any reservative census is lawful, because anyone transferring the ownership of his own thing can reserve to himself part of its fruits, provided he diminishes the price in proportion to the reservation.

II. A real consignative census, both fruit-bearing and pecuniary, is lawful, because it is lawful to sell and buy the right to some part of the usufruct, or to an annual pension.

III. The same conditions generally are required for census by natural right as for sale, namely 1. good faith; 2. sufficient insurance on the part of the censuary toward the censualist; 3. a just price, which is determined by law or by common estimation.

933. Questions. - Q. 1. Whether a personal consignative census is lawful?

Resp. Affirmatively, at least by natural right, provided the due conditions are observed; because the right of receiving a pension from another's labor, skill, etc., is as appreciable by price as the right of receiving it from a fruit-bearing thing. - Thus commonly. - St. Lig. n. 839, against others denying it because a person cannot be sold. From Gallican law no one can bind his works except for a time, or for a determined business (1780).

Q. 2. Whether a REDEEMABLE census is lawful?

Resp. Affirmatively, at least on the part of the censuary, just as retrovendition can be lawful. - In Gallican law every census is by its essence redeemable; but it is lawful to agree that it cannot be redeemed before 30 years, just as the price or condition of alienation of an immovable thing (530, 1911).

934. ○ Q. 3. Whether it can be redeemable on each side?

Resp. Affirmatively, more probably, because it is a true sale, and the buyer ought not to be of worse condition than the seller, provided there is good faith and equality is otherwise observed. - St. Lig. n. 843. - Less.-Laym., against others.

Q. 4. Whether it is lawful to buy at the current price annual censuses founded in the Government, or shares from the public banker (in French, actions de la banque)?

Resp. Affirmatively. For they are sold as merchandise; they increase or decrease in price according to common estimation.

935. ○ Q. 5. Whether a life census is lawful?

Resp. Affirmatively. For it is an aleatory contract, and in no way is repugnant to natural right, and it is approved by civil law.

The following conditions, moreover, are required:

1. Account must be taken of the age or health of the person.

2. The price ordinarily ought not to extend beyond 15 for 100.

3. The censuary cannot redeem himself except by the will of the censualist; nor can the censualist reclaim the capital except insofar as the censuary does not provide the promised securities.

4. The census is not extinguished by the civil death of the censualist, but passes to his heirs up to his natural death (1982, 1983). - See Cases, n. 1005.

Chapter VI. On Subsidiary Contracts, or on Suretyship, Pledge, and Hypothec

These contracts are called subsidiary, because they are employed for the security of another contract. We will speak briefly of each one.

Article I. On Suretyship

936. ○ Suretyship is a contract by which someone takes upon himself the obligation of another, if the principal debtor does not pay.

937. Rules of suretyship. - 1. No one can be a surety unless he has free administration of goods. From Gallican law it is required besides that the surety dwell in the territory of the royal court where the suretyship must be provided (Art. 2018).

2. Those who cannot be obligated principally cannot be sureties: such are a ward, a minor, a Religious, a wife, at least without the consent of tutor, curator, Superior, or husband.

3. The surety is bound toward creditors concerning all the obligations of the debtor, but only in the latter's default, or impotence, and indeed juridically proved.

4. The surety who pays for the debtor is subrogated to all the rights of the creditor, and therefore has recourse against the same debtor, so that he may reclaim from him whatever he was compelled to pay in his place.

5. The obligation of the surety is transmitted to his heirs, because it is a real obligation, not merely a personal one. - See Cases, n. 1007.

Article II. On Pledge

938. ○ Pledge is a contract by which a debtor gives a movable thing to the creditor for insurance of the credit. - Under the name of pledge also comes the thing pledged.

Rules of pledge. - I. On the part of the debtor handing over the pledge. He ought 1. to hand over to the creditor a suitable pledge; 2. to refund to the creditor necessary expenses which shall have been made for the conservation of the thing; 3. not to reclaim the pledge before he has paid the entire debt, unless the creditor abuses it.

II. On the part of the creditor receiving the pledge. He ought 1. not to use the thing entrusted to him except by the consent of the debtor; 2. diligently to guard the pledge; otherwise he is bound concerning damage; 3. to compute fruits received from the pledge toward the diminution of the debt, namely for preserving equality; 4. not to sell the pledge by his own authority for obtaining payment, unless the debtor is in culpable delay and has first been warned. Thus by natural and positive law.

To pledge approaches the contract which is called antichresis. But antichresis is a species of pledge by which the debtor hands over an immovable thing for the use of the creditor until the debt is paid. - St. Lig. n. 916. [1]. - See Cases, n. 1010.

[1] St. Alphonsus, or rather Busembaum (for St. Alphonsus brings forward the mere text of this man on this matter), immediately adds this resolution: This contract, according to Cajetan, Soto, etc. (against certain jurists), seems to be usurious, because the creditor gains something beyond the capital by reason of the mutuum alone, which is usury. But St. Alphonsus adds in a little note within parenthesis (Book 3, n. 916): And it is certain with Palao apud Croix, n. 1115. Nevertheless (ibid.) he holds as ratified the things which Busembaum then adds (Resol. 2): Yet just titles of gaining fruits from the pledge without diminution of the capital can intervene; as if, for example, the fruits received from the hypothec do not surpass the quantity of the pension which by right of census constituted on the same thing can be exacted with a pact of restoration, as was said above concerning censuses: or if otherwise profit ceases, or damage emerges, while the debt is deferred. Whence they are not easily to be condemned who from Princes, in place of debts, have fields, pastures, offices, etc., in antichresis. See Laym. and Binfeld, On Usuries, Mol., etc., Lessius cap. 137. To these can also be added those things which above, where treating of mutuum, were said concerning profit from credited money received short of injustice.

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Article III. On Hypothec

939. ○ Hypothec is a contract by which an immovable thing is obligated to the creditor, so that from it he may be able to pay himself, if the debtor has not paid.

A hypothec is distinguished into a threefold kind: namely legal, judicial, and conventional.

1. Legal hypothec, which is also called implicit or tacit, is that which is instituted by force of law alone and without any special agreement: thus a wife has a hypothec on all the goods of the husband for recovering the dowry.

2. Judicial hypothec is that which is established by decree of a judge in favor of those who have obtained the case: if, for example, a judge condemns someone to repairing a certain damage, by force of that sentence all the immovable goods of the condemned person, present and future, are burdened with hypothec for repairing this damage. It is required, moreover, that this sentence of the judge be inscribed with the conservator of hypothecs, and it obtains force only from the day of inscription.

3. Conventional hypothec, or that which the parties establish among themselves by mutual agreement, is a solemn contract by which a person fit for contracting obligates goods specially designated to the creditor for insurance and payment of a determined debt. Therefore it must be made before a notary, with certain formalities under pain of nullity at least in the external forum, and by a person fit for contracting, or one who has the free administration of his goods; hence minors, the interdicted, and wives cannot hand over anything in hypothec (Art. 2124 and following). - See Cases, n. 1015.

Chapter VII. On Aleatory Contracts

940. ○ They are of various kinds: insurance, wager, lottery, or raffle, and game. They are called aleatory because they are liable to the vicissitudes of lot.

Article I. On Insurance

Insurance is a contract by which one takes upon himself the risk of some thing, and the other obliges himself to a price for a risk of this kind having been undertaken. Thus in various cities there exist societies which insure, for example, houses against fire, ships against shipwrecks, etc.

941. Questions. - Q. 1. Whether the contract of insurance is lawful?

Resp. Affirmatively. For equality is preserved when the due conditions concur, as the Theologians commonly confess, and daily practice confirms.

Q. 2. What are the conditions required for insurance?

Resp. They are the following: 1. that the price be proportioned to the risk; 2. that the risk be true and equally known to each party; 3. that the insured observe all the conditions of the contract; 4. that the insurer have that from which he can pay. - St. Lig. n. 911. - See Cases, n. 1012.

Article II. On Wager

Wager is a contract by which several persons, contending concerning the truth or the event of some thing, promise something to one another, or deposit it with someone, so that it may belong to him who has spoken the truth.

942. Questions. - Q. 1. Whether the contract of wager is lawful?

Resp. Affirmatively, with the things to be posited having been posited; for it bears nothing dishonorable before itself. - St. Lig. n. 869, and others commonly.

Q. 2. What are the conditions that a wager be lawful?

Resp. 1. That the matter be understood by each party in the same sense; 2. that there be an intention of obliging oneself and of paying what is promised; 3. that the event be uncertain to each party. - See Cases, n. 1017.

Article III. On Lot-Drawing, or Lottery

Lottery is a contract by which several persons deposit something in common, so that they may have a right of drawing by lot the thing set forth in the midst. Some have the whole, some a part, some finally nothing.

943. Questions. - Q. 1. Whether lottery is a lawful contract?

Resp. Affirmatively, provided the required conditions are present. The reason is that lottery can be regarded as the purchase of an uncertain thing, or as a contract by which with money is bought the right of drawing by lot and acquiring that which shall have fallen by lot. Moreover, it is lawful to buy an uncertain thing, just as to make an agreement for the risk of some thing.

Q. 2. What are the conditions required that lottery be a contract lawful in itself?

Resp. They are 1. that there be no fraud in drawing the tickets, nor in paying the prize which has fallen; 2. that the owner of the lottery not exceed in profit, nor morally gain more than if he expended his money or distributed his goods by another lawful contract. Nevertheless the profit can be greater if the lottery has been instituted for a good work or public utility. - Thus commonly.

Article IV. On Game

944. ○ Game is a contract by which those playing agree among themselves that the price which they have staked yield to the victor. - Game is threefold: 1. industrial, which is chiefly ruled by the skill of the players, as the game of ball and of disks; 2. aleatory, which chiefly depends on chance; 3. mixed, which partly depends on skill, and partly also on chance, as, for example, the game of cards, at least for the most part.

945. Questions. - Q. 1. Whether every species of game recounted is lawful?

Resp. None of the three aforesaid games is illicit of itself, if the due conditions are observed. The reason is that game per se 1. is not repugnant to morals, since it is an honorable recreation; 2. nor to

justice, since anyone can transfer ownership of his own goods to whom and in what manner he wishes.

Formerly aleatory games were prohibited to all by Canon law, especially to Clerics; but these laws, with respect to laymen and even with respect to Clerics, have almost gone into desuetude.

946. ○ Q. 2. What are the conditions required that game be lawful?

Resp. It is required 1. that the player have free administration of the things which he stakes; 2. that fraud and deceit be absent from the game; 3. that on each side the danger of losing be morally equal; 4. that the game be honorable in itself, and not prohibited by law; 5. that coercion be absent by which someone is induced to play; 6. that an immense sum not be staked, such that the family and creditors could suffer damage from it.

947. ○ Q. 3. Whether the victor who is much more skilled in the game, so that he knows certainly beforehand that he will be victor, is bound to restore?

Resp. Affirmatively, much more probably; because the equality required among the players is lacking, and therefore justice is injured. Hence the notably more skilled person ought to withdraw from the game, or remit some advantage to the adversary. - Thus more commonly, against some.

Nevertheless, in practice restitution would not have to be urged if the matter treated were of lesser moment; or also when the adversary, sufficiently forewarned, nevertheless had obstinately wished to play; because then no deception would have intervened.

948. ○ Q. 4. Whether the victor in a prohibited game is bound to restore, or the one conquered in the same game to pay?

Resp. to the 1st. Negatively; because the contract is not declared void by law, but only illicit. - St. Lig. n. 887. Antoine, q. 5. - Lugo, D. 31, n. 60. - Lacroix, n. 1086, and others commonly.

Resp. to the 2nd. It is disputed. I. OPINION denies it; because the law by prohibiting such a game seems by that very fact to take away the natural obligation of paying as a penalty of the victor. - Thus Lugo, D. 22, n. 300. - Salmant., c. 4, n. 62.

II. OPINION affirms it, because the contract was valid by natural right, and therefore the conquered person ought to stand by it until he judicially seeks restitution. Each opinion seems probable. Yet St. Lig. n. 890 says the first is more probable.

949. ○ Q. 5. Whether it is valid if a great sum of money is staked at one time?

Resp. Affirmatively, per se, more probably, if the required conditions are observed, that is especially if the players are able freely and fully to dispose of their own goods, without detriment to family, creditors, etc.; because the players equally undergo the danger knowingly and willingly, and therefore there is no injustice. But the aforesaid conditions easily fail; and otherwise, even if such game were not against justice, at least it is opposed to honorable conduct; whence a prudent Confessor, by way of satisfaction, if it seems opportune, could enjoin on the penitent victor that he spend some part of the gain for pious uses. - Antoine, c. 11, q. 5. - Bouvier. - Gousset, n. 889.

Nevertheless, since this opinion is not certain, those do not seem to be disturbed in the tribunal of Penance who would not wish to pay a great sum which they had lost. - Thus rightly Gousset, ibid.

950. Conclusion. - Although game for the most part is lawful in itself and serves honorable recreation, due moderation in its use is to be commended as greatly as possible, lest it easily be turned aside into detestable abuses. For how many evils proceed from it daily and all too lamentable experience proves! For how many, alas! most wretched youths, and also men of every condition, are seen who, devoted to game, suffer the loss of an entire fortune in a few days or hours, plunge their family into hardships, and themselves wallow in every kind of disgrace! Therefore let Parish Priests and Confessors strive according to their powers to turn away subjects and penitents from fury of playing of this kind, and let them be solicitous lest those refusing to obey be admitted to the Sacraments. - Thus rightly concludes Gousset, n. 891. - See Cases, n. 1021 and following.

END OF THE TREATISE ON CONTRACTS.

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