COMPENDIUM OF MORAL THEOLOGY

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II

Particular States, the Sacraments, Censures

Eighth edition

Rome, Polyglot Press of the S. C. de Propaganda Fide, 1884.
The English translation is our own, made from the Latin
for the Morals of the Church library, where the text may be read and searched online.

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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 THE ANNOTATIONS

OF ANTHONY BALLERINI

OF THE SAME SOCIETY

PROFESSOR IN THE ROMAN COLLEGE

EIGHTH EDITION

MORE POLISHED AND ENLARGED WITH NEW CARES ESPECIALLY BY RESPONSES TO THE ALPHONSIAN VINDICATIONS

Volume Second

ROME

FROM THE POLYGLOT PRESS

OF THE S. C. DE PROPAGANDA FIDE

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Since the work whose title is *Compendium of Moral Theology of Father John Peter Gury, S.J., revised by the Author and enriched with the annotations of Anthony 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 they have approved that it can be published; we grant the faculty that it be committed to type, if it shall seem so to those whom it concerns.

In faith 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, Praep. General of the Society of Jesus.

IMPRIMATUR

Fr. VINCENT M. GATTI, O.P.

Master of the Sacred Apostolic Palace.

Treatise on Particular States

One must treat of the state 1° of laymen, 2° of clerics, 3° of regulars.

Part First. On the State of Laymen

Already in the fourth precept of the Decalogue we have spoken about the various and mutual duties of superiors and inferiors. But in the present Treatise we must speak about the duties which regard the public good, and especially about forensic duties. Hence

One must treat 1° of the obligations of judges; 2° of advocates and procurators; 3° of apparitors; 4° of scribes and notaries; 5° of the accuser and the accused; 6° of witnesses; 7° of physicians, surgeons, and pharmacists; 8° of guards; 9° of craftsmen and workmen.

But the obligations of merchants and other men of this sort are sufficiently understood from those things which we have discussed concerning justice and contracts.

Chapter I. On the Obligations of Judges

1. ○ A judge is a public person, constituted by legitimate authority [1], in order that according to the laws he may vindicate justice, and decree the due punishments against delinquents.

[1] By this the judge is distinguished from an arbiter, who assumes the office of judging not by public authority, but by the spontaneous choice of the contending parties.

Principles. - I. A judge is bound, from a quasi-contract with society, to fulfill his office rightly; and unless he does this, he will be guilty of violated justice, both legal justice and also commutative justice.

II. In order that a judge may be able to discharge his office rightly, he must have 1° intelligence equal to the office, so that he may be able to look into intricate causes; 2° sufficient knowledge and sagacity, so that he may take account of all the circumstances both of law and of fact [2]; 3° incorruptible integrity, so that he yield neither to love nor to hatred.

[2] Whoever seeks or undertakes the office of judge, knowing himself to be so unequal to it that he foresees that probably grave damage to his neighbor will follow, sins mortally. But whether knowingly or unknowingly he has done this through his insufficiency, he ought not be absolved unless he resigns the office, or unless he has a firm purpose of resigning, or at least, if there is hope that he will become fit by study, of supplying meanwhile for his insufficiency by using the counsels and work of another endowed both with ability and with knowledge. St. Alphonsus, Bk. 4, n. 195.

III. A judge is bound to pass sentence according to the laws and the order determined by the laws; for he is not constituted to change or reform the laws, but to put them into execution [3]. Except a special case, in which the mind of the law is rather to be followed by the judge than the bark of the words;

but then account must also be taken of the age, and of the condition and fortune of him upon whom he must impose punishment [4].

[3] These things hold for an inferior judge, who ordinarily cannot relax or lessen a penalty, even if the plaintiff consents, unless at times epikeia should dictate that it be done otherwise for the good of the republic, or unless the matter concerned only the private injury of the plaintiff. Yet the supreme judge can do this for a just cause; and if this is lacking, he would sin gravely, because he would embolden delinquents and would concur in sin. St. Alphonsus, Bk. 4, n. 205.

[4] Account of these circumstances is taken in the laws themselves. Wherefore, not even in these circumstances is the matter fully left to the discretion of the judge.

IV. In a doubtful cause let him hold these rules:

1º In criminal matters the accused is to be favored [5], unless the crime is established. - Rule of canon law 11 in 6º.

[5] Understand this both of the existence of guilt and of the merits of punishments.

2º In doubt about ownership and possession at the same time, judgment must be made according to the more probable reasons, as is clear from natural law and from the 2nd proposition condemned by Innocent XI, which sounds thus: "I probably judge that a judge can judge according to an opinion even less probable." But if the reasons are equally probable on each side, the thing must be divided [6].

[6] ** Gury ought not to have passed over in silence another opinion, which several have embraced (see Lugo, *On Justice*, disp. 37, nn. 114, 115), and they, as the Salmanticenses say (tr. 29, ch. 1, n. 41), very grave Doctors, and which Lugo (l.c.) expresses thus: "When each opinion is equally probable, the judge indeed will do better by seeking to bring the parties back to agreement; nevertheless absolutely he can choose one of them." And Sanchez (*Dec.*, bk. 4, ch. 9, n. 45): "It is truer that it is open to the judge to choose the opinion which he shall have preferred, and to judge according to it; indeed, scandal ceasing, now according to one, now according to another." I said that this opinion ought not to have been passed over in silence, since the opposite opinion, which alone Gury proposes, even the Salmanticenses themselves (l.c. n. 42) merely hold as the more probable for themselves.

This also must not be omitted, that for that opinion of the Salmanticenses and Gury, St. Alphonsus also alleged Villalobos, Prado, Sayrus, etc., since he found them cited by the Salmanticenses. But these authors, and others whom St. Alphonsus tacitly indicates, the Salmanticenses were adducing not where the question is about equal probability on the part of the law, but where there is equal probability on the part of the fact. For where there is discourse about equal probability of law, even the Salmanticenses (ibid. n. 41) acknowledge that the aforesaid authors think with Lugo and Sanchez against Gury.

Besides, whichever opinion at last you prefer in this question, the authors rightly warn (p. 926) that an exception must be made, as St. Alphonsus has it (Bk. 4, n. 410), if there is question of causes of matrimony, dowry, widow, ward, and other pious causes; for then one must judge for these, when the rights are equal, even if they are plaintiffs, from the final chapter *De sentent. et re iudicata*. Yet one must confess that hence a difficulty arises against the opinion of Gury, which otherwise St. Alphonsus (l.c.) says must be held entirely, namely that generally the thing must be divided among the parties. For this opinion St. Alphonsus after Roncaglia and Reiffenstuel brings this reason, because the judge is not the owner of things, but a distributor, and, as Reiffenstuel says, a minister of justice according to the rights of the parties; and therefore if the rights are equal, he must divide the thing equally between them. But when Canon Law, alleged by St. Alphonsus, commands that, if there is question of widows and wards, judgment in the case must be made for these, does it command that the rights of justice be violated? And if it is not lawful to affirm this, and otherwise the right of the other party must by no means be said to perish of itself because the right of the ward or widow is equal, how, while the laws of justice are preserved, will the judge not decree that the thing be divided, but be able to adjudge the whole thing to the other party? Therefore it is not without reason that very grave theologians, say the Salmanticenses, and very many and those not of slight name, as Roncaglia calls them (tr. 15, q. 2, ch. 1, q. 9), gave little or nothing to the argument which both Roncaglia and Reiffenstuel, and after them St. Alphonsus, thought most firm.

4º† In doubt about ownership alone, one must stand for the certain possessor. This is established from the rule of law: *In equal fault or cause* [7]*, the condition of the possessor is better.* - St. Lig., n. 210.

[7] In order that the cause may be called equal, the reasons of each party must be equally probable. But if the reasons of the plaintiff are more probable, that rule of law, as St. Alphonsus admits, has no place; nor does the opinion, though more common, of those who oblige the judge to pass sentence for the possessor exceed the limits of probability. See St. Alphonsus, Bk. 4, n. 210, q. II.

2. Questions. - **QUESTION 1º. Can a judge condemn an accused person whom by private knowledge only he knows to be guilty, or an innocent person who juridically is proved guilty?**

Resp. to the 1st: By no means, according to all. The reason is that a judge is bound to judge according to the things alleged, and according to the forms prescribed by law. For there is no danger in sometimes releasing a hidden guilty man, whereas there would be great danger in violating the established forms of trial [8].

[8] Understand this of an inferior judge, who cannot dispense from the law, especially in a matter of such great moment. For although power to kill someone from private knowledge is denied to a prince when there is question of a crime, nevertheless this is lawful for him if there is question of preventing an evil which threatens the republic through some person. Thus the common opinion apud Lugo, *On Justice*, disp. 57, n. 50. Moreover, speaking about civil causes and about the removal of offices, etc., perhaps a greater power is in the prince for this, that from private knowledge he can sometimes condemn an accused person not convicted. Thus Lugo (l.c. n. 54), in whose work you may see the reasons for this doctrine.

Resp. to the 2nd: It is much disputed. St. Thomas, 2.2, q. 64, art. 6, affirms. St. Bonaventure denies. St. Ligorius, n. 208, admits each opinion as probable, if there is question of civil causes, or even of criminal causes of lesser moment; but if a case occurs concerning greater criminal causes, and especially capital ones, he thinks the opinion of St. Bonaventure the more right. The reason is that in the former case it can be said, at least probably, that a private inconvenience must yield to the common good, since it is not so great. But it is otherwise in the latter case; and therefore then to condemn the innocent seems intrinsically evil [9].

[9] There are three principal opinions, says Lugo (disp. 57, n. 42), on this point. The first denies that it is ever lawful for a judge to pronounce sentence against him whom he certainly knows to be innocent. The second, extremely contrary, affirms that a judge can always pronounce sentence in any cause according to the things alleged and proved. St. Thomas holds this, and without doubt theologians and jurists commonly incline to this side. The third, a middle opinion, distinguishes concerning criminal causes in which there is question of the penalty of life or mutilation, and in these it denies that it is lawful for a judge to condemn the innocent; but in civil causes, or where there is question of a pecuniary penalty or exile, or deprivation of offices, it concedes that it is lawful. They give this reason for this last part (n. 44), that although the republic does not have dominion over the life and members of subjects, nevertheless it does have it over these other goods, so that, a just cause arising on account of the common good, it can dispose of them, and take away goods, deprive men of offices, expel citizens from the city, etc. Therefore it is credible that it gave this power to the judge for this end, that judgment be made according to the laws and proofs, lest the judicial order be contemned, the observance of which conduces supremely to the peace and quiet of the republic. These things indeed more clearly define and explain the doctrine of the Author, and give its more inward reason.

But the judgment of Cardinal de Lugo concerning the aforesaid opinions is this (ibid. n. 45): "Among these opinions the second is very probable because of the authority of St. Thomas and the common opinion; yet the third perhaps has more efficacious reasons: for although not all its arguments prove the point, some nevertheless have great force."

Each one can see for himself the reasons for each of these opinions in the same de Lugo; here it is better to subjoin, from the same author (ibid. n. 41), those things which are outside controversy: "It is certain in the first place," he says, "that that judge is bound to try all means and to use every diligence to liberate that accused man. First, by devising causes sufficient to repel the accusation. Second, by examining the witnesses with the greatest dexterity, after the example of Daniel, by questioning the circumstances of place, time, etc., until he finds them disagreeing. Third, he will be able, if it can be done without scandal, to dissemble in the custody of the prison, so that the innocent man can flee. Fourth, to remit the cause to

a superior judge, and before him to testify to the innocence of the accused, which he himself knows. Fifth, if the judge is the supreme prince, he can more easily absolve the accused by absolute power, according to which a prince can sometimes remit a due penalty." The sum of these things is taken from St. Thomas, 2.2, q. 64, art. 6, ad 3, and q. 67, art. 2. And from these Lugo rightly concludes that it can happen very rarely that a judge cannot liberate him whom he certainly knows to be innocent.

3. ○ **QUESTION 2º. Can a judge accept gifts for passing sentence?**

Resp. No. For this is prohibited by every law: 1º by natural law, at least in some way [10], because gifts blind the mind and impel it to favor the giver more than is just; and hence arises the vice of acceptance of persons; 2º by canon law; for in 6º (bk. 1, tit. 3, ch. 2), Boniface VIII established that judges should accept neither any gift, nor anything else, unless perhaps food and drink offered from mere liberality; 3º positive law, both Roman and French, is consonant. Thus in art. 177 of the Penal Code every corruption of magistrates by gifts and promises is punished with grave penalties, both in the corrupted and in those corrupting [11].

[10] It is said, "in some way"; for the matter concerns only temptation, or the danger of prevarication, which the law of nature commands to be removed. Hence St. Alphonsus (Bk. 4, n. 216) only says that sin is sometimes committed.

[11] If a judge sins by receiving gifts, by that very fact whoever offers them also sins; for he cooperates in another's sin. Except, however, the unlearned, whom ignorance very often excuses. Likewise except, if gifts are given to redeem an unjust vexation, when otherwise an unjust sentence seems prudently to be feared; nevertheless these must be restored, and also can be recovered in court after the sentence. St. Alphonsus (Bk. 4, n. 212) with the common opinion. Except also, besides other cases apud Lugo, disp. 37, n. 132, with Laymann (Bk. 3, tr. 4, ch. 4, n. 9), if the judge has been engaged without sufficient stipend, or if he increases his labor to expedite someone's cause more swiftly, without damage to others. Laymann adds that he does not dare condemn an accepted gift, considered by natural law, if a judge expedites the cause of one before others, when it is within his discretion whom he should prefer to whom; yet he subjoins that the matter is not free from danger; and Lugo (l.c. n. 136) reproves it absolutely, because whenever he is bound from justice to do something gratuitously from among alternatives, he cannot accept anything for the choice of this part.

But as to those things which depend only on positive law, Lugo adds another observation (l.c. n. 132), namely that in some places fees are accepted from litigants beyond the public stipend; and the acceptance of these fees in certain places has been established by custom. "In general," he continues, "observe that all those things which in this kind are held by legitimately prescribed custom are presumed lawful, provided they are not against natural law; but where that custom does not exist, one must stand by the particular law of each kingdom or province; for individual ones are accustomed to have their own laws on this point, more or less strict, which will oblige as long as they are not abrogated by a contrary custom."

QUESTION 3º. Is a judge bound to restitution if he has accepted gifts from litigants?

Resp. Probably no, before sentence; because even if he acts illicitly by accepting gifts, nevertheless he does not sin against justice. Thus more commonly: Lugo, Lessius, St. Antoninus, Azor, against others, who also probably affirm. St. Ligorius, n. 216, says that each opinion is sufficiently probable [12].

[12] St. Alphonsus in this place reports the doctrine of the Salmanticenses from tr. XIII, ch. 1, nn. 170-173, where the discussion is not about this special question, but generally: whether from an illicit donation, and one reprobated by the laws, there arises in the receiver an obligation of restitution. And indeed, while the Salmanticenses mingle together both things which are given for sins perpetrated, and things which merely foster the avarice of the receivers, and things which are acquired simoniacally or in a game of chance forbidden by the laws (to which pertain the two places of St. Thomas alleged by them, one of which St. Alphonsus brings here after them), they introduce such confusion that it is not permitted to extract anything in reality from them.

Therefore it is better to retain the opinion which St. Alphonsus (l.c.) reports thus from Busembaum: "Even if a judge, by accepting liberal gifts from the parties, sometimes sins either because of scandal or because of danger of perverting justice,

nevertheless he acquires ownership of the things accepted." Concerning this St. Alphonsus subjoins: "This is common and certain." Busembaum adds: "Even if a positive law prohibits the acceptance of gifts, nevertheless he who accepts is not bound to restitution before the sentence of a judge, unless the law expresses that the acceptance is not only illicit, but also invalid." See Bonacina, *On the Eighth Precept*, q. 2, punct. 8, whose allegation regards the obligation of restoring to the poor if someone has received something for obtaining favor or justice in the Roman Curia; Laymann, Bk. 3, tr. 4, ch. 4, nn. 9 and 10. And Cardinal de Lugo is authority that this opinion is handed down by many and very grave doctors (disp. 37, n. 134), who subjoins that it is proved from the common practice of all judges, even those fearing God, who never restore those gifts when they were given liberally, nor are they obliged to this by confessors. Indeed this practice of confessors also warns us not to use easily and without the greatest discretion the counsel which the Author subjoins, lest we cast unnecessary snares upon penitents.

Nevertheless judges should at least be urged to restore gifts received, or to expend them on pious works. Sometimes this could be enjoined as a penance to draw the judge away from relapse [13].

[13] ** From what has been said it is plain that here the matter is merely of giving counsel; for neither can the confessor command that which it is probable penitents are not bound to perform, nor will prudence easily agree that it be enjoined as a sacramental penance.

QUESTION 4º. Is a judge bound to restore what he has accepted by agreement for passing some sentence?

Resp. 1º Yes, if he accepted it for passing a just sentence, that is, for performing that which he already owed from justice. The reason is that whatever is already owed from office, and therefore from justice, cannot be the matter of a contract. A fortiori he is bound to restore those things which he extorted by force, threats, or unjust vexation.

Resp. 2º If he accepted it for passing an unjust sentence, he is certainly bound to restitution before he passes that sort of sentence; but after the sentence has been passed, it is disputed, according to what has been said about a contract in a base matter, vol. 1, n. 760 [14].

[14] If the question is made merely according to the principles of natural law, from what was said in the note to n. 760, vol. I, it must be beyond controversy that a price of this sort can be retained in conscience; for no probability, unless fictitious, can be attributed to the opposite opinion. But if positive law is considered, the question seems to be solved from what was said in the preceding note.

4. ○ **QUESTION 5º. Is a judge bound to repair damage which he did not prevent, or whose reparation he does not procure, when he can?**

Resp. Yes, because he is an unjust and efficacious cooperator. Recall what was said about negative cooperators, vol. 1, n. 690 and following, and elsewhere throughout [15].

[15] Concerning this question have these things more distinctly from St. Alphonsus:

1º If a judge has passed an unjust sentence by fraud, he has made the lawsuit his own, that is, he has transferred to himself the damage of the injured party, to whom he is bound to restore (Bk. 4, n. 214). Understand this with the order among those liable to restitution preserved; for before the others he is bound to restore who has in his possession the thing owed to another.

2º If a judge judges badly through great incompetence, he is bound to indemnify the injured party and to pay the expenses of the lawsuit, and this whenever notable damage occurs to the parties, whether in the substance of the lawsuit or in superfluous expenses, because of his culpable ignorance. This is common (ibid. n. 195).

3º If otherwise worthy of his office, even if by seeking it he obtained it while others more worthy were neglected, he erred through forgetfulness from human frailty, he is not obliged in conscience to restitution from his own goods, since he did not inflict a formal injury, nor did he receive any advantage from such a sentence, or rather, according to others, since he

did not commit theological fault; nevertheless he ought to revoke the sentence if he can without grave inconvenience (ibid. n. 214). And more clearly: "If a judge recognizes an error committed by himself, even without grave fault, to the prejudice of a litigant, he is bound, if he can without infamy, to prevent the error, for example by secretly warning the injured party to provide for himself by appeal or otherwise; because this pertains to the due execution of his office" (ibid. n. 195).

4º A judge sins mortally against his office by delaying very notably the dispatch of causes without just cause. Likewise he is bound to restore to the injured party the damages and expenses which have followed from the unjust delay, because he is their unjust cause (ibid. n. 196).

These things St. Alphonsus says; concerning which, nevertheless, note that the legitimate order must always be preserved among those who are liable to restitution. For before the others the first debtor of all is he who has the thing, or who from another's thing has been made richer. Hence if the judge restores, the holder of the other's thing will be bound to restore to the judge himself, who otherwise could also use occult compensation.

QUESTION 6º. Does a sentence of a judge that is doubtfully just, or certainly unjust, oblige?

Resp. to the 1st: Entirely yes. For presumption favors the superior or judge. See *On Conscience*, n. 75, etc.

Resp. to the 2nd: Of itself, no, as is plain [16]. Except, however, unless there is present a reason of scandal or of disturbance of public order; because a private good must always yield to the public good. But he who obtains the cause through an unjust sentence cannot receive the thing adjudged to him, or he must restore it, and besides he is bound to repair all damages and expenses to the opposing party [17]. Yet if he was in good faith, when this ceases he must only return the other's thing, according to what was said about the possessor in good faith, n. 635 [18].

[16] More clearly St. Alphonsus (Bk. 4, n. 215): "An unjust sentence, either from the nature of the thing or from omission of an order of law simply necessary, whether it is passed through things falsely alleged and proved, or from the iniquity of the judge, has no force in the forum of conscience; and the injured party's right remains to him, even if he does not appeal, and it will be lawful, if he can do it without scandal, to recover his goods. I said, in the forum of conscience: because in the external forum, where not so much the truth of the fact as juridical proof is considered, a proved sentence is to be observed to avoid scandals and inconveniences; nor, after the term has elapsed within which it was permitted to appeal, is an action granted to him, the law so establishing both as a penalty of sloth and for the public good, so that there may be an end of lawsuits."

[17] For this reason the injured person can, unless the other has prescribed justly, recover his own goods by occult compensation, because he recovers his own right. St. Alphonsus, Bk. 4, n. 215.

[18] He who in good faith petitioned a thing from the judge, and in good faith accepts it, and possessed the thing in good faith for the time necessary for prescription, is not bound to restore, because he has legitimately prescribed. St. Alphonsus, Bk. 4, n. 215.

Appendix I. On Jurors

5. ○ Jurors, so called because of the oath which they take about rightly exercising the office entrusted to them, are men selected from the chief citizens to discharge some part proper to judges. They are employed only in criminal causes, and their office is to pronounce concerning the existence of the fact and the culpability of the accused; but afterward the judges decree the penalty according to the law. The institution of jurors, taken from the English, was created in favor of the accused, so that the fact might be examined by grave men designated by lot, with no malicious affection toward the accused, as being for the most part wholly unknown to them, and therefore so that that fact might be known more certainly.

[1] *On the title above.* ** The question whether this institution of jurors contributes to the common good is not part of our undertaking. Indeed, it has against it the judgment and practice of all previous centuries. Moreover, since right judgment depends finally on the expertise and integrity of those judging, will it be permitted to hope for this from those jurors rather than from ordinary judges? Recall the things that happened in England concerning those who, some years ago, plotted against the life of the Emperor of the French. You have the inconveniences and absurdities of this English institution excellently set forth by Saint-Paul.

Jurors are taken from notable citizens determined by law. The body of jurors (*le Jury*) consists of twelve citizens for each case to be judged.

Jurors who by lot are designated for the session of the Court called *d'Assises* contract the same obligations as the judges themselves, whose office in great part they exercise; and therefore concerning jurors, as concerning the judges themselves, one must speak generally.

6. ○ **QUESTION. Whether a JUROR can give a vote against the accused, who indeed has been juridically convicted of the crime, but whose innocence he certainly knows by private knowledge?**

Resp. No. The reason is that this seems contrary to the mind of the law. For jurors must pronounce only concerning the fact, and according to the intimate conviction which they have about its existence, nor in any way are they bound to render a legal reason for their sentence. Indeed from the law itself they are not bound to found their sentence either on such and such a number of witnesses, or on these or those reasons brought forward from the various sides, etc. Therefore they must give their vote only according to that which they feel in the forum of conscience. And so, with regard to the office which is imposed on jurors, it is easily plain that those controversies which are debated about judges, n. 2, by no means have place concerning them.

Appendix II. On Arbiters

7. ○ They are called arbiters who are freely chosen or admitted by each opposing party, after the manner of judges, for deciding some lawsuit.

The agreement by which the faculty of composing the lawsuit is given to them is called a compromise (in French, *compromis*). By this agreement the opposing parties promise by mutual consent that they will execute whatever shall be established by the arbiters. But a compromise can be made either by a private writing, or by an authentic writing made by a notary, or even from common consent expressed orally before the arbiters themselves. Under penalty of nullity, both the matter to be judged and also the names of the arbiters must be reported in it.

Arbiters, whoever they are, once admitted by the different parties, properly enjoy the office of judges and perform all their functions, no otherwise than if they had been designated by public authority. Therefore they can instruct the cause brought before them, defer the matter to another more suitable time, hear witnesses, and finally, by a sentence passed, decide the lawsuit absolutely. Nevertheless, from French civil law, in order that such a sentence may have force in the external forum, it must be recognized by the President of the tribunal of first instance of the province in which it was given.

8. ○ Since arbiters fulfill the duties of judges, they undergo approximately the same obligations and the same burdens as judges. Hence:

1º They ought not undertake a lawsuit for the judging of which they do not have sufficient learning; otherwise they sin against commutative justice and contract the obligation of restitution [1].

[1] ** Understand these things thus: they always sin because of the danger to which they commit themselves of erring in a matter of justice, unless perhaps they employ the aid of experts; but they are bound to restitution if in reality they have inflicted damage by erring.

2º Arbiters are bound to judge according to the laws of the region, unless the parties have granted to them the faculty of composing the matter according to equity and good. For then they ought, from what is good and equitable, to promote the advantage of each party.

3º They must take the greatest care against acceptance of persons, namely lest, drawn aside by hatred, aversion, or excessive affection, they pass sentence against the rules of equity. As to the rest, the same things must be said about arbiters as about the judges themselves.

Chapter II. On the Obligations of the Advocate and the Procurator

9. Principles. - I. Advocates and procurators are bound by commutative justice toward litigants to have competent knowledge, to undertake and pursue the cause with fitting diligence and study, and to forestall delays damaging to the litigants; otherwise they sin and are liable to restitution, as was said above about judges.

II. In civil matter neither the advocate of the accused nor the advocate general can licitly sustain a cause certainly unjust [1]; therefore if by defending it he obtains an unjust sentence, he is bound to repair all damages following from it, if they are not repaired by those in whose favor the unjust sentence falls. - St. Ligorius, n. 223.

[1] ** Note that these things are said about a civil cause; for it happens otherwise in criminal causes, when by the cares of an advocate the prince can at least be moved to mercy. See below, q. 1.

A fortiori in criminal matter neither can an advocate undertake the part of an evidently unjust accuser, nor can the procurator general pursue one unjustly accused, if he discovers his innocence either at the beginning or in the course or at the end of the cause; but each is bound to abandon the accusation begun.

III. An advocate, when consulted by a client, ought seriously to examine his cause, and with that diligence which the gravity of the matter demands, to keep faith with him, to disclose the justice or injustice of the cause, and scrupulously to indicate the probability of obtaining it or losing it; for otherwise he will impel the client to useless expenses, which he himself is bound to make good.

But in pleading a cause he must beware of frauds, false proofs, or other unjust means against the opposing party; for otherwise he is likewise bound to compensate all damages following from them.

10. Questions. - **QUESTION 1º. Can advocates defend causes even less probable, both of the accused and of plaintiffs?**

Resp. 1º In civil causes, yes, with the common and certain opinion, because they can have hope that the truth will come to light. - St. Ligorius, n. 222; Laymann; Sanchez, against a few [2].

[2] ** The authors warn (p. 926, n. 78) that to this response of the Author there must be added an exception, which St. Alphonsus (Bk. 4, n. 222) indicates in these words: "Nevertheless Lugo, Malderus, Diana, and Lorca apud the

Salmanticenses (tr. 29, app. *De Offic.*, ch. 4, n. 36) note that this runs if the probability is of law; for if it is of fact, even in equal probability (because then the accused must altogether be favored) they commonly say that it is not lawful for an advocate to support the plaintiff."

Resp. 1º To this exception, which is taken from Lugo (*On Justice and Law*, disp. 41, n. 7), the authors could usefully have added another part of the exception, which St. Alphonsus omits, but the Salmanticenses (l.c.) obscurely enough, and Lugo clearly enough (ibid.) had expressed thus: "The same proceeds in a civil cause; for a plaintiff, knowing that he cannot prove against the possessor, but that the matter remains doubtful, acts unjustly and vexes him, since in doubt the cause of the possessor is better; therefore an advocate knowing that the matter always remains doubtful, and therefore that the judge ought to judge for the accused, cannot justly help the plaintiff seeking an unjust sentence." But it is manifest that Lugo here treats of a negative doubt; this is clearer from what has been said elsewhere (disp. 37, nn. 113 and 122).

Resp. 2º The authors also would not have uselessly noted that in the cited text of St. Alphonsus, Malderus, Diana, and Lorca are not well alleged. For Lugo (l.c., disp. 41, n. 7) adduces them not for his own opinion, but for the contrary opinion. And this the Salmanticenses also note, saying (l.c.): "In such a case," says Lugo against Malderus, Lorca, and Diana, "the advocate cannot licitly," etc. Wherefore from the cited text of St. Alphonsus the word "commonly" could be removed without loss; since the opinion of Lugo is not common to Malderus, or Lorca, or Diana. Lugo (l.c.) cites no one for himself except Salas, and the Salmanticenses followed him, and afterward Roncaglia, and any others there may be. But besides Malderus, Lorca, Diana, and Merolla, whom Lugo reports as dissenting from himself, you will see very many others, whom Sanchez follows, dissenting from the opinion of Lugo, in the same Sanchez (*Dec.*, bk. 1, ch. 9, n. 51).

Resp. 2º But in criminal causes the accused can always be defended, even if his culpability were established, yet by honest and licit means, lies, frauds, etc., being excluded. The reason is that an advocate defending the accused inflicts injury on no one, and besides, from his office, he ought to patronize the accused as much as he can. - St. Ligorius, n. 220.

11. ○ **QUESTION 2º. To what is an advocate bound by reason of his fee or stipend?**

Resp. 1º Generally speaking, he can accept nothing beyond what is just, which either perhaps has been fixed by law, or must be determined by the judgment of prudent men, taking account of the business, the skill of the advocate, the labor which he expends, and received custom.

Resp. 2º With regard to the poor in particular, 1º he is bound to assist gratuitously, even with grave inconvenience to himself, those who are in extreme necessity; 2º likewise he is bound to plead gratis for those who are in grave necessity, and indeed under mortal sin, though not with notable inconvenience to himself; 3º finally, even in common necessity he is bound from charity to protect the causes of the poor, but not with grave inconvenience; namely, it suffices that he bestow on them some work when he is free from others. - *Hom. apost.*, tr. 13, n. 69.

QUESTION 3º. What can an advocate demand if, after agreement has been made about the stipend, the client abandons the cause already begun?

Resp. He can demand the whole, if it does not stand through him that he does not pursue the lawsuit, no otherwise than one hiring out his work for some wage can demand this, if it stands through the employer that the work is not completed. Except, however, if a just cause for abandoning the lawsuit intervened, since this condition is always understood in the agreement. - St. Ligorius, *Hom. apost.*, tr. 13, n. 69.

12. ○ **QUESTION 4º. To what is an advocate bound who, when the cause has already been completed, notices that it is unjust?**

Resp. He must at once warn about the injustice of the cause, lest he cooperate in unjust damage. Nor can he counsel a composition, since this ought to have place only in a doubtful matter. But if he has knowingly pursued an unjust cause, he will be bound to compensate all damages occurring to each party. For he must restore to the opposing party from the sin of commission, since he himself was the positive cause of the damage; but to his own client, if he was in good faith, from the sin of omission, since from his office he was bound to warn him about the injustice of the cause. Nevertheless an advocate, by abandoning a cause which he detects to be unjust, ought not help the other party, or reveal the secrets of his own cause to the other party, as is clear from natural law, and as St. Thomas expressly teaches, 2.2, q. 71, art. 3.

QUESTION 5º. To what is an advocate bound who, noticing that the cause is unjust, does indeed warn the client, but, with him willing it, pursues the cause?

Resp. 1º He is bound to nothing toward the client, if he loses the cause, because injury is not done to one who knows and wills.

Resp. 2º He is bound, by title of positive cooperation, to compensate all damages which the opposing party suffers.

13. ○ **QUESTION 6º. Whether and how does an advocate sin who defends a just cause by unjust means, for example, if he substitutes a new bond in place of the previous one lost, etc.?**

Resp. 1º He sins against fidelity and truth, more gravely indeed or less gravely according to the character of the unjust means employed [3]. The advocate will be guilty of a greater sin if he not only substitutes a new bond for the previous one, but supposes one which never existed. Nor can he be excused from the good end which he intends; for evils are not to be done that goods may come.

[3] ** It is supposed here that it is established both to the client and to the advocate that the right wholly favors them. But it cannot but seem very hard that they must lose the cause merely because of the misfortune of a lost bond. Otherwise, the remedy employed is indeed rejected by the laws, as liable to frauds; but as to the substance of the cause no injustice appears. Therefore of itself it will be an officious lie. See below, n. 28, q. 2.

Resp. 2º Of itself he does not sin against justice, since the cause is supposed just. Nevertheless accidentally he can harm justice and be obliged to restitution, namely if damage comes from this to his own party or to the opposing party; for if, for example, the fraud is detected, it can easily happen that a cause however good is brought into suspicion and collapses.

14. Resolutions. - 1º Advocates sin against justice toward the client if, when they are not sufficiently skilled and fit, they undertake causes to be defended; if they disclose the foundations or secrets of the cause to the opposing party, or if they serve each party; if, because they seem to themselves to bring forward peremptory arguments, they neglect other arguments not to be despised, because perhaps the judges would be moved by those neglected motives; if they do not prepare themselves sufficiently for pleading the cause, etc.

2º The same men sin against justice toward the opposing party if they cite false or abrogated laws, or bend them to an alien sense; if they employ deceit or lies, by which judges or jurors are drawn aside

into an unjust sentence or vote; likewise if they impute false crimes or vices to the opposing party, etc.

3º Procurators of parties sin against justice if they prolong causes, if they obtain undue delays, if they do not procure in the first place a cause previously accepted, if they bring the parties to an unjust composition, etc.

4º The procurator general sins against justice if from negligence, from haste or prejudice, from hatred or acceptance of persons, etc., he brings an innocent man into detention, into trial, and into undergoing an unjust sentence. Likewise, if he has sustained the accusation after in the course of the cause he has recognized his innocence, or has gravely doubted of it; therefore he is bound for all damages subsequently suffered by the accused.

To this also pertains the office of the referendary, who is sometimes employed in explaining causes. Sometimes the acts of the litigants are committed to him to be discussed, so that afterward he may report their foundations, reduced as it were into a compendium, to the judges. From these things it is clear with how much knowledge, diligence, skill, and fidelity the referendary must excel, so that he may report causes in the due manner and rightly instruct the judges.

Chapter III. On the Obligations of the Apparitor

15. ○ The apparitor (*huissier*) is he who by office carries summonses [1] (in French, *citations*) and mandates of justice, and completes the executions decreed by the judge. Hence the office of the apparitor is twofold.

[1] Understand the order of appearing in court; for the word *vadimonium* rather signifies a promise of appearing in court.

Since apparitors are ministers of justice, it is supremely fitting that they discharge their office very humanely, and temper the rigor and harshness of their ministry as much as can be done. They ought to be sufficiently instructed in all things which pertain to their office. They must also show fidelity in executing the mandates of the tribunal, equally guarding both against negligence in discharging their office and against rigor and vexation toward those whom public justice pursues. A special care also lies upon them, lest they omit any necessary formalities in their acts; for otherwise they would often harm justice, and would be bound to repair the damages coming from this.

16. ○ Apparitors act unjustly especially:

1º If by price or favor they allow themselves to be corrupted to the prejudice of the client, for example, by prolonging or neglecting the denunciations of sentences, or by doing other things from which it happens that the creditor cannot receive payment. Likewise by favoring certain solidary debtors, so that they do not include them in executions.

2º If they do not grant the time fixed for making juridical acts; if they ascribe a day falsely (*fausses dates*); if they affirm something false in verbal acts (*procès verbaux*); if they do not make at the prescribed time the juridical acts committed to them.

3º If, in searching houses, they act too harshly in order to extort some gift; if they inflict unjust force or another injury; if they state what is false in their acts.

4º If they exceed the mandate of the judge, or the statutes of the law, in seizing the things or goods of private persons; if they do not observe the just price in the sale of things seized, etc.; if they retain for themselves part of this price, etc.

17. Questions. - **QUESTION 1º. Are apparitors bound to restitution if they have accepted a price above the tariff determined by law under the title of donation?**

Resp. Yes, of itself. The reason is that such a donation generally cannot be called spontaneous. Hence if the excess of the price is something grave, they are obliged under mortal sin to restore it. - Thus commonly with the Salmanticenses. Nevertheless, if they had undergone extraordinary and undue labor, they could accept something above the ordinary price. - St. Ligorius [2].

[2] Neither the Salmanticenses, whom the Author here calls upon, nor St. Alphonsus in reality have anything about Apparitors, but they discuss Advocates, Notaries, Tabellions, Relators, etc. Yet the matter comes down to the same thing. For the same question is made about all those to whom a wage is owed for some office which they perform in judgments.

Moreover, if the question is instituted with the Author about a price fixed by laws, the doubt which St. Alphonsus also touches must not be passed over in silence (Bk. 4, n. 231), namely whether the law establishing the tariff for them (notaries, etc.) obliges in conscience. But he himself responds thus: "Navarrus, Trull., etc., apud the Salmanticenses (tr. 29, ch. 5, n. 18) affirm, since it is a just law. But Machado and Fagundez deny, because this law is penal, or at least mixed, and therefore does not oblige in conscience, as Villalobos, Diana, and others hold concerning a mixed law. Lugo also denies with Turrianus and others apud the Salmanticenses (ibid. n. 19), but led by another reason, namely because, since tabellions and other ministers of justice ought to live from the stipends of their own office, and in the course of times the prices of things and expenses according to custom concerning food and clothing are increased, therefore they do not unjustly demand something above the tariff." And the Salmanticenses say that this opinion of Lugo seems in these times more conformable to equity. To these things note that the Salmanticenses (l.c. n. 20), even setting aside the reason or opinion of Lugo, hold each of those opinions as probable.

Besides, even if the opinion of the Author seems to be preferred, as the more common, who otherwise supposes that the price fixed by law is altogether just, and therefore excludes Lugo's hypothesis about a wage determined by ancient laws which afterward, because of the increased price of all things in the course of times, has become too small, nevertheless it must be added that the same opinion suffers its exceptions, just as the reason brought forward suffers exceptions, namely that such a donation generally cannot be called spontaneous. For both in many circumstances (see Lugo, *On Justice and Law*, disp. 44, n. 19, and Salmanticenses, l.c. n. 24) a donation can and must be held wholly spontaneous, and moreover not every donation even less spontaneous must be judged to lack that consent which suffices for transferring ownership. For not rarely occasions present themselves even to the unwilling which imply a certain necessity of giving, and yet no one thinks that a burden of restitution must be imposed on the donees.

18. ○ **QUESTION 2º. Can an apparitor demand multiple wages if at one and the same time he carries different summonses?**

Resp. 1º From natural law considered in itself alone, it would seem that one must answer yes, because he furnishes the same utility to each one requiring him as if he undertook the journey and work for one alone, according to what was said in the Treatise *On Contracts in General*, n. 757. - Thus St. Ligorius, *Hom. apost.*, tr. 13, n. 68, etc.

Resp. 2º Attention must be given to the statutes of particular places. But by French law this is prohibited. Nevertheless, whatever the case may be concerning the civil law, a usage has prevailed, with the Government knowing and seeing it, that advocates and procurators so compose the matter that for individual summonses apparitors have nearly the same price.

Chapter IV. On the Obligations of Scribes and Notaries

I. On Scribes or Secretaries

19. ○ A scribe or secretary (in French, *greffier*) is he who reports in writing the testimonies, sentences of judges, and all other things which are transacted in tribunals. Hence he is accustomed to be considered as it were the right hand of the judge and his public and authentic secretary.

But a scribe can commit various injustices, especially:

1º If he does not employ due diligence in exactly reporting in writing all things heard and established or decided; for an omission in things of this kind can easily become grave.

2º If he does not use serious and constant attention in reporting into authentic books all things pronounced and transacted in the tribunal; for very easily a defect of attention in a scribe can induce grave fault and the obligation of restitution, unless it is altogether involuntary. For who does not see how great damages can follow from even a slight defect [1] on the part of secretaries?

[1] You have here an example of one who in conscience is bound for slight fault, that is, who is gravely obliged to most exact diligence, so that a defect which in itself could seem slight induces a grave obligation of restitution. Cf. note to n. 661, vol. I.

3º If from malice he omits something in writing, or if he adulterates or badly guards the public tablets committed to him; if he does not append, or does not take sufficient care that there be appended, the due formalities and signatures; if he does not faithfully transcribe testimonies, whether by exaggerating, or by diminishing, or by changing or inverting.

4º If in distributing lawsuits he obeys favor rather than order; if, in order to increase his wage, he makes the acts to be distributed larger, for example, by writing on two pages those things which could have been reported on one.

5º If he betrays a secret committed to him; if he manifests a sentence not yet published; if without the prescription of the judge he shows completed proceedings to the parties.

6º If he gives the acts of the judge to the parties before they have been signed according to the legal forms. For then he exhibits a defective and false instrument, whose dispatch is held of no value. - St. Ligorius, n. 229.

II. On Notaries

20. ○ A notary, or tabellion, is said to be one who is constituted by legitimate authority to write acts or public instruments, which have credibility both in court and outside court.

Hence it appears how great is the importance of the office of notary, how widely it extends, and by how grave obligations it is bound. Therefore notaries must enjoy knowledge equal to this office, uncommon perspicacity, and especially outstanding fidelity, prudence, and probity. For since they must handle business and contracts of every kind, from their negligence, ignorance, and defect of attention the greatest evils can follow for society, and damages for the parties.

21. ○ Notaries are unjust especially in the following cases:

1º If they are ignorant of the things which pertain to their office, and therefore do not make instruments rightly; if, with detriment to the contracting parties or others, from negligence they omit necessary solemnities, for example, to employ suitable witnesses, to append signatures, to indicate the day, month, year, etc.

2º If they make a false, usurious, or unjust instrument; if to the damage of another contracting party or a third party they feign in the instrument those things which are not; if they append false notations of the day, or change true ones, even if they do not intend damage; likewise if they counsel such things; if they make acts which exceed their office, or if they exercise their ministry outside the territory assigned to them: for then their acts are by that very fact void.

3º If they do not describe faithfully the wills of the contracting parties, or by ambiguous drafts furnish occasion for lawsuits and injustices; if they do not warn the parties about clauses which can harm them, or about difficulties which can be born from them. For they are bound to these things from quasi-contract with the parties.

4º If they write falsely that a sum has been paid before them or previously, with damage to the other party or a third party; likewise if they easily write such things, gravely suspecting that they are being deceived by the contracting parties; for then they cooperate in their sin.

5º If they negligently guard acts and instruments with danger of damage to the parties; if they delay the dispatch of instruments in order to extort money; if they commit something to a copyist with danger of error.

6º If they change something in the protocol (*la minute*), from which some right is violated or impeded; if they admit false witnesses; if they do not exhibit, or conceal, or deny a transcript of, some necessary testimony to their client.

7º If they communicate acts to others than the parties; if by their fault they lose protocols; if they violate oaths or secrets; if to the sayings or deeds of the parties, or to the testimonies of witnesses, they add or subtract something; if they do not transcribe all things sincerely, just as they stand.

8º If they neglect to watch over their ministers, and for that reason instruments are badly made; for notaries are bound to answer for all the ministers whom they employ; if they sign instruments made either by other notaries or by their own ministers before they have diligently reviewed them and have had perfect knowledge of the things contained in them; likewise if, where several notaries are required, they have declared absent ones as present.

9º If they ask a price beyond the tariff or approved custom [2], or if they amplify writings, or write in a larger or more extended character, so that the number of pages is notably increased; if they prolong business to be handled for the sake of increasing the wage.

[2] Compare the things said above in the note to n. 17.

In all these things, and many other similar things, notaries are bound under grave obligation, of itself, to restitution, as unjust damagers or cooperators, as is plain from what was said in the Treatise *On Justice and Law*. - St. Ligorius, nn. 230, 234.

22. Questions. - **QUESTION 1º. Is a notary bound to restitution toward the fisc if, in making an instrument of sale or of inventory, at the request of the parties, or even with himself**

hinting it, he does not inscribe the true price of the thing, but another lower one, so that the tax to be paid may be diminished?

Resp. It is disputed. Some affirm, because thus he cooperates in the defrauding of taxes, which is iniquitous and unjust on the part of a magistrate to whom the Republic entrusts confidence. Others deny, provided that at least the lowest price is reported in the authentic writing. Others finally excuse him totally, because from custom generally received even among the upright, the whole price, even the lowest, is not customarily declared, but only a little beyond the middle part is declared, or around two thirds of this price. But if the parties do not sin by dissembling the true price, neither does the notary sin by cooperation; for he is not constituted, like one set over customs duties, to exact taxes, but to make instruments.

23. ○ **QUESTION 2°. Does a notary sin who makes instruments on Sunday or on a feast day?**

Resp. From a custom now general they can make whatever instruments, provided they do not pertain to contentious jurisdiction, that is, to forensic business. Thus they can make an instrument of contract, testaments of the sick, matrimonial agreements, processes of elections to public office, and other similar things.

But writings pertaining to the contentious forum they can by no means make on feast days [3]. This is prohibited not only by canon law, but by civil law itself, even French law. But if a notary made such acts on a feast day and feigned a different assignment of the day, he would sin against ecclesiastical and civil law, and would write a false instrument.

[3] Nevertheless nothing forbids the whole context of the writing from being set down on a feast day, to which afterward on a lawful day the signatures and other solemnities are added.

Chapter V. On the Obligations of the Accuser and of the Accused

I. On the Accuser

24. ○ An accuser is said to be one who in criminal causes brings a crime before the judge, and asks from him vindication on account of the common good, and at the same time undertakes the obligation of proving the crime charged; but in civil causes, one who, as the injured party, compels an adversary to the judge, is called not accuser but plaintiff.

An accuser differs from a denouncer [1], who brings some crime before the superior or judge, and yet does not undergo the obligation of proving it. - St. Ligorius, n. 253.

[1] ** Understand denunciation here not indeed as fraternal denunciation, whose aim is not punishment but the amendment of one's neighbor, with the paternal admonition of the superior intervening, from which, because of his authority, amendment is hoped for more certainly; but juridical denunciation, whose aim, no otherwise than that of accusation, is the same as the aim of the judge in punishing, namely the common good, which redounds from the punishments of the wicked. Wherefore juridical denunciation seems to pertain to the same virtue to which the vindication of the judge pertains, namely to legal justice. See note to n. 518, vol. I.

According to Roman Law, all who are not specially prohibited by law can be accusers. But wards, the prepubescent, women, magistrates, the infamous, those closely joined, namely children with respect

to parents and vice versa, brothers with respect to brothers, a wife with respect to her husband, and conversely, are prohibited. But by Canon Law there are excluded from the office of accuser 1º clerics in a secular judgment, especially in a cause of blood; 2º laymen with respect to clerics, unless the crime is monstrous, or tends to great harm of the Church; 3º heretics not tolerated, and excommunicated persons, with respect to the faithful. - St. Ligorius, n. 238.

Accusers according to the same Roman Law, if they are convicted of calumny, incur the penalty of retaliation, namely the penalty which they were seeking for the accused they themselves must undergo.

But by French law it is lawful for no private person to institute an accusation, but the whole office of accusing and of proving the crime is reserved only to the magistrate constituted for this, or to the general procurator of the Government. Hence it happens that it is also called the public ministry, because it undertakes and protects the interests of the community and of good morals against the accused.

II. On the Accused

The accused is said to be he who is accused in a trial, whether criminal or civil, whether he is guilty or innocent. Concerning the accused various doubts occur, especially about confession of the crime and flight. Hence:

25. Questions. - **QUESTION 1º. Is the accused, when questioned by the judge, bound to confess the truth?**

Resp. 1º No, if he is not legitimately questioned; which happens when the judge is not legitimate, or when he does not observe judicial form, as if he questions without a previous accusation, etc.; they also add, when there is not at least half-full proof of the crime. Thus commonly. - St. Ligorius, n. 272.

Resp. 2º Yes, if the accused is legitimately questioned, because he must obey the just precept of the judge. Except, sufficiently probably, if there is question of undergoing a great penalty; because the law is not judged to impose upon the accused so arduous an obligation, which seems to exceed human strength, namely that he, by confession of the crime, should spontaneously commit himself to the certain risk of a very grave penalty, provided however that grave public damage is not imminent from his silence [2]. St. Ligorius, n. 274, also says this opinion is sufficiently probable even intrinsically, although he calls the contrary more probable.

[2] St. Alphonsus expresses this exception thus, after other doctors (Bk. 4, n. 274): "Unless common damage is imminent from the withholding of confession of the crime, for example of heresy, treason, etc.; for then the accused is bound to betray himself, or at least his associates, as much as is necessary to avert the common damage, even if death is imminent to him from the revelation of the associates, from whom he will become convicted in court." Moreover, two things occur that must be noted. For 1º damage to the republic must be understood not as just any kind, but as very great. For as Lugo says (*On Justice*, disp. 40, n. 15), human law can oblige a subject with danger of life only very rarely and on account of very great damage to the republic; but in the present case that danger is most certain. 2º Since the reason of averting this damage equally obliges all who are conscious of the crime, even if they have not been called into court, and since a precept which brings certain danger of life presents the greatest difficulty, hence it is plain that some impunity is fittingly granted from time to time to the accused, so that from a fuller knowledge of crimes and delinquents provision can be made more suitably for the public good.

Add also the warning from St. Alphonsus (l.c.): "All agree, as is fitting, in saying that if the accused is in good faith, and it is known that he will be induced with difficulty to confess the crime when questioned by the judge, the confessor must leave him in his good faith."

QUESTION 2º. Can an innocent accused person reveal the hidden crimes of the witnesses or of the accuser for his own defense?

Resp. Yes, provided 1º the crime is true; 2º the revelation is absolutely necessary for the defense of his innocence; 3º and he himself otherwise would suffer grave damage. - St. Ligorius, n. 277.

26. ○ **QUESTION 3º. Is it lawful for an innocent accused person to flee or resist?**

Resp. It is indeed lawful for him to flee and to snatch himself from the hands of the officers; but it is not lawful to repel force by force, by killing or wounding, because he would violate the rights of public power. - St. Ligorius, n. 279.

QUESTION 4º. Is it also lawful for an accused person who has truly committed a crime to flee?

Resp. Yes, if he has not yet been condemned by juridical sentence to the penalty; because no one is bound to pay the penalty before the sentence. Likewise if he has already been condemned to a very grave penalty, and prison has been assigned to him for custody until he is punished with the established penalty. - Thus commonly. - St. Ligorius, n. 280.

They more commonly deny, however, if prison has already been assigned by the sentence of the judge as the penalty. The reason is that the accused is bound to obey in the execution of a just sentence. Nevertheless several except the case if necessary things are not given to him, or if the prison is very hard, because the obligation of not freeing oneself from a very grave penalty seems to exceed human strength, when someone can accomplish this without force and resistance. - Thus St. Ligorius, ibid. [3].

[3] ** St. Alphonsus adds in the same place: "Probably by Lugo, Sanchez, and Navarrus with the Salmanticenses, against Sayrus, those condemned to the galleys are excused if they flee from prison, and even from the galleys themselves, as Sanchez, Lugo, Lessius, etc., hold as the more probable."

QUESTION 5º. Is it lawful for the accused to flee, even if from this the guard will suffer damage?

Resp. Yes, because he uses his own right and does injury to no one, unless charity nevertheless should counsel otherwise because of much graver damage to the guard. Yet it is not lawful for the accused to corrupt the guard with money, because since the obligation lies upon the guard not to let the accused go, he would cooperate in his sin.

Chapter VI. On the Obligation of Witnesses

27. ○ I. No one is bound from justice [1] spontaneously to offer himself for testifying; but sometimes there is such an obligation from charity, for example, if someone can by his testimony easily liberate an innocent person, prevent a grave injustice, etc. - St. Ligorius, n. 264.

[1] ** Understand this of commutative justice, unless nevertheless the discussion is about those who from office are bound to accuse. For otherwise, speaking in general and from the nature of the thing, the general rule is that there is an obligation of

accusing or denouncing a crime pernicious to the republic, if public damage cannot be prevented by another way. Thus the common opinion with St. Thomas (2.2, q. 68, art. 1). The reason is that the part from legal justice is bound to provide for the safety of the whole. But here a crime pernicious to the republic is understood as one which is directly and immediately against the common good, such as betrayal of the city, etc.

But although regularly it suffices to denounce, nevertheless sometimes there can be an obligation to accuse, where this would be needed to avoid public damage, when perhaps the nature of the danger does not allow delay for inquiry, and therefore it is necessary to free the judge from that burden and to present proof ready at hand. See Lugo, disp. 38, n. 2.

II. A witness legitimately cited is bound to present himself before the judges, to take the oath prescribed by law, to speak the whole truth [2] and nothing beyond the truth, and then to respond simply according to conscience to the things asked. - Thus all.

[2] ** Except if what the witness knows he knows only from a secret committed to him, as below, q. 2, or if the judge does not question legitimately, etc.

III. A witness who has maliciously deposed what is false is perjured and a violator of justice [3]; and therefore he is bound to the reparation of all damages, and also to the revocation of the false oath with equal damage to himself, even with danger of life, if by force of false testimony an innocent person has been condemned to death. - St. Ligorius, n. 269.

[3] You have violated justice if someone lies to the damage of others, but not if he merely dissembles without damage to others; for thus he is only disobedient and a transgressor of legal justice. In this matter some account must also be taken of the prejudice not infrequent among the common people, to which charity seems to require that crimes be covered and thus the damage of one's neighbor be guarded against.

28. Questions. - **QUESTION 1º. To what is a witness bound who has said what is false from invincible ignorance, or inadvertence, or inculpable forgetfulness?**

Resp. He is bound to disclose the false testimony, and in the way he can to prevent the damage; nevertheless he is not bound to reparation of the damage that has followed [4], since he is free from theological fault. - St. Ligorius, Bk. 4, n. 269, with Busembaum. Likewise one would have to say, more probably, even if he had sinned venially, according to what has been said about Restitution, n. 662.

[4] Understand damage from his ignorance which has already followed and which he could not prevent. For if he can still forestall it and does not prevent it by correcting the error, he violates commutative justice and will be bound to restitution.

QUESTION 2º. What about him who substitutes or adulterates a writing, bond, or receipt, to supply lost acts, or to pursue a certain right?

Resp. 1º He sins at least venially by reason of the lie; because however the matter stands, the bond which is exhibited is different from that which gives credibility in court.

Resp. 2º He can sometimes sin gravely against charity toward himself, when he exposes himself to proximate danger of the gravest penalties if the falsity is detected.

Resp. 3º He in no way sins against commutative justice, and therefore is by no means bound to restitution.

29. ○ **QUESTION 3º. When is a witness excused from giving testimony?**

Resp. He is excused in the following cases: 1° if he received the matter only under the secret of confession; 2° if he knows the matter under a committed secret, or even under only a natural secret [5]; 3° if he received the matter from men not worthy of faith; 4° if he knows that the accused did not sin mortally, for example, on account of ignorance; 5° if he foresees that grave damage will come to himself or to his own. Except if common damage is imminent from this. - St. Ligorius, n. 268.

[5] If there is question of a witness juridically and legitimately questioned, and you take natural secret as it is distinguished from committed secret, this certainly does not exempt from the obligation of testifying, since not even a promise, even with an oath, excuses. See Lugo, *On Justice*, disp. 38, n. 6. But the words of St. Alphonsus (Bk. 4, n. 268), by which he says that you are not bound to testify if you received it under a natural secret, even only under a committed secret, etc., are plainly to be taken of committed secret, although not explicitly promised.

QUESTION 4°. Is a witness bound to reveal an altogether hidden crime, for example, one which he alone knows?

Resp. 1° Yes, according to the law in force in France or other places, which establishes that even a single witness can suffice for condemning the accused, and requires nothing else from the jurors except that they assert that they have no doubt about the truth of the fact, whatever finally may be the proofs on which their testimony rests [6].

[6] Whatever may be the wisdom of this disposition, it is plain that the latter words of the Author cannot have this sense, as if there ought not be or could not be any foundation on which the persuasion of the jurors rests, but that they are not bound to render any reason why they so judge.

Resp. 2° More probably no, according to Roman Law, which necessarily requires two witnesses for condemning, even when the confession of the accused has been had. Hence the axiom: "One witness, no witness." - St. Ligorius, n. 266, etc.

30. ○ **QUESTION 5°. Whether and how does a witness sin who hides himself lest he be cited by the judge, or who flees after citation?**

Resp. To the 1st: He does not sin 1° against legal justice [7], because no one is bound to obey the precept of a superior before it is imposed on him; 2° nor against commutative justice, because he has himself merely negatively. Nevertheless he can sin against charity toward his neighbor, as was said above, n. 27 [8].

[7] It has been observed elsewhere that legal justice must not be confused with the virtue of obedience. Hence it happens that there can be an obligation of testifying by denunciation or accusation even apart from the precept of the superior or judge. See the notes to nn. 24 and 27.

[8] ** He sins against charity toward his neighbor if there is question of the good of a private person; but he will sin against legal justice if there is question of the common good, to which detriment is directly brought from this.

Resp. to the 2nd: He sins gravely against legal justice, or against the obedience owed to the judge in a grave matter and one necessary to society; but more probably he does not sin against commutative justice, because that citation does not impose an obligation of justice, but only of obedience. - St. Ligorius, n. 270; Vogler, n. 337; Billuart; Lessius.

QUESTION 6°. Is a witness who, when legitimately questioned, conceals the truth, yet does not say what is false, bound to restitution?

Resp. Probably no. The reason is that then the witness has himself merely negatively, nor is he bound to depose the truth except from the precept of the judge; and therefore by concealing it then he sins only against obedience owed to the judge, or also against religion because of the oath taken about speaking the truth. - St. Ligorius, ibid.; Lugo; Lessius.

Chapter VII. On the Obligations of Physicians, Surgeons, and Pharmacists

31. ○ They are bound above all under grave obligation 1° to have sufficient knowledge and skill; 2° to employ diligence proportioned to the gravity of the matter which is committed to their care. But if they are deficient in these things, they are bound concerning all damages which follow from this.

Moreover, they must furnish their work gratuitously to the poor who are in necessity [1], as was said above, n. 11, about advocates.

[1] Say the same if they receive a stipend from the Community; although not every reception of gifts is on this account forbidden to them. Nevertheless care must be taken that in this matter they do not conduct themselves in such a way that it is now commonly established that from the bestowal of gifts depends that diligence in healing which otherwise, by reason of the stipend, is to be employed toward the sick.

But in curing the sick they must observe the following rules:

I. They are bound to follow opinions of physicians that are safe and secure, at least ordinarily, because the danger of the sick person cannot be removed by probability.

II. When it is certain that some medicine will be profitable to the sick, they are bound to employ it, doubt being set aside; but if certainty is lacking, they ought to prefer the more probable.

III. When no hope appears concerning the health of the sick person, and there is no remedy present except a doubtful one, or one concerning which it is doubted whether it will be profitable or harmful, it seems that it must be employed [2]. - St. Ligorius, n. 291.

[2] In what sense this can be admitted, see in the following note to n. 34.

Hence a physician sins gravely: 1° if without sufficient capacity he undertakes to cure a grave disease. 2° If, when a grave and unusual disease occurs, he does not expend special work. 3° If he employs untested medicines for the sake of testing. 4° If, the nature of the disease not being well understood, he rashly prescribes dangerous remedies, especially with risk of life or of grave injury. 5° If, when the danger of the sick person has been recognized, he is not present opportunely, visiting him by day and night if there is need, and does not employ all means suitable for driving off the disease. 6° If he does not permit other physicians to be called when it would be fitting, or if, calling others for the sake of consulting, he attends rather to friendship than to skill. 7° If, on the contrary, without necessity he calls other physicians with useless expenses to the sick person, or if against his conscience he adheres to their counsels. 8° If he prolongs the cure for the sake of gain, needlessly multiplies visits where a wage is demanded for each one, or if he demands an excessive price. 9° If, to favor friendly pharmacists, he prescribes superfluous medicines. 10° If he counsels abortion, or the means of procuring it, or executes it himself. 11° Finally, the physician sins gravely, indeed most gravely, if he

does not forewarn concerning the grave danger of the sick person, so that the Sacraments may be conferred upon him. - St. Ligorius, n. 291, and Bk. 3, n. 182.

32. ○ Pharmacists, if you except a few things, sin almost as physicians do in the cases just set forth, especially by employing old medicines, by selling useless ones, by supplying to pregnant girls means for expelling the fetus, by not faithfully executing the mandates of the physician, for example by giving one medicine for another, etc. - St. Ligorius, ibid.

33. Questions. - **QUESTION 1º. To what is a physician specially bound with regard to the soul of the sick person whose care he has undertaken?**

Resp. He is bound of himself under grave obligation to admonish him concerning the grave danger in which he is placed, and concerning the necessity of receiving the Sacraments, lest he die without absolution, Viaticum, and Extreme Unction. It is clear 1º from natural law, or from the precept of charity. It is clear 2º from the very well-known Decretal of Innocent III, confirmed and renewed by other subsequent Supreme Pontiffs. It is clear 3º from the general Lateran Council, year 1245 (chapter *Cum infirmitas* [3], 13, *De Poenit. et remiss.*). - Yet it is not always necessary that the physician himself admonish the sick person concerning the proximate danger of death. Sometimes it suffices that he take care that he be admonished by relatives or friends, so that he may kindly admit the Priest and be induced to receive the Sacraments. If the sick person has a known Confessor, it will be enough if he is warned about the state of his penitent; for then by visiting him he will be able more efficaciously to move him to provide for the salvation of his soul. But let the physician beware lest he allow the admonition to be deferred too long. For he ought not prolong it until the danger of death is certain; but he is bound to this office when he notices that the danger is gravely imminent. If physicians observed this custom, sick persons would not so greatly dread the admonition, nor would they be seized with terror at mention of confession.

[3] The chapter *Cum infirmitas* in reality is nothing other than that very well-known Decretal of Innocent III alleged by the Author a little before, and which holds the 22nd place among the Decrees of the Fourth General Lateran Council, with the title: "That the sick should provide for the soul before the body." But most wisely the Lateran Fathers observed that this decree also serves to avoid the danger of bodily health. "This indeed," they say, "among other things gave cause to this edict, that certain persons lying on the bed of sickness, when they are advised by physicians to dispose concerning the salvation of souls, fall into an article of desperation, whence they more easily incur the danger of death." On the contrary, as Sylvester notes with Io. Andrea (*Sum.*, v. *Medicus* 3), from the fact that the sick know that physicians say this in every illness, mortal and non-mortal, from precept, fear and danger will cease.

34. ○ **QUESTION 2º. Does a physician sin gravely who in time of plague deserts the sick, lest he contract the disease?**

Resp. Yes, of itself, unless there are other physicians who will furnish help to the sick. The reason is that physicians from office are constituted for the common good of society; hence in a common danger they must consult not for themselves, but for society; for a private inconvenience must yield to the public good [4]. - Thus all theologians.

[4] Make a distinction between physicians who, by reason of a stipend constituted for them by the Community, are bound from justice, and physicians to whom no certain stipend is assigned by the Community; for these latter are bound from charity alone, which surely does not oblige with grave risk of life.

QUESTION 3º. Can a physician apply remedies of doubtful efficacy when the sick person is despaired of?

Resp. 1º A remedy probably going to be profitable must be employed, if another more certain one is not had. The reason is that provision must be made for the sick person in the better way in which it can be done; but then he is helped without any danger of damage.

Resp. 2º A remedy cannot be applied to a sick person, even one despaired of, concerning which it is simply doubted whether it is healthful or harmful, and this for making an experiment for other sick persons. The reason is that it is altogether illicit to seek an experiment with danger to another's life.

Resp. 3º If a remedy is certainly not going to harm and doubtfully going to benefit, it must absolutely be applied. The reason is plain: for some hope shines forth of rescuing the sick person from death, and no danger is imminent.

Resp. 4º In mere doubt whether the remedy is going to benefit or harm, outside the case of a sick person despaired of [5], it is not to be furnished, but one must wait that nature, with God helping, may raise herself up. - Thus St. Antoninus, whose words are these, p. 3, tit. 7, ch. 2: "If he, the physician, doubts about a medicine, whether it ought to harm or benefit, he does badly by giving it, because in doubt he ought rather to leave the sick person in the hand of the Creator."

[5] The Author in this place seems to except the case of despaired-of health, although in the preceding response 2º he denies that a remedy concerning which it is simply doubted whether it is healthful or harmful can licitly be applied even to a sick person despaired of. But this apparent contradiction will vanish if you understand the second response of negative doubt, so that the phrase "it is doubted" is equivalent to "it is unknown," as St. Alphonsus has it more clearly thus (Bk. 1, n. 46): "It is certain 2º that it is not lawful to apply to a sick person, even one despaired of, a remedy concerning which it is unknown whether it is healthful or harmful, for making an experiment on the sick person." But the final response will be understood of a remedy which some reason suggests can benefit the sick person. Yet concerning this case St. Alphonsus sets down a twofold opinion, one denying that this remedy is licit, the other affirming; and of this opinion the same St. Alphonsus judges thus: "The second opinion, however, which is sufficiently probable, and perhaps more probable, affirms that it is licit; because when the sick person is despaired of, it is more conformable to prudence and to the will of the sick person, especially if he expressly consents to this, to apply to him a doubtful remedy than to omit it with certainty of death."

Chapter VIII. On the Obligations of Guards

35. ○ Guards are those who are placed over the keeping of forests, fields, etc., by the Prince or by a community or by a private lord. Besides the sin which they commit against the oath by keeping negligently [1], they sin against commutative justice toward those damaged; and, in defect of those causing damage, they are bound concerning damages culpably not prevented, especially in the following cases:

[1] ** It is supposed, of course, that an oath is exacted from these; and yet it is easily plain that this is very imprudent, and uniquely suitable for entangling and ensnaring even timorous consciences. For even those few things which the Author subjoins show that very many questions, and those not easy to solve, occur in this matter; likewise no one is ignorant that questions about the obligation of an oath, namely when and of what kind it is present for the diversity of cases, are not easy to solve; but on the other hand here the matter is with men rude in talent and learning, who are scarcely found fit for seeing clearer and grosser things. What therefore is to be expected from oaths of this sort, except a heap of insoluble difficulties?

1º If they do not report delinquents in grave matter within the determined time. Nevertheless they are probably bound only by reason of the damage, not by reason of the fine. 2º If afterward before the judge they do not sustain the report duly made; if they accept gifts in order not to report. 3º If they

report innocent persons from hatred, revenge, etc., or if they denounce for merely accidental damage. - St. Ligorius, n. 237, and *Hom. apost.*, n. 73.

36. ○ **QUESTION. Are guards always bound to denounce delinquents?**

Resp. They are bound to denounce whenever the damage is notable, unless the delinquents spontaneously offer themselves to compensate it secretly. But they can sometimes act more mildly with those causing damage, if the damages, for example, are of lesser moment and have not been repeated more often; if it can prudently be presumed that the owner does not wish the delinquent to be reported; if the delinquent is very poor and is not accustomed to commit offenses, etc.; but let guards carefully beware lest in these things they indulge more than is right.

Chapter IX. On the State of Craftsmen and Workmen

37. ○ Craftsmen and workmen are to be examined carefully by the Confessor; for very often they are silent in confession about the injustices and sins proper to their condition.

I. In general they are unjust by selling or hiring out their works for an unjust price; by not manifesting hidden defects of the works according to what was said about sale; by wasting time through culpable negligence; by turning other workers away from labor; by executing work badly, whether by too much haste or by omission of necessary things, etc.

II. But in particular the following especially are unjust:

1º Goldsmiths and silversmiths who adulterate gold and silver, pour lead into hollow spaces, buy diamonds from the ignorant below even the lowest just value, or sell counterfeit or artificial diamonds as if natural.

2º Clothmakers and wool-workers who mix wool of lesser price with good wool, and sell it for as much as if the whole material were of the same quality; who weave the beginning and end of a roll of cloth from much better wool; who use colored dyes deceptively; who, having been deceived in buying cloths, likewise deceive others by selling.

3º Millers who change grains, or mix with them foreign things of almost no value, such as beans, to increase the weight and mass; who for a wage retain something of the wheat or flour beyond the practice of the God-fearing.

4º Bakers who bake badly; who maliciously mix with wheat flour another from rye, barley, beans, etc.; who fraudulently diminish the weight.

5º Butchers who sell corrupted meats, or hand over worse quality for better.

6º Tailors and shoemakers who cut badly; who use corrupted or burned cloth or leather; who retain part of the cloth handed over to them, pretending that they used the whole in making the work.

7º Makers of hats who sell hats re-stuffed or dyed as new, or as if they had been standing in the shop for a longer time.

8º Printers who print copies in a greater number than was agreed upon, and retain them for themselves; who make adulterated editions against the right of one having a privilege [1]; who have

unskilled correctors; who do not employ paper of the same quality as they promised in the prospectus, etc. - See St. Ligorius, n. 292.

[1] Nevertheless, one must inspect whether the laws granting a privilege of this sort can be held, or not, as merely penal, whether the editions which others attempt against the privilege are adulterated or not adulterated.

Part Second. On the State of Clerics

One must treat 1º of the common obligations of clerics; 2º of the peculiar obligations of certain ones.

Chapter I. On the Common Obligations of Clerics

Article I. On the Positive Obligations of Clerics

Clerics are chiefly obliged: 1º to holiness of life; 2º to celibacy; 3º to ecclesiastical habit and tonsure; 4º to the canonical Hours.

§ I. On Holiness of Life

38. ○ How great the internal holiness and external edification of clerics ought to be needs neither demonstration nor exposition. For the very idea alone of the clerical state and of the priesthood manifestly argues this. Therefore in very few words we shall declare that clerics ought to be pious, holy, and modest, both from the nature of their state and from Scripture, the Fathers, and the Councils.

1º From the nature of the clerical state. Most holy is the ministry of clerics, since they are always applied, proximately or at least remotely, to sacred things, to the Sacraments to be conferred upon the faithful, to divine praises solemnly paid in the name of the Church, to instructing the Christian people about the way of eternal salvation, and also to celebrating the most holy sacrifice of the Mass. For why are clerics and priests constituted in the Church? That, with the Gospel as witness, they may be the salt of the earth and the light of the world. But they cannot be such unless they shine forth with distinguished and splendid holiness of morals. Not only the sublimity and excellence of the duties to be fulfilled, but even the garments with which the cleric is clothed, cry out that he must profess holiness. Hence St. Jerome says, Epistle 58: "The garment cries out, the state cries out, the profession cries out holiness of soul." 2º From Scripture. Thus concerning the priests of the old law the Lord said, Lev. 21:6: "They shall be holy to their God, and shall not pollute his name: for they offer the incense of the Lord and the loaves of their God, and therefore they shall be holy." Likewise in Isa. 52:12 it is said: "Be cleansed, you who carry the vessels of the Lord." But if such holiness of life was required in priests who offered oxen and sheep and other animals to God, what must be required in those who sacrifice the divine Lamb himself? And if such cleanness was required in those who carried the vessels of the Lord, what purity of soul must be required in those who carry the Lord himself in their hands? Read also St. Paul to Titus, Timothy, etc.

3º From the Fathers. Thus St. Chrysostom, hom. 10 on the First Epistle to Timothy: "The priest ought to have an immaculate life, so that all may look upon him as upon some excellent example; for therefore God chose us, that we may be as luminaries and teachers of the rest, and live as Angels on earth." St. Thomas teaches that greater holiness is required in a priest than in a simple religious,

saying, 2.2, q. 184, art. 8: "Through Sacred Order someone is deputed to the most worthy ministries, by which Christ himself is served in the ministry of the Altar; therefore for this there is required greater interior holiness than the state of Religion also requires" [1]. And in the Supplement, q. 35, art. 4: "For the fitting execution of Orders, excellent goodness is not sufficient; but just as those who receive Order are constituted above the people by the grade of Order, so also they should be higher by merit of holiness."

[1] ** In this place St. Thomas compares a priest with a lay religious, and merely contends that a priest, as to dignity, excels a lay religious because of the preeminence of Order.

4º From the Councils. Innumerable things are found in Canon Law about the holiness of clerics, which are also confirmed by very many Councils. But it is enough to report what the Council of Trent has by solemn Decree, sess. 22, ch. 1, *De Reformat.*: "It is altogether fitting that clerics called into the portion of the Lord so compose their whole life and morals that in habit, gesture, walk, speech, and all other things they bear before them nothing except what is grave, moderate, and full of religion."

§ II. On Celibacy

39. ○ All clerics receiving sacred Orders contract by that very fact the obligation of celibacy. This is clear from various Decrees of Canon Law, but especially from ch. 1, dist. 28, where St. Gregory prescribed thus: "Let Bishops presume to make no one a subdeacon unless he has promised that he will live chastely, because no one ought to approach the ministry of the Altar unless his chastity has been proved before the ministry has been received." Likewise from the Council of Trent, sess. 24, ch. 9, where it is defined thus: "If anyone shall say that clerics constituted in sacred Orders, or Regulars solemnly professed in chastity, can contract matrimony, and that the contract is valid, notwithstanding ecclesiastical law or vow, let him be anathema."

40. Questions. - **QUESTION 1º. Is the obligation of celibacy of divine law?**

Resp. No, with the common opinion against some; but it is from merely ecclesiastical institution, namely from the force of a precept of the Church, or also from the vow annexed to sacred Orders. The reason is that celibacy was introduced only from the precept of the Church or of the Apostles. It is further plain from the Council of Trent reported above, where it is said: "Notwithstanding ecclesiastical law." Therefore, etc. - Thus commonly the theologians. St. Ligorius, *On Order*, Bk. 6, n. 807. Therefore the Church can dispense from that obligation. But she never dispenses with those constituted in sacred Orders so that they may be bound by the bond of matrimony, unless under this law, that they be altogether excluded from clerical offices. Thus Pius VII convalidated the sacrilegious marriages of some Priests who had entered into nuptials during the French disturbance.

41. ○ **QUESTION 2º. Does the obligation of celibacy proceed immediately from a precept of the Church, or mediately, namely from the vow which is emitted in the ordination itself [1]?**

[1] The controversy is more aptly and clearly proposed by asking whether this obligation of chastity arises from the mere precept of the Church, or also from a vow annexed to sacred Orders. To this question an easy answer offers itself, that the Church wills both that clerics keep chastity and that they profess chastity from a vow. Wherefore ecclesiastical law commands clerics both chastity and at the same time the manner of professing chastity, namely from a vow.

Resp. Certain ones have thought it probable that the obligation is from ecclesiastical law alone; yet this opinion seems to have its origin from the doctrine of certain older authors understood wrongly. But the more common and to-be-held opinion says that this obligation arises from a vow. And indeed unless you derive it from a vow, it would be probable that a cleric is not guilty of sacrilege in internal sins against chastity, which is against the opinion of all [2].

[2] When you establish that clerics are probably obliged to keep chastity only by force of ecclesiastical law, another perhaps will subsume that human laws do not reach acts merely internal, as the opinion has it which is at least extrinsically probable from authority. And if indeed ecclesiastical law does not extend itself to these acts, therefore through them a cleric will certainly sin against natural law, but not against ecclesiastical law, from which alone the guilt of sacrilege could be deduced for those acts. Therefore acts merely internal will not be infected with the malice of sacrilege; whence it will also follow that the circumstance of Sacred Order in the confession of these sins is not necessarily to be expressed.

But since a consequence of this sort openly conflicts with the doctrine which doctors most commonly have as certain, namely that a cleric constituted in sacred Orders by sins even merely internal against chastity also incurs the guilt of sacrilege, necessarily to be expressed in confession (see Tamburini, *On the Sacraments*, bk. 7, ch. 3, § 3, n. 7; Verricelli, tr. 4, *Quaest. Mor.* 5, n. 2; St. Alphonsus, Bk. 3, n. 454), therefore one must conclude that, if not in both, at least in one of those premises from which that consequence flows spontaneously and legitimately, a defect lies hidden, and probability is wrongly attributed to it. For the probability of the premises would make the consequence probable; but probability of that consequence cannot cohere with the certainty of its contradictory.

Moreover the Author rightly detects a defect of this sort in the probability which, through mere equivocation, was attributed to the proposition deriving the obligation of chastity with regard to clerics immediately from mere ecclesiastical law. I said "through mere equivocation"; for if you diligently inquire, not with another's eyes but with your own, into the opinion of those authors whom, as patrons of that opinion, you have enumerated in a long train apud Sanchez (*On Matrimony*, bk. 7, disp. 27, n. 9), and after Sanchez apud Aversa (*On Order*, q. 4, sect. 7, § *Praeferendus*), you will find that most of them are wrongly alleged, since they are treating a wholly different question. And indeed several of them by no means ask whence is the obligation of perfect chastity with regard to clerics, whether from a vow or from a mere precept of the Church, but whence is the force of diriment impediment or of rendering invalid the matrimony which a cleric perhaps contracts after receiving Sacred Order; namely, whether this is to be derived from the nature of Sacred Order, or by force of a vow, or only from ecclesiastical law. But they establish that this does not flow from the nature of Sacred Order, both because the custom tolerated in the Greek Church contradicts it, and because the Supreme Pontiff can dispense; likewise not by force of a vow, both because the matrimony even of that cleric who perhaps did not wish to vow, at least by internal will, is held invalid, and because not even the solemn vow of a monk of itself, but through a statute of the Church, has this force. Wherefore they rightly conclude that the invalidity of a matrimony of this sort can be deduced from ecclesiastical law alone; and this conclusion is wrongly confused with the opinion which derives every obligation of chastity, which can be present even apart from the force of diriment impediment, from the law of the Church alone. But lest these things seem to be tossed out wrongly, it will not be burdensome for the reader to have inspected here with his own eyes the genuine senses of these doctors who are objected to as contrary.

Therefore the conclusion of Scotus is this (*In 4*, dist. 37, single q.): "The Church makes such a person simply illegitimate, namely for nuptials." Say the same about Innocent III and Henry of Ghent, of whom the former (*In C. Placet* 12, *De Convers. Coniug.*) merely says that it is from the constitution of the Church that a presbyter, after the death of his first wife, cannot take another; but the latter (*Quodl.* 5, q. 38), that the Church indeed exacts continence from a cleric, but nevertheless does not dissolve matrimony contracted before Orders were received. To these add Bellamera, who (*In C. De illo* 5, dist. 32, n. 4) establishes this one thing, that the Pope can dispense with a subdeacon, because the prohibition about not contracting matrimony is not of natural or divine law, but ecclesiastical. But Durandus (*In 4*, dist. 37, q. 1, ad 1) also merely concludes: "When they receive Sacred Order, from then they are unfit and illegitimate simply for contracting matrimony by statute of the Church." And from Durandus Turrecremata transcribed (*In C. Placuit* 13, dist. 32, art. 1, n. 6, ad 5), saying: "Sacred order impedes matrimony to be contracted and dissolves one contracted, not by reason of order absolutely, nor by reason of the annexed vow, but it impedes completively by statute of the Church making the persons illegitimate for contracting," etc. Nor otherwise Paludanus (*In 4*, dist. 37, q. 1, concl. 2), where he writes: "Each sacred order dissolves a contracted matrimony, not by reason of the annexed vow, but by statute of the Church." But the hallucination of those who understood these things as if the annexed vow were denied is plain from q. 2, concl. 2, where Paludanus expressly even

asserts this vow: "A solemn vow," he says, "which dissolves, is only either that of Sacred Order, or of approved Religion, as the new Decretal says, namely of Boniface VIII, in the single chapter *De Voto* in VI." You see this same thing apud Henry (*In C. Ex litterarum*, tit. *Qui clerici vel voventes*, n. 2), who has these things: "They, clerics, retain the character which is imprinted on the soul, nor can it be removed by deposition; whence a deposed cleric must live clerically, and the vow of continence is annexed to the character."

But what is more remarkable, even those are alleged for the opinion denying the vow who, openly asserting the vow itself, then dispute whether that vow is annexed to order by divine or human law, or whether that vow dissolves matrimony by its own force, or only by ecclesiastical statute. Thus the Archdeacon, namely Guido de Baysio, while he refutes those who asserted that a vow is annexed to Order by its own nature, and on the contrary refers this to the constitution of the Church, grants the vow itself thus (*In C. Cum in praeterito* 3, dist. 84): "There is an argument that he who has accepted order by that very fact makes a vow of continence, even if it is not expressed: for since some things are annexed to it, he who accepts one, since it cannot be without the other, seems to accept the other." Thus also the Provost, namely Ioannes Antonius de S. Georgio (*In Rubr. Qui Clerici vel voventes*, n. 6): "You have, therefore, that continence, even if someone is bound to it by a solemn vow, is not included by divine law, but by the positive law of the Church, and therefore a solemn vow dissolves matrimony rather by constitution of the Church than by divine law. For by divine law the Priests of the Synagogue could contract matrimony, and even the Eastern Church has it that Priests contract matrimony, that is, retain a wife previously taken." But Valentia (*Controv.*, single bk., *De Caelibat.*, ch. 2) institutes the question thus: "Whether the solemn vow of continence is annexed to sacred Orders not only by ecclesiastical law, but also by divine law." He repeats this in the Theological Commentaries (tom. 4, disp. 9, q. 5, punct. 5, § 1), establishing that the law of celibacy with regard to all those things which it includes is only of ecclesiastical law, not divine; and therefore that the vow of continence is annexed to Sacred Orders only by ecclesiastical law. And John Gutiérrez (*Quaest. Canonic.*, bk. 2, ch. 7, n. 2): "Although clerics do not emit an explicit vow of chastity, nor is the debt of continence essentially annexed to Sacred Order, but by statute of the Church, implicit, namely hidden in the very reception of Order; therefore by constitution of the Church they are bound to observe it. For by that very fact that someone is promoted to Sacred Order, he is tacitly understood to vow continence, even if no mention is made of a vow of continence."

Nor less beside the point are Aegidius de Coninck and Palaus alleged for that opinion, since they derive the obligation of clerical continence both from a vow and immediately from ecclesiastical law. Thus the former (*On the Sacraments*, disp. 20, dub. 13, n. 130): "Although the second opinion reported in n. 126, namely the one which deduces the obligation immediately from the vow alone, is probable because of the authority of very many doctors, nevertheless I believe it more probable that those receiving sacred Orders, besides the obligation of the vow there explained, are also immediately obliged to continence from ecclesiastical law." And Palaus (tr. 27, single disp., punct. 17, n. 5): "I judge it truer with Aegidius de Coninck that those initiated in sacred orders are bound to keeping chastity not only from a vow, but from a special law." These authors were moved, namely, by this: that if someone through ignorance or malice in receiving Sacred Order did not vow, this one would in no way be bound to chastity, contrary to what all the doctors teach. And this reason indeed moved some even of the older authors, about whom we spoke above, so that they said that the invalidity of matrimony contracted by a cleric flowed not from a vow but from an ecclesiastical statute; namely lest, if someone did not emit the vow, which must be emitted by each one's will, his marriage would have to be held valid.

Therefore, for the opinion which attributes the obligation of clerical chastity solely to ecclesiastical law, only some jurists remain, whom Zabarella also hints at (*in Clement. Ad nostrum De haereticis*). While these men were asking of what crime, adultery or incest, etc., a fornicating presbyter was guilty, and of what penalty he was worthy, they advanced so far that, against the common opinion of all theologians, they ascribed to him no other guilt except that of simple fornication, led of course by empty little reasons, both because in ch. *Presbyter*, 5, dist. 82, this offense is called fornication, "A presbyter, if he has committed fornication," and because clerics do not solemnly vow, although, as Decius adds in ch. *At si clerici*, *De Iudiciis*, n. 227, they promise chastity.

Since therefore no solid reason favors this opinion, and the authority on account of which some attributed to it some probability is finally resolved into the support of certain jurists who by vain reasonings declined to opinions opposed to the common doctrine of theologians; and since to the authority of Boniface VIII, in the single chapter *De Voto* in VI, there accedes the Constitution of Benedict XIV *Inter praeteritos*, 3 Dec. 1749, in which (§ 41) it is expressly said that a vow is solemnly emitted in the reception of Sacred Order; one must conclude that that opinion is wrongly called probable. And each one will admit this conclusion the more willingly, the more certainly it is established among all that to the sins against chastity of clerics initiated in sacred Orders, even if merely internal, the malice of sacrilege accedes.

** Nothing about St. Alphonsus, as is plain to the reader, had been said in this note. But because St. Alphonsus also held as probable the opinion which derives the obligation of keeping chastity, with regard to clerics, from ecclesiastical law alone, behold, the Vindicators (p. 327, note 1) judged that this note too must be attacked.

And indeed, 1º in order to weaken the argument which is taken from the very common opinion of the doctors, namely that clerics become guilty of sacrilege through acts even merely internal, which nevertheless human law, according to an opinion at least extrinsically probable, does not reach, they object that internal acts can be commanded by the Church at least indirectly, if they are connected with external acts as effects and cause.

Resp. Let the antecedent pass, and I deny the consequence. For it is very well known that even grave sins against chastity can be committed through acts merely internal, which are in no way connected with external acts as cause and effect. And nevertheless, by the unanimous consent of the doctors, these sins in those initiated in Sacred Order contract the malice of sacrilege. Therefore in that opinion one cannot avoid an absurdity of this sort, which of itself suffices to take away every probability from it.

2º The Vindicators add that the extrinsic value, namely the extrinsic probability of the opinion which is rejected in the note, is derived by St. Alphonsus chiefly not from certain old jurists, but from the very words of the Holy Council of Trent.

Resp. Someone perhaps would rightly prefer that certain jurists had been alleged by St. Alphonsus, rather than the theologians Scotus, Palaus, Valentia, etc. For the former, although less effectively, nevertheless seem in some way to pertain to the matter, because they touch this question; not so the latter.

But as to Canon 9, sess. 22, of the Holy Synod of Trent, this is brought forward much less to the matter. For even if you suppose what must be denied, that this canon does not stand in the way of saying that clerics in sacred Orders are kept from nuptials by ecclesiastical law alone, and that nuptials are contracted invalidly by them, can a law of this sort, keeping them from nuptials and establishing them as invalid, be confused with a law which makes clerics themselves guilty of sacrilege for any sin whatsoever committed by them against chastity? But I said that that hypothesis must be denied. For, as was indicated in the note, after the declarations both of Boniface VIII and Benedict XIV, it is not lawful to deny that clerics constituted in sacred Orders are bound by a solemn vow of chastity.

42. ○ **QUESTION 3º. Is the obligation of celibacy universal in the Church?**

Resp. Some exception is given from the tolerance of the Church among Easterners. For in the Eastern Church priests indeed can never enter matrimony after sacerdotal ordination, or even after the diaconate; but those married before the diaconate can be advanced to further Orders, and nevertheless live with their wives. Bishops are excepted, who all must constantly keep perfect chastity. But apud the Greeks the subdiaconate is not numbered among Sacred Orders. Hence the precept of chastity is imposed on unmarried clerics in the ordination of the diaconate.

QUESTION 4º. Would one be bound to chastity who expressly did not wish to vow chastity?

Resp. This one nevertheless would be bound to chastity, if not from a vow, since no one can be bound unwillingly by a vow, then certainly from a precept of the Church, which from the motive of Religion would bind him to chastity when the vow was lacking [3]. - Thus commonly with St. Ligorius, Bk. 6, n. 809. Others hold that he is bound to emit a vow of chastity; and no one will deny that the Church can oblige him to this.

[3] "What certain ones have said, that if such a one sinned against chastity he would not commit sacrilege, this does not seem sufficiently probable, and is against the common opinion, because chastity would be commanded from the motive of the virtue of religion." - St. Alphonsus, Bk. 6, n. 809, q. 2.

43. ○ **QUESTION 5º. Whether or when can a married man, while his wife is living, receive Sacred Orders?**

Resp. A married man can licitly be promoted to Sacred Orders with the express and altogether spontaneous permission of his wife, provided that she herself also vows chastity. But then the wife is not bound to enter Religion according to the more probable opinion [4], against Sanchez, etc. Nevertheless exception must be made unless the husband becomes a Bishop or a Religious, and the wife is young [5]. - Thus St. Ligorius, Bk. 6, n. 812. Others say that then the wife indeed is bound to enter a Monastery, but not to profess; others finally exempt her from every obligation except the vow of chastity [6].

[4] But now by received custom alone a man is not admitted to Sacred Orders unless the wife, if she is young, enters religion and professes, and if she is old, vows continence. Thus Pontius, *On Matrimony*, bk. 7, ch. 25, n. 7.

[5] This limitation, "if the wife is young," is to be understood only of the case of a husband professing religion, but not of one promoted to the Episcopate. For the wife of him who is chosen as Bishop must altogether pass to a monastery, even if she is old. For thus in ch. *Sane* 6, *De Convers. Coniug.*, Alexander III established: "By Apostolic authority we prohibit you from presuming to ordain a married man as Bishop, unless the wife first, having professed continence, puts on the sacred veil for herself and assumes religious dress."

[6] But these authors seem to have been ignorant of what has been sanctioned in law (ch. *Cum sis* 4, *De Convers. Coniug.*). For thus Alexander III: "You ought not be ignorant that it is contrary to the constitution of the holy Fathers that a husband, with his wife not assuming the habit of religion, or a wife, with her husband not assuming it, should pass to religion. Hence it is that by apostolic authority we prohibit you from permitting a husband or wife in your episcopate to pass to religion, unless each shall have migrated to religion. But if the wife is so old and sterile that she can remain in the world without suspicion, you will be able to dissemble, so that with her remaining in the world and promising chastity, her husband may pass to religion."

44. ○ **QUESTION 6º. Can a wife who vowed chastity outside Religion after the ordination of her husband, when he has died, validly contract matrimony?**

Resp. There is a twofold probable opinion.

The 1st OPINION denies, and rests on Canon Law, ch. *Quia sunt*, 10, dist. 28, where it is said of such a matrimony: "Let those who are badly joined be separated." But the reason of this decision is that the Church, because of reverence for the Order assumed by the first husband, renders the wife incapable of a subsequent marriage. St. Ligorius, n. 812, calls this opinion the more common and very probable. The 2nd OPINION affirms. The reason is that it is not established that such a matrimony is invalid. For 1º it is not invalid by reason of the simple vow of chastity emitted by such a wife; 2º nor is it invalid from a special law of the Church; for from the fact that the spouses are ordered to be separated, it does not follow that their matrimony is invalid; for separation can be ordered as a penalty of a second matrimony contracted against the vow and prohibition. The same St. Ligorius, ibid., says this is sufficiently probable [7].

[7] For this opinion St. Alphonsus had no one whom he could allege except Soto and Pontius. The former of these (*On Justice and Law*, bk. 7, q. 5, art. 3) writes scarcely a few words about this matter in passing, where he also supposes that a priest, unlike a religious, is not simply incapable of matrimony; but the latter (*On Matrimony*, bk. 7, ch. 25, n. 10) rests on this argument, that the Canons sometimes order spouses to be separated, although the matrimony is valid; but the Toledan canon grants the sacrament at the end of life to one sinning. But it would further have to be proved that separation of this sort and the interdict of the sacrament until the end of life were then imposed by the canons on delinquents only when the matrimony had existed validly, but by no means when, although invalidly, it had nevertheless been attempted. Since this cannot be proved, the argument of Pontius falls back into a mere sophism. Otherwise, St. Alphonsus does not deny that the former opinion is received by the common support of theologians and canonists, so much so that he scarcely, or not even scarcely, makes mention of the contrary opinion. See Schmalzgrueber, bk. 4, tit. 6, nn. 40-42.

§ III. On Wearing the Habit and Tonsure

45. ○ Clerics, at least those initiated in major Orders, are obliged to wear the tonsure and clerical dress. This is clear from the whole of Canon Law, especially from the Council of Trent, sess. 14, ch. 6, *De Reformat.*, where it is said: "But because, although the habit does not make the Monk, nevertheless clerics must always wear garments congruent to their own Order, so that by the decency of the exterior habit they may show the interior honesty of morals." Moreover in the same place it is enjoined on Bishops that they seriously admonish transgressors, and if they do not obey, remove them from sacred functions.

But the clerical habit varies for various regions. Therefore one must stand both by custom and by the particular statutes of places.

46. Questions. - **QUESTION 1°. Do clerics sin gravely by not wearing the habit?**

Resp. Yes, of itself, unless there is present a just reason, or lightness of matter excuses, or the smallness of the time. - St. Ligorius, Bk. 6, n. 825; Benedict XIV, *On the Diocesan Synod*, bk. 11, ch. 8; Ferraris, v. *Clericus*.

But they commonly admit that it is venial only once or again to leave off the habit. But how much space of time is required for mortal sin can be determined not in general, but only from the circumstances.

But for those making a journey a shorter habit is permitted, but of black color, and one in which the decorum and honesty of the clerical state shine forth. But the clerical habit can be totally left off for a grave cause, for example, if persecution is imminent, or if one must pass through places of heretics, infidels, or impious men, etc.

47. ○ **QUESTION 2°. Are clerics not constituted in sacred Orders also bound under grave or under light obligation to wear the clerical habit?**

Resp. It seems one must deny as to each. For from the common opinion they are not bound to this under grave obligation, scandal being excluded; nor probably under light obligation, strictly speaking and of itself, because the obligation seems to have been imposed only on clerics constituted in sacred Orders. Nevertheless attention must be given to particular laws and to the custom of places. Besides, even simple clerics, as long as they wish to be clerics, must wear garments redolent of clerical modesty [1].

[1] A cleric not wearing the habit and tonsure, if after being admonished a third time by the Bishop he is not corrected, loses the privilege not only of the forum but also of the canon. St. Alphonsus (Bk. 6, n. 827).

Nevertheless beneficed clerics must be excepted, who, although they are not in sacred Orders, are bound by the same law as higher clerics to wear the habit, and indeed under the penalty of suspension from benefices and every ecclesiastical dignity, as is clear from the Bull of Sixtus V, *Cum sacrosanctae*, 9 Jan. 1588 [2].

[2] ** This suspension seems to have been abrogated by force of the Constitution of the Supreme Pontiff Pius IX.

48. ○ **QUESTION 3º. Do clerics sin gravely by not wearing the tonsure or crown?**

Resp. 1º Clerics who are not constituted in sacred Orders never sin gravely, unless they are beneficed. - Thus most commonly.

Resp. 2º Even clerics initiated in sacred Orders at least do not sin gravely unless they omit wearing the tonsure for a notable time [3], such as is not the time of one or another month. But whether it is grave not to wear the tonsure for a whole year is not clear. Theologians more commonly affirm; but it is not clearly proved. - See St. Ligorius, Bk. 6, *On Order*, n. 820.

[3] What the Author above, n. 46, warns, that for a grave cause the clerical habit can licitly be put aside, this same thing must be held about the tonsure, and all the more easily, because it is not the case that, just as garments can be put off and changed quickly when danger is imminent, so the tonsure can be put off quickly when there is need.

§ IV. On the Recitation of the Canonical Hours or Divine Office

49. ○ The canonical Hours are said to be a collection of prayers and readings to be recited at certain hours on individual days by persons deputed to this. Hence the Hours are also called 1º Divine Office, because it is recited in honor of God; 2º ecclesiastical Office, because it is paid in the name of the Church; 3º canonical Office, because it must be recited according to the rules of the Canons; 4º Breviary, because that Office is a compendium of the old and new Testament, and also of the sentences of the Fathers and the lives of the Saints.

The origin of the Divine Office as to substance seems to be derived from the very times of the Apostles, as is gathered from various places in the Acts of the Apostles, from the testimonies of the Fathers, and from various documents.

In the course of times the form and quantity of the Breviary was varied. The Council of Trent, sess. 25, at the end, commanded that a new reform of the Roman Breviary be made. St. Pius V corrected it, increased it by some additions, and by the Bull *Quod a Nobis*, 7 July 1568, prohibited all other Breviaries which from institution or legitimate custom did not surpass 200 years. Nevertheless in France the custom unhappily grew strong that most Bishops would have and change their own proper Breviaries [1]. For a long time the Church was silent because of the calamities of the times, so that she was believed to tolerate this custom. But in these most recent times, according to the various circumstances of things, she has kindly opened her mind, and thence the pious Mother rejoicing sees almost all Bishops eagerly returning to liturgical unity.

[1] ** This custom is owed in no small part to the artifices of the old Jansenists, who, having undertaken to disturb the order of the ecclesiastical hierarchy for the subversion of the Church, attributed to individual Bishops for their own Diocese the plenitude of power by which the Roman Pontiff prevails over the universal Church.

The whole Divine Office is divided into seven Hours, namely Matins with Lauds, Prime, Terce, Sext, None, Vespers, and Compline.

One must treat 1º of the obligation of the Breviary; 2º of the time established for recitation of the Hours; 3º of the manner of reciting them; 4º of causes excusing from recitation.

Point I. On the Obligation of Reciting

50. Principles. - I. There are obliged to recite the canonical Hours daily: 1º all clerics constituted in sacred Orders, even those suspended and excommunicated. This is clear from various places of Canon Law, from the Lateran Council, year 1215, and from the Bull of St. Pius V, *Quod a Nobis*. - 2º All beneficed persons who have a right in the thing and full dominion of the benefice. This is drawn from the Lateran Council under Leo X, and also from the Bull of Pius V, *Ex proximo*. - 3º All religious of each sex professed in an Order approved by the Church and destined for choir. This is plain from custom, and also from the Decree of Gregory X, etc. - St. Ligorius, n. 140 and following.

II. All these sin gravely if they omit the whole Office or a notable part of it without legitimate cause. The reason is plain: for they violate a law of the Church in a grave matter. - St. Ligorius, n. 146, and others most commonly.

III. The obligation of reciting the Hours is affixed to the day, so that it can in no way be satisfied on another day; therefore the obligation according to the mind of the Church ceases with the day assigned to it, and accordingly it is usually called the burden of the day.

51. Questions. - **QUESTION 1. What is grave matter in the omission of the Office?**

Resp. Theologians most commonly agree that the omission of one little Hour, or of Compline, or of a part of the Nocturns at least equivalent to the quantity of one little Hour, is the matter of mortal sin [1]; but the omission of a smaller part does not exceed venial sin. - St. Ligorius, n. 147, etc.

[1] Certain ones use this argument, that one omitting even one of the little Hours is bound to restitution of fruits by apostolic definition. But this argument does not seem sufficiently firm. For someone can be bound to restitution lightly and because of a light fault.

Some have written that it is mortal sin even to omit a third part of a little Hour, because such a part with respect to that Hour is already notable matter; but more probably this must be denied. The reason is that although that part is notable with respect to a little Hour, it is nevertheless light in itself and with respect to the whole Office. Hence concerning smallness of matter one must regard the quantity of the whole Office, but not of each Hour. Therefore if someone does not omit altogether a whole Hour, he can be excused from grave sin, because more probably it is light to omit less than an entire Hour. - St. Ligorius, n. 147; Elbel, n. 367; Lacroix, n. 1200, etc.

52. ○ **QUESTION 2º. Is it grave to omit Vespers on Holy Saturday?**

Resp. No, at least more probably, because the matter is very slight both in itself and with respect to the whole Office. - St. Ligorius, ibid., and others commonly.

Nevertheless some have judged this matter grave, not indeed in itself materially, nor with respect to the whole Office, but by reason of the special signification which the individual Hours seem to have [2].

[2] The opinion is anomalous and of no use.

QUESTION 3º. Does he who omits the entire Office commit one grave sin or multiple grave sins?

Resp. He seems to commit only one grave sin. - Thus commonly the theologians with St. Ligorius, n. 148, after St. Antoninus, part 3, tit. 13, ch. 4, where he says: “He who omits all the Hours of one day

does not on that account commit seven mortal sins, but one, and so much the graver as he omits more of the Office; because the whole Office of the day falls under one precept." - St. Ligorius, ibid.

53. ○ **QUESTION 4º. If someone doubts whether he omitted something in the Office, is he bound to recite it?**

Resp. No, if the doubt is positive, that is, if he probably judges that he has satisfied. Thus St. Ligorius, n. 150 [3], who says that this is the most common opinion, with Sanchez, Lacroix, Azor, Navarrus, Tamburini, etc.

[3] In this place you have St. Alphonsus proving and calling most common that doctrine which establishes that probable satisfaction of the law suffices; nevertheless certain ones wished to ascribe the opposite of this to the Holy Doctor. See vol. 1, n. 80, with note.

** But the Vindicators (p. 987, n. 80) bring these things from the questions reformed by St. Alphonsus: "If someone probably judges that he has fulfilled the canonical Hours, is he bound to satisfy if it is still probable or doubtful that he has not fulfilled? Several Authors deny; but the opposite must be held."

Resp. The Holy Doctor, as we said above, confessed that the opinion which denies the obligation of reciting in this case is most common. Therefore, with reverence due to the Holy Doctor preserved, the faculty must be denied to no one that according to theological canons he may prefer the most common opinion and follow it with a safe conscience.

Hence, they say, you are rightly excused from repeating the Office if you do not remember that you said something, and you have a just conjecture for believing that you said it; suppose, if you remember that you began a Psalm, or some Lesson, or an Hour, and afterward, distracted, you arrived at the end of the Psalm, Lesson, or Hour, without remembering whether you recited the whole; for presumption favors you, because you are accustomed to recite integrally those things whose recitation you began. Likewise if you have arrived at some Hour, for example Sext, and doubt whether you recited the preceding one, you can hold the same decision, because you are not accustomed to recite the later Hour unless you have sent the former ahead, and therefore you can prudently believe that you have omitted nothing. - St. Ligorius, n. 150; Lacroix, etc.

54. ○ **QUESTION 5º. Are Religious who, for a just cause, do not attend choir bound under grave obligation to recite the Office privately?**

Resp. Yes. The reason is that the principal obligation for a Religious does not fall on choir, but on the recitation of the Office by reason of the Religion, which has undertaken that burden from its institute. This obligation is clear from the universal sense and custom of Religious, who, when they cannot be present at choir, believe themselves obliged under grave obligation to recite the Office privately. But a universal custom which has been constantly observed with great inconvenience by Religious and Nuns furnishes a sufficient argument concerning a grave obligation undertaken. Hence the opinion of some, who say that the obligation of the Office does not urge a Religious outside choir, is not probable. - St. Ligorius, n. 142, and others commonly.

55. ○ **QUESTION 6º. Does a Religious sin gravely who recites the Office privately while he could easily be present at choir?**

Resp. No. For the obligation of choir, although it is grave for the Community, is nevertheless held light for individual private persons, provided that choir is not altogether removed. But for choir four

who are free, or able to sustain choir, suffice. But if there are fewer Religious, they are in no way obliged to recite the Office in choir; nevertheless they are not exempt from private recitation, as was just said. - St. Ligorius, n. 143, and others commonly.

QUESTION 7º. Are those obliged to the Office bound to supply those things which they omit in choir because of the functions of choir, for example, by ringing the bells or the organ, or by searching out Psalms, and other similar things?

Resp. No. The reason is that the omission in choir, provided it is not excessive, is supplied by the companions. Thus one satisfies who coughs while others are reciting, etc., and probably also if a whole Psalm is said meanwhile. A fortiori he who did not hear some things of the alternate part is not bound to repeat [4]. - St. Ligorius, n. 443, and others commonly.

[4] These things ought to have force also in the private recitation of several together.

56. ○ **QUESTION 8º. Which Breviary must be used?**

Resp. By common law only the Breviary reformed by St. Pius V must be used; this is clear from the Bull of the same St. Pius V, *Quod a Nobis*, given on 7 July 1568. In this Bull the Pontiff removes and abolishes all other Breviaries which from institution or legitimate custom do not surpass two hundred years. Nevertheless he permits that even those more ancient than two hundred years can be changed into the Roman Breviary if the Bishop and the whole Chapter consent. But he commands this Breviary to be observed in the whole world [5], with the sole exception just reported. Indeed, in another Constitution which begins *Ex proximo*, he declares that all obliged to the Hours will not satisfy their duty if they use another Breviary, and therefore that beneficed persons do not make the fruits their own.

[5] Understand here the whole world as the Church using the Latin rite. Nevertheless the law about not introducing changes pertains to any rites already approved.

57. ○ **QUESTION 9º. What is to be thought about those who recite another Breviary preserved from the custom of the place?**

Resp. 1º There is no difficulty for places where the Breviary had already prevailed for two hundred years before the Bull of St. Pius V, if nevertheless Breviaries still exist which have remained unchanged. This is clear from the Decree cited above.

Resp. 2º As to Breviaries reprobated by the Supreme Pontiff, whether they existed before the Bull or were introduced afterward, they are materially opposed to law, as is evidently clear from the aforesaid Constitution, unless they have been confirmed by the approval, either express or at least implicit, of the Supreme Pontiff. This is confirmed from the following response of the Sacred Congregation of Rites directed to a Canon of Le Mans.

Decree — Of the Sacred Congregation of Rites concerning the Present Liturgy of the Church of Le Mans, 10 Jan. 1852

1º Whether in the years 1748 and 1749 the innovation of the Breviary and Missal of Le Mans, altogether alien from the Roman rite, was licit, after the old Breviary and Missal corrected to the

Roman form had first been removed, done or approved by the authority of the Bishop alone and the Chapter of the Church of Le Mans, and without the Apostolic See having been consulted?

2º Insofar as negative, whether at least this Liturgy of this sort, by force of prescription or century-old custom, has been made legitimate, so that today any Priest of Le Mans can observe it with a safe conscience? 3º Insofar as again negative, whether any Priest of Le Mans, even a Canon and Pastor, is at once bound in conscience both to pay the canonical Hours and to celebrate Mass according to the Roman rite, namely when he recites and celebrates privately?

To the 1st: Negative.

To the 2nd: Negative.

To the 3rd: Let him consult jointly both Constitutions of St. Pius V, namely that which begins *Quod a Nobis*, 7 Ides of July 1568, and the other which begins *Ex proximo*, 12 Kalends of October 1571 [6].

[6] ** The Constitution *Quod a nobis* (§ 7) establishes that he who recites another breviary than the one prescribed does not satisfy, as if he had not recited in any way. But the Constitution *Ex proximo* declares that the same person is bound to restitution, and does not make the fruits his own.

Moreover from a Decree of the Sacred Congregation of Rites, 15 March 1608, apud D. Bouix, *On Liturgical Law*, Churches which formerly could use the benefit of the exception made by St. Pius V, so that they might retain their proper breviary, can no longer return to the old liturgy, if once they have cast this aside in favor of the Roman Breviary. Likewise Churches have lost that privilege of exception if they have introduced into their liturgy any additions or changes whatsoever, as is clear from several declarations of the Sacred Congregation of Rites, and very recently from the Response of the Holy See to the Archbishop of Besançon on 28 Aug. 1856.

58. ○ But although all the Bishops of France desire to return to the Roman rite, so that they may comply with the Holy See, nevertheless they cannot at once remove all difficulties from the midst; whence Cardinal Gousset (n. 698) concludes that private Priests meanwhile can recite the Breviary of the diocese.

59. ○ **QUESTION 10º. Does a Priest need the permission of the Bishop to recite the Roman Breviary in places where another is tolerated?**

Resp. No. This is clear from the response of the Sacred Congregation of Rites, to which this question was recently proposed. For the most eminent Cardinals, having weighed the question, responded negatively by unanimous consent.

60. ○ **QUESTION 11º. Are clerics obliged to the Breviary bound to use the Proper of the diocese?**

Resp. Yes, provided that that Proper has been recognized and approved by the Sacred Congregation of Rites. The reason is that although this concession of proper Offices has the character of a privilege, nevertheless all private persons are bound to use a privilege conceded to the whole community. - Except if private persons, by virtue of an apostolic indult, can not use the Proper of the diocese.

QUESTION 12º. Is there still an obligation of reciting the GRADUAL Psalms, the little Office of the Blessed Virgin Mary, and the Office of the Dead?

Resp. 1º No, with regard to clerics who recite the Office privately.

Resp. 2º No also for those reciting the Office in choir, unless where there is a custom of reciting the aforesaid Offices from the time of St. Pius V. - Thus the Sacred Congregation of Rites has declared several times.

61. ○ **QUESTION 13º. Are those obliged to the Office bound under grave obligation to recite the Office of the Dead on the day of Commemoration of All the Dead, and also the Litanies on the feast of St. Mark and the three days of Rogations?**

Resp. to the 1st: Yes, according to all. But this Office consists only of Vespers, Matins, and Lauds. - St. Ligorius, n. 161.

Resp. to the 2nd: Yes, according to the common opinion. The reason is that in the Rubric after Feria II of the Fifth Sunday after Easter it is said thus: "Those who are not present at the procession of the Litanies should say them privately after Matins with their prayers and orations." But the word "should say" imports a grave precept when the matter is grave, such as the matter of the Litanies surely is. Moreover, everywhere the custom is in force of reciting the Litanies on these days. But custom is the best interpreter of laws. Nevertheless some deny the grave obligation, saying that the precept is not established, especially as grave. - St. Ligorius, n. 161, says: "The first opinion is much more pleasing to me; yet I do not dare to say that the second is improbable."

Point II. On the Time and Place and Position of Body Due for Reciting the Hours

I. As to Time

62. ○ 1º The time prescribed for fulfilling the entire recitation of the Office begins from midnight and ends at the following midnight, so that whoever recites the whole Office within this time is always to be exempted from grave sin, at whatever hour he satisfies such a duty. The reason is that he satisfies as to substance by reciting the whole Office on the natural day. Indeed Matins and Lauds, from a privilege conceded by the Church, can be recited on the preceding evening.

2º Matins and Lauds must be recited by Priests before the celebration of Mass. This is clear from the Rubric of the Missal, tit. 1, *De Praeparat. sac.*, where it is read: "The Priest about to celebrate Mass, at least Matins with Lauds having been completed," etc. Likewise from the Constitution of Innocent IV, year 1254 [1].

[1] ** On this argument see the things which will be said below, q. 2 and 3.

3º All the little Hours can be recited in the morning time; and the first two must indeed be recited before midday; but the two latter can be said during the whole time both morning and evening. Vespers and Compline are recited from midday until midnight. In Lent, however, from the first Sunday, Vespers can be recited before the meal because of the ancient discipline, according to which the fast was not broken before the recitation of Vespers. Nevertheless on Sunday Vespers cannot be anticipated, because the fast is not observed on that day.

Formerly the Hours were recited thus: Matins after midnight, Lauds at dawn, Prime after sunrise, Terce at the ninth hour of the morning, Sext at midday, None at the third hour after midday, Vespers at sunset, Compline at the twilight of night. Hence a cleric ordained subdeacon is bound only to recite the Hours corresponding to the time of ordination. Therefore if the ordination happens before the ninth hour of the morning, he will be bound to recite Terce, but not the preceding Hours.

63. Questions. - **QUESTION 1º. Can the little Hours be recited even before dawn without any cause?**

Resp. More probably, yes. The reason is that from the time when the ancient custom of reciting those Hours at a determined time was removed, no other law or new custom imposed the obligation of paying them only in the time following dawn. Indeed grave theologians expressly assert that these Hours can be recited during the whole morning time, or from midnight to midday. Thus expressly St. Ligorius, *Hom. apost.*, tom. 5, app. 5, n. 74; Saettler, *On the Hours*, art. 2, q. 3, etc.

QUESTION 2º. Does the obligation of reciting Matins and Lauds before Mass urge under grave obligation?

Resp. No, at least more probably. The reason is that there is no connection between the Office and Mass, and therefore the recitation of Matins does not seem a disposition for celebrating, since a Priest can also otherwise by praying dispose himself piously for the Sacrifice; nor does a grave obligation appear from the Rubric reported above, nor is it generally apprehended under grave obligation. - Thus commonly with St. Ligorius, *On the Eucharist*, n. 347 [2], and Benedict XIV in the work *On the Sacrifice of the Mass*, bk. 3, ch. 13, against Antoine and a few others, who contend that, a cause excusing being excluded, it is grave.

[2] St. Alphonsus (Bk. 6, n. 347) responds to the controversy, "What kind of sin is it to celebrate Mass before recitation of Matins?": "There are three opinions. The first says that it is mortal. But the second opinion recognizes no fault in this. But the third opinion, more common and more probable, teaches, against the first, that this is by no means mortal; but against the second, that it is not excused from venial fault."

64. ○ **QUESTION 3º. What cause can excuse from that obligation?**

Resp. Any reasonable cause will excuse [3], for example, if someone asking a Priest to celebrate Mass for him desires that it be celebrated at once; likewise if the people, or some grave person, is waiting; if the Superior commands; if the time of celebrating has arrived and the celebration cannot be deferred without some inconvenience; if greater convenience of study, or greater utility to be perceived from studies, demands this; if some unexpected business has come up; if some penitent must be heard before, and similar things. - St. Ligorius, ibid.

[3] St. Alphonsus (Bk. 6, n. 347) says: "Any moderate reasonable cause."

65. ○ **QUESTION 4º. At what hour is it licit to begin the recitation of Matins in the evening of the preceding day, according to the privilege reported above?**

Resp. From the common opinion of the theologians, it is licit to begin at the hour of Vespers, which is held to be when the sun holds the middle of its course between midday and sunset [4]; for then, according to all, the ecclesiastical day begins, since first Vespers are customarily chanted. This is

confirmed by universal custom. Hence in various places tables are customarily drawn up determining this hour at the various times of the year. - St. Ligorius, n. 174.

[4] This resolution must be taken affirmatively, but not exclusively, as is clear from the following resolution; namely, it is asserted, from the common opinion of theologians, that the recitation of Matins is licit at that hour; but it is not defined that anticipation is not licit.

QUESTION 5°. Must the recitation of Matins be repeated if it was had before the aforesaid time?

Resp. More probably, yes. The reason is that the Breviary is the burden of the day; therefore it must be recited on the day assigned to it. But if the aforesaid anticipation is made, the Office is then recited outside the day, no otherwise than if the little Hours of the following day were recited before midnight. - Thus commonly with St. Ligorius, n. 175. - Nevertheless Sanchez, Diana, the Salmanticenses, Trullench, Quintanadvenas, Leander, etc., hold the opposite opinion, and Tamburinus judges it probable. Moreover this opinion does not seem to lack its probability [5]. Therefore if someone has recited Matins indeed after the second hour from midday, but before the time fixed by the Rubric, as sometimes is accustomed to happen from error, he could be excused from repeating the Breviary.

[5] The Salmanticenses have thus concerning this question (*Tract.* 16, ch. 3, n. 15): "We judge it most probable that Matins with Lauds can be recited immediately at the second hour of the day (namely after midday), at which Vespers are customarily recited." For this opinion they soon allege Sanchez, Molfesius, Quintanadvenas, Leander, Antonius a Spiritu Sancto, Martinus Ledesma, Trullench, Martinus a S. Joseph, Caramuel, and Diana. But they add: "From these, several say that this anticipation, even made without cause, is not even a venial sin; others indeed assert that it is venial, but that any cause excuses from it." St. Alphonsus (Bk. 4, n. 174) adds to these Tamburinus, who (*In Dec.*, tr. 2, ch. 5, § 5, n. 2) calls this opinion probable equally with the others. Diana indeed (tom. 3, tr. 6, resol. 62) adds Faber, and (resol. 64, n. 2) Escobar a Corro, Garcia, and Machado; and he further notes that Sanchez (*Consil.*, bk. 7, ch. 2, dub. 37) confirmed his opinion from the doctrine of St. Thomas, Viguerius, Turrecremata, and Navarrus.

** Even this little note, although merely historical, since it only reports certain authors alleged by others for the aforesaid opinion, nevertheless could not escape the censures of the Vindicators.

Therefore they object (p. 927, note 3), 1° that St. Thomas, Navarrus, and Viguerius are wrongly alleged by Sanchez, since St. Thomas (*Quodl.* 5, art. 28) merely affirms that Matins can licitly be said *de sero*, in the evening. But wrongly, they say, does Sanchez, whom Ballerini follows, explain that phrase *de sero*, as if it already designated the second hour after midday. Navarrus moreover and Viguerius speak in the same way as the Angelic Doctor. - Resp. 1° Ballerini there affirms nothing, nor denies anything, but merely reports. 2° Sanchez does not rely on the phrase *de sero*, but on other words of the Holy Doctor. For thus he writes (*Consil.*, bk. 7, ch. 2, dub. 37, n. 4): "This conclusion is gathered from the cited doctrine of St. Thomas, Viguerius, Turrecremata, who say that if someone after Vespers and Compline says Matins of the following day, this now pertains to the following day." And in fact St. Thomas (l.c., ad 1) has these words: "As to the ecclesiastical office and the celebrations of solemnities, the day begins from Vespers; whence if someone after the said Vespers and Compline says Matins, this now pertains to the following day." But the same thing may be read apud Viguerius, Navarrus, and Turrecremata in the places cited by Sanchez.

The Vindicators object 2°: among the other authors brought forward by Father Ballerini for his opinion, several are more lenient than is fair. And after five have been counted up they add: "Of the remaining patrons of Father Ballerini, there are few who should be numbered among the weightier Doctors." - Resp. 1° Father Ballerini did not bring forward authors for his own opinion; but he indicated certain authors reported by others, so that in some way it might appear why he did not deny probability to Father Gury's second opinion. - Resp. 2° What the Vindicators add, namely that from nineteen authors reported in the note five are mentioned who are considered too, or sufficiently, benign, this argument, otherwise rather liable to ill-will, in the present case lacks all force. I said that this argument is liable to ill-will; for, to omit now the question whether those five are rightly disparaged as too benign, would the Vindicators prove that someone would throw back the very same thing whenever St. Alphonsus alleges one of those five, as often happens, for his own benign opinion? But

besides, in the present case this exception is destitute of any force. For suppose an exception of laxity or excessive benignity of this sort is objected, rightly or wrongly, when some opinion rests on the authority of one writer alone. But where several others agree in the same opinion, on whom no one has dared to bring the mark of excessive benignity, does fairness permit that their suffrage be attributed to laxity or excessive benignity? And here indeed perhaps someone could invite the Vindicators to inspect whether there is any place for this exception of theirs concerning the authors brought forward by St. Alphonsus. The Vindicators say that eight authors are brought forward by the Holy Doctor for the less benign opinion. But what if someone perhaps with stronger right objected (of which a little later) that in reality Concina alone existed who defended the thesis of the Holy Doctor, and that this author, by the judgment of St. Alphonsus himself, is most rigid?

But as to what the Vindicators add, that the patrons of the aforesaid opinion are few who are to be numbered among grave Doctors, Resp. judgment concerning these men must more aptly be left to others, both for other reasons and also so that the danger may be avoided that someone should boast the same authors as grave, and indeed most grave, when they fight for him, but not grave when they fight against him. In the Preface which St. Alphonsus prefixed to the edition of the year 1748, these words are read: "Some things I judged must be explained, others added, from the various authorities of approved Doctors, namely Sanchez, ... Viva, Croix, Roncaglia, and others; especially the Salmanticenses, who, in the common estimation, treat this moral science diffusely and excellently; whom I myself had more frequently familiar than the others, so that nearly all things which the same men recall for examination with a broader pen in so many books, you will find here briefly arranged." Therefore at least those five, whom St. Alphonsus calls approved Doctors, are not brought forward vainly for that opinion.

Indeed even St. Alphonsus can be alleged for the same opinion; for in that same edition (Bk. 4, ch. 2, art. 4, dub. 2, note D) he wrote: "It is most probable that Matins can be recited at the second hour after midday ..., as Sanchez, Viva with Fill., Bon., Trull., and Tambur., the Salmanticenses with Led., Dian., Molf., Leand., etc., hold." What wonder therefore that an opinion could seem probable to Gury which could seem most probable to St. Alphonsus? You will say that afterward the contrary opinion was more pleasing to the Holy Doctor. But, setting aside now the question whether the later opinions of the Holy Doctor are always more probable than his earlier ones, one may ask: do the Vindicators think that the Holy Doctor gratuitously called the earlier opinion most probable? Therefore by the very fact the Holy Doctor confessed that some grave and solid reason stands for that opinion.

Moreover, so that force may be attributed to the allegations, it seems that in this question a threefold class of authors must be distinguished. For there are, 1º those who merely propose their own opinion, with no mention made of the other opinions, affirming, for example, that Matins can be recited at the fourth hour. But these indeed could be brought forward efficaciously against those who would deny that very thing, but not in the same way against opinions about which they pronounce no judgment; just as he who merely affirms that in a little supper those fasting can eat herbs would wrongly be alleged against those conceding some little fish, or even a portion of a larger fish, tuna for example, since he in no way touches the question about fish. Hence, when for example Filliuccius writes (tr. 23, ch. 8, n. 274): "It is licit to anticipate Matins half an hour before sunset, from the common opinion," would he rightly be alleged as if refuting, for example, the rule of St. Alphonsus or others who establish that it can be recited before that hour? Indeed Filliuccius himself (n. 276) adds: "If elsewhere there were another custom, it will be advisable to observe it." But with Concina removed, of this sort are nearly all the authors whom both St. Alphonsus and the Vindicators oppose to the controverted opinion.

There are, 2º others who report several opinions, and among these also the controverted one, which they either embrace, or call probable, or at least do not reprobate. Of these latter you have Mazzotta, who (tr. 2, disp. 1, ch. 2, q. 5), after reviewing various opinions, leaves the choice to readers; you have Illsung (tr. 5, disp. 1, q. 1, art. 4, n. 35), Reiffenstuel (tr. 6, dist. 1, ch. 2, n. 71), Gobat (tr. 5, n. 679), Croix (bk. 4, n. 1314), and Sporer (tr., append., *De Hor. Canon.*, ch. 2, n. 140), who, although they do not prefer this opinion to the others, nevertheless permit it without a mark of censure, and certainly do not reprobate it. But among the former, namely those who either profess it absolutely, or at least judge it probable, besides those several whom each one sees alleged above in the note, Viva must be added, who (*Curs. Theol.*, part 2, q. 3, art. 5, n. 11) writes: "Matins and Lauds ... from custom already received, can probably be recited without venial sin and without any cause from the declining of the preceding day, namely two or three hours after midday of the preceding day." And Azor (part 4, tr. 10, ch. 9, q. 5): "Therefore that doctrine and sentence of St. Thomas seems to me simpler and plainer, that the Nocturnal Office ... can be discharged privately by clerics as soon as the Vesperal and Compline prayers have been recited ..., namely after three, or two, hours after midday have elapsed." And Felix Potestas (*Exam. Conf.*, tom. 1, part 2, n. 459): "In private recitation Matins and Lauds, from the already prescribed custom, can licitly be recited two hours after midday of the preceding day." And Giribaldi (tr. 5, ch. 3, n. 194), after recounting after others also those who will that it can be recited at

the second hour after midday, adds (n. 195): "But probably each of the said authors judges that at the time assigned by them ... it is licit to discharge Matins." And Babenstuber (tr. 5, disp. 2, art. 3, n. 111): "Certain ones apud Tamburini think that it is licit to recite three hours before sunset; others three hours after midday; others between the third and fourth afternoon hour; others at the second hour after midday. I judge with the same Tamburini that all these opinions are probable, and that each one can embrace whichever he prefers." And Trullench (bk. 1, ch. 7, dub. 18, n. 9), after he brought forward Sanchez asserting that on any day of the year one reciting Matins of the next day at the second hour after midday, even if he has not yet recited Vespers and Compline, satisfies the precept, and ... with a cause existing in no way sins, adds: "I gladly admit it on account of the reason given." And Roncaglia (tr. 5, q. 2, ch. 5, q. 4): "Setting aside so many diverse opinions ..., to me that opinion is very probable which affirms that it can be recited at the hour at which first Vespers are said. The reason is that then tomorrow's feast day begins.... Besides, there is no inconvenience if, when tomorrow's feast day has now begun, the Matins of that day are anticipated." But the allegations which he subjoins, of Sanchez and Antonius a Spiritu Sancto, sufficiently explain the sense of these words. But to those alleged both now and in the preceding note, Neusser and Josephus Angles apud Gobat (l.c.) and Sporer (l.c.) must be added for the same opinion, and also Narbona, Verricelli, and Bassaeus apud Giribaldi (l.c.), and Leander (disp. 4, q. 93), and Concina (*In Dec.*, bk. 2, disp. 2, ch. 9, § 8, q. 4), after Leander, brings forward also Acacius. And certainly it was to be desired that the Vindicators, who, most intent in seeking out the opinions of authors on this matter, could not fail to see these things with their own eyes, would not have passed over these same things in silence. Indeed both the examples and warnings of the Holy Doctor Alphonsus demand that our chief cares be borne not to defending some cause of our own, but to preserving the rights of truth.

There are, 3º finally, those who, following another opinion, undertake to attack the aforesaid one, which grants that Matins can be recited at the second hour after midday. But no one who preceded St. Alphonsus in attacking this opinion has up to now been found except Daniel Concina. For neither the seven others whom St. Alphonsus adds, nor the many others whom the Vindicators most diligently collected, touch this special question.

With these things inspected, let the fair reader now judge whether Gury should be blamed because he said that that opinion did not seem to lack probability, which otherwise so many Doctors either plainly admitted, or at least judged probable, and which no one in reality attacked except Concina and, after him, St. Alphonsus, who nevertheless earlier had defended it as most probable. But as to what can regard the reason brought forward by St. Alphonsus, for now it is enough to observe that it is not some abstruse reason which would not easily occur to the eyes of all. And if indeed so many and such great doctors have shown by the very fact that they were in no way moved by it, then let pardon finally be given also to others, that they may judge that it is not a reason of such a kind as settles the controversy.

The Vindicators object 3º finally (l.c.): "The Church conceded to certain Religious Orders the privilege of reciting Matins with a reasonable cause at the second hour after midday.... But this privilege would be useless if, by force of the common law, this were licit to any cleric."

Resp. I retort the argument. For, as Suarez (*On Religion*, tr. 4, bk. 4, ch. 17, n. 12) and Filliuccius (tr. 23, ch. 8, n. 274) have it, by Pontifical privileges the faculty of saying Matins one hour before sunset is granted. Therefore will the privilege be useless, if by force of the common law it is licit for each person to recite not only one hour before sunset, but much earlier, as St. Alphonsus concedes? Well does Suarez say (l.c.): "This argument is weak, because many things are granted in privileges, not because they are necessary, but because they are requested either because of fear or scruple, or for removing doubt arising from various opinions, or because what is requested is not licit according to the rigor of law and depends on custom, which can be uncertain and various." And Diana had already solved the same difficulty as to the second hour thus (tom. 3, tr. 6, res. 54, n. 3): "You will say: Pontiffs grant privileges that Matins can be recited two hours after midday. Therefore. I respond: those who seek this privilege are a sign that they hold the contrary opinion, and many things are sought from the Pontiff for greater caution and because of scruple; but from these things it does not follow that the cited opinion of the Doctors is not probable, nor that it cannot be followed."

66. ◦ **QUESTION 6º. Can the Matins of the Office of the Dead and the Litanies for the feast of St. Mark and the days of Rogations be recited on the preceding evening?**

Resp. to the 1st: More probably, yes. It is established from universal custom, and also from the Rubrics which have thus: "Once the *Benedicamus Domino* has been said, Matins of the Dead begins absolutely." Therefore, since the Matins of the Octave of the feast of All Saints is customarily, or at

least can be, anticipated, consequently the Matins of the Dead also can be anticipated. Some with Lacroix deny this, relying on a Decree of the Sacred Congregation of Rites. But that Decree, according to St. Ligorius, n. 174, seems to regard only recitation in choir.

Resp. to the 2nd: No. The reason is that the Litanies are affixed to the day, nor do they seem of themselves to be joined with Matins and Lauds. Besides, they supply attendance at the procession, which is wholly affixed to the day. Moreover, if the feast of St. Mark is transferred, the Litanies must not be transferred; therefore they do not inhere in Matins, nor do they have any connection with it. - St. Ligorius, n. 174, q. 3. - Lacroix.

67. ○ **QUESTION 7º. Is one foreseeing an impediment to reciting the Office on the very day of obligation bound to recite Matins and Lauds on the evening of the vigil?**

Resp. No. The reason is that, although Matins and Lauds can be recited on the preceding day, nevertheless they need not be [6]. Therefore the strict obligation does not press before the following midnight. Therefore, with an impediment standing from midnight to midnight, the obligation is removed.

[6] Namely, it is granted only by force of privilege that Matins can be recited on the preceding day. But the general rule is that no one is bound to use any privilege.

68. ○ **QUESTION 8º. At what hour can the recitation of Vespers be begun in the morning during the time of Lent?**

Resp. The Salmanticenses say, tr. 16, ch. 3, n. 15, that in Lent Vespers can be recited from the eleventh hour, or one hour before midday [7]. But the general rule is that Vespers can be recited privately at the same hour at which they are customarily recited in choir. But in choir they must be recited after the conventual Mass and None. The hour of the Mass, however, depends on the custom of places.

[7] As to the hour of reciting any part whatsoever of the Office, this must not be passed over, which St. Alphonsus has (Bk. 4, n. 173): "In order that someone may licitly anticipate or postpone the due time of the Hours, any useful or honorable cause suffices ..., greater devotion, or rest, a time more apt for studying, and the like."

Moreover, there is no obligation to recite Vespers before midday, but it is a mere privilege, which no one is bound to use. Compline, however, does not enjoy the aforesaid privilege; hence even during Lent it must be recited after midday.

II. As to Place and Position

69. ○ 1º As to place. The Office of choir must be recited in the very place destined for this, or in choir or in the Church. But the Office, if it is recited privately, can be said in every place, whether in an oratory, or at home, or in the country, or even while walking along the road, or making a journey, provided that the place is suitable for the attention required and does not impede devotion. - St. Ligorius, n. 179.

2º As to position. Privately the Office can be recited in every decent position, whether with knees bent, or standing, or sitting, or walking. Thus the universal practice, with which all theologians agree.

70. Questions. - **QUESTION 1º. Is it licit to recite the Office while lying down in bed?**

Resp. No, a reasonable cause being excluded; for such a position savors of some irreverence. The same must also be said of any other such position. Yet this irreverence never exceeds venial sin. - Thus Concina and Viva apud St. Ligorius, n. 179. But any moderate cause will excuse from all fault, for example, sickness or any infirmity, headache, fatigue, or if someone cannot sleep at night, he could recite the Office without being bound to rise.

QUESTION 2º. Is it licit to recite the Office in a carriage or on horseback?

Resp. Yes. The reason is that this is prohibited by no law; nor from elsewhere does it stand in the way of attention, nor of the reverence due to prayer, even if others were journeying and conversing at the same time. For this has been obtained by the general custom even of pious persons. - Thus commonly.

71. ○ **QUESTION 3º. Is it a fault not to observe the rubric according to which certain prayers must be recited with knees bent?**

Resp. 1º No, if there is question of recitation outside choir; for from custom and common interpretation this rubric regards only choir. The same must be said of the sign of the cross and of other signs used in choir. These things indeed are laudably done in private recitation, but they are omitted without fault. - St. Ligorius [8], n. 179, and others commonly.

[8] St. Alphonsus indeed discusses position; but concerning the sign of the cross he has nothing.

Resp. 2º If there is question of recitation in choir, it is disputed. It seems one must affirm, because a rubric prescribing something imposes a precept [9]. Yet such an omission can never exceed venial fault. - St. Ligorius, ibid., etc.

[9] That a rubric prescribing something, by that very fact, imposes a precept accepted in the strict sense, is an opinion to which certain ones adhere, but certain others by no means, because they distinguish some rubrics as preceptive, others as merely directive.

QUESTION 4º. Is it a sin to recite the Breviary in an indecent place?

Resp. More probably, it seems it must be denied of itself, unless the place were to stand in the way of due attention, for example, because of a crowd of people, noise, etc.; for otherwise it would be indecent to pray in an indecent place, which is false, since, as God is everywhere, so also everywhere he can be prayed to and adored, as is clear from the Apostle, 1 Tim. 2:8: "I will that men pray in every place." - St. Ligorius, n. 179. - Lacroix, n. 1320, and others, against not a few who said that venial sin is present because this does not lack some irreverence.

Point III. On the Manner of Reciting the Hours

The Hours are to be recited 1º in the prescribed order; 2º with due pronunciation and devotion.

I. As to Order

72. ○ A twofold order must be observed in the recitation of the Breviary, namely the order of Offices and the order of Hours. 1º The order of Offices is described in the calendar of feasts and in the rubrics for their translation, where several occur at the same time. 2º

The order of Hours is that which is set out in the Breviary, namely that Matins with Lauds be recited in the first place, then the little Hours be subjoined, that is, Prime, Terce, Sext, None, and finally Vespers with Compline follow.

73. Questions. - **1º Does one satisfy the precept of reciting the Hours who from error or inadvertence recites another Office for the Office of the day?**

Resp. Yes [1]. The reason is that the Church is not presumed to will to oblige someone twice on one day to this burden, and because the substance of the recitation has been sufficiently preserved. Hence the common axiom which is held as a rule in these circumstances: *Officium pro Officio valet*, "Office counts for Office." Therefore, when the recitation has been completed, there is no obligation to recite another Office. - Thus commonly. - St. Ligorius, n. 161, q. 3. - Lacroix, n. 1351. - The same must also be said about any part of the Office according to the axiom: "Error is corrected where it is detected."

[1] Thus you would say rather that one erring is excused from paying the task twice, than that he has satisfied.

Nevertheless it is counsel, says Laymann with others, but not obligation, to subjoin the propers of the omitted Office. But when the Office would be notably shorter, for example, the Office of some Saint for the Office of Sunday, compensation must be made by reciting nine Psalms from the first Nocturn. - St. Ligorius, ibid. [2].

[2] St. Alphonsus (Bk. 4, n. 161, q. 3) does not define the matter so absolutely, but merely has these words: "Tournely with Laymann, Bonacina, etc., reasonably notes that if the Office said was notably shorter, suppose the Office of a Saint in place of Sunday, compensation must be made by reciting nine Psalms from the first Nocturn." Therefore St. Alphonsus only reports the opinion of certain ones as reasonable. But neither is this opinion perfectly reported there. For Laymann, by merely opining, hints at it (Bk. 4, tr. 1, ch. 5, n. 5), saying: "You would seem to be obliged to make some compensation." Nor otherwise Suarez (*On Religion*, tr. 4, bk. 4, ch. 25, n. 15): "Although it seems necessary to make some compensation, if he can, within the same day." Add that Laymann (l.c.) affirmed this especially about culpable error.

74. ○ **QUESTION 2º. If someone from error has recited only some part of an undue Office, and notices the error, can he proceed with the Office begun, or is he bound to recite the remaining parts from the Office of the day?**

Resp. According to the common opinion of theologians, liberty is given. Therefore he can either proceed, or recite the remaining parts from the due Office, after the Psalm or prayer has been finished. Yet it is better to change the Office according to many, who establish this rule: "Error is corrected where it is detected." But this is from mere counsel, not from precept. - St. Ligorius, n. 161, q. 5. - Lacroix, n. 1255. - Tamburinus, etc.

75. ○ **QUESTION 3º. When you have already said one Office for another, can you recite the omitted Office on the day on which the Office already recited by you occurs?**

Resp. No. But the Office recited must be recited again. The reason is that the Church prescribes that an Office be transferred only when it is not recited because of a Sunday or a greater Office; besides there is an obligation of conforming oneself with the common rite of the Church [3]. - Thus Lugo, *Resp. Mor.*, bk. 5, dub. 8. St. Ligorius, n. 161, says this is more probable; but it must be held as morally certain from the Decree of the Sacred Congregation of Rites, 17 June 1674, apud Gardellini, n. 2634 (3rd ed.).

[3] Nevertheless, that this obligation is not grave is sufficiently shown by those things which St. Alphonsus discusses (Bk. 4, n. 161, qq. 3 and 4).

76. ○ **QUESTION 4º. Whether or how does he sin who knowingly recites another Office for the Office of the day?**

Resp. 1º He commits no sin if he does this for a reasonable cause, for example, if he cannot easily have the proper Office, or if from charity he recites with a companion saying a different Office, provided that that Office has been approved by the Holy See, and is equal or nearly equal; indeed the reason of companionship alone appears sufficiently reasonable, says St. Ligorius, n. 161.

Resp. 2º If a reason is excluded, it will indeed be a sin, but only venial, if the Office is changed into one equal or nearly equal, because the obligation is satisfied as to substance, provided however that it happens rarely [4]. - St. Ligorius, ibid. - Roncaglia, - Sporer, etc., against others, who say that it is always mortal.

[4] St. Alphonsus (Bk. 4, n. 161, q. 3, at the end) calls the opinion which apposes that condition, "provided it happens rarely," more equitable; but he adds that the opinion which does not admit that condition or restriction is sufficiently probable.

Resp. 3º If a notably shorter Office is recited, it is a grave sin, because then the substance of the obligation is not satisfied. This is clear both from the nature of the thing and from proposition 34 condemned by Alexander VII, which reads thus: "One reciting the Paschal Office on Palm Sunday satisfies the precept."

77. ○ **QUESTION 5º. What sort of sin is it to invert the order in the recitation of the Hours?**

Resp. 1º In private recitation it never exceeds venial sin, because such an inversion of order does not contain grave deformity; for the order to be observed is not under precept except as a secondary precept and as a circumstance of lesser moment. But if you change the order for some just cause, for example, to recite with a companion who has already proceeded further in the recitation, you will be wholly free from all fault. Certain ones say that inversion of order is a mortal sin if it happens frequently; but more probably this must be denied with St. Ligorius, n. 169.

Resp. 2º In public recitation, it is disputed whether it is a grave sin or not to invert the order or to change the time of the Hours. Some affirm, if the inversion or change of time is notable and there is no excusing cause. The reason is that the Canons repeat several times that the Hours must be recited at the appointed times. - Azor, etc. - But others deny, because a circumstance of this sort does not pertain to the substance of the precept, but is merely accidental. Each opinion is probable; but the second is more probable, because there is no certainty about a grave precept. - Thus St. Ligorius, n. 171.

78. ○ **QUESTION 6º. What is a cause for inverting the order of the Hours?**

Resp. Any reasonable cause excuses. But the following can be assigned, namely: 1º if you are invited by a friend to recite some Hour with him, and you have not yet recited the preceding Hour or Hours; 2º if in the morning you do not have the Breviary at hand, nor can conveniently wait, then from the Diurnal which you have you could recite the daytime Hours, afterward to recite Matins; 3º if you do

not have the Lessons at hand, you can recite the Psalms of Matins and Lauds, indeed also the rest, with the Lessons deferred; 4º if you come to choir when an Hour has already been begun, you can proceed with the others, and afterward supply what has been omitted. Likewise, if you come to choir when one Hour has already been completed, you can sing the later one with the choir, and afterward supply the prior. - Thus St. Ligorius, n. 170. - Lacroix, nn. 1509 and 1311, and others commonly.

79. ○ **QUESTION 7º. Is it a sin to say Matins of the following day before the Office of the present day has been completed?**

Resp. It is indeed a sin, says Lacroix, n. 1315, but only venial, if it is done without cause. But neither is it certain that it is venial, since the Office of one day seems to have no order with the Office of another day. According to the opinion, however, which holds that it is a venial sin, a sufficient cause for beginning Matins of the following day before you have completed the Office of the present day is if you are asked by another to recite the Matins of the following day with him; and generally every cause sufficient for an inversion of order among the Hours of the same day would also suffice in the present case. - Lacroix, n. 1315.

80. ○ **QUESTION 8º. Does he sin who does not recite the commemorations according to the order assigned by the rubric?**

Resp. Several deny, because that rubric seems merely directive, like those which regard the position of the body or signs of the cross. Indeed they say the same about the order to be observed among commemorations in Mass. But this at least as to the latter must be denied, because all the Rubrics to be observed in Mass are preceptive, as St. Ligorius says, Bk. 6, n. 399 [5].

[5] St. Alphonsus, after proposing the question whether the rubrics of the Missal are merely directive, or of counsel for instruction, or are preceptive, obliging to fault, responds that there are four opinions of the Doctors. Therefore one must not think that the opinion which St. Alphonsus prefers, and which the Author here proposes, is the only one which it is licit to follow.

And indeed, as to prayers, the same St. Alphonsus (Bk. 6, n. 412) writes these things: "Concina and Croix with Pasqualigo probably say that although it is more satisfactory to observe the rubric, nevertheless it is not forbidden from some cause or devotion to add one collect." And Gobat and Pescara add that this can be done even on a feast of the second class.

II. As to Pronunciation

81. ○ Pronunciation must be vocal, integral, continued.

1º Vocal. The Office must be recited with the voice, and indeed distinctly; but it does not suffice that it be read by the mind alone, or only run through with the eyes; nor is it enough if it is recited in the throat or between the teeth, or by syncopating, or abbreviating with a stammering tongue. The reason is that properly vocal prayer is prescribed; but it is not judged properly vocal unless it is made with a distinct voice. - Thus all.

2º Integral. The Office must be recited integrally; but to its integrity pertain the *Pater*, *Ave*, and *Credo* at the beginning and end of the Hours, as is noted in the Rubrics. Nevertheless the prayers *Aperi, Domine* and *Sacrosanctae* do not pertain to the integrity of the Office; but they are recited only from counsel.

3º Continued. Any notable interruption within one Hour, if it happens without any cause, is not free from fault; but it does not exceed venial sin. - St. Ligorius, n. 166.

82. Questions. - **QUESTION 1º. Must one reciting the Office hear himself in order to satisfy?**

Resp. More probably, no. The reason is that hearing is not prescribed, but only recitation, that is, pronunciation of words, which is called vocal; therefore it suffices if the one who recites is conscious to himself that he is pronouncing the words. - Laymann, Sporer, the Salmanticenses, and St. Ligorius, n. 163, says this is sufficiently probable, against others.

83. ○ **QUESTION 2º. What are just causes for interrupting the Office?**

Resp. Any reasonable cause suffices for interrupting any Hour; but especially the following causes are numbered: 1º any utility, one's own or another's, which cannot be deferred without some inconvenience; 2º a reason of civility or charity, or the reason of executing the commands of Superiors; 3º if the confession of someone who would not gladly wait must be heard; 4º if you wish to do or note something so that you may remove distraction or solicitude, for example, lest you forget, etc., provided nevertheless that it does not happen frequently; for frequent interruption on account of this cause does not lack some irreverence; 5º some brief prayer also, or some pious affection of the heart, can licitly be inserted into the recitation. Nevertheless it would not be licit to linger in these things longer and frequently for the sake of meditating, because the character of recitation or vocal prayer would not be sufficiently preserved; likewise if a longer vocal prayer and one in no way pertaining to the Office were said; for a notable part would be added to the Hours, which would be venial as against the prescribed form. - St. Ligorius, n. 168. - Salmanticenses, tr. 16, ch. 3, n. 4. - Lacroix, n. 1307, and others commonly [6].

[6] None of the authors alleged here introduces discussion about meditation not being inserted into the recitation of the Office; likewise none reprehends other prayers perhaps intermingled, unless these are added as parts of the Office.

84. ○ **QUESTION 3º. Can Matins be separated from Lauds?**

Resp. Yes, according to the common opinion. For thus St. Ligorius, n. 167: "It is common that Matins can be separated from Lauds without any cause, as the Salmanticenses, Bonacina, Concina, Suarez, Sanchez, Navarrus, Lacroix, Lessius say." Then, however, when Matins has been finished, the *Pater noster* must be said, as must be done after any Hour.

85. ○ **QUESTION 4º. Can the Nocturns be separated without cause?**

Resp. Yes. It is established from universal custom, against which no law can be opposed. Indeed formerly from the practice of the Church they were separated, since they were customarily recited at various hours of the night. Why therefore could they not now be separated? - Thus the Salmanticenses and others more commonly against others. Indeed not a few say that even without a special cause an interval of three hours can be placed between individual Nocturns. But if there is a just cause on account of which the Nocturns must be separated, that interval can also be prolonged according to the reason of that cause. - Thus Busembaum, Bonacina, the Salmanticenses, Viva, whose opinion St. Ligorius, n. 167, deservedly calls probable.

86. ○ **QUESTION 5º. Whether or how does he sin who, after one or another Nocturn has been recited on the vigil, recites the remaining part of Matins with the whole night intervening?**

Resp. 1º He must always be exempted from mortal sin, because he satisfies the substance of the precept. For from the general rule handed down by St. Ligorius, n. 168, and by others commonly, the substance of the precept is satisfied whenever the Office is recited integrally on the natural or ecclesiastical day, so that venial sin is never then exceeded, however great an interruption may intervene even without cause. Therefore the present case must not be excluded.

Resp. 2º He also will be excused from venial sin who does this for a reasonable cause, for example, if the Office is very long, as the Office of Sunday, and after the first Nocturn has been recited he is very fatigued or overwhelmed by sleep, etc. The reason follows from what has been said, since any interruption from a just cause is licit. Reuter, *On the Canonical Hours*, n. 262.

87. ○ **QUESTION 6º. Whether or to what extent must some Hour be repeated because of a notable interruption placed within it?**

Resp. 1º An entire Hour must never be repeated, even if the interruption was placed without just cause. The reason is clear from what was just said. Besides, individual Psalms, and individual Lessons or Prayers, have their complete signification, and they are sufficiently united by the intention of continuing.

Resp. 2º Indeed, speaking of itself, nothing must necessarily be repeated, even if the interruption occurs in the middle of a Psalm, provided it is not in the middle of a versicle or in the middle of a prayer, because individual versicles also have their own particular signification. - St. Ligorius, n. 168, and others commonly, against some.

QUESTION 7º. In the recitation of the Office, is it licit to mix in or append something from devotion?

Resp. No, because in the Offices nothing is to be added or changed unless it has been conceded by the Apostolic See. - Thus the Sacred Congregation of Rites, 10 June 1690 [7].

[7] ** Understand: nothing is to be added as a part of the Office. See above, n. 83, q. 2.

88. ○ **QUESTION 8º. To what is one reciting the Hours with a companion or with the choir bound by reason of pronunciation?**

Resp. For satisfying the obligation, it is required: 1º that the recitation be made in alternate verses. But if more than two recite, after a double choir has been made, it must be recited alternately, because this manner is admitted by the custom of the Church; 2º that the verses be said successively and not simultaneously, and that one not resume before the other has completed his own; 3º that the things which are said by one be heard by the others, so that they may communicate, and one moral prayer be made. Nevertheless it is not necessary that those hearing pronounce in a lowered voice the part of the others. - Thus most commonly. - St. Ligorius, n. 162.

QUESTION 9º. Do you satisfy if you recite the Hours with a layman, or another not obliged, or with one distracted or not attentive?

Resp. Yes to all. The reason is that these things do not prevent you from reciting the Hours according to the custom of the Church. The defect of obligation or of attention on the part of the other does not change or vitiate your recitation. Therefore, if the companion is obliged and does not attend, he himself does not satisfy, since he does not communicate with you; but he does not prevent you from communicating with him, if he pronounces rightly and you hear rightly. - Lacroix, n. 1295.

89. ○ **QUESTION 10º. Are you bound to repeat the things which you recited with imperfect or mutilated pronunciation?**

Resp. 1º Yes, if the mutilation is very notable, so that the sense of the words is corrupted and destroyed; and this holds even if you did it involuntarily, because the defect affects the substance of the recitation; except unless impossibility stands in the way, for example, stammering.

Resp. 2º No, if you so mutilate syllables that the sense of the words is not corrupted, or if you mutilate in small quantity; for then the fault does not affect the substance of the obligation, and therefore does not exceed venial sin. Indeed you sin in no way if you do this involuntarily because of inadvertence, or stammering, or an inveterate custom which can only with difficulty be overcome; otherwise suitable effort must be applied to amend this custom.

QUESTION 11º. Must the prayer be said after Matins when Lauds are separated?

Resp. Probably, no, but it suffices to recite the *Pater noster* after Matins. The reason is that probably Matins and Lauds morally effect one Hour, and from another source a prayer is prescribed on the night of the Nativity of the Lord alone. - Thus St. Ligorius, n. 167. - Salmanticenses. - Sanchez. - Viva, etc. - Voit, n. 1064, etc.

Nevertheless others also affirm, probably, because, they say, it is probable that Matins and Lauds are two distinct Hours. Thus Gavantus, Bonacina, Navarrus, and St. Ligorius, ibid., says it is probable [8].

[8] These things contribute to the mere erudition of the reader, but nothing to practice. For a merely probable obligation is now not an obligation, but a mere opinion about an obligation, which does not have the force of obliging.

QUESTION 12º. Before Lauds separated from Matins, must the *Pater* and *Ave* be said, as before the other Hours?

Resp. Some affirm absolutely, because then Lauds are an Hour distinct from Matins. Thus Saettler, etc. Others more probably deny, because this is prescribed nowhere. Nor is the reason valid, that Lauds then are like a distinct Hour; for the *Pater* and *Ave* are not said at the beginning of Compline, although this is a distinct Hour. - Thus Voit, n. 1064. - Lacroix, n. 1305.

III. As to Attention and Devotion

90. ○ The Office must be recited attentively and devoutly, since it is prayer, and indeed public prayer, or prayer to be recited by a public minister deputed by the Church. Hence one voluntarily distracted in reciting the Hours sins at least venially. But whether at some time he sins gravely will soon be said in the questions.

Moreover, not only distractions which are intended are voluntary, but also those which are willed in their cause, namely those which arise from negligence, levity, excessive preoccupation with business

to be done, from curiosity in looking around at external objects, from circumstances of an unsuitable place or time, unless some reason excuses this. - Bouvier, etc.

91. Questions. - **QUESTION 1º. How many kinds of attention are distinguished?**

Resp. Twofold, namely internal and external. The former consists in the interior advertence of the mind to that which is being done; but the latter is that which excludes every external action physically incompatible with recitation, such as conversing, writing, etc.

Again, internal attention is threefold, namely: 1º spiritual, which is to God himself, as the term of prayer; 2º literal, or to the sense of the words and the signification of the things; 3º material, which is made to the words only, namely to pronouncing them rightly. - See vol. 1, n. 344.

QUESTION 2º. Is internal attention required under grave obligation?

Resp. There is a twofold opinion among theologians.

The 1st OPINION, the more common, affirms. The reason is, 1º because prayer without internal attention is not prayer. For prayer is an elevation of the mind to God; but with internal attention excluded, there is no elevation of the mind to God. Therefore... Besides, for discharging the Hours there is required at least some intention of worshiping God; but this intention cannot be had without some internal attention. Therefore... 2º Because one must not believe that the Church intended to prescribe only material attention in discharging the Divine Office. Indeed the Council of Trent seems expressly to have declared the necessity of internal attention by saying that the Office must be recited reverently, distinctly, and devoutly. 3º If no internal attention were required, there would be no reason why voluntary distraction would be prohibited by divine law. - Thus Sanchez, Azor, Roncaglia, and many others.

The 2nd OPINION denies, and says that external attention absolutely suffices for satisfying the substance of the recitation and for removing mortal sin. The reason is that if internal attention were required, one who involuntarily distracted recited the Hours would not satisfy his obligation; for when the essence of a thing has been destroyed, although inculpably, the thing itself remains destroyed. Nevertheless, not even the adversaries admit this. But thus St. Ligorius concludes, n. 177: "The first opinion seems more probable at least on account of extrinsic authority, and altogether is to be counseled as safer [9]; but the second, both on account of the authority of the Doctors, which is not to be contemned, and on account of reasons resting on foundations not slight, appears sufficiently probable." I gladly adhere to this conclusion. - Recall what was said about Mass, vol. 1, n. 345.

[9] Namely, attention even interior is to be recommended, but not the opinion which imposes a grave obligation of interior attention; for it is not lawful to impose an uncertain opinion as a certain obligation.

92. ○ **QUESTION 3º. What internal attention is required according to the former opinion?**

Resp. Any certainly suffices, because whether it is spiritual, or literal, or material, the mind is elevated to God, and true prayer is made, even if the attention were only to the words. Hence neither spiritual attention nor literal attention is required, which is impossible for many, namely for Nuns and for some Religious ignorant of the Latin language. Therefore it is enough if material attention is had; for attention to the words with the general intention of worshiping God suffices. Indeed

attention to individual words is not required, but moral and general attention suffices, by which someone takes care to say all things with the intention of praying [10]. - Thus St. Ligorius, n. 176. - Lacroix, n. 1344.

[10] If for internal attention any one of the three aforesaid kinds, and material attention also, suffices, De Lugo, according to whose opinion it is probable that external attention suffices, rightly notes (*De Euch.*, disp. 22, n. 41) that Father Aegidius Coninck (*In 3 P. S. Thom.*, q. 83, n. 301) not without reason said that in reality many of the adversaries agree, namely those requiring internal attention, and that there seems to be a disagreement only about the name. For they require internal attention, but only to the words, and such that it suffices lest someone expose himself to the danger of pronouncing the words badly and in a disturbed manner, or of omitting them. This attention can be had by one who even voluntarily at that time would think about some metaphysical question, or another similar thing.

Indeed De Lugo does not hand these things down as if, from this opinion, the voluntary distractions of those praying lacked fault. For soon, speaking about other adversaries who require some greater internal attention, he subjoins these things: "Therefore we confess that whenever vocal prayer is continued, some internal attention is given; but this is sometimes so slight that certain adversaries deservedly do not wish to call it attention; because when they demand attention from obligation, they understand it of a more formal and explicit obligation. Yet we say that this cannot be voluntarily omitted without venial fault because of the irreverence which intervenes, if you speak to God exteriorly, with the mind wholly distracted to other things; nevertheless there is no certainty about an obligation under mortal sin, since prayer still remains substantially." But that prayer then remains substantially, Lugo had shown by those reasons (ibid., nn. 29-39) which certainly, to use the words of St. Alphonsus (Bk. 5, n. 552), can with difficulty be solved.

QUESTION 4º. What are the remedies for repelling distractions?

Resp. Some are negative, and others positive. Negative remedies are reduced to the removal of all those things which are the cause of distraction, for example, to prevent the eyes from wandering about, to withdraw oneself from greater noise of men, not to hurry toward diverse business, etc. - But positive remedies are: 1º at the beginning of the recitation to form the intention of praising God; 2º to renew the intention at the end of the Psalms, when the *Gloria Patri* is said; 3º often to bring the presence of God back into the mind; 4º to set before oneself the Passion of our Lord, distributing the various circumstances of that Passion through the individual Hours, etc. - St. Ligorius, n. 177.

Point IV. On Causes Excusing from the Recitation of the Hours

The causes excusing from the recitation of the Divine Office are 1º impossibility; 2º charity; 3º dispensation.

93. º I. Impossibility, whether physical or moral, which consists in grave difficulty of reciting the Office. Hence he is excused:

1º Who does not have a Breviary, because, for example, undertaking a journey, he forgot it, or lost it on the journey, with inability to procure another. If, however, through his own fault he forgot or lost it, or threw it away, he sinned gravely [1], and the omission of the Hours is to be imputed to him. 2º Who labors under a grave illness, for example, fever, pain of the intestines or head; or who justly fears lest grave inconvenience follow from the recitation, etc. Hence he is sufficiently excused who prudently believes or fears that because of the recitation of the Office some notable heaviness of the head, or rawness of the stomach, or weariness of strength, or some other grave inconvenience would thence come upon him. - St. Ligorius, n. 154, note 1.

[1] Better say that this person has sinned gravely or lightly, according as the cause of the omission existed as gravely or lightly culpable.

3º One convalescing from grave illness can be excused for some days at the judgment of a prudent person, until his strength is restored. And this can be admitted even if the sick person already celebrates Mass. - St. Ligorius, ibid., note 2.

4º He also is excused who in time of persecution fears lest from the recitation of the Breviary he be betrayed; likewise he who labors gravely with his eyes, etc. - St. Ligorius, nn. 156 and 157, and others commonly.

II. Charity toward one's neighbor, that is, a grave occupation which cannot be omitted without scandal or notable detriment of the neighbor. Such occupation excuses from the recitation of the Office, because the natural precept of charity prevails over ecclesiastical law. Hence you are excused from the recitation of the Hours, either totally or partially,

1º If at night, about to recite the Office, for example Vespers, you are called immediately to a dying person, and time or convenience for discharging the obligation of the Office does not suffice for you.

2º If the whole day you are occupied in hearing confessions which, because of peculiar circumstances, cannot be deferred, for example, in sacred missions, and especially under their end, when you are about to depart, etc.

3º If you could not omit a sermon without scandal or detriment to reputation, and nevertheless time for preparing it would not suffice if the Office had to be recited.

4º If you are occupied the whole day in settling quarrels, or in assisting the sick, for example, in time of contagious disease, etc. - St. Ligorius, n. 156, and others.

94. ○ III. Legitimate dispensation, or one conceded by a legitimate Superior.

1º The obligation of reciting the Divine Office, since it is of ecclesiastical law, can be removed by ecclesiastical Superiors.

2º The Pope can validly concede this dispensation in every case, even without cause; but licitly from a reasonable cause, for example, because of excessive occupation, for quieting scruples, etc.

3º A Bishop also can dispense from this law, but not validly without sufficient cause, and only with someone in particular for a time, namely: 1º when there is doubt about moral inability, or about the gravity of a detriment to be feared; 2º when recourse to the Pope is difficult; 3º when the dispensation is sought on account of a cause which frequently recurs, for example, because of infirmity; 4º when the dispensation is sought for a brief time. - Thus St. Ligorius, n. 159. - Recall what was said in the Treatise on Laws, vol. 1, n. 115.

95. Questions. - **QUESTION 1º. What must be done in doubt whether infirmity suffices for excusing or not?**

Resp. 1º The sick person can commit himself to the judgment of a physician, as is said in Canon Law, ch. *Fraternitatis*, *De frig. et mal.*; 2º he can acquiesce in the judgment of the Superior, who in doubt also has power to dispense; 3º he can remit himself to the probable judgment of a prudent man; 4º indeed probably he can also stand by his own judgment, if he himself is able to form such a judgment. - St. Ligorius, n. 154 [2].

[2] ** St. Alphonsus (bk. 4, n. 154) adds these things: *If it is only doubtful whether the indisposition reaches so far as to excuse, as above; then, since the law of reciting is in possession and the doubt concerns the exemption, the law must certainly be fulfilled. This holds, however, when it is a pure doubt; otherwise if there is a probable judgment.* Tournely, Roncaglia, Elbel, Anacletus, etc. In which you again see that, in the judgment of St. Alphonsus, the principle of possession certainly holds when it is a matter of negative doubt, but not where a probable opinion stands on the other side. See above, Vol. I, the Note to n. 80.

St. Alphonsus adds besides (ibid.): *But what if, these things having been premised* (namely those which Gury reports in this place), *the doubt still persists? It is answered: if the doubt is whether the recitation would gravely harm him, then he is certainly not bound, indeed he cannot recite, because the natural right of preserving health is to be preferred to the precept of the Church, as Viva and the Salmanticenses say with others; unless he did it from love of virtue, the danger of death being excluded, according to what was said in bk. 3, n. 371, with Lugo, the Salmanticenses, Villalobos, etc.* But these things are to be understood with discretion: 1. because, if the recitation would in fact gravely harm him, it would perhaps follow that afterwards he would have to be free from reciting for a longer time, which love of virtue ought rather to shun. 2. The citation of bk. 3, n. 371 seems perhaps less to the point. For the question there concerns Monks who by living austerely perhaps incur some loss of a longer life. On which matter Lugo, whom St. Alphonsus cites, has thus (*De Iust.*, disp. 10, n. 32): *It is inferred, seventhly, that penances, fasts, and mortifications of the flesh voluntarily undertaken are unlawful only when they would bring a notable hastening of death...; otherwise... it is not unlawful to perform those works, although some shortening of life, not notable, is feared.* Now that danger of a harm perhaps to follow little by little differs considerably from the injury which by the very fact will bring grave harm to the one reciting.

QUESTION 2º. To what is a sick person bound, if he is certain that he cannot discharge the whole Office, but doubts whether he is able to recite a part?

Resp. Probably he is bound to nothing. For he is reasonably excused from the whole Office, lest he be distressed by scruples, not knowing how far he can and is bound to recite; indeed such anxiety, as St. Ligorius says, would bring him great harm. - St. Ligorius, n. 154, at the end.

96. ○ **QUESTION 3º. Is one who is in any way impeded from reciting the whole Breviary bound to the part which he can recite?**

Resp. Entirely yes. The reason is evident. For the obligation of the Breviary falls on its individual parts, since the thing prescribed is divisible. This is also established from proposition 54 condemned by Innocent XI, which lies thus: "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." Therefore he who lacks a Breviary, and knows nothing else by memory except Lauds or Compline, is bound under grave obligation to recite those.

QUESTION 4º. Are you bound to recite the Psalms if you have only these before your hands, or know them by memory, with the Lessons and Responsories left aside?

Resp. More probably, yes. The reason is that, since you can recite a notable part of the Office, there is no cause why you should be excused from it. - St. Ligorius, n. 158. - Lacroix, n. 1220. - Sporer, etc. Yet several say that you are bound to nothing, because then the form prescribed by St. Pius V is lacking. Moreover the opinion of these seems sufficiently probable. Nor does the above-cited proposition 54 condemned by Innocent XI stand in the way, because in that proposition there is question of one who can complete entire Hours. - But the following rule is handed down by St. Ligorius and others [3]: If you can recite as much as is a little Hour, you are bound under grave obligation to recite it; but if less, you are not obliged to recite anything even under venial obligation, because such a small part, taken separately, is not judged appreciable for the end intended by the law.

[3] ** St. Alphonsus had prefaced this rule with these things: "Busembaum with Bonacina, Holzmann with Illsung, and Croix with Laymann and Filliuccius, rightly assign this rule, that if you can recite as much as a little Hour, you are bound under

grave obligation to recite it."

But, what you will surely wonder at, neither Busembaum, nor Bonacina, nor Holzmann, nor Illsung, nor Laymann, nor Filliuccius has anything about a rule of this sort. Therefore Croix alone is the one who (Bk. 4, n. 1220) wished to deduce it from Illsung, who again entirely wrongly wished to deduce another rule of his from Laymann. But from Croix this rule flowed into St. Alphonsus, and from the Holy Doctor into Gury, and into Scavini, who (tr. 5, disp. 1, ch. 2, art. 3, § 5, n. 1, in note) wrote: "Behold the rule: if you can recite as much as a little Hour, you are bound under grave obligation."

I said that Illsung wrongly wished to deduce a certain rule of his from Laymann. For after he had stated beforehand (tr. 5, disp. 1, q. 1, art. 6, n. 41) that he who cannot say even an entire Hour is not obliged to say the Psalms, or prayers, or parts of Hours, he adds: "Laymann is still more severe; for he judges that, although Matins is only one Hour, he who could say all its Psalms, but not the Lessons because of lack of a book, would altogether be bound to say them. Hence he says that, provided someone can say only as much as suffices for an omission mortally sinful, as indeed all the Psalms of Matins, exceeding the smallness of the other Hours, would suffice, by this very fact there is an obligation of saying; which also seems true to me." But from this Croix fashioned his rule, reasoning thus: From Laymann and Illsung, someone is obliged to say that whose omission is gravely sinful. But the omission of one little Hour is gravely sinful. Therefore he who can recite as much as one little Hour is bound to this under grave obligation. But Croix indeed drew this inference, not Illsung, who, with the context considered, together with the mark of a more severe opinion attributed to Laymann in comparison with others, seems to be understood of a notable part of one and the same Hour which is omitted. Otherwise it would be inferred that one who knows by memory only two Psalms of Matins, the last two from Lauds, and two from Vespers, is now, as if from the opinion of Illsung, bound under grave obligation to recite these, since they exceed, not merely equal, the measure of one little Hour; which certainly Illsung did not even dream of.

Moreover Croix and Illsung attribute both Croix's rule and Illsung's other rule to Laymann wholly wrongly. For he (Bk. 1, tr. 4, ch. 19, n. 6), after positing this thesis: "If the precept is about an indivisible thing, he who is excused from a substantial part of it is excused from the whole," then subjoins this exception: "Unless the part of the precept which cannot be observed is slight, so that he who observes the remainder is judged morally to fulfill the precept as to substance." But he adds an example also from the Breviary, saying: "It is similar if someone has lost his Breviary, and in the Matins of some feria knows all the Psalms by memory, but does not know the three Lessons with the Responsories, he is obliged to recite the Psalms, because then the part which is omitted is not notable." And from these things indeed Illsung generally inferred that one is obliged to recite the Psalms of Matins, even if someone lacks the Lessons; and further he inferred as if from the mouth of Laymann a certain general principle about the obligation of reciting that whose omission would be gravely sinful. But both of these are vainly ascribed to Laymann. For Laymann immediately follows: "But something else must be said about Matins of nine Lessons, the omission of which is judged notable; wherefore he who cannot recite that part seems to be excused from the whole." Therefore Laymann did not say generally that the Psalms of Matins must be recited if the Lessons are lacking; but he asserted this only concerning the lack of three Lessons in the Matins of a feria. Much less does he generally admit the obligation of reciting that whose omission constitutes grave fault; for is not the omission of the nine Psalms of Matins grave? Yet he excuses from reciting them one who lacks the nine Lessons. Namely, he takes the norm not from the part of the Hour considered in itself, but from its proportion to preserving the substance of the precept, which he says must be measured, not in relation to the whole Office, but in relation to individual Hours. Therefore he subjoins (l.c., n. 7): "If the precept is about a divisible thing, he who is excused from one part must nevertheless observe the other, since in that part the substance of the precept can consist; for example, a priest who for some cause is impeded from reciting Matins is nevertheless bound to recite the little Hours and Vespers, if he can." From these things it is also clear that Bonacina (*De Pecc.*, disp. 2, q. 8, punct. 1, n. 7) did not rightly number Laymann among those who assert that he who cannot recite the greater part of the Divine Office is not bound to the lesser, since otherwise Bonacina had established the same principle as Laymann (l.c., n. 4), namely that he who cannot conveniently fulfill the whole precept is bound to fulfill part, provided it is a notable part and is judged intended by the Superior, provided namely, as Laymann says, that in that part the substance of the precept is preserved. And from these things we are again taught how cautiously allegations are to be trusted, although the authors apud whom they stand may seem more accurate.

97. ○ QUESTION 5º. Are you bound to employ a companion if you are not able to recite the Hours alone?

Resp. Yes, if you easily find someone whom you can conveniently employ. The reason is, 1º because then there is not inability properly so called; 2º because the precepts of the Church require ordinary diligence for their fulfillment. But no means is more ordinary than to employ in recitation a companion whom perhaps you can easily find. - Thus commonly. - St. Ligorius, n. 158. - Salmanticenses, etc.

QUESTION 6º. Are you bound to employ a companion, with a stipend paid, if you cannot conveniently find another?

Resp. No, according to the common opinion. The reason is that the means is wholly extraordinary, and also is full of inconveniences; whence the Church is not judged to oblige to it. Indeed, if a companion who will recite with you gratis does not promptly occur, you are not bound to seek someone with anxiety and solicitude, because this too would become an extraordinary means. - Thus the Salmanticenses, ch. 3, n. 44. - Suarez, *On Religion*, tom. 2, bk. 4, ch. 8, n. 12.

Article II. On the Negative Obligations of Clerics, or on Those Things Which Are Prohibited to Clerics

98. ○ Generally, clerics are prohibited from giving themselves to those things which are unbecoming to the ecclesiastical state, for example, from exercising the art of butcher, innkeeper, physician, and surgeon, except in a case of necessity; from acting as judge in a case of blood, or advocate, or patron, or notary in secular contracts. Likewise clerics are prohibited from going about armed, entering taverns, and many other things. But the following are especially prohibited to clerics: 1º habitation with women; 2º games of chance; 3º bearing arms and hunting; 4º trading. Of each briefly.

§ I. On Habitation with Women

99. ○ Habitation under the same roof with women was generally prohibited to clerics by the sacred canons already from the earliest times of the Church. Thus in the First Council of Nicaea, canon 3: "The great Synod has altogether forbidden that it be licit for a Bishop or Presbyter, or Deacon, or any one at all of those who are in the Clergy, to have an introduced woman [1], except certainly a mother, or sister, or aunt, or those persons alone who escape all suspicion." - It is also established from chapters 1 and 9, *De Cohab.* Likewise from the First Lateran Council, ch. 3. Hence in most places Bishops also prescribed in Synods that it should be lawful for clerics to cohabit only with those women who are joined by a strict bond of consanguinity or affinity, namely in the first and second degree. Nor did they permit maidservants to be admitted by them unless they were of known probity. Indeed in most synodal statutes it is found prohibited that clerics have with them maidservants who have not completed the age of forty years. But the reason of the precept is both that the danger which clerics could incur because of human frailty may be removed, and that calumnies may be forestalled, which otherwise could easily be fastened upon the innocent. To this pertain those words of Ecclus. 42:12: "Do not dwell in the midst of women; for from garments proceeds the moth, and from a woman the iniquity of a man."

[1] *Subintroducta* (Greek *syneisaktos*) was called not just any woman or maidservant, but a devout woman professing celibacy, who would be loved by a cleric as a sister with special love, and would live together with him. Wherefore this Canon seems less to pertain to the matter.

100. ○ But the mind of the Church is that clerics not only abstain from cohabitation with women, but also that they take care not to visit or speak with them frequently. Thus all the Fathers admonish. Among others St. Ambrose must be heard, thus instructing his clergy, bk. 4, *Offic.*, 20: "Let the younger not go to the houses of widows and virgins, except for the sake of visiting; and this with older men, that is, either with the Bishop, or, if the cause is graver, with Presbyters. What necessity is there that we give secular persons a place for disparagement? What need is there that those frequent visitations also receive authority? What if some one of them perhaps slips? Why should you undergo envy from another's fall? How many even strong men has enticement deceived? How many have not given place to error, and have given place to suspicion? Why do you not spend on reading those times in which you are free from the Church? Why do you not revisit Christ, speak with Christ?"

§ II. On Games of Dice

101. ○ A game of dice is said to be one which is situated wholly in pure lot, and whose outcome depends on mere chance, without the player's industry obtaining any part in it: such, for example, is the game of dice.

Games of dice are severely prohibited to clerics, at least those constituted in major Orders and beneficed persons. This is established 1° from the Fourth Lateran Council, canon 16, where it is said: "Let clerics not play at dice and games, nor be present at games of this sort"; 2° from the Council of Trent, sess. 22, ch. 1, *De Reformat.*

With laws of this sort considered, he who, initiated in sacred Orders, indulged in games of this sort for the sake of gain and much, was commonly held guilty of grave sin. - St. Ligorius, bk. 3, n. 896. - But from present custom the prohibition of the ancient Canons seems greatly tempered.

At present, according to many, a cleric is judged immune from every sin who plays sparingly, moderately, privately, and without scandal at dice and cards, however much the outcome depends on fortune, if he plays where the aforesaid Canons are not rigidly observed. - St. Ligorius, n. 899. - A fortiori he would be free from every fault who for the sake of recreation and without scandal would recreate himself with those games; for example, if there is no gain or the least gain, or if the gain is assigned to the poor, because custom in this way has interpreted the sacred Canons.

102. ○ **QUESTION. Is any card game whatsoever judged aleatory?**

Resp. No. For a twofold card game must be distinguished. One is of pure lot and altogether aleatory; but another is mixed, or partly aleatory and partly depending on the skill or industry of the player. This latter kind of game is not to be held as illicit of itself, if it is played moderately, without scandal, and for a small quantity of money, unless nevertheless it is prohibited somewhere by special law; for thus the interpretation of the law and universal custom bear. Yet clerics should take care lest in playing they be carried away to excesses, levity, and dissipation of mind, and also to the affection of

cupidity or passion. It is especially expedient that they generally abstain from playing with seculars, unless these are men of uncommon prudence and gravity; because otherwise their holy ministry will easily suffer detriment, and sometimes grave detriment. Above all they must beware of waste of time, and as much as possible of the scandal of the faithful.

§ III. On Bearing Arms and Hunting

103. ○ The bearing of arms, necessity excluded, is prohibited to clerics. This is established, besides other things, from the Decretals, bk. 3, tit. 1, *De vita et honest. Cleric.*, ch. 2, where it is said: "Let clerics bearing arms be excommunicated." The reason is that bearing arms is unbecoming to the character of clerics, who, after the example of Christ, ought to be meek and humble of heart. From another side, the arms of clerics ought to be merely spiritual, since it belongs to them to fight against the powers of darkness. Hence the theologians with Benedict XIV, note 101, say that clerics in sacred Orders who embrace military service sin gravely. Nevertheless they are not to be reprehended who cooperate in a just war by counsel, exhortation, or even aid, provided they do not bear arms nor discharge the office of leader. These things are established from various places of Canon Law. I said outside necessity, because necessity has no law.

104. ○ Hunting is prohibited to clerics; but understand hunting to be noisy hunting, or that which is done with dogs and the noise of arms, or with hawks; but not quiet hunting, for example, with snares or other instruments. This is established from various places of Canon Law, but especially from the Fourth Lateran Council, canon 15, where it is said: "We interdict hunting and fowling to all clerics; whence let them not presume to have dogs or birds." Likewise from the Council of Trent, sess. 24, ch. 13. - See St. Ligorius, bk. 5, n. 606.

But it is disputed whether noisy hunting is a grave sin if it happens rarely. St. Ligorius denies, scandal being excluded. Likewise hunting with a gun and one dog does not seem strictly prohibited of itself; but generally it involves indecency, nor is it free from some scandal, unless perhaps it happens rarely, for example, without running, in a garden, etc.

§ IV. On Trading

105. ○ Trading is prohibited to all clerics, especially to those who have been initiated in sacred Orders. This is established from innumerable texts of Canon Law, chiefly from Trent, sess. 22, ch. 1, *De Reformat.*

Nor is it licit for clerics to devote themselves to trading even because of the necessity of supporting a family, without the permission either of the Apostolic See within Italy, or of the Ordinary outside Italy. From the Decree of Clement XIII, constitution *Cum priorum*, 17 September 1759. - See St. Alphonsus, *On Contracts*, nn. 832, 833. But the following are not contained in that prohibition: 1° Clerics who sell the fruits which they gather from their own fields. 2° Those who exercise an art consonant with their own condition and state, and sell the works. 3° Those who buy things at a small price when there is abundance, so that, when scarcity of provisions comes on, they may sell them at the same price to friends, relatives, and the poor. 4° Those who buy animals so that, fattened on their

own farms, they may sell them; but otherwise, if they are fattened in another's stalls. 5º Probably from the common opinion, also those who buy the fruits of the fields of others for fattening animals, and selling them when fattened. 6º Those who buy for their own use, but afterward sell if the price rises, so that a similar thing may be bought more cheaply. 7º Those who buy many things so that they may provide for themselves more safely, and then sell what remains, even at a higher price.

Chapter II. On the Particular Obligations of Clerics

We shall speak of the obligations 1º of Bishops; 2º of Pastors; 3º of Canons.

Article I. On the Obligations of Bishops

106. ○ A Bishop is called an Ordinary, because he uses ordinary jurisdiction in his diocese. He is also called Diocesan by reason of the territory subject to him, and Suffragan by reason of the Metropolitan to whom he is subject. His Church is called Cathedral because in it is the episcopal See, or Chair.

The obligations of Bishops, besides those by which on the day of consecration they bind themselves by oath, are reduced to residence, prayer, preaching, and visitation of the diocese.

107. ○ I. As to residence. Bishops, although they are Cardinals, are bound to dwell in their episcopal see, as is gathered from the Council of Trent, sess. 6, ch. 1, *De Reform.*, and sess. 23, the same chapter.

But there are several causes excusing a Bishop from perpetual and continuous residence.

1º Christian charity, for example, if some Church is placed in great danger of heresy and he can bring help to it, or if his mediation is necessary for composing peace, etc.

2º Urgent necessity, for example, if the Bishop's life is endangered because of sickness, inclemency of the air, personal persecution, etc.; but not because of a general danger, for example, in time of contagion, etc.

3º Due obedience, namely when the Pontiff calls some Bishop so that he may entrust to him the care of some business: thus Cardinals assisting the Roman Pontiff have a sufficient cause why they are rather often absent from their Churches.

4º The evident good of the Church, for defending its rights, for example, in a provincial or general Council. - St. Ligorius, n. 125.

It is permitted to Bishops that for an honorable cause and without detriment to the flock they can be absent each year for two or three months, either continuously or at intervals. From the Council of Trent, sess. 23, ch. 1, *De Reform.* But they cannot be absent longer without an Apostolic Indult, if you except pilgrimage to the thresholds of the Apostles and attendance at a provincial Council.

108. ○ II. As to preaching. Bishops are bound by a most strict obligation of preaching the word of God, by themselves or at least through others, if they themselves have been legitimately impeded: this is established from Sacred Scripture. Thus the Apostle, 2 Tim. 4:2: "Preach the word; be urgent in season, out of season; reprove, entreat, rebuke in all

patience and doctrine," etc. It is also established from the Council of Trent, sess. 5, ch. 2, *De Reform.*

III. As to prayer. Bishops, after the likeness of the Apostles, ought often to devote effort to prayer, and to exercise themselves in the contemplation of divine things, and continually to implore divine light for themselves, the Clergy, and the whole people.

Frequently, and at least on Sundays and feast days, they ought to offer the Sacrifice for the whole diocese, and often to incite the people to prayer, by teaching the manner of praying, by appointing private and public prayers in chief necessities, and by decreeing supplications, etc. - St. Ligorius, *Hom. apost.*, tr. 7, nn. 65-66.

109. ○ IV. As to episcopal visitation. The Bishop, as pastor of the whole diocese, ought to bear great care for the souls committed to his solicitude and labors. Wherefore he is bound diligently to visit the various Churches of his jurisdiction, so that he may know his sheep, as is fitting, detect their necessities, and search out the means of meeting them. To all these things he is obliged by divine and natural law, nor can this law be abrogated or diminished by any custom, as is open from the Council of Trent, sess. 24, ch. 3, *De Reform.* - St. Ligorius, *Hom. apost.*, tr. 7, nn. 59-60.

Bishops who administer distant and immense dioceses, as in France, cannot survey them whole every year or every other year: therefore they are excused because of impossibility, provided they do what they can and visit a great part of the diocese, at least through Vicars General, if they are personally impeded.

In all things which pertain to visitation and correction of morals, Bishops have the right of ordering, moderating, punishing, and executing those things, according to the sanctions of the Canons, which according to their prudence seem necessary for the amendment of subjects and the utility of the diocese. - Thus from the Council of Trent, sess. 24, ch. 10, *De Reform.*

Article II. On the Obligations of Pastors

110. ○ A Pastor, once canonically constituted, enjoys ordinary jurisdiction over the people entrusted to him, and without a new approval of the Bishop has the right to undertake all parochial duties. Therefore no Cleric, with the Bishop and his Vicar General and their delegates excepted, can licitly in any way perform any sacred functions in his Church or parish, without his express or reasonably presumed consent [2].

[1] *On the title above.* On this subject, most worthy to be read, indeed to be thumbed day and night, is the little work entitled: *Manuale pratico pel Parroco novello,* by Giuseppe Frassinetti, Prior of St. Sabina in Genoa: *operetta utile anche agli altri Ecclesiastici, specialmente Confessori e Predicatori*. For whatever can in any matter pertain to any of the duties of a Pastor -- namely in the administration of the Sacraments, in sacred functions, in administering the goods that belong both to the parochial benefice and to the fabric of the church, in the beauty of the church and the decency to be kept in the parish house as well, in the care of the poor, of the sick, and of schools, in founding or fostering pious Confraternities, in furnishing the people with the food of the divine word both by preaching and by the useful reading of books, in correcting subjects where there is need, in removing scandals whether against faith or against good morals, etc. -- all of it is touched on in this excellent little work. Nor does the Author carry this out by long and, as it were, sermon-like exhortations, much less by the sharper remonstrances, as some are wont, by which he would seem to carp at the vices of ecclesiastics; but briefly and soberly, by certain admonitions full indeed of wisdom and prudence, such as the sweetest and gentlest charity, solid doctrine, long

experience, and a most temperate cast of judgment (others would say discretion) are able to furnish. And hence arises this advantage, surely of the greatest moment: that against the errors into which some, either not yet sufficiently taught by experience or less furnished with prudence, are sometimes wont to stumble, they are fortified beforehand, not by trials made with their own or others' damage, at times grave, but by a most safe way shown in advance.

[2] ** You cannot, therefore, hear confessions in his Church without the consent of such a pastor. If, however, you are permitted to celebrate Mass there, you can then also distribute the Most Holy Eucharist. As regards hearing confessions, however, distinguish the parish from the parochial Church. For you can go to hear the confessions of the sick even without the pastor's knowledge.

Pastors, like Bishops, are chiefly bound: 1º to residence; 2º to prayer; 3º to preaching; 4º to administration of the Sacraments; 5º to correction of the sheep; 6º to visitation of the sick and of the parish.

111. ○ I. As to residence. The Pastor is bound to residence; because when he undertook the administration of the parish, he obliged himself to consulting for the salvation of souls, and to procuring it according to his strength. - Council of Trent, sess. 23, ch. 1, *De Reform.* - St. Ligorius, n. 121. The Pastor must dwell in the presbyteral residence, or, if this is lacking, in the nearer house within the boundaries of the parish, so that he can easily be approached, and he himself not be impeded in fulfilling the duty of residence. But in order that satisfaction be made to the duty of residence, he must not only be present in body, but also by himself he must serve the parish. - St. Ligorius, nn. 124-127.

Yet, if they obtain permission from the Ordinary, they can for a just cause be absent each year for two months, provided they substitute for themselves a suitable Vicar through the Bishop. The permission of the Ordinary is necessary even if they wish to be absent for a week. But for one or another day they can be absent without special license from a cause which seems legitimate to them, provided they commend the parish to a suitable Vicar.

II. As to prayer. The Pastor, like the Bishop, is bound to offer the Sacrifice for the parish on feast days and Sundays, as will be clear from the things to be said in the Treatise on the Eucharist. Likewise he is bound to pray frequently for his sheep, so that he may implore for himself and his subjects the graces necessary for salvation and heavenly blessings.

Moreover the Pastor ought to take care that all learn to pray, that they pray well, and that they teach their own to pray. To this it will contribute greatly if sometimes, especially on feast days and Sundays, and also during Advent and Lent, the faithful publicly perform morning and evening prayers. - St. Ligorius, *Hom. apost.*, tr. 7, n. 35 and following.

112. ○ III. As to preaching. Pastors are bound rather often to speak words to the people, to nourish them with saving food, at least on individual Sundays and on individual greater feasts. - Thus Trent, sess. 5, ch. 2, *De Reform.*

Therefore Pastors sin gravely who for a notable time abstain from preaching. But a notable time is held by many to be if preaching is abandoned for an entire continuous month, or for three months not continuous, or divided in the year. - Thus St. Ligorius, Bk. 3, n. 269 [3]. - Nor do those sufficiently fulfill the obligation who do not strive to accommodate preaching to the capacity of the hearers.

[3] Thus indeed are the opinions reported there by St. Alphonsus. Nevertheless the words of Trent, from which they infer the gravity of guilt in an omission of three months, seem to regard three continuous months rather than interrupted ones.

By the name of preaching here there do not come sermons perfected and elaborated with much and subtle art, filled with elegances, and committed to memory [4]; for although these sermons are useful and sometimes necessary, nevertheless for the most part a Pastor giving sermons of this sort would in no way satisfy his duty, because according to Trent he ought to teach those things which are more necessary, and in a more useful way and one more accommodated to the greatest part of the hearers. Nor less are those to be reprehended who, with no preparation employed, babble whatever comes into the mouth, without order, clarity, piety, and zeal. These disfigure the word of God and create nausea and distaste in the hearers. - Thus all.

[4] The Author had before his eyes the words of the Synod of Trent (sess. 5, *De Reform.*, ch. 2): "Let them feed the flocks committed to themselves, according to their own and their flock's capacity, with saving words, by teaching the things which are necessary for all to know for salvation, and by announcing to them, with brevity and ease of speech, the vices which they must decline, and the virtues which they ought to follow," etc.

But the Pastor who reads pious books to the hearers does not fulfill his duty of preaching, because reading is not preaching; unless someone is of so weak a memory that he cannot do otherwise. But then from time to time he ought to take care that sermons be given to the people through another, or to notify the Bishop about the impediment.

113. ○ IV. As to administration of the Sacraments. Pastors are bound by themselves to minister the Sacraments, not only when the time of precept and of grave necessity urges, but also, as regards the Sacraments which can be repeated, as often as the sheep duly, or not unseasonably, ask, unless they are legitimately impeded, or can provide for them through another without inconvenience and offense of those asking. See several other things concerning this obligation in the Treatise on the Sacraments in general.

V. As to correction. The Pastor is bound to correct subjects living in mortal sin or in proximate danger of mortal sin, even if grave danger had to be undergone; if nevertheless some hope of amendment seems to shine forth. He must also, insofar as he can, with due prudence, remove scandals from the midst, or forestall them by himself or through others, directly or indirectly, by command, counsel, exhortation, prayers, etc. - Thus commonly, and indeed more probably from justice, not from charity only. - St. Ligorius, *Hom. Apost.*, tr. 7, n. 30 and following [5].

[5] St. Alphonsus does not hesitate in this place to affirm that pastors, and much more Bishops, are bound to the office of correction even with danger to life. But here the Doctors do not use correction in the strict sense for an admonition about the amendment of offenses, but more broadly for care of warding off or impeding any spiritual ruin of the sheep committed to them. For in reality it sometimes happens that, whatever danger finally must be undergone, the pastor nevertheless must teach and warn his people. Thus, for example, where those rebellious laws against divine law are in force, which with regard to the validity or invalidity of Christian matrimony take no account of canonical laws, the pastor, with any danger whatsoever disregarded, is certainly bound to proclaim that Catholic dogma which is declared in the letters of our Most Holy Lord Pope Pius IX to the King of Sardinia, given 19 Sept. 1852: that any union whatsoever among Christians, even if sanctioned by civil laws, if it is not a sacrament, is nothing except foul concubinage.

Then Pastors ought solicitously to provide for the spiritual good of their subjects, according to that word of the Apostle, Rom. 12:8: "He who presides, in solicitude." Therefore they ought to investigate the morals of parishioners, correct delinquents, sustain the wavering, and strive that all fulfill their

obligations, always holding in memory that they will one day have to render an account for their souls.

114. ○ VI. As to visitation of the sick and of the parish. It is an abuse very harmful to the salvation of souls not to visit the sick before the Pastor is summoned by them. But when the Pastor has visited the sick and refreshed them with the Sacraments, let him not think that he has fulfilled his duty; but let him visit them rather often and console them. Let the admonitions of the Roman Ritual concerning the care and visitation of the sick be read and recalled with pious meditation.

As to visitation of parishioners, the Council of Soissons of the year 1849, title 15, ch. 1, has these things:

"Because, as Christ himself says, the good Shepherd knows his sheep and calls them by name, therefore the Pastor ought to know the faithful committed to him. Therefore let him not neglect this so salutary custom of visiting individual families of his parish at certain times; and let him fulfill this duty with gravity and modesty together, and also with singular charity. For although he ought to abstain from every useless roaming through the parish, nevertheless let him not think that he has satisfied his office if, shut up at home, he waits for the parishioners to come to him. Indeed this precept of the Lord has always had force, but especially in these present times has force: Go to the sheep which have perished of the house of Israel."

Article III. On the Obligations of Canons

115. ○ Canons, so called because formerly they were subjected to a common rule, constitute the council of the Bishop, and are bound by various obligations as to divine worship, the altar, choir, and, when the See is vacant, administration of the diocese.

Canons are constituted chiefly where there is an episcopal See, or Cathedral Church. Churches which besides the cathedral have a college of Canons are called Collegiate.

Some Canons are regular, who under a Provost live the common life bound by vows, and these are now found fewer; but others are secular, who live separately from benefices or ecclesiastical pensions, and observe the canonical institute as to various duties to be fulfilled in the Church.

But the chief obligations of Canons are reduced 1° to residence; 2° to the Office of choir; 3° to the conventual Mass; 4° to assistance of the Bishop; 5° to certain duties, when the See is vacant.

I. As to Residence

116. ○ Canons are bound to residence. For thus the Council of Trent establishes, sess. 24, ch. 12, *De Reform.*: "It is not lawful for Canons by force of any statute or custom whatsoever to be absent beyond three months ... in any year, with the constitutions of Churches which require a longer time of service nevertheless preserved; otherwise in the first year let each be deprived of half the fruits," etc. 2° Not all Canons can be absent at the same time, but not beyond a third part of the Chapter, because vacations are indeed conceded to Canons, but not to the Chapter; for divine worship, to which they are assigned, must

not be vacant. Nor do they need the permission either of the Chapter or of the Bishop for departing within the diocese; but if they wish to go about outside the diocese, the permission of the Bishop is necessary for them. Thus the Sacred Congregation of the Council established. Nor do they need any special reason in order that they may be absent, as the same Congregation of the Council expressly declared on 4 May 1737.

But the time of vacation must not fall on the greater solemnities of Easter, Pentecost, the Nativity of the Lord, etc., nor on their Octaves, nor during the time of Advent or Lent.

117. Questions. - **QUESTION 1º. Can the Bishop permit a longer absence?**

Resp. If there is a legitimate cause, the Bishop can permit an absence of four months, indeed also a longer one because of an extraordinary cause, namely because of the offices of Christian charity, infirm health, raging persecution, or undoubted utility of the Church or Republic.

QUESTION 2º. Are absent Canons bound to substitute someone for themselves?

Resp. No. Thus the Sacred Congregation of the Council of Trent declared. The reason is that the other Canons present are supposed to suffice for attendance at choir and for performing divine worship. Hence they are of a better condition than Pastors, who can never be absent unless they substitute for themselves another suitable Priest.

II. As to the Office of Choir

118. ○ All Canons are bound to sing or chant the Divine Office in choir. This is established from the Council of Trent, sess. 24, ch. 12, *De Reform.* Nor are they for that reason excused because perhaps they are few; for the Congregation of the Council defined on 13 March 1696 that Canons, even if few, suppose two or three, are bound to sing or recite the Office in choir. Hence it does not suffice that Canons only be present in choir or at the Offices; but insofar as they can, they are bound to concur in the singing or recitation, with elevated voice and pious affection of heart. Nor do they satisfy, even when present, with private recitation, as is clear from the Constitution of Benedict XIV, *Cum semper*, 19 Aug. 1744. Therefore they sin gravely who without probable cause are notably absent from choir beyond the time permitted by the Council of Trent, and venially if for a brief time, for example, three or four days. - Thus commonly with St. Ligorius, Bk. 3, n. 675. Nor can they be absent longer, an Apostolic Indult being excluded, which for example is customarily conceded for preaching.

119. Questions. - **QUESTION 1º. Can the Bishop permit that not all the Hours be sung?**

Resp. No. For the Sacred Congregation, very recently asked by the Chapter of the Church of Moulins whether the statute of Lord Antoine de Pons, first Bishop of this See (year 1822), by which such permission was conceded to Canons, can be sustained, responded: "The aforesaid ordinance is not to be attended to." Nevertheless the same Congregation conceded permission to the Bishop that things be retained in the old state until certain circumstances are changed (apud D. de Conny, *Des usages et des abus en matière de cérémonies*, at the end of the work).

QUESTION 2º. Must the Office of the Dead, of the Blessed Virgin Mary, and the Gradual Psalms be recited in choir from obligation?

Resp. No. Because they are not of precept, but of directive rubric, or of counsel. - Thus commonly the Canonists. - Recall what was said above about the Canonical Hours, n. 60.

III. As to the Conventual Mass

120. ○ 1º Canons, according to the common opinion of theologians and canonists, are bound under grave obligation to sing the conventual Mass daily. - St. Ligorius, Bk. 6, n. 314. This is established from the Bull of Benedict XIV, *Cum semper*, etc., and also from the response of Leo XII, who, having been asked by the Chapter of Le Mans, ordered that response be made in that sense. - Bouvier, on the fourth precept of the Decalogue.

2º But the conventual Mass 1º must be sung daily; 2º it must be applied to the founders and benefactors of the Church in general. Yet this obligation could be reduced by the Sacred Congregation of the Council to feast days, if the canons are so poor that they need the stipends of Masses for living. - Thus expressly as to all these things Benedict XIV in the cited Bull.

IV. As to Assistance of the Bishop, etc

121. ○ 1º The Council of Trent, sess. 24, ch. 12, *De Reform.*, thus established concerning Canons of cathedrals: "Let all be compelled to assist and serve the Bishop celebrating or exercising other Pontificals." The Ceremonial of Bishops, bk. 1, ch. 15, agrees, and declares that all Canons are bound to assemble in canonical habit at the designated place, and to conduct the Bishop proceeding to the Church for the sake of exercising Pontificals, and likewise to accompany him returning. But this must be understood when the Bishop comes to the Church on more solemn feasts or ceremonies, about to celebrate or to be present at the Sacrifice, clothed in the cope, or about to perform Pontificals. But they are not bound to assist the Bishop privately celebrating.

2º Canons moreover compose the council of the Bishop. For the Bishop, unless a contrary and true custom is present, in a particular case ought to ask the counsel of the Canons before he issues mandates; but he does not need their consent in order to establish and urge them, except in cases determined by law [1]. For thus Benedict XIV, *On the Synod*, bk. 13, ch. 1, nn. 8-9: "Much in this matter must be deferred to the custom of places.... It certainly is not necessary that a Bishop about to promulgate new laws ask for the opinion of the whole Clergy; but it suffices if he requests the counsel of his Chapter, although he is not bound to follow it.... Indeed the Bishop who by legitimately prescribed custom has acquired for himself the right of making and publishing laws without consulting the Chapter will be freed from the very obligation of seeking the counsel of the Chapter."

[1] ** Namely, Canons in that Council do not have the right of a deliberative vote, but merely of a consultative one.

V. As to the Duties of Canons, When the See Is Vacant

122. ○ 1º The Chapter, when the See is vacant, succeeds the Bishop in ordinary jurisdiction, but not in that delegated by the Supreme Pontiff. Thus from Canon Law, with all Canonists agreeing.

2º The Chapter is bound within eight days to constitute a Vicar General, or to confirm an existing one; but if it has not done this, the right of constituting him devolves to the Metropolitan, and in his defect to the older Suffragan [2]. Thus the Council of Trent establishes, sess. 24, ch. 16, *De Reform.*

[2] Say the same if the election indeed has a place within the legitimate space of eight days, but has not been made duly and regularly.

3º The whole episcopal jurisdiction passes into the capitular Vicars General regularly elected, nor can the Chapter retain even the least part of it with itself. But Vicars elected by the Chapter can no longer be removed, except from a cause which has been recognized as sufficient by the Sacred Congregation of Bishops and Regulars. Nor can the Chapter place any conditions even on the election of the Vicar. Hence the power of capitular Vicars is indefinite, and endures until the Bishop elected and instituted by the Pope has shown the letters of his institution to the Chapter of his Church, and thus has obtained possession.

Moreover capitular Vicars can do whatever the present government of the diocese requires; but not all the faculties of the Bishop are attributed to them. Thus by Canon Law they are specially prohibited from innovating anything, diminishing episcopal rights, granting indulgences, conceding dimissorial letters before a year has elapsed, conferring irremovable titles, etc.

Appendix I. On the Privileges of Clerics

I. On the Privileges of Clerics in Common

123. ○ Clerics enjoy certain privileges from Canon Law and from Roman Civil Law, indeed according to several from divine law, namely the privilege of immunity, lest they be punished by a lay court, and of exemption from the lay forum as to their own goods, both ecclesiastical and patrimonial.

But these privileges and most other ones, in many places, as also in France, are no longer acknowledged by the civil power [1]. Nevertheless there remains everywhere the privilege which is called of the Canon, by reason of which they incur excommunication who unjustly lay hands upon Clerics, as is established from the Second Lateran Council, in which it is said: "If anyone, at the instigation of the devil, lays violent hands on a Cleric or Monk, let him lie under the bond of anathema."

[1] ** This namely is the beginning, or rather the consequence, of apostasy from the Christian Religion. For the power which holds any Religion whatsoever in the same place has surely consummated apostasy from the Christian Religion. There you find Christian men; but you do not have a Christian kingdom or empire.

This privilege is enjoyed by 1º all Religious, even novices; 2º all Clerics, even those endowed only with simple tonsure; 3º indeed all Nuns and all religious persons living under a rule in Community, and also tertiaries of each sex wearing the habit of religious Orders and living in Community. - St. Ligorius, Bk. 1, Appendix II. - *Hom. Apost.*, tr. 22, ch. 2.

II. On the Privileges of Bishops

124. ○ The privileges of Bishops regard 1° censures and irregularities; 2° impediments of matrimony; 3° vows and oaths; 4° other special cases, as may be seen apud St. Ligorius, Bk. 1, at the end of the Appendix on privileges, and in *Hom. apost.*, tr. 20, ch. 3.

I. Concerning censures and irregularities.

1° They can absolve subjects from any hidden papal cases whatsoever, at least those reserved before Trent [2], with the cases of the Bull *Coenae* excepted.

[2] Whether Bishops can absolve from cases reserved after Trent, if they are hidden, was not the one opinion of the Doctors. For the affirmative opinion stood Bonacina, Mazzuchellus, Peregrinus, Bossius, Gavantus, and Suarez alleged by Diana (tom. 3, tr. 3, res. 27, n. 2); to whom St. Alphonsus (Bk. 6, n. 594) adds Sanchez, Sorbus, Delbene, Renzi, Beia, Mazzotta, and Diana himself, who brings forward these reasons (l.c.): "This opinion is proved, because although the Council uses a word of past time, nevertheless it is extended also to future things because of the nature of law, whose property is to comprehend future things, as is had in the final chapter, *De Constit.*, and the Doctors there. And it is confirmed from law *Ariani*, C. *De haereticis*, where it is had that the law is always in fresh observance and always speaks. But a general Council has the force of law, both because the Council grants to Bishops the said faculty generally, not distinguishing between past and future reservations; therefore it must be understood generally (law *Pretio*, ff. *de publ. in rem action.*, and ch. *Solitae*, § final, *de maior. et obed.*); and because the faculty of absolving which is given in jubilees extends to future sins; and because the Council in the said decree places a general rule concerning pontifical Reservations, namely that they are to be understood of public crimes, but not of hidden ones, with the limitation placed in the same decree; and finally because in reserved cases and in cases to be reserved there is the same reason of absolution, if they are hidden, and therefore in each one there ought to be the same disposition of law. For why

To these reasons there is added an argument taken from the Constitution of Sixtus V, *Effraenatam*, 29 Oct. 1588, against those procuring abortion. For while he reserved to himself both absolution from the sin and censure, and dispensation from irregularity as to clerics who perchance were accomplices in this crime, he judged that the privilege granted to Bishops by the Synod of Trent, that they can absolve from hidden papal cases, had to be expressly derogated. But there would have been no need to derogate this privilege if the privilege did not extend itself to cases reserved after the Synod of Trent. Therefore.

And St. Alphonsus indeed (l.c.) grants that these things are affirmed very probably; nevertheless he judges that the response is not solid enough which the aforesaid Doctors return to those objecting the Declaration of Gregory XIII, when they answer that it is not authentically established concerning it. But on the contrary St. Alphonsus opposes the authority of Fagnani, who (*In C. Dilectus De Tempor. Ordin.*, nn. 30-33), while generally establishing the thesis that Bishops cannot absolve from hidden cases reserved by a new Constitution after the Council of Trent, adds that the Sacred Congregation so judged. Indeed this thesis of Fagnani and the alleged Declaration would otherwise overthrow also the opinion of St. Alphonsus, which we shall set forth below.

For the rest it seems plainly to be said that the reasons brought forward by Fagnani for that thesis are very lame. And surely, first, he argues from the fact that today a Bishop cannot absolve from heresy and from the other cases reserved in the Bull *Coenae*, although they are hidden. But from these things one argues wrongly to other cases. For the faculty of absolving from cases, even hidden ones, reserved in the Bull *Coenae*, according to the opinion of the Doctors, was taken away from Bishops by force of the derogatory clause concerning the decrees of any Council whatsoever, which, according to Benedict XIV (*De Syn. Dioec.*, bk. IX, ch. 4, n. 8), after Card. De Lugo (*De Fid.*, disp. 23, n. 48), began to be appended to the same Bull under Gregory XIII. But this clause is by no means found in other Constitutions which reserve some case to the Supreme Pontiff.

Fagnani next argues from the response given to the Archbishop of Florence under Gregory XIII. For when the Archbishop of Florence had doubted (I recount the matter in the words of the same Fagnani) whether by force of ch. 6, sess. 24, he could absolve a nun who secretly and for an evil end had broken enclosure, notwithstanding the Bull of Pius V, which seems to have place in a public case, there was a divergence in opinions. For out of ten Cardinals, three judged that the Bull was to be understood also in hidden cases, because its words are general, and only the case in the article of death is excepted, etc.;

and because it had already been declared that the Bull *Coenae Domini*, which prohibits absolution by others, has place even in hidden cases; and because, since the Bull was drawn up after the Council, it is judged to have derogated the Council. Four judged that that Bull did not have place in hidden cases. But the remaining three said that the matter should be brought before the Most Holy One; who declared that the Bull of Pius V has place even in hidden cases.... Hence afterwards the Sacred Congregation, having been generally consulted, whether, if a nun of some monastery subject to the jurisdiction of Regulars secretly committed an offense in the matter of enclosure, she could in the forum of conscience be absolved by force of the same Decree by the Bishop, to whom, as Delegate, authority in those things which pertain to enclosure was attributed by the Decree ch. 5, sess. 25, *De Regularibus*, with the aforesaid Bull of Pius V standing, responded: SHE CANNOT. Thus Fagnani. But this argument too labors under the same defect as the preceding one. For 1º the Declaration of Gregory XIII affects only the Constitution of St. Pius V concerning the enclosure of nuns. 2º The response of the Sacred Congregation, which is added, regards only the case of violated enclosure. 3º Indeed another reason for this negative response was available; for the power given to the Bishop as Delegate of the Apostolic See concerning the enclosure of exempt nuns attributes to him no jurisdiction over the exempt nuns themselves (see St. Alphonsus, bk. 6, n. 602, q. VII). Indeed this can seem the stronger reason why the faculty was denied. For otherwise, since nuns are reckoned among persons impeded from going to the City, and according to the common opinion one thus impeded is not held to seek absolution by letters (see St. Alphonsus, bk. 7, n. 89), by common law the faculty of absolving would be made to the Bishop, unless the exempt nun, removed from the jurisdiction of the Bishop, had another Ordinary. Therefore the reasons of Fagnani conclude nothing concerning the general question.

St. Alphonsus (bk. 6, n. 504, at the end), after mentioning from Fagnani the history of the aforesaid Declaration, judged that that Declaration was indeed not to be extended to all Constitutions, but only to those which are fortified with the same clauses; in which matter, as is plain, he departs from Fagnani. Thus he says: It must be noted with the same Fagnani (*In C. Quoniam De Constit.*, nn. 29-30), that for the cases contained in two Bulls, namely in the Bull *Coenae* and in this aforesaid one of St. Pius V, derogation was made from the faculty granted by Trent to Bishops in the said ch. *Liceat*, because of the derogatory clauses, namely in the first: "Notwithstanding the decrees of any Council"; and in this second: "Unless in the article of death." Hence we say that any Bull whatsoever, where the aforesaid clauses are present, takes away from Bishops the faculty of absolving hidden cases reserved to the Pope; but not other Bulls, in which no derogatory clause is present, as Diana, p. 7, tr. 2, res. 22.

But this theory ought to be ascribed neither to Diana nor to Fagnani. Not to Diana, since he (l.c.) indeed excepts if in the new Constitution there is a clause sufficiently derogating this decree of the Council; but nowhere does he say that a clause of this sort is contained in the words, "Unless in the article of death." Not to Fagnani, who (in the cited ch. *Dilectus*) extends his doctrine to any reservations whatever later than Trent; but elsewhere (in the cited ch. *Quoniam*) merely says that the Sacred Congregation declared: from the Bull *Coenae* the faculty attributed to Bishops by the decree of the Council (ch. 6, sess. 24) was taken away, and similarly from the Bull of Pius V the faculty belonging to Bishops (from the same ch. *Liceat*) of absolving nuns secretly offending in the matter of enclosure was removed. But concerning the clauses of the same Bull of St. Pius V he has nothing at all. Therefore what St. Alphonsus adds from his own opinion, that this is to be understood of any Constitution having the clause, "Unless in the article of death," this indeed, as we saw above, was said by three Cardinals in the Congregation, with reasons brought forward which do not seem to be of great weight; but that there is any value in this opinion of theirs no one has defined, nor is it in any way established that Gregory XIII had this before his eyes in his Declaration. Wherefore that extension to other Constitutions, viewed according to the principle on which it rests, does not seem sufficiently firm.

Finally, of lighter weight are the things which Cajetan Giraldi has concerning the Decree or Declaration mentioned by Fagnani, both in the *Exposit. Iuris Pontif.* (part 2, sect. 152), and in the Notes to Thesaurus' work *De Poenis Ecclesiasticis* (part 1, ch. 22). For thus he writes concerning this matter: Since it is not indicated by Fagnani in what year this decree, first cited by him, was issued, lest its issuance be called into doubt, after the Registers of the Sacred Congregation of the Council had been diligently turned over by me, I found that it had been issued in the month of January 1589 in the Response to Postulate XII, which among other things Gaspar Visconti, Archbishop of Milan, made to the same Congregation on the occasion of the visitation to the sacred thresholds. For when the said postulate XII expressed in the Italian idiom what, translated into Latin, sounds thus: "Because it often happens that censures reserved to the Apostolic See are incurred by contravening Papal Constitutions issued after the Council of Trent, the Archbishop desires the faculty of absolving the contraveners, who sometimes remain bound by censures for a longer time, since they do not have the means of obtaining absolution from the Roman Curia, especially concerning the enclosure of nuns and of male Regulars," as is found in bk. 5 of the Decrees, p. 239, the Sacred Congregation abstained from the concession of the Postulate, but only tacitly confirmed

what the Archbishop himself thought concerning this faculty by these precise words, in the month of January 1589, as they are found in the cited bk. 5, p. 240: "Reservations of cases newly made after the Council are not comprehended in ch. 6, sess. 24, *De Reform.*, and especially concerning the enclosure of nuns." Gallemart reports that this declaration, at this same chapter, was confirmed by Gregory XIII. From these things it is plain what the sense of the Bishops was, soon, as it were, after the publication of Trent, concerning the faculty attributed to them in the cited ch. 6.

I said that these things are of lighter weight; for who, I ask, would admit this response, such as it is, as the first decree of the Sacred Congregation on this matter, which Gregory XIII then confirmed, if indeed the mere denial of a requested faculty is worthy of the name of a response, when that Postulate of the Archbishop of Milan is said to have been offered in the month of January in the year 1589, while Gregory had already departed from life four years before? And then, what does this TACIT RESPONSE, which Giraldi fashions for himself, have in common with the Decree by which the Sacred Congregation, according to Fagnani, EXPRESSLY responded that thing, namely, SHE CANNOT? Indeed, what does the question concerning hidden cases, about which Fagnani speaks, have in common with the Postulate of the Archbishop of Milan, in which a faculty of absolving is sought without any distinction between hidden and non-hidden cases? Therefore the whole force of the argument will finally reside in this, that in the supplicatory petition that opinion of the petitioner is found expressed. But ought the private opinion of the Bishop petitioning to be confused with the Decree of the Sacred Congregation, which responds nothing about that very opinion? Surely if this new canon is established, and if the opinions which the petitioner expressed in a supplicatory petition must be held as so many Decrees of the Sacred Congregation, we shall now say that this too has been defined by the Sacred Congregation: that a Bishop cannot absolve from papal cases those who are detained by a legitimate impediment from approaching the Pontiff for absolution from papal cases! For in the same petition the faculty is sought of absolving those who otherwise remain (these are the words of the Postulate) bound by censures for a longer time, since they do not have the means of obtaining absolution from the Roman Curia; and nevertheless the Sacred Congregation did not judge that assent should be given to that petition, but denied the faculty of absolving them. Therefore let us conclude that Giraldi's great labor in searching the Registers of the Sacred Congregation not only contributed nothing to proving the authenticity of the Declaration about which the question is, but on the contrary, since he did not find anything better in the same Registers, although most diligently turned over, it rather has deservedly cast the gravest suspicion that Prosper Fagnani, who dictated his work while blind, slipped in memory, and that this Declaration in fact never existed.

But neither do those things completely settle the controversy which are reported from the Cremonensis of 4 Dec. 1632 in another Severina of 28 May 1796, where the Secretary narrates these things: "Adhering (the Sacred Congregation) to declarations made at other times, it rescripted that Bishops by force of ch. 6, sess. 24, *De Reform.*, cannot absolve or dispense in the case of heresy, nor in other cases reserved to the Apostolic See by a new law after the Council. But in these cases, in which such a faculty has not been taken away from Bishops, it is indeed transferred to the Capitular Vicar," etc. And surely here it is not sufficiently apparent whether that new law must be taken for one which, in the accustomed manner, reserves absolution from sin to the Apostolic See, or rather must be taken for one which only places an exception upon the faculty conceded to Bishops by that ch. 6 concerning hidden cases, of which sort are held to be the Constitution of Pius V as to the enclosure of nuns, and that of Gregory XIII concerning the cases of the Bull *Coenae*. Now unless this is certainly defined, nothing in fact can be concluded from these things. For the rest, if the consequences are inspected, surely you would say that that reservation must be taken in this latter sense. For it follows: "But in these cases in which SUCH A FACULTY HAS NOT BEEN TAKEN AWAY FROM BISHOPS," etc. Therefore the context requires that the preceding words be understood of a new law by which such a power has been taken away. But such a power is no other than that which is conceded to Bishops by ch. 6 concerning hidden cases. Therefore the new law is here to be understood as one by which the Pontiff after Trent has placed an exception or limitation upon the faculty of Bishops concerning hidden cases, not indeed as one by which he has generally reserved some case to the Apostolic See.

And these things indeed have been said concerning the state of the controversy, as it has hitherto been possible to judge from the reasons which are customarily brought forward by each of the dissenting parties. For that the Apostolic See was able to revoke the faculties conceded to Bishops by ch. *Liceat*, as in fact was done, for example, as to the cases contained in the Bull *Coenae*, or was able so to circumscribe them that, for example, they would not extend themselves to reservations later than Trent, no one ought or can doubt.

For the rest, after the Constitution *Apostolicae Sedis* issued by our Most Holy Lord Pope Pius IX on 12 Oct. 1869, there is now no doubt that a controversy of this sort must be held as defined. "Nevertheless" (says the Supreme Pontiff) "we will that the faculty of absolving conceded by the Synod of Trent to Bishops, sess. 24, ch. 6, *De Reform.*, remain firm in any

censures whatsoever reserved to the Apostolic See by this Our Constitution, with only those excepted which we have declared reserved in a special manner to the same Apostolic See."

Therefore the difference between the old Law and the new resides in this: that in the former the cases contained in the Bull *Coenae* and the censures issued against violators of the enclosure of Nuns were excepted; but in the more recent one, only the cases reserved in a special manner to the Apostolic See are excepted. These are fourteen, to which must be added 1º the interdict against universities, Colleges, and Chapters appealing from the ordinations or mandates of the Roman Pontiff existing at the time to a future universal Council; 2º from the Declarations of the Holy Office of the Inquisition, 17 June 1866 and 4 April 1871, the case of a person of whatever sex falsely denouncing a Priest for the crime of solicitation in Confession.

would the authority of Bishops be lesser in new reservations than in old ones?

2º They can dispense from all irregularities and absolve from all suspensions on account of a hidden offense, excepting irregularity from voluntary homicide.

3º In irregularities also doubtful from defect. (Probably.)

4º In non-hidden irregularities from defect of birth for minor Orders and simple benefices. - Council of Trent, sess. 24, ch. *Liceat*. - See St. Ligorius, bk. 4, Appendix on privileges, n. 49 and following.

125. ○ II. Concerning impediments of matrimony, Bishops can dispense:

1º In impeding impediments, except the vow of perpetual chastity, the vow of entering Religion, espousals, and the impediment of disparity of worship between Catholics and heretics.

2º In supervening impediments, once marriage has been contracted, in order to asking for the debt, for example, if they contracted affinity because either one had carnal intercourse with the other's blood relatives; or if one vowed chastity. Indeed the Bishop can also dispense the spouse from a vow of perpetual chastity which he or she emitted before marriage, so that he or she may exercise matrimonial rights [3].

[3] ** Nevertheless the Confessor ought to know that in these circumstances, which sometimes do not permit delay, or do not leave prompt access to the Bishop, another way is present by which provision is made for the necessity of the spouses, namely that one spouse indirectly irritates the vow of the other, that is, suspends its obligation. See vol. 1, n. 330.

3º In doubtful diriment impediments [4]. - St. Ligorius, Appendix, n. 55, where he says that this opinion is very common.

[4] ** Yet someone will be able to note that, where the impediment is doubtful, there is no need that a dispensation be sought, as will be said in the treatise on matrimony.

4º Per accidens in certain diriment impediments, both before and after the contracted marriage, when recourse to the Pope is very difficult, or when there is danger in delay [5], or where there is imminent danger of scandal, infamy, incontinence, etc. - St. Ligorius, ibid., n. 56 and following.

[5] ** St. Alphonsus, as we shall see in the Treatise on Matrimony, judges it probable that the impediment ceases when, some grave cause urging, access is not open even to the Bishop.

5º In publications of the Banns. - St. Ligorius, ibid. - See the things to be said in the Treatise on Matrimony, n. 739.

III. Concerning vows and oaths, Bishops can dispense:

1º In all simple private vows, excepting the five reserved to the Pope, namely of perpetual chastity, of Religion, and of pilgrimages to Jerusalem, to the thresholds of the Apostles, and to St. James of Compostela (tom. 1, n. 330).

2º In all oaths, if you except oaths accepted by a third party, which were not extorted by fear or fraud. - St. Ligorius, passim.

126. ○ IV. Concerning certain particular cases, Bishops can dispense:

1º In all matters of lighter moment, both from custom and because recourse to the Pope would be too inconvenient.

2º In all things which commonly occur, for example, in fasting, in abstinence, in the divine Office for particular cases [6], or for a brief time, etc.

[6] ** Understand, with particular persons; for in common law Bishops do not have the faculty of dispensing with a whole community.

3º In all statutes which have the clause, "until dispensation is given." But whether a Bishop can dispense in canonical statutes not expressly reserved, St. Ligorius judged that the negative opinion is altogether to be held, bk. 1, n. 191 [7].

[7] ** St. Alphonsus (*Hom. Apost.*, tr. II, ch. VI, n. 58) writes these things concerning this question: But whether Bishops can dispense in all Canonical laws where the Dispensation is not expressly reserved, many Doctors admit this, as Soto, Covarruvias, Sporer, St. Antoninus, who calls it common, and Elbel, who calls it most common and for it adduces St. Bonaventure and Scotus, and Castropalaus calls it probable with the Gloss on ch. *Nuper*, *De Sent. Excomm.*, where the Pontiff thus acknowledged: "Yet because the founder of the Canon did not specially retain absolution to himself, by that very fact he seems to have conceded to others the faculty of relaxing." And the Gloss adds: "Here is an argument that Bishops can dispense where Dispensation is not specially prohibited, from law *Nec non*, ff., *Ex quibus causis*." But on the contrary Suarez, Bonacina, the Salmanticenses, etc., deny from ch. *Dilectus*, *De Temp. Ord.*, where a certain Bishop, since he had conferred several orders on one person on the same day, was suspended for this reason: "Since a Dispensation of this sort from the Canon was by no means permitted to him." And they respond to the text first alleged, that that disposition was made only for absolution from censures. But, notwithstanding this, the first opinion is sufficiently probable, because we can use the same response for the second text, that it has force only in the matter of ordination. All the more because in the first text the words seem to speak generally, but in the second specially about ordination, since that word, "of this sort," is used. Thus far St. Alphonsus.

4º For performing the Sacred Rite from midday. By force of the quinquennial faculties they enjoy the privilege of celebrating for one hour before dawn and another after midday, and of communicating this faculty to suitable Priests.

5º They can choose for themselves a Confessor outside the diocese, provided he is their subject, and they can take him with them to different places; but if he is not a subject, he must be approved by the Ordinary of the place. Cardinals can do the same, but only at Rome, although they can take him whom they have chosen with them outside Rome. - St. Ligorius, Appendix, bk. 1, n. 65.

6º They can dispense from interstices for ordination. - St. Ligorius, bk. 6, n. 793.

7º They can absolve from some cases per se papal, but which by common law are reserved to Bishops or Ordinaries. They are the following: 1º The excommunication imposed on Clerics constituted in sacred orders, or Regulars or Nuns, after a solemn vow of chastity, presuming to contract marriage;

and also all persons presuming to contract marriage with any of the aforesaid persons. From the Constitution *Apostolicae Sedis* of Our Most Holy Lord Pope Pius IX.

2º Likewise the excommunication imposed on those procuring abortion, the effect following. From the Constitution *Apostolicae Sedis*, etc.

3º Likewise on those knowingly using false Apostolic Letters, or cooperating in the crime in that matter. From the Constitution *Apostolicae Sedis*, etc.

4º A light striking of a Cleric, or a grave one done by a woman, or by a boy, or by another person impeded from being able to approach the Apostolic See. From ch. *Pervenit*, 17, and ch. *Quod de his*, 26, and ch. *Quamvis*, 58, *De Sent. Excommunic.*

5º Reincidence into the censure by which anyone is punished who, absolved in the article of death by one not having the faculty, does not present himself to the Superior.

6º Communication in a criminal crime with those excommunicated by the Bishop. From ch. *Nuper*, 29, and ch. *Si Concubinae*, 55, *De Sent. Excomm.* [8].

[8] ** In order that it may be understood what this privilege of Bishops means for itself, it must be noted that by general law it has been sanctioned that he who communicates, that is, cooperates, in the same crime with him who for this very crime has already been excommunicated, incurs altogether the same excommunication. The Doctors derive this rule from ch. *Si Concubinae*, 55, *De sent. Excom.*, which they usually allege here. Therefore if there is question of a crime reserved to the Pope, the communication in that crime will also be reserved to the Pope; if the crime is reserved to the Bishop, communication will likewise be reserved to the Bishop. Therefore it is plain that the privilege about which the Author speaks concerns absolution from an excommunication reserved to the Bishop; for he therefore says, "with those excommunicated by the Bishop." But then, you will say, what privilege will it be, that the Bishop can absolve an excommunicated person not indeed by the Pope, but by a Bishop? That the reason may be understood, one must have recourse to the doctrine concerning those excommunicated by name *ab homine*, whom by law only the excommunicator can absolve (see Bonacina, *De Cens.*, disp. 2, q. 2, p. 6, § 1, n. 9). But by force of the privilege the faculty is given to Bishops of absolving him for whom it is difficult to approach the excommunicator. To this matter the Doctors adduce ch. *Nuper*, 29, *de Sent. excom.*, in which this question is clearly solved. For thus Innocent III says: "Since such a person communicates in the crime and participates with the criminal, and by this seems, by reason of the condemned crime, to offend against him who condemned: absolution will then deservedly have to be sought from him or from his superior by merit of the offense, since equal punishment binds the doer and the consenter.... But if from some just cause it is difficult for him to approach the excommunicator himself, we concede by way of indulgence that ... he be absolved by his Bishop or proper priest." See Thesaurus, *De Poen.*, part 2, word *Censura*, ch. V.

7º The extraction of one who has fled for refuge from the Church, done by private authority, or the striking or plundering of the goods of the same fugitive, likewise by private authority. Ch. *Definivit*, 35, caus. 17, q. 4.

8º A visit of a sick person made by a physician, if after he has visited him on the third day, it has not been established for him by the testimony of the Confessor that the same sick person has made sacramental confession, or has deferred it by the counsel of a learned Confessor. From the Roman Council under Benedict XIII, tit. 32, ch. 1.

9º All censures reserved to the Pontiff, if the offense is hidden, with those excepted about which above, n. 84, in the Note.

10º All papal censures and cases, even reserved in a special manner, if because of a legitimate impediment or urgent necessity of hearing confession the Apostolic See cannot be approached. - See St. Ligorius, bk. 7, n. 213.

Appendix II. On the Benefices of Clerics

Although the matter of benefices has been treated at length by most Theologians, nevertheless it is filled with innumerable and intricate difficulties, which otherwise have altogether vanished in France, from the time when by force of the Concordat between Pius VII and the French Government benefices were taken away and commuted into a yearly pension to be paid by the Government.

We must speak briefly about benefices regarded only in general, namely 1° about the nature; 2° about the acquisition; 3° about the loss of benefices.

I. On the Nature of Benefices

127. ○ A benefice is a perpetual right of receiving fruits from the goods of the Church because of some spiritual office constituted by the authority of the Church.

One benefice is simple, another double.

1° A simple benefice is one which has no obligation annexed except that of performing the divine Offices, such as canonries, chaplaincies, etc.

2° A double benefice is one which has jurisdiction, administration, and care of souls annexed, such as the episcopate, the parochial office, etc. It is called double because it is subject to a double burden; for besides the recitation of the breviary, common to all, it has some administration and eminence.

3° The pension which is paid by the Government in France to Bishops and Canons and Pastors, since it has been substituted in place of benefices, obtains their place, and therefore must be regarded as an ecclesiastical good, as is plain from various responses of the Sacred Penitentiary (tom. 1, n. 563).

II. On the Acquisition of Benefices

128. ○ The way of acquiring a benefice is threefold: 1° by election, by which a Cleric is chosen by the whole Chapter and is confirmed by the Superior; 2° by presentation, by which someone is offered by the Patron to the Superior, and is instituted by him if he is found suitable; 3° by collation, when a benefice is freely given from the sole right of the Prelate, and is not subject to the right of Patronage. - St. Ligorius, n. 85.

In any diocese the Bishop is the proper collator of benefices, unless by legitimate prescription such a right belongs to another. But the Pope is the supreme and universal collator of all non-patronage benefices. - St. Ligorius, n. 86.

The right of Patronage is twofold: 1° ecclesiastical, if it has arisen from some title of the Church; 2° lay, if it has been acquired by some layman through the foundation, for example, of a Church. The right of Patronage is constituted by *os, aedificatio, fundus*, namely patronage, the building of the Church, and donation of the land. - St. Ligorius, n. 87.

129. Questions. - **QUESTION 1°. What qualities are required for obtaining a benefice?**

Resp. It is required 1° that the person be suitable and capable, that is, that he be a Cleric, not illegitimate, of good morals; 2° that he have enough knowledge and skill for rightly performing the duty annexed to the benefice. - St. Ligorius, n. 112.

130. ○ **QUESTION 2º. Is there an obligation of choosing the more worthy for a benefice?**

Resp. 1º Affirmative, and indeed under grave obligation per se as to benefices with cure, or double benefices, because the good of the Church demands this. But that it be a grave sin, it is required that the one choosing, after all the circumstances have been diligently inspected, judge that the one chosen is evidently and much less worthy. But greater worthiness is not to be taken absolutely, but relatively to the utility of the Church and of the faithful. - St. Ligorius, nn. 91-92.

131. ○ Resp. 2º Affirmative, also more probably and more commonly as to simple benefices, because the advantage of the Church also and distributive justice demand this; unless rarely one less worthy is chosen, and there is question of benefices of lesser moment. - St. Ligorius, n. 93 and following. Nevertheless the election of one less worthy is more probably valid in every case, nor does it induce the burden of restitution per se [1]. - St. Ligorius, nn. 102, 103, 106.

[1] ** Well does the Author add, "per se"; for otherwise one must speak if some implicit or explicit pact is violated, for example, if collation is made by concursus.

132. ○ **QUESTION 3º. Is it lawful for someone to possess several benefices?**

Resp. Generally no, unless they are simple and do not oblige to residence. Indeed, neither by dispensation of the Pontiff can several benefices be held at the same time if there is not present a cohonestating cause, because this is against natural law, since one suffices for honorable support [2], and various duties cannot rightly be performed by one and the same person. - St. Ligorius, n. 117 and following.

[2] ** This reason sometimes fails. For in certain places no one applies for the parochial benefice, because it has revenues so slender that it by no means suffices for the support of the pastor. Hence it also happens that for this cause the Sacred Congregation sometimes dispenses a Pastor from applying Mass for the people on certain days.

133. ○ **QUESTION 4º. What causes cohonestate plurality of benefices?**

Resp. According to the common judgment of the Doctors, they are the following: 1º necessity of the Church, namely if other suitable ministers are lacking; 2º utility of the Church, namely if one alone, although absent, is judged likely to profit more by his authority, doctrine, and prudence than another; 3º prerogative of merits, namely if someone should excel among others in doctrine, counsel, etc. - St. Ligorius, n. 118.

III. On the Loss of Benefices

134. ○ Benefices can be lost in four ways: 1º by the death of the benefited one, because they are conceded only to persons; 2º by disposition of law ipso facto because of certain enormous crimes; 3º by sentence of the judge because of crimes not so enormous [3]; 4º by spontaneous dimission or resignation.

[3] ** Even in the preceding case a sentence of the judge is required, if not condemnatory, at least declaratory of the crime; because no one is compelled to abdicate by himself.

But resignation is twofold: 1º tacit, for example, if someone enters Religion; 2º express, if it is done before a Superior accepting it. But this is either simple or conditioned, accordingly as it is done simply without condition, or with some condition appended, namely that it be conferred upon a certain designated person, etc. - St. Ligorius, nn. 133, 134.

135. ○ **QUESTION. What are the conditions, that resignation or permutation of a benefice may be valid?**

Resp. It is required 1º that it be made freely; 2º that it be made before [4] the Bishop. or Pope; 3º that it be accepted by the Prelate, in whose hands it is made, and by him to whom it is conferred; 4º that the consent of the Patron or of the electors be present, when the benefice is from patronage or election. - See St. Ligorius, n. 133.

[4] ** Understand, with the consent and authority of the Bishop or Pontiff intervening, accordingly as the collation of the benefice belongs to the Bishop or to the Pope.

To a benefice is referred an ecclesiastical pension, which is the right of receiving fruits from another's benefice. But a pension is threefold: 1º lay, which is given to laymen because of temporal service toward the Church; 2º ecclesiastical, which is given to Clerics because of spiritual ministry; 3º mixed, which is given to a Cleric only for honorable support.

Moreover for the validity of a pension there is required 1º that dispensation of the Pope accede; 2º that it be given from a just cause; 3º that ordinarily it not exceed the third part of the benefice.

Part Third. On the Religious State

136. ○ Besides the way of the commandments, by which all men ought to tend toward obtaining eternal salvation, there is given the way of counsels or of special perfection, which is merely of counsel, and is proposed only to a few selected by God Himself, who, bidding farewell to the world, lead life in monasteries.

Christ Himself teaches us this twofold way in many places of the Gospel; for example, Matt. 19:17, He says to the young man inquiring about the way of salvation: "If you wish to enter into life, keep the commandments." And v. 21: "If you wish to be perfect, go, sell what you have, and give to the poor, and you will have treasure in heaven; and come, follow me."

There is also a certain third way, midway between each of the preceding two, namely the way of chastity, or of continence preserved in the world.

Hence a threefold class of men is established by reason of the means proposed for attaining God, or a threefold state of life, namely 1º the state of matrimony; 2º of celibacy; 3º of religious life. Hence also a threefold grade of perfection; for celibacy, as St. Paul declared and the Council of Trent defined, is more perfect than the matrimonial state; but religious life is, as is plain, the most perfect of all. The sacerdotal state, although in dignity it is the most excellent of all, nevertheless, by reason of perfection, falls far short of religious life. But just as God is wonderful in His saints, so also is He wonderful in the various modes by which He promotes them to sanctity.

We must treat 1º of the nature of the religious state; 2º of religious vocation; 3º of the obligations of Religious by force of vows; 4º of the privileges of Regulars; to which there will be added an Appendix concerning the condition of Religious in France.

Chapter I. On the Nature of the Religious State

137. ○ The religious state is a stable institute of life approved by the Church for the faithful who, under a certain rule and common mode of living, wish to tend toward perfection by the three perpetual vows of poverty, chastity, and obedience.

I said 1º *a stable institute of life*; because the Religious by the three vows of religion devotes himself in perpetuity to God.

I said 2º *approved by the Church*; for since the religious state is a certain sacred community, it ought to be instituted by spiritual power. Formerly indeed this approval was conceded by any Bishop for his own diocese; but afterwards it was established in the Lateran Council under Innocent III that no new Religion be introduced unless it had been approved by the Supreme Pontiff. - St. Ligorius, bk. 4, n. 5.

I said 3º *who... wish to tend toward perfection*; for a religious, by force of his Profession, is held under grave obligation to study in some way for perfection by the observance of the vows; because by force of his Profession he is held to will to preserve his state, which is a state of perfection. But a Religious is not held by force of his Profession to be perfect, but only to study for perfection. - Thus all.

138. Resolutions. - 1º Solemn vows are not required for the essence of Religion, but simple vows suffice. For all the conditions necessary for the substance of Religion are had even in simple vows, since through them a man can perpetually bind himself to God in an Order approved by the Church [1]. It is established moreover from the Bull of Gregory XIII, *Ascendente Domino*, in which the Pontiff declared that those also are true Religious in the Society of Jesus who have emitted only simple vows. 2º Those are Religious who in an approved Religion, according to a certain rule, emit the three essential vows. But on the contrary, those who, although they emit these three vows and lead life in common, nevertheless do not profess a rule approved by the Apostolic See, are not Religious properly so called. Hence various Congregations of men or of pious women approved only by the Bishop do not constitute Orders strictly religious. Nevertheless those who in Congregations of this sort emit simple vows and live under a common rule and dependence on a Superior can enjoy the same merit before God as Religious properly so called, since they exhibit the same denial of self to the Lord. But we note that, from today's practice, the Apostolic See does not approve new religious Institutes as Orders properly so called with profession of solemn vows, but only as religious Congregations, or, more strictly from the manner of speaking of the Holy See, as secular Congregations, with simple vows, to which therefore the privileges conceded to solemn vows do not belong per se. - See *Analecta I.P.*

[1] ** An Order approved by the Church is here distinguished from religious Congregations, which, as the Author warns below, are also called secular. Therefore what Gregory XIII defined concerning the Scholastics of the Society of Jesus, that they are true Religious although they have emitted only simple vows, seems certainly to have to be said also of those who, from the recent disposition of Our Most Holy Lord Pope Pius IX, remain bound for some years only by simple vows in religious Orders before they emit solemn profession.

3º Those are not Religious who, having emitted a vow of perpetual poverty and chastity, vow obedience to a Confessor or Bishop. The reason is that by force of this vow they are not subjected to Superiors.

4º From the Decree of Pius IX, promulgated by the encyclical letters of the Sacred Congregation of Regulars given to the Superiors of Religious Orders on 19 March 1857, all Religious of those Orders in which solemn vows are emitted, in the future, the novitiate having been completed, emit only simple vows, at least for a triennium; then they are admitted to solemn vows if they are found worthy by their Superiors. But for just causes solemn Profession will also be able to be deferred longer, though not beyond the completed age of 25 years. - See *Analecta I.P.*, series 2, col. 2954.

But from the declarations of the Sacred Congregation of Regulars given on 23 February 1859, etc., and pertaining to the aforesaid decree, the simple vows about which there is question are perpetual on the part of the one vowing, and dispensation from them is reserved to the Supreme Pontiff. Yet on the part of the Order they can be dissolved through dismissal of the Professed, so that, dismissal having been given, by that very fact the professed become free from every bond of the said vows. But no one will be able to be dismissed on account of infirmity arising after Profession of simple vows [2]. For the rest, the professed of these vows become participants in all the graces and privileges which the solemnly Professed enjoy in the same Order. - See *Analecta I.P.*, 24 Sept. 1859, col. 4891.

[2] ** Others extend a law of this sort more broadly, so that, unless some fault intervenes, he cannot be cast out for any other cause.

139. Questions. - **QUESTION 1º. What things are required for the validity of Profession?**

Resp. The following conditions are required:

1º Aptitude of the one vowing, namely that he has entirely completed the sixteenth year of his age; that he has spent at least a whole year of Novitiate with the religious habit [3]; that he has no impediment which, from statutes confirmed by the Supreme Pontiff, is judged substantial.

[3] ** Understand this according as the Constitutions of each Order require or do not require it, or also according as the circumstances of times or places demand or allow.

2º Consent and express or tacit acceptance of the Prelate of the Order, or of the Chapter, where it is required. But error concerning the substance, both on the part of the one professing and of the one admitting, makes the Profession invalid.

3º Liberty of the one vowing, that is, that the Profession be made spontaneously, grave fear being excluded, or even reverential fear joined with importunate requests more often repeated, blandishments, command, or grave offense or indignation long continued of blood relatives. - St. Ligorius, n. 7, and *de Matr.*, n. 1056 [4].

[4] ** Concerning reverential fear St. Alphonsus more clearly says thus (bk. 4, n. 7): Profession should be made spontaneously, with grave fear not compelling, such as would be... Likewise reverential fear, not indeed by itself, but with the importunity of requests, blandishments, and command often repeated acceding, or grave offense, or indignation long continued of blood relatives, with threats also of denying support if he departs from Religion. For these things individually, or certainly joined together, with the condition of a rude, timid man considered, can instill just fear and invalidate profession, as Laymann with others, etc.

140. ○ **QUESTION 2º. To what is the Bishop held as to girls about to enter Religion?**

Resp. He is held under grave obligation, from the statute of the Council of Trent, to explore by himself, or, if he himself is impeded, through a Vicar or deputy, the will of those girls, both before the reception of the habit and before Profession. Nevertheless the omission of one of the two examinations would not be regarded as grave. For the rest, the Profession would not be invalid if each examination were omitted, provided the girls were free in emitting Profession. An examination of this sort is required even if the monastery which the girl is about to enter is exempt from episcopal jurisdiction; because the Bishop then acts as one delegated by the Holy See for this. - St. Ligorius, n. 4.

QUESTION 3º. Is the integrity of the year of Novitiate required for validity?

Resp. Affirmative, so that in a leap year the lapse of the day which is to be added must be awaited. Thus the Sacred Congregation of the Council of Trent expressly declared. But the time of Novitiate begins from the moment of reception of the habit [5].

[5] ** This can have force with those Orders which use a peculiar habit. For example, the Society of Jesus, which by force of its Constitutions does not use any proper habit, is not held by this law.

141. ○ **QUESTION 4º. Does interruption of the Novitiate harm the validity of Profession?**

Resp. Affirmative. It is established from the decree of the Sacred Congregation of the Council, which established that a Novice who had departed from the monastery in order to enter another Religion, and, after only two hours had been spent in another convent, repenting of the deed had returned, was held to begin the year of probation again.

QUESTION 5º. When is the year of probation judged to be interrupted?

Resp. 1º It is judged to be interrupted chiefly 1º whenever the Novice goes out from the monastery without permission with the intention of not returning, even if he immediately returns, as is established from what has just been said; 2º whenever he is dismissed absolutely by the Superiors and is then admitted again; 3º if he departs by private authority in order to enter another house or another province even of the same Order.

Resp. 2º But the Novitiate is not judged to be interrupted 1º if the Novice is sick in the house, even for a notable time, although he can by no means be present at the exercises of the Novices; 2º if, compelled by violence, he departs from the house; 3º if, with permission accepted, he turns aside to parents or others for a brief time for the sake of recovering health or conducting business; 4º if he is dismissed by false accusation, and afterwards, when the truth has been known, is admitted again; 5º if he makes a journey ordered by his Superiors, because then he remains under their dependence. - There are several other doubtful cases, which can be seen apud the authors.

142. ○ **QUESTION 6º. By what means is a Religious held to tend toward perfection?**

Resp. 1º He is held to tend primarily through the essential means of the religious state, namely through observance of the three vows, poverty, chastity, and obedience. For if he does not observe these at least for the most part, he can be called Religious only in name and habit, but not in reality [6].

[6] ** Understand this as to the manner of life; for as to the state he both is and must be called Religious also in reality.

Resp. 2º He is held to tend secondarily also through accidental means, namely through the proper Rules of the Order, at least by not contemning those helps. But then a Religious is judged to omit the rules from contempt when he transgresses them with the intention of not being subject to them or to his Prelates; or if he holds them as vain [7]. - St. Ligorius, n. 10. - Laymann. - Busembaum. - Sanchez. - Lessius, etc.

[7] ** To hold rules as vain does not always imply contempt of the true name. It is surely one thing to contemn the authority of the one commanding, another to hold of little account the thing prescribed as if useless or imprudent, etc. In the former case you have truly formal contempt, but not likewise in the latter. Make sure that you have this before your eyes for rightly understanding also those things which are read in the following Question 7.

143. ○ **QUESTION 7º. When does a Religious sin gravely against the precept of tending toward perfection?**

Resp. In this he gravely offends: 1º if he violates the vows very often in a grave matter, as is plain; because he omits the means essential for observing this obligation, and consequently altogether necessary. - Thus all. 2º If he transgresses the rules generally from contempt, as was just said. But otherwise, if he violates them led by concupiscence, or because he thinks that they are not necessary for him for salvation, or if he thinks that they are not prescribed under grave obligation. For to transgress rules in matters of slight moment, even from custom, contempt being excluded, does not exceed venial sin. - Thus expressly St. Ligorius, n. 10, with St. Thomas, the Salmanticenses, and others commonly.

Yet there are not lacking those who contend that a Religious sins gravely against the obligation of tending toward perfection if he frequently, or at least for the most part, violates the rules; because they are efficacious means, although secondary, for directing a Religious in the way of perfection. But the prior opinion, which is common, appears truer, provided the omission of the rules does not lead into grave and frequent violation of the vows [8].

[8] ** I think it rarely happens that that relaxation of soul in observing lighter rules, even directly voluntary, is from this title alone a mortal sin; because that negligence, speaking per se, is only a remote disposition, unless some peculiar circumstances accede which in some matter consummate a proximate occasion. Thus Suarez (*De Relig.*, tr. VIII, bk. 1, ch. 4, n. 18). See also Card. De Lugo (*De Poenit.*, disp. 15, nn. 49-50).

144. ○ **QUESTION 8º. Does a Religious sin gravely who intends to observe only commandments obliging under grave obligation, and to care in no way about the rest?**

Resp. There is a twofold probable opinion:

I. The first opinion affirms absolutely, because the very purpose of not caring about the rules, even those not prescribing under sin, is virtual contempt of the same. - Lacroix, bk. 4, n. 57. - Elbel. - Sylvius, etc.

II. The second opinion denies. The reason is that by the very fact that the Religious wishes to fulfill those many things which oblige under grave obligation, he already tends toward perfection, since he wishes to fulfill many things which, with respect to others, do not oblige, but are mere counsels. - Thus Sanchez. - Salmanticenses, etc. And St. Ligorius, n. 10, calls this opinion the more common and more probable.

For the rest, St. Ligorius, n. 11, rightly notes that a Religious so disposed can be in grave danger of sinning mortally from other heads, for example, by reason of the danger of transgressing the vows, or of inflicting grave harm upon Religion as to discipline, etc.

145. ○ **QUESTION 9º. Whether and to what extent does a rule taken distributively, or with individual rules attended to in particular, oblige under sin?**

Resp. In most Orders, the rule, speaking generally and per se, does not oblige under sin, not even venial sin. This is established from the constitutions themselves of various Orders and from the common interpretation of Theologians. Orders are to be excepted in which the constitutions expressly establish the opposite.

I said 1º *speaking generally*; because whatever things fall under vows or express precepts of Superiors are not without fault, and indeed grave fault according to the gravity of the matter, as below we shall say concerning vows.

I said 2º *per se*; because Theologians agree that transgression of the rule is very rarely free from all fault because of extrinsic reasons. St. Ligorius, n. 10, says that such a transgression is scarcely ever to be excused from venial sin, because almost always there will be some fault by reason of negligence, concupiscence, scandal, sloth, or any other inordinate motion [9]. - Thus also Laymann. - Suarez. - Busembaum. - Sanchez, etc.

[9] ** In these things, as is plain, reasonable use of epieikeia is not comprehended.

146. ○ **QUESTION 10º. Does a Prelate sin gravely by neglecting to correct slight defects of subjects?**

Resp. Affirmative, if the defects are several and such that they can notably relax discipline. Therefore the Prelate is held not only to correct the defects of subjects tending toward the harm of the whole Community, but also to inquire so that he may correct, excessive solicitude nevertheless being excluded. Sometimes, however, it is expedient that he dissemble, if the defects do not bring scandal, or if he foresees that the subject will come out worse from correction, or if a more opportune time must be awaited. For prudence persuades this for obtaining a greater good or removing an evil. - St. Ligorius, n. 13, and others commonly.

QUESTION 11º. Whether and what obligation of reciting the divine Office arises from religious profession?

Resp. 1º There is no obligation by force of religious profession considered in itself; and in fact there are several religious Orders in which the Professed are by no means obliged to the Hours, unless they have been constituted in sacred orders.

Resp. 2º A grave obligation urges all Religious of Orders who emit solemn vows and are destined to choir to recite the divine Office immediately from the time Profession has been made, so that those impeded from choir ought privately to satisfy the canonical Hours, whether they are Clerics or laymen, whether men or women; Conversi nevertheless excepted. - Thus most commonly. - St. Ligorius, bk. 4, n. 141, against a few.

Yet in Orders in which only the Office of the Blessed Virgin Mary is recited, this recitation does not oblige under grave obligation, although solemn vows are emitted in those Orders, for example, in the Order of Nuns called of the Visitation, as has several times been decided.

Moreover, in Communities in which, besides the Office of the day, the Office also of the Blessed Virgin or of the Dead, or the seven penitential Psalms, must be recited, the obligation does not affect those privately reciting the Office outside choir; indeed not even those reciting in choir itself, at least commonly, as was said above, n. 60. - St. Ligorius, n. 143.

147. ○ **QUESTION 12°. Can the Pope dispense from solemn vows?**

Resp. Affirmative, from a most grave cause. The reason is that the solemnity of vows was instituted from ecclesiastical Law alone, as is established from the Extravagant of John XXII, tit. 6, and from the Bull *Ascendente Domino*, in which Gregory XIII says: "We, considering that the solemnity of a vow was invented by the constitution of the Church alone," etc. Therefore the Supreme Pontiff can dispense in solemn vows, just as in simple vows, since the reason of the difference which intervenes between them is from merely ecclesiastical institution [10]. But according to all, the Pontiff can dispense in simple vows. Therefore, etc. It is established also from several examples related in Ecclesiastical history that Supreme Pontiffs have sometimes used power of this sort. Especially in more recent times Pius VII conceded several dispensations of this kind to Monks and Nuns solemnly professed, for revalidating marriages sacrilegiously entered. - Thus Bouvier, who says that the opinion of Theologians is now most common, against Billuart and some others.

[10] ** Therefore the dispensation would be valid even if it were conceded without cause; nevertheless this must be understood of the solemnity of the vow, but not of the bond of the vow; for this, that it may be dissolved, requires a cause. Therefore a professed religious dispensed in this way would indeed validly contract matrimony, because the force of diriment impediment depends not simply on the vow, but on the solemnity of the vow, which in the present hypothesis would be taken away; nevertheless he would enter upon nuptials illicitly, as one still bound by the vow, although only simple.

Chapter II. On Religious Vocation

148. ○ It is certain that there is given a divine vocation, that is, that God by most benign providence calls some before others to a more excellent and more perfect state, and at the same time lavishes the gifts and graces for rightly executing and preserving it, especially as to the ecclesiastical and religious state. For since all things in the natural order are governed by God in the mode proper to each, therefore a fortiori in the supernatural order. On another ground, special gifts and graces are required for embracing and pursuing a more perfect state, which can be conceded by God alone, the supreme dispenser. It is established moreover from various places of Sacred Scripture. Thus concerning the Priesthood in particular the Apostle says, Heb. 5:4: "Nor does anyone take honor to himself, but he who is called by God, as Aaron...." Moreover the same thing must be said about religious life, which is a more perfect and much more difficult state.

149. Questions. - **QUESTION 1°. Whether or how does one sin who, feeling himself called to Religion, does not comply with the divine vocation?**

Resp. 1º Per se, strictly speaking, he sins in no way; because divine counsels per se impose no obligation, since in this precisely they differ from precepts.

Resp. 2º Yet he can scarcely be excused from some fault because of the danger of eternal salvation to which he commits himself. Indeed he would not be excused from grave sin who was persuaded that this one means of obtaining eternal salvation remained for him, namely that he flee from the dangers of the world.

But indeed, are those persons in a bad state who, morally certain about a divine vocation to Religion, strive to persuade themselves that they can obtain their salvation equally easily by remaining in the world, or by returning to it? It does not seem to be doubted that these persons expose themselves to a great risk of salvation; because by remaining in the world against the vocation of God, they deprive themselves of those special helps which God's providence had prepared for them in religion, and therefore they will with difficulty resist the temptations of the world. Nevertheless St. Ligorius does not dare to render a certain judgment about this.

150. ○ **QUESTION 2º. How does one sin who, not called, nevertheless undertakes the more perfect state of Religion or of the Clericate?**

Resp. He sins gravely, if he has clearly known the defect of vocation, both on account of the reverence due to sacred Orders and Religion, both on account of the injury brought upon God, and especially on account of the danger of salvation which he incurs, while he undertakes obligations which he will not be able morally to satisfy, as one lacking the special helps which are conceded by God only to those called. Nevertheless he will be excused from that fault if he has a firm will of fulfilling the obligations of the state undertaken.

151. ○ **QUESTION 3º. Do parents or Superiors sin gravely who turn children or subjects away from the religious state?**

Resp. 1º Affirmative, if they turn them away unjustly by threats, force, fraud, or importunate prayers; because they impede them from the attainment of a great good, to which they have a right [1].

[1] ** They not only impede from the attainment of an immense good, but expose their children to the risk of eternal salvation.

Resp. 2º Affirmative, for the most part, even if they turn them away only by prayers and promises; because this cannot be without grave harm to them. - Thus commonly with St. Ligorius, who says that this opinion is altogether to be held against some. - Yet parents do not sin who oppose for a time the pious desires of younger children in order to test their constancy, or because of another just cause [2]. Nevertheless in this matter, in order to avoid hallucinations, they ought to stand by the counsels of the Confessor or of an upright and learned man.

[2] ** That cause can be judged just on account of which not even the Superiors of the Order would easily admit the candidate. For the rest, even in testing the constancy of the younger ones, no small discretion is needed, lest namely the candidate's frailty turn him away from a vocation otherwise true.

QUESTION 4º. Do children sin by entering Religion when their parents are unwilling or unaware?

Resp. No, speaking per se, although in practice this ordinarily is not expedient, unless they deservedly fear unjust vexation or impediment. The reason is that unless parents oppose from a just cause, children are altogether free concerning the choice of a state of life. - Recall the things said concerning the fourth precept, tom. 1, n. 369.

152. ○ **QUESTION 5º. What are the signs of a religious vocation?**

Resp. Speaking generally, or according to ordinary providence, two things are required and suffice for proving a divine vocation, namely due aptitude and propensity of the will.

1º Aptitude is understood as suitability for the religious state in general, and in particular for the observance proper to such an Order. But it consists especially in right judgment, in a good disposition, in a soul submitted to the yoke of obedience, in relatively sufficient knowledge, and in lack of defects of body and soul which are repugnant to the reason of this life. 2º A natural [3] and constant inclination, which therefore is not subject to frequent changes, notwithstanding otherwise some past tergiversation arising from temptations of the devil or from some repugnance of nature. Yet it is not required that the inclination proceed from spontaneity or propensity more than from intimate persuasion of soul. Moreover that inclination ought to be right, namely to proceed from a pure intention, from the mere desire of attaining salvation more easily, of procuring the greater glory of God or even the salvation of souls, etc.

[3] ** Understand *natural* here as a spontaneous propensity of soul, which arises almost from this, that the religious state is presented to the mind as congruous to one's proper disposition, and suitable for bringing about internal peace and happiness.

I said *speaking generally* or *in ordinary providence*; because there are more evident signs of vocation, namely 1º divine revelation, as St. Paul, St. Aloysius Gonzaga, St. Stanislaus Kostka, etc., were called; 2º singular inspiration, which consists in an internal motion by which someone is vehemently impelled to a more perfect life and, as it were, drawn.

Chapter III. On the Obligations of Vows

Article I. On the Vow of Poverty

153. ○ I. A Religious bound by a solemn vow of poverty, namely a Religious solemnly professed in an Order approved by the Holy See, is altogether incapable in particular or personally of any dominion over a temporal thing estimable by price [1], even with the permission of the Superior. This is established from the Council of Trent, sess. 25, ch. 2. - But the Community can acquire and possess goods, either by itself or through subjects, unless its constitutions stand in the way. Hence the well-known axiom of Canon Law: "Whatever a Monk acquires, he acquires not for himself, but for the Monastery."

[1] ** Nevertheless the Apostolic See, as is established by several examples, has dispensed that Religious even solemnly professed could validly and licitly have and retain dominion of temporal goods. And, to pass over St. Francis Borgia, who, from a dispensation obtained from Paul III, emitted the solemn vows of the Society of Jesus in such a way that nevertheless only within a four-year period after profession did he abdicate the Duchy of Gandia and the remaining temporal goods from himself (cf. the *Life of St. Francis Borgia* written in Spanish by Alvaro Cienfuegos, bk. 3, ch. 8, § 2, and ch. 10, § 1), we have Responses of the Sacred Penitentiary, both that given for French nuns on 28 Nov. 1818, by which the faculty is imparted that, notwithstanding the solemn vow of poverty, "... they can retain the goods and revenues which they have acquired up to

now" (see Carriere, *De Iust. et Iur.*, p. 4, sect. 1, ch. 4, n. 214), and that given on 20 Nov. 1820 for the nuns of Belgium, to whom, although solemnly professed, by the express authority of the Holy See the faculty is attributed of acquiring, possessing, and administering goods, which they may use for honorable ends, etc. (see Bouix, *Tract. De Regularibus*, part 3, ch. 3).

But from these things it sufficiently appears that the incapacity of a solemnly professed religious for having and exercising dominion over temporal things must be traced back not to natural or divine law, but only to ecclesiastical law. Hence St. Ignatius de Loyola added to part 6, ch. 2, of the Constitutions of the Society of Jesus a Declaration in which the faculty, even after solemn profession, of acquiring and retaining dominion, which could be obtained from the Apostolic See, is expressly mentioned. "If someone," he says, "moved by his devotion and with holy intention to the greater glory of God, before his profession were to obtain from the Apostolic See the faculty that either he himself, or the house in which he emitted profession, could have the right of succeeding to an inheritance, ... he would not be judged contrary to this Constitution or its intention."

Nor indeed ought the reason of this doctrine to seem hidden. For this must be confessed, as daily practice in the Church teaches, that dominion of temporal things is indeed compatible with a simple vow of poverty. But what is added to the simple vow, namely the solemnity of the same vow, was introduced by ecclesiastical law, as the Apostolic Constitutions openly declare. Now if solemnity is superadded to a vow by ecclesiastical law alone, is it not manifest that the force of the same solemnity, and the measure of its effects, is defined by that power from which solemnity itself proceeds, and therefore depends on the judgment of the Supreme Legislator in the Church? Therefore from the very nature of the thing it is that a solemnly professed religious exists incapable or capable of dominion according to the judgment of the supreme authority, to whose wisdom it belongs to dispose all things according to the circumstances of times, places, and persons. Cf. Marc. Struggl (*Th. Moral.*, tr. 6, q. 5, n. 33), who concludes: Thus Sanchez, *in Decal.*, bk. 5, ch. 2, n. 9, Card. De Lugo, *De Iust.*, disp. 3, n. 75, and others COMMONLY.

Therefore a professed Religious is altogether unfit to exercise any act of proprietorship concerning any thing, whether of the monastery, or of parents, or of outsiders; and therefore without the Superior's permission, either general or special, he can dispose of no thing, either licitly or validly, by acceptance, donation, sale, loan for use, loan for consumption, use, exchange, improvement, etc.

154. ○ II. A Religious bound by a simple vow of poverty can indeed have direct dominion of goods; but he can licitly dispose of nothing concerning them without particular or general permission of the Superior [2].

[2] ** It is said, he cannot do so licitly; for indeed he would dispose validly, as is said below, q. 2.

This has force even if the Order was not approved by the Holy See, but only by the Bishop, because the efficacy of a simple vow is always the same; for the one vowing entirely despoils himself of the right of disposing of any thing without permission, or of preserving the use of the same thing, or of exercising any act of proprietorship, unless the constitutions of the Order or legitimate custom except something.

Besides sins against the vow of poverty, sins against the virtue of poverty also are not rarely given, although the vow remains uninjured; for example, if a Religious excessively fosters affection [3] for things which he keeps by permission of the Prelate, if he indulges conveniences more than is fair, if he asks superfluous things from Superiors, or keeps them after they have been obtained, and similar things.

[3] ** As often as the affection is so depraved, and is carried so far, that even against the commanding will of God he wills or pursues something, certainly there will be sin. But in the remaining cases you will have a defect of further perfection, not however a sin; for sin is defined as a transgression of law.

155. Questions. - **QUESTION 1º. What is the difference between the vow and the virtue of poverty?**

Resp. The vow regards only external acts of proprietorship; but the virtue extends also to the internal affections of the heart [4]. For the object of the vow is to despoil the Religious externally of temporal goods. But the virtue has as its end entirely to cut away every inordinate affection of the heart toward earthly things. Therefore the vow of poverty is, as it were, a means to the virtue, which is the end to be obtained. This having been posited, no one does not see that the virtue of poverty extends much more broadly than the vow; for as often as someone infringes the vow, he at the same time injures the virtue, but not conversely.

[4] ** These things seem less to cohere with what immediately preceded, where the vice was noted of retaining superfluous things even with the Superior's permission, of indulging conveniences, etc., which surely pertain to externals.

Add that account must be taken of the customs of each Order, which concede a greater or lesser measure of conveniences; and yet no one would have dared to turn these things into fault.

For the rest, Lugo rightly notes (*De Iust. et Iur.*, disp. 3, n. 131) that if in some Order the vow of poverty is observed more severely, the subject who retains superfluous things even with the Superior's permission is not without fault against the vow of poverty, although he cannot be called a proprietor.

I said that the vow affects only external acts of proprietorship; nevertheless the vow could be violated by an internal act which regarded and attained an external act, namely by the desire of acting externally against the vow; since desire puts on all the malice and species of the external act, as was said in the Treatise on Sins, bk. 1, n. 468.

QUESTION 2º. Can a religious preserving direct dominion of goods VALIDLY dispose of these without permission?

Resp. Affirmative, because he is truly the owner, although on account of the vow of poverty he acts illicitly [5]. - Yet some deny, because, they say, Religious have themselves as wards, who cannot validly give their goods. But this opinion is of no weight at all.

[5] ** That Religious of the Society of Jesus acting thus sin against the vow of poverty, Suarez also taught, although others falsely affixed to him the opposite opinion, as Lugo shows (*De Iust.*, disp. 3, n. 78).

QUESTION 3º. To what does the direct dominion of a Religious not solemnly professed extend?

Resp. 1º To the temporal goods which he possessed before the vows; 2º to the fruits or revenues of the same goods; 3º to those things which come to him by law, without new acceptance, such as a paternal inheritance, legacies, etc.; 4º to all goods which he receives from parents, relatives, friends, etc., by permission of the Superiors. Yet if these are consumable by use, they must be applied according to custom to the common use of the monastery [6], at least speaking generally.

[6] ** That some part from these things yields to the use of the monastery does not happen by force of the vow, but by custom; for, the vow preserved, they could be spent for other uses, for example, in alms, although the permission of the Superior ought always to intervene.

156. ○ **QUESTION 4º. Can a religious, without the Superior's permission, keep his own manuscripts and transfer them to another?**

Resp. Affirmative, according to the common opinion; for manuscripts, as offspring of the intellect, are held as something spiritual. Besides, they pertain to knowledge, which does not fall under the vow of poverty; but the stronger reason is that the common and received custom among Regulars bears this way. - St. Ligorius, n. 14. The Salmanticenses and others commonly hold the same also about Relics of the Saints.

QUESTION 5º. Does a Religious sin against the vow of poverty if he spends something from things conceded for a determined use on another use?

Resp. Affirmative. The reason is that in these things the Religious has only use of fact, and that precariously, as long as it will seem good to the Superior. But it is an act of proprietorship or dominion to dispose of some thing according to one's own judgment, and otherwise the will or permission of the Superior, unless something else is manifest, is restricted to the assigned use. - St. Ligorius, n. 19, and others commonly.

157. º **QUESTION 6º. Can a Religious without permission give away what by living more sparingly he subtracts for himself from things conceded for use?**

Resp. No, speaking generally. The reason is plain from the responses to the preceding question. - They except if a certain quantity is assigned to the Religious in such a way that neither is the Monastery held to provide anything else to him, nor is he himself held to render an account. St. Ligorius, n. 23, says that it is commonly permitted by authors that a Religious can bestow, on whom he wishes, his pittances which are provided to him in a limited way, such as eggs, meats, etc., unless the Superior has expressly prohibited this. - St. Antoninus. - Sylvius, etc.

QUESTION 7º. Does a Religious sin against the vow of poverty who accepts money from an outsider to be spent at will on pious works?

Resp. Affirmative. The reason is plain from what has been said; for by acting thus, the Religious would make an act of proprietorship, unless he had the permission of his Superior [7]. - But otherwise, if the pious works were determined by the donor; because then the Religious would be nothing except a channel, and as it were the mandatary of the donor. Hence a Religious does not sin against the vow of poverty who accepts from an outsider money to be disbursed to such a poor person, to such a Monastery, Church, such a pious cause, etc. Indeed he does not sin even if he himself without permission of the Superior asks money from an outsider to be handed over to another determinate person. Nevertheless if there is question of a matter of great moment, prudence persuades, and the right order of religious discipline requires, that a subject do nothing unless he has first obtained the assent of the Superior, even if he incurs no danger of violating poverty.

[7] ** Sanchez (*In Decal.*, bk. 7, ch. 30), to the question, "Whether, when one giving money to a religious so that he may distribute it to the poor does not designate the poor to whom it is to be distributed, nor designate the quantity to be bestowed on each poor person, but commits the choice of both or of either to the religious, ... the religious then sins against the vow of poverty by designating the poor person to whom the alms are conferred, or by designating the quantity of alms to be conferred?" responds (l.c., n. 4): "I cannot persuade myself that this is against the vow of poverty, and most learned men of our Society and externs consulted by me have approved my opinion. I am led by this, that ... the religious here does not retain or accept that money as his own, nor as owner, but so that, in the name of another, namely of the one handing it over, he may give it to the poor. Therefore he does not exercise any act of dominion or proprietorship.... Secondly, because not any possession and administration whatsoever of money is opposed to the vow of poverty, but when they are something of right, namely when the religious administers in his own name.... But in this event the religious

administers not in his own name, but in another's. Thirdly, because in this dispensation these four things alone are found: reception of the money, faculty of choosing the poor, the choosing of them, distribution among them. But none of these is against the vow of poverty. Not reception of the money, because the religious does not receive it for himself..., but so that in the name of the testator he may distribute it to the poor.... Nor even the faculty of choosing the poor; for this is nothing else than the right of naming the poor..., which we proved above to be nothing of right, but of mere fact.... Nor the very choice of the poor; because if the right of choosing is not opposed, a fortiori neither is the choice itself, which is the exercise of that right. Nor finally the very distribution of money to the poor, because the religious does not distribute in his own name, but in the name of the one giving, nor is he himself judged to confer anything, but the giver, as is established from law *unum de familia*, ff. *De Legat*. 2.... Finally the solution of the arguments of the contrary party will confirm this part, which they do not prove." Thus Sanchez; but see the following note to n. 160.

158. ○ **QUESTION 8º. Does a Religious sin against the vow of poverty who refuses those things which are offered to him by outsiders?**

Resp. 1º No, if there is question of mere donations, alms, or gifts to which he has no right. The reason is that the vow of poverty does not oblige him to receive those things which he has not yet acquired, or to which neither he himself nor the Monastery has a strict right. Nevertheless if the Religious has no reason for refusing, he sins against charity by impeding the good of his Religion, but not against justice. - St. Ligorius, n. 20. - Lugo. - Sanchez, etc.

Resp. 2º Otherwise, if there is question of things already acquired, for example, of legacies, of payment owed for the labors of the Religious, or of gifts already accepted, etc. The reason is that the monastery immediately acquires the right of these according to the axiom: "Whatever a Monk acquires, he acquires not for himself but for the Monastery." - St. Ligorius, ibid.

159. ○ **QUESTION 9º. What matter is to be judged grave in violation of the vow of poverty?**

Resp. 1º In sins which are at the same time against Religion and justice, speaking generally, that matter must be held as grave which constitutes mortal sin in theft. - St. Ligorius, n. 24. - Lugo. - Sanchez, and others commonly.

Yet some Theologians say that that matter only is grave which is judged grave in the thefts of sons of a family, namely matter about twice greater than in thefts against outsiders. - Thus Elbel, n. 646. - But this does not seem to be admitted. The reason is that sons are in hope of the goods of the father of the family, but Religious are not. Moreover Superiors are more unwilling as to thefts of subjects than parents are about thefts of sons. Besides, graver detriments follow as to the soul in the former than in the latter [8]. - St. Ligorius, ibid. For the rest, in order that judgment may be made about the gravity of matter in thefts of this sort, it must be noted that monasteries of middling wealth are commonly equated with rather wealthy private owners. Hence the same measure as for those generally constitutes grave matter. But if they are very wealthy, a greater quantity is required. A greater quantity is also required if a Religious usurps things of the Monastery for his own use, or gives them to others of the same Community, than if he were to disburse the same things to outsiders, because thus they remain at home. Greater also in minute thefts, which besides, with a notable interval interposed, do not coalesce into grave matter. Greater again in edible things, as we said concerning servants, tom. 1, n. 608.

[8] ** Nevertheless the reason can have force on the contrary, that the Superior, as to the substance of the thing taken secretly, is less unwilling as to members of the household than as to outsiders. But although the condition of a Religious

and of a son is different, nevertheless in this there is something similar, that the goods of the monastery are possessed for the good of the subjects, not indeed for the convenience of the Superior. Finally, as to the detriments which seem to be feared, these depend chiefly on the use of the things taken secretly; for a son can consume things taken away in gaming and whoring, and a Religious can disburse them to the poor, and vice versa.

160. ○ Resp. 2º In sins committed against Religion alone, or against the vow alone, the difficulty increases, and the disagreement of Theologians is greater. Yet more commonly they require generally the same matter for mortal sin as in the preceding case where justice is violated, because the act of proprietorship seems to be of the same gravity. Nevertheless not improbably some grave Doctors require a greater quantity for grave sin. - Thus Elbel, n. 646. - Salmanticenses, ch. 6, n. 12.

But they commonly agree that a much greater value is required for sinning gravely when gifts are accepted from outsiders to be disbursed to others, because then the act of proprietorship is much less than if these things were retained for one's own use. St. Ligorius, n. 24, and others commonly. - Indeed some then require 60 argentei, or the value of about 30 francs, for sinning gravely. - Thus Diana. - Leander, etc., apud St. Ligorius, ibid. [9].

[9] ** This opinion seems to carry much difficulty before itself. For either it is understood of money to be accepted and disbursed by a religious in his own name, or for his own use; and thus, since we have an act of proprietorship contrary to the vow of poverty, with the old Doctors it will deservedly seem too lax to require 60 argentei, or six Roman scudi, for gravity of fault, especially since the change in the value of money which has occurred in the course of time (see the things said about this argument in tom. 1, note to n. 607) would now require a much ampler quantity of money. Or it is understood of money accepted and disbursed in the name of another; and thus with Sanchez (see note to preceding n. 157) it will be licit to judge that no fault intervenes, even if there is question of a greater sum.

St. Alphonsus borrowed that opinion with its allegations from the Salmanticenses (*De Restit.*, ch. 6, n. 47); yet all these, if they are compared with their Authors, are found to be brought forward beside the point. Namely, with Leander they allege Suarez, Palaus, and Diana. But these hand down the same doctrine as Sanchez.

Thus Suarez (*De Relig.*, tr. 7, bk. 8, ch. 15, nn. 15 and 16): "When the owner concedes only the use of fact..., if the use yields to the convenience of the religious himself, or is properly given to him, it is against poverty to accept that without permission, not so much because of the dispensation as because of the acceptance of the thing, because namely something estimable by price is accepted without permission, and thus it is an acceptance of proprietorship. But indeed if the use neither yields to the convenience of the religious, nor does he accept it for himself, but only that the thing be given to another, so that he himself is only the medium or instrument of transferring the thing from one to another, then in reality there is no sin against poverty, because he neither accepts anything nor expends anything in his own name.... Hence I gather that as often as an indeterminate use of fact is conceded..., it is not against poverty..., if only the dispensation to be made to others in the name of another is accepted, although the particular application is committed to the judgment of the religious...." See also the same bk. 8, ch. 5, n. 31, where he establishes that administration formally and per se is not repugnant to poverty, because it is only something of fact and not of proper right, since things thus administered are held not as one's own but as another's. Hence he concludes: "Therefore administration as such has nothing on account of which it is excluded by the vow of poverty; therefore it is not matter of poverty, but can be matter of obedience," etc.

But Palaus (*Tract.* 16, disp. 3, punct. 22, n. 4): "If not goods of the Convent ... but things accepted from seculars you hand over to blood relatives, ... a distinction must be made: if you accept them absolutely, you sin not only against poverty, but also against justice against Religion, into which those goods by your acceptance have been incorporated. But if you do not wish to accept them, but make manifest to the giver that in his name you will give them to your blood relatives, you do not seem to violate justice or poverty: not justice, since the handing over happens from the will of the owner; not poverty, because you neither give nor hand over anything to your blood relatives, but the secular person provides the donation through your medium.... This holds true even if the secular person has not designated to whom the money is to be conceded, but has left this to your judgment; because the choice of persons alone belongs to you, which is not against poverty."

And Diana (tom. 7, tr. 3, res. 23, n. 2): "Note also here in passing that a Religious does not sin against poverty if without the Superior's permission he accepts money so that he himself may freely dispose of it in alms in the name of him who gave it. And for this opinion above I cited Sanchez and Faustus, to whom I now add Petrus de Ledesma and Francis Suarez." But he gives this reason (ibid., res. 27, n. 2), "because the vow of poverty obliges a Religious not to accept dominion and proprietorship of any thing while the Superior is unaware: but in our case this Religious does not accept dominion of that money, but only accepts it in the name of another, namely of the one handing it over, so that he may give it to the poor. Therefore."

Cf. also Card. De Lugo (*De Iust.*, disp. 3, n. 155), and Pellizzarius (*Manual. Regul.*, tr. 4, ch. 2, n. 236).

The VV. attack this Note and the preceding one subjected to n. 157 through fourteen columns (pp. 372-378). Therefore two things must be shown here against their objections: 1° that rightly and deservedly it is affirmed in the Note that the allegations of the Salmanticenses and of others are brought forward by St. Alphonsus beside the point; 2° that nothing solid is advanced by the VV. against the doctrine of Suarez, Sanchez, Palaus, Diana, Lugo, etc.

And as to the first, these are the words of St. Alphonsus (bk. 4, n. 24): "But if something is accepted from outsiders to be furnished to others, still more (namely, for gravity of matter) is required; for then Garcia with Palaus, Leander, Diana, etc., apud the Salmanticenses (tr. 13, ch. 6, n. 47), assign for grave matter a value greater than 60 argentei." And the VV. (p. 375) not only acknowledge, but contend, that in this place there is question of a Religious who disburses money accepted from an outsider, by this person's mandate, to the poor.

But the Salmanticenses in the cited place do not treat this question, and therefore neither do the Authors brought forward by them there pertain to our question. Therefore all those allegations are brought forward beside the point apud the Holy Doctor.

The minor is proved: 1° from the words of the Salmanticenses (l.c., n. 47), from which the Holy Doctor took his opinion: "But if from outsiders," they say, "something is received for giving or SPENDING, a greater quantity is still required that it be mortal.... Garcia, citing Leander, Palaus, Diana, and others, assigns as matter things of value greater than 60 argentei." But that which is generally received for giving AND SPENDING does not pertain to alms to be disbursed by force of the mandate of someone. Compare also the title of that Punctum V. Therefore these things do not make to the matter.

2° The matter is more clearly plain from the third preliminary observation there (n. 44): "We note thirdly, from the opinion of all Doctors, that a greater quantity is required that donation and acceptance from goods accepted from seculars be mortal than from common goods; and still greater if the donation is made to Religious of the same Convent than to outsiders." But a donation of a Religious is not what a Religious distributes in the name and by the mandate of another. Therefore there the question is not about our case.

3° But this is most luminously plain when the Salmanticenses, in that same place (l.c., n. 47) from which St. Alphonsus took, render the reason why a greater quantity is required for the gravity of matter if the donation is made to Religious of the same Convent than to outsiders. For after they had said that Garcia, Leander, Palaus, etc., assign as grave matter things of value greater than 60 argentei, they immediately add: "If, however, things are donated to another Religious of the same Convent, Suarez deservedly asserts that a greater quantity is required for grave fault, SINCE THAT THING STILL REMAINS WITHIN THE MONASTERY." And again below: "BECAUSE THAT THING STILL REMAINS WITHIN THE DOMINION OF THE CONVENT." Therefore the Salmanticenses treat of a thing to be disbursed, indeed accepted from outsiders, but which has already yielded into the dominion of the Convent. But whatever a Religious receives from an outsider to be disbursed to the poor in the name and by the mandate of that person by no means passes into the dominion of the Convent. Therefore the Salmanticenses do not there dispute about our controversy.

4° Finally, this very thing shines out from the fact that the Salmanticenses, where they touch our question, find no fault in the Religious, and have the same opinion as Suarez, Sanchez, etc. Thus they say (tr. 13, ch. 6, n. 15): "A Religious would not sin against the vow if he does not wish to accept things offered by another, but manifests to the giver that he will give them to others in his name; because then he himself does not give, but another, using him as minister and instrument, is the one who uses the money and makes the donation, as Sanchez holds, bk. 7, ch. 19, n. 74; Suarez, tom. 3, *De Relig.*, bk. 4, ch. 15, n. 16; Palaus, punct. 22, n. 4; Diana, part 1, tr. 6, res. 29, and part 3, tr. 2, res. 65." Therefore it is most manifest that the question which the Salmanticenses discuss in n. 47, from which St. Alphonsus took, is altogether another and very different one from the present, and therefore the authority both of the Salmanticenses and of the Doctors alleged by them there is invoked beside the point by the Holy Doctor.

Let us now come to the other head, namely to the arguments which the VV. bring against the doctrine of Suarez. Namely, the VV. concede that a Regular does not sin against the vow of poverty when someone committing alms to be distributed to a Religious at the same time determines the poor to whom those things are to be handed over; but that he sins if the free choice of the poor is permitted to the judgment of the Religious. They soon add that the text of the Salmanticenses just set down is to be understood of persons determined by the one committing. To this last thing it must be answered: 1° this is asserted gratis, and therefore it is also denied gratis; 2° this must be denied altogether. The reason is plain; because the Salmanticenses must be understood in that sense which the Doctors exhibit, to whom they themselves remit the matter. But Suarez, Sanchez, Palaus, and Diana, as their texts brought forward in the Note prove, exempt each case from fault, nor do the Salmanticenses place any distinction between case and case, which otherwise would have been necessary there. Therefore.

For the rest, the VV., to strengthen their thesis against Suarez, namely that there is sin against the vow of poverty if in the case the free choice of the poor is left to the judgment of the Religious, bring forward 1° from a letter of St. Alphonsus the authority of Azor, Rodriguez, and Lohner, of whom St. Alphonsus also alleges the first two in *Hom. Apost.* (bk. 15, n. 7); 2° an argument from a threefold reason. A few things, which will suffice, to each.

Therefore 1° from Azor the VV. object these things (p. 1, bk. 12, ch. 9, q. 1): "It is of certain law that a Religious of the second kind cannot have peculium; for even usufruct, use, or administration from which the Abbot cannot remove the Monk by his nod and judgment, is repugnant to the solemn vow of poverty. For a Religious can have nothing proper. But use, or usufruct, or administration which someone has at his pleasure, subject to the power and will of no other, is something proper." - Resp. These things do not make to the matter. For Azor had set down beforehand (ibid.) that that use is understood so that a Religious by his own judgment can use the fruits of those goods and establish concerning them by his own nod what he wishes. But he who in our case receives money to be disbursed to the poor cannot establish concerning it by his own nod what he wishes. Therefore those things do not make to the matter. On the contrary, concerning our case Azor says elsewhere (l.c., ch. 10, q. 10): "Either something is given to a Religious so that in the name of him who gives he may disburse it for certain uses; and then that is not acquired for the monastery, since he who gives does not transfer dominion of the thing, but distributes it through the Religious for certain uses; and in this way money is given to Religious to be restored or to be disbursed for the uses of the poor."

2° From Alphonsus Rodriguez they bring forward these words (p. 3, tr. 3, ch. 15, n. 3): "It is repugnant to the vow of poverty not only to make oneself owner and proprietor of any thing without permission of the Superior," and yet these things are repugnant even with the Superior's permission, which cannot be given by the Superior, "but also to usurp its use and free administration and dispensation." - Resp. These things again do not make to the matter. For Rodriguez judges this when another gives money in such a way that he attributes the free faculty of spending and distributing it as he pleases (sicche mi lasci in liberta di spenderlo e distribuirlo a mio arbitrio, e come mi parra); wherefore the Religious could even buy a little dog with that money. On the contrary, concerning our case Rodriguez had premised (ibid.) that there is no sin against the vow of poverty if someone gives me money so that in his name I may give it to someone, or restore it, or bestow it upon certain poor persons. Therefore the authority of Alphonsus Rodriguez is alleged less faithfully.

3° Finally, Lohner indeed in his *Opus Concionatorium* seems to go into the opinion of the VV.; but the reason which he adds, namely that use of a thing independent of the Superior does not belong to anyone bound by the vow of poverty, either leaves uncertain in what hypothesis he says money is accepted by a Religious, or is judged plainly false by the Doctors, who, to one objecting that use of a thing is repugnant to the vow of poverty, would respond by distinguishing thus: use of right, I concede; use of fact, I deny. See Sanchez (*Dec.*, bk. 7, ch. 30, n. 4), Azor (p. 1, bk. 12, ch. 12, q. 4), Ferraris (word *Votum*, art. 2, n. 116). Well does Sanchez say (bk. 6, ch. 11, n. 52): This choice is something of fact rather than of right, as is established from law *Cum pater*, 77, § 4, ff. *de Legatis* 2. For the rest, this is no wonder in a homiletic work. Those things of St. Alphonsus (bk. 2, n. 54) also make to this: "When I discharged the office of preacher, I also often tried forcefully to denounce this pernicious practice; but since here I discharge the office of a writer about moral science, I MUST SAY WHAT I THINK ACCORDING TO THE TRUTH."

Now to the arguments of the VV. against Suarez. But it must be premised that this doctrine is not Suarez's alone; indeed it is common among those weightiest Authors who have touched this question. And indeed, that most Writers of moral discipline do not have even a word about this question, although otherwise they pursue at length any modes whatsoever by which the vow of poverty can be injured, makes it abundantly plain that they had not even suspected that those are held by guilt of this kind who have undertaken alms to be distributed in the name of another to poor persons either determinate or indeterminate.

1º Therefore the VV. object (p. 377) that in the case there is had an act by which the Religious, by his free will without the Superior's permission, disposes of temporal goods. - Resp. I distinguish: he disposes by his free will, because this is a human act, I concede; he disposes according to his judgment of temporal goods, I deny; because merely as messenger he executes the certain will of another.

2º The VV. object (ibid.) that the Religious to whom free choice of persons is committed can enrich his own blood relatives by choosing them; which is estimable by price. - Resp. I deny the whole; for the hypothesis is concerning one who faithfully executes the will of the donor. But if the will of the donor is that something, whether much or little, be attributed also to the blood relatives of the Religious, the very same thing always returns, that the Religious merely acts the parts of a messenger. Thus Laymann (bk. 4, tr. 5, ch. 7, n. 16) in that same place which the VV. object: "A Religious does not sin against the vow of poverty ... if he has himself as the messenger of another, as for instance if in the above-said case he accepts money from a rich man so that he may give it, not in his own name, but in the name of that rich man, to a blood relative or poor person.... And in this sense the opinion of Sanchez is true, that a Religious does not sin against the vow of poverty if without the Superior's permission he accepts money, the faculty of choosing the poor to whom he distributes it having been left to him."

3º The VV. object (ibid.) that the parity which Suarez establishes between this Religious and a steward limps; because he who gives the money to be distributed is not the master of the Religious. - Resp. I deny that the office of messenger or almoner changes its nature, whether the executor of the office is a servant or not a servant. If it pleases, let it be said that in these circumstances the Religious serves another.

And enough concerning these things. For even at first glance it ought to seem burdensome to dwell on this question, when on this side indeed stand the weightiest Authors Suarez, Sanchez, Lugo, Palaus, Pellizzarius, Diana, Laymann, Tamburini (*Dec.*, bk. 8, ch. 3, § 5, n. 5), Azor (p. 1, bk. 12, ch. 10, q. 10), Croix (bk. 4, n. 112), and the Salmanticenses (tr. 13, ch. 6, n. 15); but on the other side scarcely any words of uncertain sense could be brought forward from an ascetical or homiletic work.

Generally, however, a Religious does not sin gravely by secretly accepting some thing from the Community, for example, a book for his own use even for a long time, but not in perpetuity, unless he hides it in such a way that it cannot be found by Superiors; because then the Prelate is not judged unwilling as to the substance, but only as to the mode. As to things accepted or handed over as loan for consumption or loan for use without permission of the Prelate, speaking generally he will not sin gravely against the vow of poverty if he gives things for his own use or even other things to outsiders as loan for consumption or loan for use, provided he is certain of recovering them and does not therefore bring grave harm upon the Community, which for this reason, for example, lacks the use of a thing gravely necessary here and now. Much less gravely will he sin if he lends for consumption or use to other Religious of the same monastery things conceded for his own use. The reason is that although in these things he makes some act of proprietorship, nevertheless he does not sin gravely, according to the common interpretation of Theologians. - St. Ligorius, n. 27. - Laymann. - Sanchez, etc.

161. Resolutions. - 1º A Religious sins against the vow of poverty if without the consent of the Superior he accepts, retains, consumes, exchanges, gives to another, or lends for use anything at home or outside, even from those things which pertain to food or clothing. Likewise if without permission of the Superior he accepts money or other things as loan for consumption or for use from outsiders.

2º He sins against the vow of poverty also who spends things obtained for some use on another use, or culpably loses or destroys them.

3º He sins against the vow who eats or drinks apud outsiders without the faculty of the Prelate; because while he accepts something without permission, he posits an act of proprietorship. Nevertheless generally he does not seem by this to sin mortally [10]. - Lacroix, n. 105. - Suarez. - Sanchez, etc.

[10] ** Indeed permission can be presumed without difficulty; and otherwise the Superior could perhaps be judged unwilling not so much by reason of the thing accepted by the subject as from another cause.

4º If a Religious accepts from outsiders a thing to be handed over to the Superior, he can very easily suppose presumed permission. But if he cannot suppose it, he seems to sin against poverty; nevertheless generally that sin will not exceed venial sin. - Lacroix, n. 118, etc.

5º He sins against the vow of poverty who keeps a thing accepted with permission for use beyond the limits of time fixed by the Superior; who applies it to another use with detriment of the same; who keeps a thing with the soul of an owner, namely with the intention of subtracting it from the free disposition of the Superior, for example, if he hides it lest it be seen; and indeed this one cannot be excused from this, that he had obtained permission previously.

6º He sins against the vow of poverty who without faculty of the Superior buys something even for the Community, because he acts as proprietor. Sometimes, however, he can presume permission, namely when he knows that this will be pleasing to the Superior and easy recourse to him is not open, for example, on a journey. But permission of this sort can more easily be presumed in matters of lesser moment.

7º A Religious making a journey cannot turn aside to other places outside the straight way to see curious things, unless perhaps the distance is brief and no expenses or very modest expenses must be made; but in a particular case, if a grave cause underlies, the permission of the Superior can deservedly be presumed. Otherwise he will sin both against poverty and also against obedience.

8º A Religious can accept no deposit properly so called without permission. The reason is 1º because according to the opinion of several he would make an act of proprietorship; 2º because a deposit is a contract; but a Religious without the faculty of the Superior can enter no contract concerning temporal things [11].

[11] ** Concerning this matter Pellizzarius says (*Manual. Regul.*, tr. 4, ch. 2, n. 232): "You will ask: Are religious prohibited by the vow of poverty from receiving money of outsiders in deposit without the permission of the Prelate? Resp., they are not prohibited if they receive it with the intention of returning it as often as the owner wishes; although this can be against obedience and religious decency if it is done secretly. Thus Diana from Suarez, Sanchez, and Faustus." And Laymann (bk. 4, tr. 5, ch. 7, n. 4): "To accept things in deposit, so that the depositor retains every right of dominion and possession and administration, is not repugnant to the vow of poverty; although in such a mode, for example, monies have been deposited apud a Religious so that he can use them after permission of the Superior has been sought and obtained; nevertheless such things are against the perfection of poverty, and for the most part against the prescription of the Rule." Lugo has the same things (*De Iust.*, disp. 33, n. 6), who moreover (disp. 3, n. 219) warns that the Convent is not held to repair the damage when some thing deposited by an outsider apud a Religious was lost by his fault or taken away by thieves. Indeed not even if he accepted that deposit with permission of the Prelate, because the offense of a subject does not harm the Convent.

162. ○ 9º All gifts which are made to Religious solemnly professed are by that very fact acquired for the Monastery, not excepting legacies and inheritances, from the most known principle of Canon Law: "Whatever a Monk acquires, he acquires not for himself, but for the Monastery." This principle has force also as to other Religious within the

limits of the vow of poverty, which does not take away from them the faculty of acquiring and possessing. Hence these are able to accept and acquire legacies and inheritances, although they cannot dispose of them without permission. As to the remaining donations, they come to the Monastery unless they are made specially in view of a private person and not insofar as Religious [12]. But then the Religious cannot accept without at least presumed permission, or under the condition of obtaining permission.

[12] ** The Author says this concerning Religious not solemnly professed. For donations, even if they are made as to private persons, if they are made to solemnly professed persons, come to the monastery.

10º Manual works, whatever they are, which are made by Religious, pertain to the Community. Therefore private persons, although artisans, cannot dispose of them, nor can they receive any emolument from them [13]. The same must be said about honoraria which are attributed to Regulars for Masses or other spiritual ministries.

[13] ** Yet sometimes Superiors are accustomed to indulge that the subject receive emolument from the wage of his labors and industry, and apply monies to his own uses. In this surely one must beware lest the devil, as not infrequent experience teaches, draw the unwary monk back from Religion to the world by these, as it were, nets or little cords.

11º Religious sin against the vow of poverty who do not apply equal care lest things conceded for their own use become worse. Say the same about those who, because of negligence, allow things committed to them by office to perish or suffer detriment.

163. ○ 12º It is not against the vow of poverty to accept something under the condition of obtaining permission, or even to give, provided the thing can be recovered if permission is denied, because the act is in reality suspended. - Lacroix, n. 108. - Lugo, etc.

13º For accepting licitly, or for making expenses, presumed permission suffices when the Superior cannot be approached and the occasion urges. But a thing accepted from presumed permission ought afterwards to be manifested to the Superior when he can be met, and the thing has not already been consumed. - Suarez. - Lacroix, nn. 109-114.

14º A fortiori tacit permission suffices for giving or accepting; indeed it has force even if the Superior can be approached, because tacit permission is judged to exist de facto: for example, because it is contained virtually in another permission, or is prudently gathered from circumstances, while presumed permission is not supposed to exist de facto, but only to be going to exist if it were sought. - Lacroix, n. 109. - Suarez, etc.

15º If a preceding Superior has given you permission of having some thing, it still has force even if he has departed from office. - Lugo. - Lacroix, n. 145.

16º If you have permission of giving something to Paul, and you give to Peter, you do not sin, unless the Superior gave permission for Paul because of a peculiar reason and would have denied it if you had sought this permission for Peter. - Lacroix, n. 119. - Pellizzarius, etc.

17º If Titius the Religious has permission of giving something to anyone whatsoever, Caius of the same Community by that very fact has the faculty of accepting, because to give and to accept are correlatives, and therefore permission for one is judged also to be for the other. - Sanchez. - Pellizzarius, etc.

These things concerning religious poverty in general. But one must attend to the particular constitutions of individual Orders, or to custom tolerated by Superiors; for in several Monasteries generally it is permitted to Religious to ask, accept, or procure for themselves several things necessary for food, clothing, books, and other things of this kind.

Article II. On the Vow of Chastity

164. ○ The vow of chastity must be judged much more excellent than the vow of poverty, since through it the Religious renounces not goods extrinsic to himself, but intrinsic ones, namely pleasures of the body and senses.

Its object comprehends two things, namely those which are already prohibited by natural and divine law, and also those which could licitly be done in legitimate matrimony. Therefore this is the efficacy of the vow of chastity, that what otherwise could be licit becomes illicit for a Religious; but those things which are prohibited to all, he himself ought to avoid from a double obligation, namely of chastity and Religion.

The simple vow of chastity constitutes only an impeding impediment of matrimony, and therefore makes matrimony illicit, but not invalid. But the solemn vow also diriments a subsequent marriage.

165. Questions. - **QUESTION 1°. Are sins of luxury, even merely internal ones, opposed to the vow of chastity?**

Resp. Affirmative. The reason is that a Religious by force of the vow of chastity is held to abstain from every voluntary venereal delectation, whether internal or external, so that if he injures chastity, he incurs a double guilt, namely of luxury and sacrilege. - St. Ligorius, n. 33.

According to some, the vow of chastity is violated only by external sins of luxury; because, they say, the Religious devotes to God only 1° external goods, of which he despoils himself by the vow of poverty; 2° the body, whose pleasures he renounces by the vow of chastity; 3° the soul, or mind and will, which he hands over to the Superior to be moderated by the vow of obedience. But the most common and true doctrine is that the vow of chastity is violated, and indeed gravely, even by merely internal sins; because the one vowing simply promises to God that he will abstain from every delectation without any distinction.

166. ○ **QUESTION 2°. What is the gravity of sins committed against the vow of chastity?**

Resp. This general rule must be established: the gravity of sin against the vow is exactly the same as against the sixth and ninth precepts of the Decalogue, namely the sin is mortal or venial against Religion according as it is mortal or venial against chastity. But smallness of matter is not to be admitted in sins of luxury sought or admitted, nor can the fault be light except from imperfect consent, according to the things said in tom. 1, n. 412.

167. ○ **QUESTION 3°. Whether or what difference is there between the virtue and the vow of chastity?**

Resp. 1º No difference is given by reason of the object, since the vow extends as broadly as the virtue itself. Nevertheless they differ in this, that in those things which are prohibited by the virtue, two sins are given if the vow is violated, while one sin is committed in that which is interdicted by the vow alone. For if someone bound by a simple vow of Religion were to contract matrimony, he would perpetrate one sin, namely against Religion, in the use of marriage [1]. Therefore sometimes the vow can be violated without the virtue itself being injured.

[1] ** Say the same if, with the consent of the wife, the husband has received sacred Orders or has emitted solemn vows in a Religious Order. For if afterwards they were to use matrimony, they would bind themselves by the crime of sacrilege, yet they would not sin against the virtue of chastity.

Resp. 2º The virtue of chastity, besides the obligations which it imposes, also counsels mere counsels leading to greater perfection; while the vow affects only the matter of obligation.

But for the greater custody of chastity enclosure was introduced, by force of which Nuns cannot go out from the Monastery except with permission of the Pontiff or Bishop, which can be given only in extraordinary cases; but Religious cannot be absent from the house without the permission of the Prelate. Thus from the Constitution of Clement VIII, *Nullus*, etc. - Hence:

QUESTION 4º. What kind of sin is it to go out from the Monastery without permission?

Resp. 1º For Nuns dwelling within enclosure it will always be grave, since the Church prohibits it under a most grave penalty, namely of excommunication.

Resp. 2º For Religious it will be grave if it is done more often with scandal, or secretly at night; but only venial if someone goes out once or twice, or only sometimes during the day. - More things concerning enclosure and the penalties inflicted upon violators of it in the Treatise on Censures.

Article III. On the Vow of Obedience

The vow of obedience is the most excellent of all the vows of Religion, since through it the Religious offers [1] and consecrates wholly to God the goods most intrinsic and most excellent to himself, namely the will and the intellect itself. Hence it is said, 1 Kings 15:22: "Obedience is better than victims." And Prov. 21:28: "An obedient man will speak victory."

[1] ** Nevertheless note the things which the Author shortly after adds, n. following, that the matter of the vow does not extend itself to the internal faculties, but to the external execution alone of the command.

168. Principles. - I. A Religious from the vow of obedience is held to all things which the Superior commands according to the rules and constitutions of the Order, either directly and expressly, or indirectly and implicitly. - St. Ligorius, n. 58. Nevertheless, that there be sin against the vow, it is required that the Superior truly command, and not only counsel; which indeed will be plain from the words, the manner of speaking, and the various circumstances of things.

II. The Superior has the right of commanding not only those things which are had explicitly in the rule or constitutions, such as abstinence, silence, etc., but also whatever things are implicitly contained in them, such as penalties against transgressors, and whatever pertains to the offices of the Community duly to be performed, or to its right administration. The reason is that a Religious binding himself to observing the special constitutions of the Order [2], obliges himself to all those things which have been wisely established or are prescribed for attaining this end.

[2] ** This is not to be taken as if by vow a Religious binds himself to observing the Constitutions of the Order.

III. A Religious by force of his vow is not held to obey a Superior commanding a thing impossible, or evidently illicit, or gravely harmful to himself. - St. Ligorius, n. 47, etc. And surely he could not oblige himself to an impossible thing, since no one is held to the impossible; nor to a thing certainly illicit, since a vow cannot be a bond of iniquity; nor finally to a thing gravely harmful to himself, because this is alien to the mind of Religion, and heroic acts do not commonly and implicitly fall under the vow, just as they do not fall under a precept. Except, however, if there is question of offices to be fulfilled within the limits of religious life, for example, of caring for pestilent Religious, etc.

Hence a subject is not held to obey a Prelate ordering him to walk upon waters, etc.; but if examples are reported by which it is established that such obedience was approved by God and confirmed by miracles, it must be said that then the divine good pleasure by a singular and heavenly light was manifested both to the one commanding and to the one obeying.

169. Questions. - **QUESTION 1º. What difference intervenes between the virtue and the vow of obedience?**

Resp. The same as was indicated above, n. 155, concerning poverty; namely, the object of the vow is the external execution of the command of the Superior, while the virtue reaches even to internal submission and effects perfect obedience itself.

But by a Religious there are diligently to be avoided not only sins against the vow, but also sins against the virtue, which indeed is more frequently accustomed to be injured. For it happens, would that it were more rarely, that a subject obeys the command of the Prelate integrally indeed by external action, but with a reluctant, sad, and sick will. Then, although he satisfies the vow, nevertheless he recedes far from the virtue [3].

[3] ** One must inspect what sort of affection is repugnant to obedience. For if it is natural and also consonant with a nature well instituted, and nevertheless does not retard or diminish the affection of obeying, it takes nothing away from the perfection of obedience, as the example of Christ the Lord suggests. But if the repugnance is from the inordination of nature or custom, then either, notwithstanding the contrary impulse, the man promptly obeys, and thus nothing is taken away from the perfection of virtue; indeed, because of the difficulty overcome, the act will seem in some way more perfect. But if the repugnance retards or diminishes the affection of the will otherwise executing the commands, then obedience indeed will be imperfect, insofar as the contrary affections are voluntary; but the account of fault will be taken not indeed from the imperfection of obedience, as if the grade of perfection in the will obeying fell under precept, but from the inordination of affection toward other things, by which it happens that one sins in another kind of virtue. Cf. Suarez (*De Relig.*, tr. 10, bk. 4, ch. 15, n. 19).

Therefore a Religious disobedient to a Superior truly commanding commits a double sin, the one against the natural precept, which prescribes submission to a legitimate superior, and the other against the vow. Hence in pious congregations of men or women leading life in common under the same Rule without the bond of vows, the disobedient are not exempt from sin if they are rebellious against superiors, but they commit one sin.

170. ○ **QUESTION 2º. How does the solemn vow of obedience differ from the simple vow?**

Resp. 1º Dispensation can much more easily be obtained from a simple vow than from a solemn vow, which can be dissolved only by the Pope and from a most grave cause.

Resp. 2º A simple vow indeed renders illicit an obligation which is contracted by a subject without the consent of the Superior, yet it does not per se make it invalid, unless perhaps the Superior by force of power over the will of the subject wishes to irritate such an obligation. But the solemn vow so binds the will of the subject to the authority of the Superior by an absolute, perpetual, and irrevocable oblation that the Religious can validly contract no further obligation, neither natural nor civil [4].

[4] ** Understand this as to those things which are subject to the power of the Superior. For if the subject, for example, promises someone a secret, or a secret is committed to him, he certainly contracts an obligation concerning which there is no authority for the Superior. But as to those things which can be matter of obedience, the subject can indeed contract an obligation, for example, of celebrating Mass according to the intention of another, yet conditioned, namely unless the Superior disposes otherwise.

QUESTION 3º. Is a Religious held to obey in doubt whether the thing prescribed is licit or not?

Resp. Affirmative, because then presumption favors the Superior. Moreover the opposite opinion would disturb order in Religious families. - St. Ligorius, n. 47, and others commonly.

171. ○ **QUESTION 4º. When does a Religious sin gravely against the vow of obedience?**

Resp. He sins gravely in the following cases, which rarely occur, namely: 1º when he refuses to obey in grave matter a Superior commanding in virtue of holy obedience, or in the name of Jesus Christ, or by other similar formulas, which are very rarely to be used by Superiors; 2º when he responds to the Superior commanding: "I do not wish to obey, I do not wish to do it, I will not do it," or something similar which smacks of formal contempt of the authority of the one commanding [5]; 3º when from disobedience there follows grave scandal of others, whether of subjects or seculars, or grave inconvenience either for the Community or for others, for example, for the salvation of souls, etc.

[5] ** This has force even if the matter of the precept, viewed in itself, is not grave.

In other cases disobedience does not exceed venial sin; but since the aforesaid cases of mortal sin rarely occur, commonly the sins of Religious against obedience must be regarded as venial. - Much more rarely still will sins committed against the virtue alone become mortal.

172. ○ **QUESTION 5º. To whom must obedience be given?**

Resp. Obedience must be given not only to major Superiors, but also to inferiors, or ministers, or those placed over others who command from the mandate of superiors, since the authority which enjoins the command is the same [6].

[6] ** These things are to be understood of the virtue of obedience; for a precept which constrains the subject by obligation of vow is usually reserved to the Superiors alone of the whole Convent or house, unless the special Constitutions of some Order dispose otherwise.

QUESTION 6º. How must obedience be given?

Resp. That the full perfection of obedience may stand, one must obey 1º from a supernatural motive, as the Apostle prescribes, Coloss. 3:22: "Not serving to the eye, as pleasing men.... Serve the Lord Christ." For otherwise obedience, even if it were immune from sin, would nevertheless lack all merit and would be merely material [7]. - 2º Cheerfully, or with joy and a willing soul; for God loves a

cheerful giver, 2 Cor. 9:7. - 3º Promptly, that is, either immediately or at the prescribed time, and with due care, without sluggishness. - 4º Entirely, or by completing the whole prescribed work.

[7] ** That one obey the Superior as Christ the Lord is not required for the formal account of the virtue of obedience (see Suarez, *De Relig.*, tr. 10, bk. 4, ch. 14, nn. 2-3); nor again is it required for the account of merit that someone act from a supernatural motive, as has been shown elsewhere (see tom. 1, n. 32, qq. 6, 7, 8).

Chapter IV. On the Privileges of Regulars

173. ○ The privileges by which Religious rejoice are chiefly concerned with exemption from the jurisdiction of Bishops, the sacrament of Penance, reserved cases and censures, irregularities, certain vows and bonds, Mass and Communion, and some other things. - See St. Ligorius, bk. 1, at the end, Appendix 2, on Privileges; and in *Hom. apost.*, tr. 20, ch. 4.

I. Concerning Exemption from Episcopal Jurisdiction

1º Regulars generally enjoy the privilege of exemption from the jurisdiction of Bishops, because regular Prelates in their monasteries and churches have jurisdiction quasi-episcopal [1].

[1] ** These things do not render the reason, nor do they assign the cause of exemption, but merely express its effect. The cause is the will of the supreme Legislator, namely of the Roman Pontiff, who judged it to be for the ecclesiastical matter to have several persons immediately subject to himself, and therefore exempt from the jurisdiction of Ordinaries.

2º Therefore they are exempt from the visitation of the Bishop both as to persons and as to Monasteries and Churches. Except 1º Monasteries of Nuns not subject to Regulars, and also those subject to them as to the custody of enclosure, for taking care of which Bishops watch as delegates of the Apostolic See; 2º Churches of seculars whose Pastor is a Religious; 3º Churches of Regulars if they are parishes, yet only as to those things which regard the parish and the Pastor insofar as he discharges that office [2].

[2] ** The rights of Bishops, as regards the visitation of Parochial Churches belonging to monasteries of Regulars, you have defined by the Constitution *Firmandis* of Benedict XIV, 6 Nov. 1744.

3º The privilege of exemption is enjoyed not only by the Professed and Conversi, but by Novices and tertiaries who dwell within the cloisters. Likewise, as to censures and sacraments, servants of Regulars who actually serve, and, as if of the family and perpetual table companions, reside within the cloisters of the Monasteries [3], no otherwise than the Conversi themselves. - Trent, sess. 24, ch. 11. - See St. Ligorius, bk. 1, at the end, Appendix on Privileges, n. 75.

[3] ** Hence the true reason must be sought why these servants of Regulars, as St. Alphonsus also notes, bk. 6, n. 583, are not subject to episcopal reservations of sins or censures: namely, because they are exempt from the jurisdiction of the Bishop. And indeed by force of this principle, the solution becomes easy of a certain case which could seem very complex to some. Suppose, for instance, that some servant of this sort falls into a sin which the Bishop has reserved, and wishes to confess his sins to a secular Confessor, not however having faculty for reserved cases. I ask: will this confessor be able to absolve him? For if you deny it, how will you say with St. Alphonsus (l.c.) that he is not subject to episcopal reservation? But if you affirm it, how does the Confessor absolve from a sin over which he does not have jurisdiction? Perhaps finally will you say that reservation, which is a restriction of jurisdiction, affects not Confessors but penitents? Therefore solve the knot from this, that these servants are in the same condition as Religious as to this, whom they serve. Now just as a religious, when by faculty of his prelate he confesses to a secular priest or to one of another Order, is absolved by force of the jurisdiction which the Prelate indirectly communicates to the priest whom the subject has chosen for this, so also these servants, who likewise are subject to the jurisdiction of the Prelate. And since the regular Prelate does not restrict the

jurisdiction indirectly communicated by himself as to that sin which the Bishop has reserved, the reason is manifest why the jurisdiction of the secular priest in absolving either a religious or a servant of religious is not restricted.

But this very thing plainly happens when someone confesses in a diocese not his own and brings a sin reserved in that diocese indeed, but not in the proper diocese of the penitent. For since both from the nature of the thing and from the common opinion of the Doctors, absolution is then conferred by force of jurisdiction indirectly communicated to that confessor by the Ordinary of the penitent, and since this Ordinary, as the hypothesis states, has not reserved a sin of this sort and therefore has not restricted jurisdiction as to it, the manifest reason is clear why in the case the Confessor can validly and licitly absolve him from the sin in whatever way reserved there, unless he came there in fraud of reservation, as will be said in its place.

II. Concerning the Sacrament of Penance

174. ○ 1º Regular Priests, by faculty of their Superior, can absolve Religious of the same Order without any approval of the Bishop of the place. Thus from the privileges conceded to them by law. - St. Ligorius, n. 140. Nevertheless Congregations which are not Religions properly so called are by no means comprehended by this privilege [4].

[4] ** Sometimes, however, even these Congregations enjoy the same privilege, namely from a special indulgence of the Roman Pontiff.

2º Regulars living in a Convent ought to confess to Priests of the Order designated by the Superior, nor can they be validly absolved by any others either inside or outside the house without permission of the Superior [5]. Thus from the privilege conceded to Religion.

[5] ** This permission of the Superior imports an indirect communication of jurisdiction, which is made to the priest to whom the subject will confess. But why a Religious cannot be validly absolved by any others whatsoever, besides the designated confessors, whether within or outside the Order, the reason is easily plain: namely, because all others lack jurisdiction for absolving him.

3º Yet it is customary to concede that during the time of Jubilee Regulars, even Nuns, can confess to any approved Priest without permission of the Superior. - St. Ligorius, n. 410 [6].

[6] ** The clauses of the Constitution granting the jubilee must be diligently inspected. For several times the Apostolic See has elsewhere declared either that universally Religious, or at least certain ones of them by force of a singular disposition or privilege, are not comprehended by these concessions.

4º Regulars on a journey, if they have a suitable companion of the same Order, ought to confess to him. But if a suitable companion is lacking, they can confess to any Priest at least approved, whether regular or secular.

But can Regulars, when a suitable companion is lacking, confess to any Priest, even not approved, provided he is suitable? Some deny this, especially relying on the decision of the Sacred Congregation of the Council to the postulate of the Bishop of Hildesheim. But more probably one must affirm with St. Ligorius, Appendix on Privileges, n. 3, with the common opinion [7].

[7] ** This common opinion of the Doctors rests on the Decree of Trent (sess. 23, ch. 15, *De Reform.*), which is of this sort: "The Holy Synod decrees that no one, even a Regular, can hear confessions of seculars, even of priests, nor be reputed suitable for this, unless he either has a parochial benefice, or by examination by the Bishops, if it seems necessary to them, or otherwise is judged suitable, obtains approval...." Therefore it expressly requires the necessity of approval only for receiving confessions of seculars. Therefore Regulars are not comprehended by this Decree, and thus remain under the old law. But that Capuchin Fathers can confess only to approved priests was specially established by Benedict XIV. For the rest, since Pontifical Constitutions grant Regulars the faculty that, if a companion from their own Order is lacking, they can be

absolved by another Priest, whether Regular or secular, by that very fact jurisdiction is conferred on this priest who is chosen by the penitent.

But the Resolution of the Sacred Congregation to the Postulate of the Bishop of Hildesheim does not stand in the way, because there was question of Religious who, although they had at hand companions of their own Order, nevertheless wished to confess to any Priest, as by law is conceded to them on a journey when a suitable companion is lacking [8].

[8] ** From the Acts of the Sacred Congregation (Thesaur. Resol. S. Congr. Conc., tom. 38, p. 111) it is established that the question proposed was concerning Regulars who, coming to the city several times per year and staying there for some days, were accustomed there to choose for themselves a secular presbyter not approved by the Bishop, although in the same city there were not lacking those who, from the proper family of each Order, could receive their Confessions, and of whom they could easily have supply (ibid., p. 113). Now, as is also noted in the Acts, the faculty conceded to Regulars, that while they were traveling or were outside their convents they could confess to any priests whatsoever, had this condition added (ibid., p. 116): "if they cannot have some suitable presbyter from the Professed of the Order," or if they cannot have a supply of priests because they do not have their own confessor. Therefore that the Sacred Congregation responded, not indeed to the general question, but to that special case on 18 Nov. 1769, that those confessions were not valid, pertains nothing to the controversy which the Author touches in this place.

III. Concerning Reserved Cases

175. ○ 1° As to subjects. They can absolve them 1° from all papal cases and censures, unless the Pontiff excepts certain ones, although reserved to the Bishop, such as the light striking of a Cleric; 2° from all papal cases in the same mode as Bishops can absolve their own diocesans; 3° from excommunication on account of striking even gravely and publicly inflicted on Clerics [9].

[9] ** St. Alphonsus (bk. 7, n. 107) notes that by common law a Regular can be absolved by his Prelate, 1° if he has struck a companion of the same Order, unless the striking is enormous, or a hand has been laid on a Bishop or Abbot; 2° if he has struck a religious of another Order, provided also the sentence of the Prelate to whom the one struck is subject is applied; 3° that he cannot be absolved by his Prelate if he has struck a secular cleric, but that the Apostolic See must be approached for absolution, although he can be absolved by the Bishop if the striking was light. All these things are extended to a Novice who has bound himself by these crimes.

But St. Alphonsus adds with the common opinion that these things must be understood according to common law. For, he says, with privileges considered, Religious can indeed be absolved by their Prelates, even if the striking was enormous ... and this has force even if a Religious struck another of another Order, or a secular cleric, and even if the striking was public. But as to these privileges, St. Alphonsus remits the reader to some writers, among whom Palaus (*De Censur.*, disp. 3, punct. 23, § 4, n. 10) alleges the *Compendium of Privileges of the Society of Jesus*, word *Absolutio*, where these things are had (n. 10): "If any live under the obedience and correction of the Society, they can be absolved by the Provost General and by others whom he deputes, from all sins committed before or after entrance into the Society, and from all censures and penalties inflicted by law or by man, except from these four which are contained in the Bull of Sixtus IV, namely relapse into heresy, schism, falsification of apostolic letters, and carrying of prohibited things to infidels. It is had by the Bull for the Preachers, given on the day before the Kalends of September 1474 under Pontiff Sixtus IV, beginning *Regimini universalis*..., and of the same Pontiff Sixtus IV for the Carmelites, 4 Kal. Dec. 1476, beginning *Dum attenta*..., and of Julius II for the same Preachers, 27 Feb. 1510, beginning *Exponi Nobis*..., where among the above excepted cases he adds conspiracy against the Roman Pontiff; but as to the remaining cases besides these five, he declared that the publication of the Bull *Coenae* and the derogations contained in it do not stand in the way."

For the rest, as to absolving religious subjects from cases of the Bull *Coenae*, there must not be passed over what Lucius Ferraris notes after others (word *Absolutio*, art. I, n. 37, and word *Praelatus Regularis*, n. 20), namely that the Sacred Congregation of Bishops and Regulars, a word having been made with His Holiness Clement VIII, absolutely decreed that all Bulls and decrees derogatory of the privileges of Regulars, as to the faculty of absolving from cases reserved to the Pope,

are to be understood only in order to seculars, but not in order to their own Regular subjects. But as to what he intimates (word *Praelatus Regularis*, n. 31), that certain authors assert that the Sacred Congregation declared that Regular Prelates cannot absolve from hidden heresy, he himself (ibid., nn. 25-29) openly shows that that Declaration of 19 Nov. 1628, which Mendo boasts of so much (*Stater.*, disp. 1, q. 4, n. 56), and after him Dominicus Viva (on prop. 4 of Alexander VII, n. 2), pertains nothing here. See also those things which the same Ferraris has under word *Absolutio*, art. 1, from n. 29.

2º As to seculars. 1º They could absolve them, supposing the Bishop's approval for hearing confessions, from papal cases, excepting those which are contained in the Bull *Coenae* and five others, which are customarily called Clementine; 2º more probably they could absolve from cases reserved to the Bishop in law or from custom and which the Bishop himself did not reserve to himself. - St. Ligorius, ibid.

But these general faculties have been taken away by more recent law through the Constitution *Apostolicae Sedis*, 15 Oct. 1869, in which, as to the faculty of absolving from cases reserved to the Apostolic See, these things are read: "But whatever privileges or faculties, whether by Our Predecessors or even by Us, have ever been conceded up to this time to any company, Order, Congregation, Society, Institute, even Regular of whatever species, even endowed with a peculiar title and even worthy of special mention, all these and every one of them We will by this Our Constitution to be revoked, suppressed, and abolished, as in fact We revoke, suppress, and abolish them," etc. Therefore both the things which Gury had written in this place, and the things which older Authors of many centuries have concerning this matter, pertain merely to the history of the past time [10].

[10] ** Note nevertheless the Declaration which in the Instruction of the Holy Office of the Supreme Inquisition, given 1 Feb. 1871 to the questions of a certain Ordinary, is read thus: "By the Constitution (*Apostolicae Sedis*) the Most Holy Father by no means intends, not even in the least, to bring detriment to faculties of whatever kind which had been conceded by the Holy See before the promulgation of the same Constitution, whether these are quinquennial, or extraordinary, or regard the present Jubilee," namely that proclaimed on the occasion of the Ecumenical Vatican Council, "and he wills that they remain in their full vigor for the time prefixed in the said Constitutions or Indults enduring." These last words sufficiently indicate that temporary faculties, even those conceded to some company, or Order, or Institute, are not comprehended in the abrogation. Likewise, since in the cited words of the Constitution the abrogation is referred only to privileges or concessions attributed to a company, Order, Society, Institute, or Congregation, it is openly gathered that faculties which are personal remain in their force, namely those which had been conceded to some singular person.

But if from a concession of this sort there are some who have the faculty in papal cases, the question now returns whether they can absolve from cases reserved to the Bishop by law or custom, and which the Bishop himself has also reserved to himself anew. Now that those who enjoy the aforesaid faculty cannot absolve from papal cases which by law become episcopal, when perhaps Bishops in their edicts have also specially reserved those to themselves, St. Alphonsus (bk. 3, n. 397, and bk. 7, n. 99) seems to have taken from Viva (on prop. XII of Alexander VII, n. 13), although for it he alleges Cabassutius and Elbel. But others perhaps will in some way deny the supposition, namely that a Bishop can reserve to himself a sin, or cause, which the Supreme Pontiff has reserved to himself. For the reservation of a Superior so withdraws that cause from the power of the inferior prelate that the latter cannot even absolve from that sin, or certainly cannot absolve except by a power delegated to him and from mere permission of the Superior. But it seems absurd that he who does not even have the faculty of absolving from some sin nevertheless reserves it to himself, and indeed reserves it in such a way that not even those who received the faculty of absolving from the reserving Superior can absolve from it.

Suarez excellently treats this question (*De Poenit.*, disp. 31, sect. 4, n. 26), writing these things among others: "By this very fact that the Supreme or higher Pastor reserves a sin to himself, he extracts it from the jurisdiction of all inferiors. Therefore inferiors have nothing which they can reserve to themselves. But if this is so, it rightly follows that, through the faculty of the same supreme Pastor, which is also communicated to the Mendicants, the reservation is sufficiently removed, because a Superior can concede jurisdiction even if the inferior is unwilling; and this is true not only from use, but also from the rigor of law."

Nor otherwise does Card. De Lugo speak (*De Poenit.*, disp. 20, n. 151), who moreover recalls that this is positively interdicted to Bishops. Finally I add, he says, that what has been said, namely that a Bishop cannot VALIDLY reserve to himself a sin which the Supreme Pontiff had already reserved to himself, which is the same concerning any inferior Prelate with respect to a superior Prelate, has place also when the Bishop or inferior Prelate had first reserved some sin to himself. For if afterwards the Pope or superior Prelate reserves that same sin to himself, by that very fact the reservation of the Bishop or inferior Prelate ceases, because then also through the reservation of the Pope there is taken away from the Bishop the faculty of absolving from that sin; and therefore he cannot reserve it to himself anew, nor continue the reservation previously made.... Finally the Sacred Congregation of Cardinals by mandate of Clement VIII, in its decree edited in the year 1602 concerning reserved cases, prohibited that for the rest Bishops reserve to themselves cases accustomed to be read in the Bull *Coenae*, or others specially reserved to the Apostolic See.

IV. Concerning Irregularities and Impediments

1º With their own they can dispense 1º in all hidden irregularities from offense, with voluntary homicide excepted, as Bishops with diocesans; 2º in irregularities as to defect of soul on account of insanity, if its danger has ceased; as to defect of body, for example, as to defect of birth, which irregularity of itself ceases through religious profession, as to bigamy even true, and public defect of mildness.

2º With seculars. 1º They can dispense in all hidden irregularities from offense, as a Bishop; 2º they can dispense and commute vows and oaths, as a Bishop, but only in the internal forum; 3º they can dispense with spouses in the impediment of exacting the debt because of incest committed with a blood relative of the other spouse. - St. Ligorius, n. 109. - Moreover Religious can dispense in a vow of chastity with spouses in order to the use of matrimony, whether the vow was emitted before or after marriage had been entered.

V. Concerning Mass, Communion, and the Last Sacraments

176. ○ 1º Regulars can celebrate Mass one hour before dawn, that is, three hours before sunrise, but only in their own Churches, in which secular Priests also can do this from the same privilege, Gregory XIII; but after midday only one hour. For although from the privilege conceded by Eugene IV they formerly could celebrate even three hours after midday had elapsed, yet that privilege was revoked by St. Pius V.

2º They can administer the Eucharist in their Churches to all the faithful, except on the day of Easter [11].

[11] ** At Rome Thursday in the Lord's Supper is also excepted.

3º They can administer paschal Communion, Extreme Unction, and Viaticum to their subjects, novices, and familiars [12]. - St. Ligorius, nn. 121, 122. - Nevertheless secular Congregations, excluding a special Apostolic Indult, such as for example was recently conceded to the Sulpicians, Marists, and Oratorians.

[12] ** Understand familiars here as those who are perpetual table companions and live within the cloister. And hence the reason why Regulars can administer to them the sacraments about which there is speech. For as was said above, n. 173, by law these are exempt from the jurisdiction of the Bishop, and therefore of the pastor.

VI. Concerning Particular Cases

1º They can dispense, with cause, in ecclesiastical laws for their own subjects, as Bishops can, for example concerning the divine Office, fasting, abstinence, etc.; because they have quasi-episcopal jurisdiction.

2º Regular Superiors can permit subjects who are simply tonsured to preach in Churches (Gregory XIII).

3º Mendicant religious generally communicate among themselves [13] in their privileges, both as to persons and as to places. But they do not communicate them when they are wholly special, or odious, or contrary to their own state, so that they prejudice the common good or the observance of Religion.

[13] ** Indeed Mendicants also participate in the privileges of Orders that are not Mendicant.

But it must be carefully observed that these privileges conceded to Religious families by Canon Law, or by the Holy See, belong only to Superiors, who communicate them to subjects according to their wisdom; and furthermore that the same are not extended to Orders not strictly religious, which are called secular Congregations [14].

[14] ** Understand: unless by a special indult of the Apostolic See this also has been conceded to them.

Appendix. On the Current State of Regulars in France

Very many Monasteries, both of men and of women, were numbered in France as the eighteenth century was drawing to its end. But by the monstrous disturbance of all things which followed, all were dissolved. When the storm had quieted, many houses of Nuns were restored. Several others were founded under various forms sanctioned by the Bishop. Afterwards some Convents of men also were restored, and we now see them multiplied day by day. But several doubts have arisen, which must be weighed by us. Difficulties occur especially concerning Nuns. Hence:

177. Questions. - **QUESTION 1º. Do Nuns in France emit SOLEMN VOWS?**

Resp. Negatively. For because of the difficulties of the times after the French disturbance, they preserved the faculty of possessing and acquiring goods, notwithstanding the vow of poverty. Thus it was declared several times by the Holy See. Therefore the vow of poverty which they emit is not solemn [1]. Therefore the other two also cannot be solemn; for according to the nature of solemn Profession and the laws of the Church, one vow cannot be solemn without another. Therefore the vow of chastity does not constitute a diriment impediment of marriage until it shall please the Supreme Pontiff to restore to Nuns the solemnity of vows, or to establish that a simple vow is a diriment impediment.

[1] ** This conclusion does not follow necessarily from the premises. For the Apostolic See can dispense so that, although bound by the solemn vow of poverty, they can possess, as is clear from the Response of the Sacred Penitentiary immediately subjoined. See what was said above in the note to n. 155.

178. ○ Response of the Sacred Penitentiary directed to the Bishop of Limoges, in the year 1820.

The Sacred Penitentiary, after diligently weighing the things set forth, responded to the Venerable Father in Christ, the Bishop of Limoges: That a solemn vow is that which is accepted by the Church as such, and renders the one vowing incapable, perpetually and immutably (with ordinary law

considered and pontifical dispensation excluded), of contracting marriage and of acquiring or retaining ownership of things, as Father Pirhing speaks, with the other treaters of the sacred Canons, in the 3rd of the Decretals, tit. 54, § 1. Since therefore (as the things premised by the Bishop-orator signify) now the Nuns of the Gauls, in order to accommodate themselves to civil laws, emit the vow of poverty in such a way that they by no means abdicate dominion over their things, but retain them as their own, and intend to dispose of the same, when there shall be need, according to the civil laws, therefore this vow of theirs, whether it be quinquennial or perpetual, certainly is not solemn, nor is it accepted as such by the Church. But if a vow of poverty of this kind is not solemn, neither can the remaining two vows of chastity and obedience be considered solemn; since according to the nature of solemn religious profession, and the discipline of the Church, one vow cannot be solemn without another.

179. ○ **QUESTION 2°. Can Nuns in France nevertheless gain all the Indulgences of the Religion in which solemn vows are emitted elsewhere?**

Resp. Affirmatively. This is clear from the following response of the Sacred Penitentiary directed to D.D. Bouvier.

Most Blessed Father,

The Bishop of Le Mans, prostrate at the feet of Your Holiness, humbly asks a response to the following doubts:

1° Whether Nuns suppressed at the time of the French disturbance, afterwards restored, but transferred from other dioceses into that of Le Mans, nevertheless are truly Nuns enjoying their ancient privileges?

2° Whether Convents of Nuns recently founded according to the proper rules of the approved institute, with the authority of the Bishop alone, enjoy the spiritual privileges of their Order and other communicated privileges?

Most of the Monasteries now existing in the Gauls were not restored or founded. The Sacred Penitentiary judged that it should be responded to the Venerable Father in Christ, the Bishop-orator: that Nuns who before the French disturbance emitted solemn religious Profession are true Religious, and that they, as also the other Sisters of the Monasteries of France, can gain all the Indulgences which were conceded to the Religion or institute of other Nuns emitting solemn vows, according to the respective institute or rule; and this by Indult of the Holy Father Pius VII, and again confirmed by the Most Holy Lord Pope Gregory XVI. Given at Rome, in the Sacred Penitentiary, on the 3rd day of February 1841.

180. ○ **QUESTION 3°. Can a Bishop in France dispense Nuns from vows?**

Resp. 1° Affirmatively, as to Nuns pertaining to an Order in which solemn vows were formerly emitted, at least for the vows of poverty and obedience. For from an Apostolic Indult the Bishop, with attention given to the present circumstances of the times, can dispense from those vows as one delegated by the Holy See. A fortiori he can dispense from the same vows pious Congregations sanctioned by him or by his predecessors, and not yet approved by the Holy See.

I said, at least for the vows of poverty and obedience: because the vow of chastity, even simple, if it has been perpetual and absolute, is reserved to the Pope, and can still be kept among seculars. Nevertheless the case must be excepted in which a woman, in vowing, did not wish explicitly or implicitly to oblige herself except insofar as she would remain in the Monastery, or wished to oblige herself at the judgment of the Bishop, or also if the constitutions of the Congregation seem to be understood in this way; because then that vow would not be absolute nor perpetual.

Resp. 2º Negatively, if there is question of recent Congregations which are governed by a Superiorissa General; but recourse must be had to the Holy See. For if the Bishop could dispense these Nuns from vows, various Bishops having Communities of the same Order in their diocese would enjoy the same faculty as to them, and a conflict of jurisdiction would follow from this. Hence Bishops cannot dispense from vows the Nuns called of the Sacred Heart, etc.

Nor can a Bishop release Nuns from the bond of vows, although they emit only simple vows and do not depend on a Superiorissa General, if this Congregation has been approved by the Holy See.

QUESTION 4º. Is the vow of entering Religion reserved to the Pope in France?

Resp. Negatively. This is clear from the response of the Sacred Penitentiary to the Most Illustrious D.D. Bouvier, Bishop of Le Mans, on the 2nd day of January 1836 [2].

[2] ** This seems to be understood of the vow of entering a Congregation which, by reason of circumstances of time and place, is not held by the Holy See as a religious order properly so called.

181. ○ **QUESTION 5º. Must the laws of enclosure, as to Monasteries of Nuns in France, be rigorously observed, and do those violating enclosure incur canonical penalties?**

Resp. to the 1st. By common Law those laws do not urge rigorously. For since Nuns in France are not now held as properly Religious, by that very fact they are not subject to strict enclosure. Therefore enclosure is to be observed there only from the Rule, which remains the same, and also from the authority of the Bishops, who prescribe it. This is clear from the response of the Sacred Penitentiary to D. Gely, Canon of Nantes, on the 23rd day of January 1821. Nevertheless the law of enclosure in monasteries in which, by force of the constitutions, it ought to exist, cannot be cast aside without fault per se mortal; because it seems commonly to be apprehended so, and the Bishops are judged to wish to oblige so, since this discipline has always been held supremely necessary. Thus Bouvier, on the second precept of the Decalogue, at the end.

Resp. to the 2nd. From what has been said it must also be deduced that the spiritual penalties laid upon Nuns departing from the monastery, or upon outsiders entering their monastery, have no place in the present circumstances of things. - P. X. Gautrelet, Traite de l'etat religieux, t. 1, 2nd part, ch. 2.

182. ○ **QUESTION 6º. Does the obligation of the divine Office urge for Nuns in France?**

Resp. Negatively, per se or by reason of the law of the Church. For since Nuns in France, with attention given to the present circumstances of things, are to be numbered only among Congregations, they do not seem rigorously to be obliged per se to the divine Office under grave sin, unless from the constitutions of the Order they are gravely bound to it, which is very rare [3]. For although they may have pertained to an Order formerly (or even now elsewhere) approved by the

Church for solemn Profession, now they no longer pertain to it. But the rigorous obligation of reciting the Hours does not urge except Religious women professed in an approved Order. Therefore, etc. Nor should the Church be judged to wish to impose so great an obligation upon those women whom it now does not acknowledge as strictly Religious. - P. X. Gautrelet, Traite de l'etat religieux, t. 2, c. 3, art. 2.

[3] ** This ought to be all the rarer, because if they are not bound by ecclesiastical law, it does not appear how this grave obligation could flow from the Constitutions alone, or who imposed it or could impose it.

183. ○ This doctrine can be confirmed by the following response of the Holy See.

Postulate of the Bishop of Perigueux concerning the obligation of reciting the Breviary for Nuns in France.

Most Blessed Father,

The Bishop of Perigueux in the Gauls, prostrate at the feet of Your Holiness, most humbly asks from You the solution of the following doubt.

From several responses of the Sacred Penitentiary it is plain that Nuns in France are not truly and properly Nuns, but only congregations of pious women, and that their vows are not solemn. Hence it seems to many that those Nuns who by force of their Rule are held to the recitation of the divine Office, such as Carmelites, Poor Clares, Nuns of the Visitation of the Blessed Virgin Mary, etc., are not held to it under grave sin, since the gravity of this obligation seems not to reach any but Nuns emitting solemn vows. Others judge otherwise; because although they do not emit solemn vows, they seem to have taken upon themselves the obligations attached by law to the Rule which they have professed. In this variety of opinions, the Bishop-orator most humbly asks from Your Holiness:

Whether Nuns, with attention given to their condition in the Gauls, are held under grave sin to the recitation of the divine Office; or whether, since their vows are not solemn, they are not held to it more gravely than to any other point whatever of their Rule?

The Sacred Penitentiary, having maturely weighed the things set forth by the Venerable Father in Christ, the Bishop of Perigueux, judged that it should be responded, as it responds:

That Nuns bound by solemn vows are held under grave sin to recite the Office daily from custom already prescribed; but since concerning Nuns in the Gauls it has several times been responded that they neither emit solemn vows nor are Nuns strictly such, but only societies of pious women, therefore they are held by no other obligation than that which results from the respective constitutions. Given at Rome, in the Sacred Penitentiary, on the 26th day of November 1852.

184. ○ **QUESTION 7º. Are the vows of Religious men in France now to be held as solemn?**

Resp. Affirmatively. Thus the Collator of Le Puy (Conferences du Puy), P. Gautrelet, Traite de l'etat religieux, t. 1, c. 6, art. 3, etc., against some.

Proof. It must be admitted that vows of this kind can be given, unless it is shown that something now stands in the way, either from the civil power or from the ecclesiastical power; for if nothing stands in the way on either side, the integral right of emitting solemn vows conceded by the Church

to strictly Religious Orders is preserved; but absolutely nothing stands in the way on either side. Therefore...

1º Nothing stands in the way on the part of the civil power. For 1º the civil law, whatever it may be, cannot affect the vow of poverty either directly, since it is a wholly spiritual thing, which by its nature cannot be subject to secular power; or indirectly, since religious poverty, in whatever manner it may have been promised, can in no way injure the political regime. 2º This is also clear from the absurdities which would follow from it. For if this were admitted, solemn vows could not be emitted in regions which are subject to infidel or heretical Princes, which nevertheless is contrary to the constant practice and doctrine of the Church; indeed religious Profession would be impossible in the whole Church if legislation of this kind were admitted everywhere. Moreover a Religious, for example of the Society of Jesus, frequently changing domicile, today would be Professed in Italy, and therefore incapable of dominion, but tomorrow in France he would not be, etc., etc. But these things cannot be said. Therefore, etc. 2º Nothing also stands in the way from the ecclesiastical power. For if anything stood in the way on this side, it would be some law, or Decree, from which the express will of the Supreme Pontiff derogating from the condition of Religious would be clear. But no Apostolic Constitution, no Decree, nor any Declaration of any Congregation can be brought forward from which such a will of the Supreme Pontiff would become known. Therefore... - Indeed from authentic testimony it is clear that the Religious of St. Benedict of Solesmes emit solemn vows; therefore such vows can be given and are in fact given. Therefore the power of the Church does not stand in the way of the efficacy of the solemnity of vows. - See the note of R. P. Gueranger, Abbot of the monastery of Solesmes, against the opposite opinion of D. Carriere, in the public sheet l'Ami de la Religion, t. 106, 7 September 1840.

185. ◦ It will be enough for us to report these few things: the Sacred Congregation of Bishops and Regulars, to the proposed question: **Whether license should be conceded to the Superior of the monastery of Solesmes to admit to solemn Profession all subjects living with him for 4 years?** responded: Affirmatively, for those who emitted SIMPLE VOWS, and for those actually existing in the monastery who completed 18 months in the novitiate, at the judgment of the Superior with his Chapter..., when two years and a day have been completed from the public reception of the cappa, they shall emit Profession...

Therefore the vows of the Regulars of the aforesaid Order assisting at choir are solemn; therefore the same must be said of the Regulars of other Orders.

186. Objections. - Obj. 1º The civil law in reality stands in the way of solemn Profession; for the law establishes that all citizens are capable of entering into contracts and receiving successions. Therefore, etc.

Resp. 1º The civil law can in no way stand in the way, neither of solemn vows nor of perpetual vows; because the matter of a vow, since it is merely spiritual, cannot be touched by civil law, not even indirectly; for otherwise the civil power could annul the laws of the Church, which is repugnant. - See P. Gautrelet in the cited work, and P. de Ravignan, in the work on the Institute of the Society of Jesus. Hence Pius VI protested against the civil Constitution of the Gallican Clergy, by which it was

declared that the Government in no way recognized the SOLEMN vows of Religious (Brief Quod aliquantum, 10 March 1791). And very recently Pius IX, among the usurpations which he detests in certain places of America, sets down this, namely that Religious families can admit no one to the pronouncing of solemn vows without the permission of the Government (Allocution in Consistory, 15 December 1856).

Resp. 2º The law must be regarded as having merely external effects, and thus all things are put in order. Moreover, the legal capacity for possessing, conceded to all citizens, is a right of nature; but private citizens can renounce this right. For who, for example, can be compelled to contract?

187. ○ Obj. 2º It is not permitted by law to renounce a succession not yet opened; therefore a Religious before Profession cannot renounce at least future goods, for example a paternal inheritance while the father is still living; but neither could he do this after solemn Profession, namely when the inheritance has been opened, since he has been made incapable of any disposition whatever. Therefore by this law solemn Profession is impossible.

Resp. 1º A Religious can always, even after solemn Profession has been made, with the consent of the Superior, accept inheritances or legacies for the monastery, as the statutes of Canon Law permit, although he can accept nothing for himself. Except a few Orders in which the constitutions specially stand in the way.

Resp. 2º A Religious before solemn profession, notwithstanding civil law, can dispose of future goods for others, for example for brothers. For by natural law he can renounce goods having true value here and now; but the hope of a future inheritance has true present value: therefore a Religious can validly renounce the hope, either by an internal act, or even by a testament drawn up before Profession, establishing that all goods pertaining to him at the time of death come to such and such persons, or to his natural heirs according to the course of civil law, and (with this understood) according to an intention predetermined before the emission of vows. But then the external declaration of this renunciation cannot be held as an act of ownership, but only as a manifestation of a disposition had beforehand.

188. ○ Obj. 3º The vows of all Nuns have been declared simple by the Holy See; therefore from analogy the same must also be said of the vows of Religious men.

Resp. 1º It is not true that all the vows of Nuns in France have been declared simple. For from the response of the Sacred Penitentiary related above n. 179, it is clear that Nuns who before the French disturbance had vowed solemnly were afterwards also true Religious. But from the various mentioned responses compared with one another, it is evidently plain that according to the manner of speaking of the Holy See the words: True Religious, and solemnly Professed, sound the same.

Resp. 2º From the fact that in various responses the Holy See speaks only of Nuns, it can deservedly be conjectured that Religious men are not comprehended in these Decrees. Indeed the Declaration approved by Gregory XVI expressly decrees that the decrees issued concerning this matter pertain only to Nuns.

Resp. 3º The condition of Religious men and Nuns in political disturbances is not the same. For the difference consists chiefly in this, that women can much more with difficulty provide for themselves, if they are cast out from the monastery, than men, most of whom are Priests, Missionaries, or professors of various sciences, etc. But the reason of disparity which seems to urge most of all is this, that the observance of perfect enclosure has become more difficult, since it is not acknowledged by the civil power, and consequently receives no protection from it. But enclosure for Nuns has a special connection with solemn Profession. This reason, however, is not valid for Religious men.

END OF THE TREATISE ON PARTICULAR STATES.

Treatise On the Sacraments in General

Since every part of Christian doctrine requires the Pastor's knowledge and diligence, so especially the discipline of the Sacraments, which both by God's command is necessary and is most abundant in utility, demands a singular faculty and industry of the Parish Priest, so that by an accurate and frequent perception of it the faithful may become such that the most excellent and most holy things may be imparted to them worthily and salutarily, and that Priests may not depart from that rule of the divine prohibition: Do not give what is holy to dogs, nor cast your pearls before swine. Catechism of the Council of Trent, part 2, on the Sacraments, c. 1, n. 1.

189. ○ Since there is such dignity and utility of the Sacraments for the sanctification of souls, for whom Christ the Lord did not hesitate to pour forth His Blood and to undergo the torment of the cross, it is especially helpful that preachers of the divine word frequently have discourse to the people concerning them, namely by explaining their institution, necessity, pre-eminent dignity, and wonderful efficacy, and by accurately teaching the faithful concerning the dispositions necessary for receiving abundant graces through them. - Hence the Council of Trent, sess. 24, c. 7, on Reform, has these words:

That the faithful people may approach the receiving of the Sacraments with greater reverence and devotion of soul, the holy Synod commands all Bishops that not only, when these are to be administered to the people by themselves, they first explain their force and use according to the capacity of those receiving them, but also that they take care that the same be piously and prudently observed by individual Parish Priests...; and also that during the solemnities of Masses, or the celebration of divine things, on individual feast or solemn days, they explain the sacred utterances and admonitions of salvation, and strive, useless questions having been put aside, to insert the same into the hearts of all, and to instruct them in the law of the Lord.

We must treat 1º of the nature and division; 2º of the matter and form; 3º of the Minister; 4º of the subject of the Sacraments.

Chapter I. On the Definition, Number, and Division of the Sacraments

190. ○ I. DEFINITION. A Sacrament is a sensible sign instituted by Christ to signify and confer grace.

Hence three things are necessarily required in every Sacrament, namely: 1° a sensible sign; 2° divine institution; 3° the force of producing the grace promised by Christ.

All Sacraments are perfected by three things: 1° by things as matter; 2° by words as form; 3° by the person of the Minister confecting the Sacrament with the intention of doing what the Church does. This is clear from the Council of Florence in the Decree of Union.

The Sacraments, besides sanctifying grace, produce grace which is called sacramental, that is, they confer helps for obtaining the special end for which each Sacrament was instituted, if the due conditions are not lacking. The Sacraments operate ex opere operato, that is by force of the divine institution, independently from the work of the one operating, namely of the Minister and of the subject of the Sacraments.

Hence the Sacraments are distinguished from sacramentals, which are certain sacred things or actions instituted by the Church, such as lustral water, blessings and consecrations, the Agnus Dei, etc.

191. ○ II. NUMBER. The Sacraments are seven, as is clear from Trent, sess. 7, Can. 1: If anyone shall say that the Sacraments of the new law were not all instituted by our Lord Jesus Christ, or that they are more or fewer than seven, namely Baptism, Confirmation, Eucharist, Penance, Extreme Unction, Order, and Matrimony, or even that any one of these seven is not truly and properly a Sacrament, let him be anathema.

III. Division. The Sacraments, according to various properties, are distinguished thus:

1° Necessary, or not necessary. Again the necessary are so either by necessity of means, or by necessity of precept. Necessary by necessity of means [1] are Baptism, which is the gate of the Church and of the kingdom of heaven, and Penance for those who have fallen into mortal sin after baptism; necessary by necessity of precept are all the others, with the last two excepted, which are not necessary for private persons, but only for the community.

[1] ** In the strict sense that alone is necessary by necessity of means which not only has in itself the character of a means to the end which is intended, but furthermore is necessary in the very character of a means, because it cannot otherwise be supplied. You have this in those words of Paul (Heb. XI, 6): For he that comes to God must believe that He is, and is a rewarder to those who seek Him. For approach to God without the movement of a man (an adult) is impossible; and again such movement is impossible without knowledge of this kind. But in this sense baptism will be called necessary by necessity of means if you understand baptism either of water or of desire; otherwise, both about baptism and about Penance, this mode of speaking is used here in a broader sense.

2° Impressing, or not impressing, a character upon the soul. Baptism, Confirmation, and Order impress a character; the others do not impress one. Trent, sess. 7, Can. 9. 3° Formed, or unformed, according as they produce grace when they are received, or, an obstacle intervening, suspend their effect until the obstacle is removed [2].

[2] ** That sacraments can be valid but unformed is certain doctrine. But whether it is to be attributed to all sacraments that, when the obstacle has been removed, they produce their effect, see St. Alphonsus, Lib. 6, n. 87.

4º Sacraments of the living or of the dead, according as they already suppose sanctifying grace, or first grace, and only increase it; or from their primary institution confer the same.

192. Questions. - **QUESTION 1º. Can the Sacraments of the dead confer second grace?**

Resp. Affirmatively. This can be done in a twofold case: 1º when venial sins alone are subjected to the keys, which frequently happens; 2º when a penitent, guilty of mortal sin, approaches the Sacrament of Penance with perfect contrition; because perfect contrition with the vow of the Sacrament justifies a man even before reception of the same: then therefore the Sacrament confers not first but only second grace [3]...

[3] ** The same thing can also happen with the sacrament of baptism, to which an adult can approach after already having obtained justification by an act of charity. And indeed it can reasonably be held, according to the doctrine of St. Thomas (1. 2, q. 89, art. 6), that this mode of justification happens not rarely among children among unbelievers: When the use of reason, he says, shall have begun in a child,... the first thing which then occurs to a man to be thought about is to deliberate concerning himself: and if indeed he has ordered himself to the due end, by grace he will obtain remission of original sin. Cajetan exhibits this ordering of oneself to the end thus (in the cited place): If he shall have judged an honorable good, confusedly, as that age is accustomed to do, to be something to be sought by himself, he has deliberated well concerning himself, placing his end in true beatitude, although imperfectly and inchoatively.

QUESTION 2º. Can the Sacraments of the living sometimes confer first grace?

Resp. Affirmatively, more probably, not indeed per se, as is clear from their institution, but per accidens, or by means of Charity infused by force of the Sacrament in a subject not placing an obstacle. For it can happen that someone guilty of mortal sin, ignorant of this in good faith, approaches a Sacrament of the living attrite; but in these circumstances the Sacrament of the living infuses grace into the soul, and therefore destroys sin. For the Sacraments always confer grace upon those not placing an obstacle, as is clear from Trent, sess. 7, Can. 6; but an obstacle is not placed by him who approaches attrite in good faith. Therefore, etc. - Thus commonly. - St. Thomas, part 3, qu. 72, art. 7. - Suarez. - St. Ligorius, n. 6 and 268, discoursing on the Eucharist: Sometimes, he says, per accidens it can confer even first grace, namely if someone, ignorant that he is in mortal sin, or believing that he has contrition, approaches Communion with attrition alone; then from attrite he is made contrite.

193. ○ **QUESTION 3º. Is attrition required or sufficient, so that the Sacraments of the living may confer first grace?**

Resp. Affirmatively to both: 1º it is indeed required, because first grace cannot be infused except through the destruction of mortal sin; but the destruction of mortal sin cannot be done without detestation of the same, namely without contrition or at least attrition; 2º it suffices, because from what has been said the Sacraments of the living can sometimes confer first grace: but this could not be done if attrition did not suffice, since the sinner would always approach the sacrament already justified by perfect contrition. - St. Ligorius, n. 6, etc.

QUESTION 4º. In what does the character of a Sacrament consist?

Resp. Although it is of faith that a character is impressed in Baptism, Confirmation, and Order, nevertheless Theologians do not agree in what precisely it consists. For us it will be enough to know, as the Council of Trent teaches, that the Character is a certain spiritual and indelible signet, preventing the Sacrament from being able to be repeated (Sess. 7, can. 9).

194. ○ **QUESTION 5º. Is original sin destroyed in Baptism which is indeed valid, but unformed because of a defect of disposition in the baptized adult?**

Resp. Negatively. The reason is that no sin dissolving one from the friendship of God is condoned except through reconciliation with God, that is, through justification. But this cannot be done unless first grace is infused; but this first grace is not infused if the dispositions are lacking. Therefore. But when the obstacle has been removed, either by perfect contrition with the vow of the Sacrament (namely of Penance), or by this Sacrament with attrition, the sacramental grace of Baptism revives, or the suspension ceases, and it destroys original sin and at the same time all actual sins committed before Baptism. But the Sacrament of Penance destroys sins committed after Baptism and the sin of fiction, or of the evil disposition with which the Sacrament of Baptism was received, at least insofar as this evil disposition persevered after Baptism. - See what is to be said, n. 232, Q. 2º.

195. ○ **QUESTION 6º. What are the effects of sacramental grace proper to the individual Sacraments, besides sanctifying grace common to all?**

Resp. 1º The effect of Baptismal grace is to remit every fault and punishment of fault, to illuminate the mind, to diminish concupiscence, and to make the soul fruitful for Christian works. But this habitual grace brings to the baptized person the right of obtaining helps by which he may attain these effects.

2º The effect of the grace of Confirmation is strength for constantly professing the Faith where there shall be need, and for defending it when opportunity has been given. And therefore it brings to the soul a right to helps by which it may accomplish this.

3º The effect of the grace of the Eucharist is to nourish the spiritual life, to increase grace, to generate disgust for worldly things, to draw one toward union with God, and therefore to bring a right to graces by which those communicating may be able to attain all these things.

4º The effect of the grace of Penance is to remit sins committed after baptism, and to confer strength for avoiding sins and for persevering in the state of grace, and a right to helps suitable for accomplishing these things. 5º The effect of the grace of Extreme Unction is to remove the remnants of sins, to alleviate the soul of the sick person, to strengthen confidence, to render the inconveniences of illness less troublesome [4], to bestow strength for repelling final temptations, and to confer a right to helps proportioned to these things.

[4] ** Another effect proper to this sacrament can, indeed should, be added, namely restoration to former health.

6º The effect of the grace of Order is to render the Ministers of Christ fit for the sacred ministries, so that they may perform these with due piety, and to confer a right to helps suitable for these things.

7º The effect of the grace of Matrimony is to restrain disordered concupiscence, to bestow strength for sustaining the burdens of the conjugal state, for preserving conjugal fidelity, and for educating

offspring in a Christian manner, and therefore to confer a right to helps necessary for fulfilling these things. - Common.

Chapter II. On the Matter and Form of the Sacraments

I. On the Nature and Union of Matter and Form

196. ○ DEFINITIONS. Matter is the sensible thing to be determined to the nature of a sacrament by the form. Hence matter is that which in the Sacrament is more indifferent, and has a less perfect signification; and therefore it must be determined by another thing for signifying.

Matter is twofold: one remote, and the other proximate. The former is the sensible thing itself which is employed in the Sacrament, or the thing about which the sacramental action is exercised. The latter is the very application or use of the remote matter in the sacramental action.

But form is the part of the Sacrament which determines the matter for effecting the sacrament, and which ordinarily consists in words pronounced by the Minister.

197. Principles. - I. Matter and form are altogether necessary for the validity of a Sacrament; therefore, with either one lacking, Sacraments cannot be confected. The reason is that a Sacrament cannot be confected except in that mode in which Christ instituted it, who alone is the author of the Sacraments. It is of faith. This is clear besides from dogmatic definitions, especially from the Council of Florence in the Decree of Union, etc.

II. In confecting a Sacrament outside a case of necessity, matter and form ought morally to be employed, as far as they can be had [1], certain. The reason is that, unless necessity urges, it is not permitted to use probability which does not remove the danger of invalidity.

[1] ** To this pertains the first of the propositions proscribed by Innocent XI: It is not illicit in conferring sacraments to follow a probable opinion concerning the validity of the sacrament, the safer opinion having been left aside, unless law, agreement, or danger of incurring grave harm forbids it. Hence an opinion merely probable is not to be used in the conferral of baptism, of priestly Order, or of episcopal Order.

But the Author aptly adds, as far as it can be had; for where there is question, for example, of the disposition necessary for the sacrament of penance, scarcely anything else can be had concerning it than a certain prudent and probable judgment.

III. Matter and form must be united or applied by the same Minister and toward the same subject. The reason is that if one were to place the matter, and another the form, the words of the form would not be verified; for the Minister who, for example, would say: I baptize thee, while another poured the water, would pronounce what is false, since he himself would not baptize.

IV. [2] In order that a sacrament be valid, there must be between the matter and the form, for example between the pouring of water and the pronouncing of the words, so great a conjunction that according to the moral estimation of men, with the nature of each sacrament considered, one affects the other, that is, that the words are judged to fall upon such a thing and to constitute with it one total sign. St. Alphonsus (Lib. 6, n. 8) with Busembaum.

[2] ** Those things are supplied which Gury seems to promise in the title of the paragraph, but in reality omitted.

From this: 1° In Baptism, Confirmation, Unction, and Order, such a conjunction is required that while the minister pronounces the words, he is morally judged also to wash, etc. Busembaum, ibid. [3].

[3] ** Lugo (De Sacram., Disp. 2, n. 99), when about to explain how in the ordination of a Priest moral conjunction is had between the form and the first imposition of hands, which is done while no form is pronounced, discusses this matter thus: The imposition of hands is not so distant from the utterance of the form which afterwards follows, that they are not judged to have sufficient moral nearness; for there ought not to be physical coexistence, as is clear in Deacons, to whom the form is said to all at once, and afterwards they successively touch the book; wherefore if one hundred Deacons were ordained together, without doubt there would be great physical distance between the utterance of the form and the contact of the book with respect to the last; but nevertheless there is sufficient moral presence, because the same action is morally continued without moral interruption. So also after hands are imposed upon Priests, up to those words Receive power, etc., the same moral action is continued, by anointing them and preparing them so that they may more fittingly receive the grace of the Holy Spirit. But afterwards the matter is more explicated and another part of the same matter is applied together with the form: wherefore that distance, whatever it may be, is not so much between matter and form as between part and part of the matter, which certainly need not physically coexist with one another... Wherefore when it is a question of creating a Priest, that whole action by which insignia, vestments, instruments, and other things are solemnly given to him is judged to be one and the same action, just as the coronation of a Pontiff or of a King is drawn out for a long time, and divided into several actions, and interrupted by various solemnities, yet is reckoned the same action.

2º In Penance absolution can be deferred for a sufficiently long time, as in trials a sentence follows after examination of the cause. Busembaum, ibid. [4].

[4] ** St. Alphonsus adds in this place (Lib. 6, n. 9): In this Sacrament such distance ought not to be so great as happens in a forensic trial. If these words merely indicated that it is not necessary that absolution be deferred as long as the sentences of judges sometimes are wont to be deferred in a forensic cause, they would express the most common and certain doctrine. But then the holy Doctor subjoins: But Croix, Lib. 6, n. 8, says with Tamburini, that a penitent is validly absolved after an hour from confession. From these words you might almost gather that according to the mind of the holy Doctor the due conjunction between matter and form is not preserved if such a delay intervenes as sometimes occurs in a forensic trial. And since here the question concerns that conjunction between those two parts of the sacrament which pertains to validity, the matter is certainly of grave moment. - Therefore the words of the holy Doctor are to be understood discreetly. For otherwise the most common opinion of all Doctors is that which Reiffenstuel expresses thus (Tr. 4, Dist. 1, Q. 2, n. 29): In the Sacrament of Penance a much greater distance can be admitted between the accusation of the penitent and the absolution of the priest: since this sacrament is performed by way of judgment; but in judgment accusation is presupposed to absolution, nor is it required that the sentence of the judge be conjoined in time with the accusation of the accused himself. And although all the Doctors use this reason, namely that this sacrament is performed by way of judgment, nevertheless there is found no trace of that limitation which St. Alphonsus suggests. Indeed the Salmanticenses (Tr. 1, Cap. 4, nn. 20 and 28) concede, and even contend, that the conjunction or moral coexistence is fittingly preserved if one who confessed on one day is absolved on another day. But Coninck (ad Q. 60, art. 6, n. 41) writes: In Confession absolution could be deferred for a sufficiently long time; just as in a trial absolution or condemnation is often wont to follow the examination of the cause after a long time. And Henriquez (Lib. 1, Cap. 9, n. 11): In the Sacrament of Penance, because it is a judgment, the matter, which is a human act, is called sufficiently present, although the confession of sins precedes the form by many days. Wherefore Roncaglia refers the reader to those things which are commonly handed down by the Doctors about deferring absolution for penitents. For thus he says (Tr. 16, C. 3, Q. 2, Resp. 2): But because Penance was instituted by way of judgment, in which it is not necessary that the sentence be altogether simultaneous with the confession of the crime, hence it is that absolution can be deferred after the confession has been heard, as will be said in its place. And in reality, whatever delay of absolution you may finally imagine, the two parts of the Sacrament will always have to be judged sufficiently conjoined, as often as it is morally understood that this one judgment is being performed. Thus well Suarez (In 3 Part, Tom. 3, Disp. 2, Sect. 2): In that sacrament that simultaneity suffices which is morally enough that the same judgment be understood to be performed and confirmed by the sentence.

But that which Croix reports from Tamburini (Lib. 6, P. 1, n. 8) is nothing. For Tamburini (De Sacr., Lib. 4, C. 1, § 1, n. 6) merely wishes to indicate the difference which is had concerning the conjunction of matter and form, if there is question of the Sacrament of Penance and of Extreme Unction. Namely, with two cases proposed, he says that an interval of one hour in no way stands in the way in the Sacrament of Penance, but does stand in the way if there is question of Extreme Unction.

3º In matrimony the consent of one can follow the consent of the other so long as this latter consent is judged morally to remain, as in other contracts. Busembaum, ibid.

II. On the Change of Matter and Form

198. ○ A twofold change is given both in matter and in form, namely substantial and accidental.

A substantial change will be in the matter if, according to the use and estimation of men, this cannot be called the same as that which was determined by Christ; but in the form, if the sense of the words intended by Christ is changed into another. But an accidental change is called one which concerns only the qualities of the thing, or which does not change the sense of the words. - St. Ligorius, n. 11.

199. Principles. - I. Every substantial change in the matter and form of a Sacrament invalidates the Sacrament, because it is no longer the rite instituted by Christ; and if it is voluntary, it constitutes grave sin, because it inflicts a grave injury upon the author of the rite.

II. No accidental change in the matter and form invalidates a Sacrament; nevertheless it induces grave or light sin, according as it is, or is not, notable.

The form of the Sacraments can be changed in many ways, namely by subtraction of a syllable or of words, addition, variation of language or of words, transposition of words, corruption of the same, for example by changing letters, and interruption. These are shown in the following little verses:

Do not take anything from the form, do not add anything, do not vary anything; Beware of transmuting, corrupting the words, delaying.

But the change will much more easily be substantial at the beginning than at the end of the words, because the sense will more easily be changed for hearers, for example in the name of the mother instead of of the father. In practice beware especially of precipitation.

III. On the Repetition of the Sacraments in Doubt Concerning the Valid Application of Matter and Form

200. ○ A threefold rule is to be established:

I. The Sacraments can be repeated whenever there is a prudent doubt concerning their validity. The reason is that if perhaps the Sacrament were not valid, those who approach to receive it would be deprived of its fruit. But that the prudent fear of so great an inconvenience is a sufficient reason why the Sacrament be repeated is clear from the very well-known axiom: The Sacraments are for men.

II. Sacraments generally cannot be repeated without grave sin when there is not present a prudent doubt concerning their validity. The reason is that they would be repeated without cause, and therefore a grave injury would be inflicted upon them.

III. Sacraments ought to be repeated whenever, upon a prudent doubt having arisen concerning their validity, charity, justice, and religion require it, namely whenever the nullity of the Sacrament, if perhaps it were present, would turn to the harm of neighbor and sometimes to the contempt or irreverence of Religion. But then they are to be repeated only conditionally, so that reverence for the Sacrament may be provided for. - Voit, n. 29 and following. - See St. Ligorius, n. 27 and following.

201. You will resolve. - The Sacraments that are more necessary, and that are conferred only once, namely Baptism and Order, are more readily to be repeated, even if a much greater probability

militates for the validity of the sacrament against reasons doubtful or slenderly probable in the opposite direction. - Thus commonly.

2º Absolution is to be repeated with a penitent guilty of mortal sin if there is prudent doubt concerning the due pronouncing of the form. But if the penitent is not in the state of mortal sin [5], it will not be necessary to repeat the form, since Communion can be permitted to him even without absolution.

[5] ** Perhaps you would say better: If the penitent has not brought necessary matter; for it certainly can happen that someone is in the state of grace, and nevertheless has matter which must necessarily be subjected to the keys, for example a grave fault omitted in the preceding confession from forgetfulness, which indeed had then been remitted indirectly, but nevertheless still needs absolution.

3º A Minister who lightly doubts, and does not know why he fears, or merely does not reflexively remember that he pronounced the words of the form, sins mortally per se if he repeats the form, or even repeats one word three or four times. The reason is that he changes the form, and introduces a new rite concerning the gravest action of all. Moreover he presents Christ, whom he represents, as speaking ridiculously. In practice, however, scrupulous persons who repeat the form are for the most part excused from mortal sin, indeed often even from venial sin, because, being too agitated by scruples, from perplexity or without advertence, they act thus foolishly. - Thus Voit, n. 27. - Elbel, n. 14. - Gobat, tract. 3, n. 94, etc.

4º If in Mass after consecration a doubt arises for you concerning the due pronouncing of the form, or concerning total omission, you ought and can repeat nothing, since otherwise you are not accustomed to omit these things: for one must judge from what commonly happens, unless, however, you doubt very probably, as the Rubric speaks. - See St. Ligorius, n. 224.

Chapter III. On the Minister of the Sacraments

The Minister of the Sacraments is he who, in the name of Christ, whose place he holds, performs the sacramental action.

We must treat 1° of the requisites in the Minister for conferring the Sacraments; 2° of the office of the Minister in the administration of the Sacraments.

Article I. On the Requisites for the Administration of the Sacraments, or on the Attention, Intention, Faith, and Probity of the Minister

§ I. On the Attention of the Minister

202. ○ DEFINITION. Attention is the application of the mind to those things which are being performed, or it is the act of the intellect by which a man considers that which he does.

Division. A twofold attention is distinguished: one internal, which consists in the advertence itself of the mind to that which is being done; another external, which excludes every action physically incompossible with internal attention. - See what was said above, n. 91; and t. 1, n. 544.

Principles. - I. For the validity of the conferral of the Sacraments no other attention is required except that which is found in every truly human act. Therefore the Sacraments can be validly ministered even by a distracted Minister, or one thinking at the same time about other affairs. The reason is that, in order that an act be and be considered human, not actual attention, but the procession of the act itself from an act of rational will is inspected. Moreover attention often does not depend on the will of man; but Christ could not require in the Minister of the Sacraments a condition that is sometimes impossible. - Thus St. Ligorius, n. 11, and others commonly.

II. For the licit conferral of the Sacraments attention is required, so that every voluntary distraction be absent. The reason is that the reverence due to the Sacrament demands that it be treated diligently, and that the danger of erring be avoided. Nevertheless voluntary distraction, according to the common opinion of Theologians, ordinarily does not exceed venial sin, unless someone exposes himself to the danger of gravely erring in the form. - St. Ligorius, ibid.

They more probably and more commonly except the Eucharist, in the confection of which they judge every voluntary distraction, on account of the greatest dignity of the Sacrament, to be mortal sin. - St. Ligorius, ibid. - Nevertheless Lacroix, lib. 6, part 2, n. 443, Mazzotta, and others deny this not improbably.

§ II. On the Intention of the Minister

203. ○ DEFINITION. Intention is an act of the will tending toward some end, or an act of the will by which someone intends to do or omit something.

DIVISION. It is manifold, namely: 1º actual, virtual, habitual, and interpretative; 2º internal or true, or external, which regards only the external act; 3º determinate, or indeterminate or in the confused; 4º absolute, or conditioned. Recall the definitions given throughout, for example in the Treatise on Human Acts, where voluntary action is treated, tom. 1, n. 5.

Principles. - I. For the validity of a Sacrament there is required in the Minister some true and serious will at least of doing that which the Church does. - This is clear from the Council of Trent, sess. 7, Can. 11.

II. Nevertheless an actual intention is not required, but a virtual one suffices. The reason is that actual intention, although best and to be desired, is sometimes morally impossible; but virtual intention sufficiently flows into the action of the Minister, so that this action can be called truly human and deliberate. - Thus all.

III. A habitual intention does not suffice, nor an interpretative one. The reason is that for a human act some will is required, by force of which the act is placed. But neither habitual nor interpretative intention is of this kind: not the first, because it is neither actually elicited by the will, nor, although it was once elicited, does it endure in some effect or in a series of actions; not the second, because it is neither actually elicited, nor was it ever actually elicited, but would only be elicited if the mind were thinking about the thing to be done. - St. Ligorius, n. 16.

204. Questions. - **QUESTION 1º. Is internal intention required?**

Resp. Affirmatively, because if the Minister intended only the external act, he would not have a true intention of doing what the Church does [1]. For the Church intends to place a sacramental rite: but he who proposes only to do the external rite does not intend this [2]. - St. Ligorius, n. 20.

[1] ** Someone perhaps could deny this in truth; since even the Church does nothing else except that it places the external rite, as Christ the Lord commanded to be employed.

[2] ** Nor nevertheless is it required that the minister explicitly intend to do a sacramental rite; otherwise, if someone either is ignorant or does not believe that by that action a sacramental rite is perfected, as for example Protestants do not believe that a sacrament is effected by matrimonial consent, he would not confer the sacrament validly; which is false. Therefore it ought to be enough that the minister wishes confusedly to do what Christians do.

But the condemned proposition which is subjoined perhaps does not fit the matter. For in this proposition there is question not of a mere defect of the required intention, but of a contrary intention.

This is also clear from the 28th proposition condemned by Alexander VIII, which sounds thus: Baptism conferred by a Minister is valid who observes the whole external rite and form of baptizing, but inwardly in his heart resolves within himself: I do not intend to do what the Church does.

QUESTION 2º. Is there required in the Minister an intention of doing what the Roman Church does?

Resp. Negatively, provided that he has the intention, at least implicit, of doing that which the true Church does, even if from error he should think his own heterodox church to be the true Church. - St. Ligorius, n. 21.

QUESTION 3º. Is there required in the Minister an intention of confecting a Sacrament?

Resp. Negatively, at least explicitly, provided this intention is not excluded. For it suffices that he intends in general and implicitly to do what the Church does. - St. Ligorius, n. 21, and others commonly.

205. ○ **QUESTION 4º. Must the intention of the Minister be determined to certain matter and person?**

Resp. Affirmatively. The reason is 1º as to the matter, because otherwise it would remain in a state of indifference: for it cannot be drawn out from that state and be determined to a Sacrament except through the minister's intention; 2º as to the person, because the effect of the Sacrament cannot be applied in general, but to some subject; otherwise no application would be made [3].

[3] ** Namely the object or term of the action must be determined according to the nature of the thing of which there is question: for if, for example, you were to say, I give, but did not determine what, or to whom, you have an act void of all force.

QUESTION 5º. Is a Sacrament conferred with a conditioned intention valid?

Resp. 1º Negatively, if the condition added is concerning the future; because the condition suspends the intention of the Minister, and therefore prevents the form from being applied here and now to the matter; nor can it be applied afterwards, when the condition has been fulfilled, since the matter and form have already ceased to be present [4].

[4] ** Matrimony, however, like all other contracts, can be celebrated under a condition concerning the future; when this has been fulfilled, they are perfected no otherwise than if they had been entered into purely and without condition from the beginning. Nor for that reason is the inconvenience to be feared of which the Author speaks. For since the consent is referred to the event of the condition, then in reality the contract is perfected, and therefore then the sacrament is made.

Resp. 2º Affirmatively, if the condition concerns the past or the present, and this in reality exists; because here and now the conditioned intention passes into an absolute intention: but if the condition is not fulfilled, then there is no intention, as being restricted to a condition not existing. - St. Ligorius, n. 26, and others commonly.

206. ○ **QUESTION 6º. Is the conferral of Sacraments with a conditioned intention licit, in doubt whether they have been validly conferred?**

Resp. 1º As to Sacraments impressing a character, it is certain that it is licit. This is clear from Canon Law, Decretals, c. 2, on Baptism, where this form is indicated in doubt concerning Baptism conferred: If thou art not yet baptized, I baptize thee, etc.

Resp. 2º Also as to the other Sacraments it is licit, if there is present a sufficient cause for placing the condition. The reason is that the Sacraments are for men, and by a conditioned conferral of the Sacrament provision is made, insofar as can be done, both for the good of those who receive the Sacrament, if perhaps they are capable of it, and also for the reverence of the Sacrament. - Thus commonly with St. Ligorius, nn. 27, 28, against some. But it is certain that in extreme necessity, where there is no matter present except doubtful matter, the Minister not only can, but also is held under grave obligation to minister the Sacrament under condition. - St. Ligorius, n. 29.

QUESTION 7º. Must the condition be expressed in words?

Resp. Negatively. The reason is that it suffices for reverence of the Sacrament if it is conceived in the mind. - Thus St. Ligorius, Homo apostolicus, tr. 14, n. 3. - Lacroix, n. 85, etc. Indeed according to Gobat, n. 272, there is not even need to have the condition explicitly and formally in the mind; but it is enough if it is had implicitly and virtually, as he has it who wishes to hear confessions according to the institution of Christ or the intention of the Church; because thus also the reverence due to the Sacrament is sufficiently preserved. Nevertheless it must be added orally where the Rubric prescribes this, as in conditional Baptism, especially if it is conferred publicly, lest, namely, the bystanders believe that Baptism is repeated absolutely. - St. Ligorius, Homo apostolicus, tr. 14, n. 3, etc. [5].

[5] ** To this response, which otherwise is of St. Doctor Alphonsus, VV. (p. 928, n. 82) append, as a gloss, that which St. Alphonsus has thus in the seventeenth of the more recent Retractions: Whether it is licit to confer a sacrament under condition, without the condition being expressed orally, in Lib. 6, n. 29, was affirmed with Tournely, Roncaglia, Castro-Palao, and others most commonly. But because there are not lacking some authors, such as Gonet, Juenin, Contenson, Serry, etc., who hold (although little probably) that the validity of the Sacrament does not depend on the intention of the minister, but only on the conferral itself of the Sacrament seriously performed, it is safer to express the condition also in words.

Resp. 1º The most learned Father Haringer (in note to Lib. 6, n. 29) explains the words of the holy Doctor thus: The word safer placed here seems to signify nothing else than more advisable. Therefore the holy Doctor merely gives counsel; and to this counsel the words of Gury, who raises the question only about the necessity of expressing the condition, do not stand opposed. 2º The holy Doctor in the words described above seems to hint, although obscurely, at the doctrine of those who went into the celebrated opinion of Catharinus concerning the nature of the intention necessary for conferring the sacraments. I said, obscurely; because these Authors did not deny, indeed they expressly asserted for the validity of the sacraments, the necessity of some intention in the minister, as may be seen in Juenin (De Sacram., Dissert. 1, Q. 1, Cap. 2, art. 1). But if the matter thus stands, then that also remains sufficiently obscure: why, on account of that singular opinion of theirs, it should generally be expedient also to have expressed the condition orally.

§ III. On the Faith and Probity of the Minister

207. Principles. - I. For the validity of the Sacraments neither faith [1] nor probity, or the state of grace, is required in the minister. This is clear 1º from the practice and perpetual tradition of the Church, which never wished those baptized by heretics and the wicked to be rebaptized. It is clear 2º from the definition of the Church. - Trent, sess. 7, Can. 12, and Can. 4, on Baptism.

[1] ** Understand faith here as perfect or Catholic. For some persuasion or notion, at least by which the minister knows that he is carrying out the rite of Christians, seems necessary for having a sufficient intention.

II. But for the licit administration of the Sacraments, faith and probity are required in the minister, at least if he has been consecrated for conferring Sacraments, and confects them solemnly, that is, with the entire rite prescribed by the Church. Therefore he who ministers Sacraments in mortal sin sins gravely; for a minister destitute of faith or wicked inflicts a grave injury upon God and Christ, by treating holy things unworthily and, so far as lies in him, by contaminating them. Moreover, since the Minister of the Sacraments represents Christ the primary Minister, who is the Holy of Holies, and bears His person, it is necessary that he also be holy.

208. Questions. - **QUESTION 1º. Does a Minister sin gravely who confers in mortal sin a Sacrament for which he has not been specially ordained or consecrated, for example if a woman ministers Baptism in the state of sin?**

Resp. Negatively, probably, because the obligation in the Minister of having sanctity does not arise precisely from the sanctity itself of Christ and of the Sacrament according to itself, but from the consecration of the Minister in Order for conferring Sacraments. - Billuart, diss. 5, art. 4. - St. Thomas, 3 p., q. 64, art. 6; and in 4, Dist. 5, q. 2, art. 2; and many others. Nevertheless not a few others affirm; thus Collet, Lacroix, Lugo, etc. But St. Ligorius, n. 32, admits the probability of both opinions; nevertheless he inclines more toward the affirmative [2].

[2] ** The second opinion affirming, says St. Alphonsus, seems more probable. But learn whether this opinion can be of use to confessors from the opinions of the Doctors which we have elsewhere described from the same St. Alphonsus (Vol. I, in note to n. 152).

** The opinions of the Doctors indicated in this little note, which St. Alphonsus adopts and inculcates (at the end of the moral system), are of this kind: Nothing ought to be condemned as mortal sin concerning which there is not evident reason, or manifest authority of Scripture (Gabriel Biel). And St. Antoninus: Unless for this there be express authority of Scripture or of a Canon of the Church, or evident reason. - And St. Raymond: Do not be prone to judge mortal sins where it is not clear to you through certain Scripture. Hence the argument: St. Alphonsus, after he had elsewhere taught that both opinions were probable, namely the one affirming and the one denying that grave fault is present in the case, later wrote by opining that the affirmative seems more probable. But a certain opinable greater probability does not suffice according to the holy Doctor, so that in practice the conscience of grave sin be imposed. Therefore that opinion cannot be of use to confessors.

VV. object (p. 927, note 2) that St. Alphonsus in the little work Confessore diretto per le genti di campagna absolutely wrote that spouses who contract in the state of sin commit two sacrileges, the one as ministers, the other as unworthily receiving the sacrament.

Resp. It is a canon that the more obscure places of any Writer are to be explained through the clearer ones. But the Moral Work (Lib. 6, n. 32) most clearly teaches us that as to the second sacrilege the holy Doctor affirms this merely opinably, and that he changed nothing in it, nor therefore departed from this opinion of his, although after that little work had been published he published the Moral Work several times over the course of twenty years. But if someone wishes to contend that the words of that little work are to be taken in a strict sense, this alone could be concluded: that those two places of the holy Doctor do not cohere with each other, and that the meanings of the little work are to be put after those of the Moral Work, since they are opposed to the certain principles of the same holy Doctor.

VV. add (l. c.) that St. Alphonsus attributed to the negative opinion only extrinsic probability, perhaps on account of the authority of St. Thomas, whose suffrage, however, they say, does not effect that it is sufficiently solid, since for the affirmative a notable excess and preponderance of intrinsic reason militates.

Resp. 1º I deny that, according to the mind of St. Alphonsus, that notable excess and preponderance of reason is present for the affirmative. For otherwise he would not have written so temperately and in a manner of one somewhat doubting, it seems more probable.

Resp. 2º St. Alphonsus indeed brings forth no new reason; but, no otherwise than others, he seeks reasons from the intrinsic nature of the thing. But that from the considered nature of the thing a reason so evident can be taken which suffices for certainly affirming mortal sin, or at least a reason so convincing that it removes solid probability from the opposite opinion, and nevertheless that concerning an intrinsic reason of this kind St. Thomas, Richardus, Sylvester, Cajetan, Dominic Soto, Suarez, Laymann, Coninck, Henriquez, Filliuccius, Reginaldus, Sa, the Salmanticenses, Dicastillus, Becanus, Valentia, Palaus, Escobar, Sporer, Reiffenstuel, Giribaldi, Roncaglia, Ferraris, Mezger, Illsung, Pettschacher, Babenstuber, Struggl, etc., etc., etc., were in some way blind - this will seem sufficiently difficult, indeed also very hard. Therefore whoever, with so many and such great Doctors preceding him, should doubt entirely concerning so great a solidity of the reason brought by St. Alphonsus, indeed should altogether deny it, certainly will not rightly be convicted of any imprudence or rashness.

QUESTION 2º. Does a Priest, or consecrated Minister, sin gravely, who indeed ministers a Sacrament in mortal sin, but not solemnly, for example Baptism without ceremonies in a case of necessity?

Resp. It is controverted, as in the preceding question, and the same authorities and reasons are brought forward for both sides. Hence it must probably be said that he does not sin gravely, because although he is per se consecrated for ministering sacraments, nevertheless he does not act as one consecrated or from office, but only as a layman from charity for helping a neighbor in necessity [3].

[3] ** To this response of the Author, VV. (p. 929, n. 84) oppose these words from St. Alphonsus: The opinion (more probable) teaches that, speaking per se... a Priest ministering not solemnly sins gravely by ministering in mortal sin. The reason, etc. Lib. 6, n. 32.

Resp. St. Alphonsus did not write absolutely, more probable, but wrote by opining, it seems more probable; and in the same place he expressly writes absolutely concerning the opposite opinion: This opinion is indeed probable. But if, even according to the judgment of St. Alphonsus himself, it is probable that in the case there is no mortal sin, then according to the very firm principles of the same holy Doctor it is unlawful to impose upon penitents the conscience of mortal sin. Does not St. Alphonsus in the same place report that Concina (whom he himself calls very rigid) says the opinion which denies grave fault is true and common? And do not others agree with Concina, who are heard as no less rigid: Natalis Alexander, Contenson, Habert, Juenin, Collet, etc.? Besides, that, with due reverence preserved for the holy Doctor, his judgment in this question can be set aside neither imprudently nor rashly, has already been shown sufficiently and more than sufficiently in the preceding Note.

QUESTION 3º. Does a consecrated Minister, solemnly ministering in mortal sin, sin gravely if grave necessity urges?

Resp. Negatively, rigorously speaking, namely if the danger is so urgent that it is not permitted to him through time to elicit an act of contrition. But this hypothesis generally must be denied. Moreover a Minister is not to be excused from mortal sin who, conscious of grave fault, can foresee the case of necessity, as a Parish Priest and others who by office must minister the Sacraments, and therefore are held by a special obligation habitually to remain in the state of grace. - St. Ligorius, n. 35, and others commonly.

209. ○ **QUESTION 4º. Does he sin who outside the celebration of Mass ministers the Eucharist in mortal sin?**

Resp. Affirmatively, more probably. The reason is that he inflicts a grave injury upon the most holy Eucharist. For although he himself does not act as an efficient cause in confecting the Sacrament, nevertheless he is its dispenser, specially consecrated for this, and he discharges a ministry which immediately cooperates in the sanctification of the soul. - St. Ligorius, n. 35, and others commonly. Nevertheless Lugo, on the Sacraments, D. 8, n. 455, Salmanticenses, tr. 1, c. 7, n. 11, and others probably judge that he sins only venially [4].

[4] ** VV. (p. 929, n. 85) oppose the words of St. Alphonsus (Quaest. Reform., n. 62): In the earlier book the negative opinion was called probable. But here we refute it.

Resp. Therefore the negative opinion could seem probable even to St. Alphonsus. Therefore it is not without reason. But the reasons which moved the holy Doctor to change his opinion were not unknown to others; nor nevertheless did they move those Doctors, the long line of whom the holy Doctor himself recounts (and to whom several others can be added), so that they did not either profess the negative opinion absolutely or call it probable; and no one will deny that among these even the very grave are numbered. What therefore will you finally define? Let the received canons be applied. Since therefore, by the judgment of grave Doctors, grave reasons militate for each side which move to prudent assent, we shall have on each side mere opinion. Yet this difference between the two opinions stands out: that the one suffices through reflex judgment for removing suspicion of grave fault; the other does not suffice for imposing the conscience of grave fault. Among those who, after weighing the reasons of each side, defined each to be probable, it will be helpful to have added the

more recent Babenstuber (Tr. 8, Part 4, Disp. 2, art. 4, n. 9), Giribaldi (Tr. 4, De Euch., Cap. 6, Dub. 7, n. 31), Reuter (Part 4, Tr. 1, n. 27), and Struggl (Tr. 9, Q. 1, art. 3, n. 33).

QUESTION 5º. Do they sin who in mortal sin either mediately or immediately touch or carry the Most Holy Eucharist?

Resp. It is controverted. There is a threefold probable opinion:

I. The more probable OPINION affirms in each case, because they treat the most holy thing, or the Body of Christ, unworthily. St. Ligorius, n. 35, calls this opinion very probable.

II. The OPINION denies, because no administration of a Sacrament is present here, nor does the matter appear so grave that it induces mortal sin. - Thus Lacroix, n. 101. - Salmanticenses, c. 7, n. 1. - Busembaum. And St. Ligorius says that this is not improbable.

III. The OPINION distinguishes thus: Those touching the most holy Eucharist immediately in mortal sin do indeed sin gravely, but not those touching mediately. The reason is drawn from the very different degree of irreverence between the first case and the second [5]. Thus Billuart.

[5] ** But if the opinion of Cardinal De Lugo, concerning which in the preceding q. 4, is not without its probability, this distinction is employed in vain.

210. ○ **QUESTION 6º. Do those gravely sin who exercise other sacred functions in mortal sin?**

Resp. Negatively; because all other exercises of Orders besides the confection and administration of the Sacraments do not seem to demand sanctity under grave obligation, since they are not proximately ordained to the sanctification of the soul. - Thus commonly and more probably. - Salmanticenses. - Mazzotta, and St. Ligorius, n. 37, says this is sufficiently probable.

QUESTION 7º. Is a Minister held to confess before the confection of a sacrament, if he is guilty of mortal sin?

Resp. 1º Affirmatively, if there is question of the celebration of Mass, and the supply of a Confessor is not lacking to him; because all the faithful who are to communicate must premise confession from the Decree of the Council of Trent, sess. 13, cap. 7.

Resp. 2º But negatively, more probably, if there is question of the other Sacraments; because he is obliged by no law to confession; and therefore it suffices that he elicit an act of contrition [6]. - Thus St. Ligorius, n. 34. - Elbel. - Lacroix. - Lugo, etc., against certain others.

[6] ** Except, however, if the defect of perfect contrition is clear to him.

211. ○ **QUESTION 8º. Does he sin gravely who hears confession in mortal sin, but does not absolve?**

Resp. Negatively, more probably, because a Confessor by hearing confession does not confect the Sacrament. - St. Ligorius, n. 56, and others commonly against some.

QUESTION 9º. How many sins does a Confessor commit by successively absolving several penitents in mortal sin?

Resp. There is a twofold opinion. For according to others he commits as many sins as persons whom he absolves; the reason is that the individual absolutions constitute so many distinct moral actions, so many complete judgments, and so many Sacraments conferred in the state of sin, and therefore so many sins. - Thus St. Ligorius, n. 30, with others. Yet others think it is one sin. - Thus the Salmanticenses, on Censures, c. 1, n. 182, with others whom they allege; and Lugo, on Penance, D. 46, n. 558, calls that opinion probable [7].

[7] ** VV. (p. 929, n. 86) observe that St. Alphonsus (Quaest. reform., n. 53) retracted what he had written before, namely: He commits one sin... if a Confessor in mortal sin successively absolves several confessing persons; but later he wrote (Lib. 5, n. 50, q. 6): More truly Concina... and others teach that as many sacrileges are committed as absolutions he imparts.

Resp. I concede the antecedent; I deny the consequence. Indeed we ought to defer this honor to the holy Doctor, that we never think that he blurted out anything inconsiderately and rashly. Therefore he put forward the prior judgment not without grave reason. Nevertheless, since afterwards he issued another judgment on the same matter, the question now is which judgment is to be preferred. But rather than assume for ourselves the office of judging concerning this question, it seems fitting that we inquire into the opinion of the wiser. But after inspecting the opinions of the Doctors whom St. Alphonsus himself also reports, we find that some stand for the prior judgment of the holy Doctor, others for the later. Therefore this controversy remains in the same condition as before, and furthermore ought to remain so; for St. Alphonsus brought forth no new reason by which the condition of the controversy can be said to have been changed. Therefore the probability which previously favored each opinion must in no way be said to have perished.

But here also that must be observed which we said in the Note to Q. 4: namely, through a reflex judgment we can indeed most safely use in practice the prior and milder judgment of St. Alphonsus; but to use the later and more severe one for imposing a grave obligation is still by no means lawful according to the principles of St. Alphonsus.

212. ○ **QUESTION 10º. How many sins does he commit who in mortal sin ministers the Eucharist to several persons?**

Resp. More probably only one; because he places one moral action: for the individual distributions are held by way of one, and constitute one administration and one banquet [8]. - St. Ligorius, n. 35.

[8] ** Compare what was said above (n. 209, q. 4), where a twofold opinion was produced concerning the gravity of this fault.

Article II. On the Office of the Minister

1º As to the obligation of ministering the Sacraments; 2º as to the obligation of sometimes denying them; 3º as to the manner of conferring them.

§ I. On the Obligation of Ministering the Sacraments

213. Principles. - I. Those having care of souls are held under grave obligation from justice to minister the Sacraments to their subjects reasonably asking. For by undertaking the care of souls they obligated themselves to this by a tacit contract entered into with their subjects, from whom they receive support or at least honor.

Therefore they are held if the common precept of receiving those Sacraments urges, or if the private necessity or utility of the one asking demands administration, for example if the one asking foresees some danger, or is involved in temptation and needs the grace of the Sacrament, or if he wishes to exercise a devotion suitable to his state, or to gain an Indulgence, etc. - Scavini.

II. Others not having care of souls are not held to minister the Sacraments from justice; nevertheless sometimes they are held from charity, namely in grave necessity of neighbor. - St. Ligorius, n. 58.

214. Questions. - **QUESTION 1º. Who are considered to have care of souls?**

Resp. All those who by office, or by special title of spiritual jurisdiction or delegation, ought to feed or care for some part of the fold of Christ. Therefore such are Bishops, Parish Priests, and whoever have subsidiary care of souls from commission or public office, as are Coadjutors or Vicars of Parish Priests. Likewise with respect to Regulars, their own Prelates or Superiors. - St. Ligorius, n. 58.

QUESTION 2º. What Sacraments are to be ministered in necessity, even with danger of death, whether by those having care of souls, or by others?

Resp. 1º Those who do not carry the care of souls are certainly held only to ministering the Sacraments absolutely necessary for salvation, namely Baptism and Penance, or Extreme Unction when someone can in no way confess. The reason is that they are held only from charity alone to succor neighbor in the gravest danger of salvation. But only the aforesaid Sacraments are necessary for salvation. Therefore, etc. - Thus most commonly the Theologians with St. Ligorius, n. 58, and lib. 2, n. 27.

Resp. 2º Even those carrying the care of souls are more probably held to ministering only the aforesaid Sacraments with any danger. The reason is that the other Sacraments are not of so great necessity that anyone is held to confer them with grave danger of life. - Thus St. Ligorius on the Eucharist, n. 233, relying on the declaration of Gregory XIII (12 Oct. 1576), and likewise on the Declaration of the Sacred Congregation of the Council approved by the same Pontiff. - Nevertheless those who carry the care of souls are held to expose life not only in extreme necessity, but also in grave necessity, while other Ministers are obliged to this only in extreme necessity. - St. Ligorius, lib. 2, n. 27. - Lacroix, lib. 3, part 1, n. 755 and following.

215. ○ **QUESTION 3º. Is someone held to expose life for ministering the aforesaid Sacraments with only probability of success or necessity?**

Resp. It seems it must be denied, because it is too hard to demand an act so heroic for helping neighbor unless there is present a morally certain hope either of success or of necessity. Hence you are not held certainly to expose life for baptizing or absolving someone, if you probably ought to perish before you can fulfill this, or if you probably presume that he is baptized, or is not in the state of mortal sin, or even can easily succor himself by an act of perfect contrition. - Collet, Decalogue, c. 4, and St. Ligorius, lib. 2, n. 27.

216. You will resolve. - 1º Those having care of souls sin gravely, not only if without reason they deny their ministry, but also if they often show themselves slow and difficult; because in this way they deter the faithful from the Sacraments, and the matter comes back to the same point as if they denied the Sacraments.

2º Nevertheless it is not mortal to deny the Sacrament of Penance or of the Eucharist to one or another, or to the same person once or again, asking apart from necessity; because the damage can easily be repaired, nor is the subject for this reason judged gravely unwilling.

3º If subjects ask irrationally, there is no sin. Hence a parish priest is not held daily to spend time with a scrupulous person or with little devout women, since so frequent confession is not expedient

for these, nor do they have a strict right to so frequent absolution.

4º If a Parish Priest has suitable Vicars, he will not be held so rigorously to receive the confessions of subjects; nevertheless he ought to satisfy the faithful requiring him by name, unless either he is impeded, or the penitents are willingly going to approach another Confessor.

5º Generally speaking, those carrying the care of souls sin gravely who are unwilling to receive the confessions of subjects except on a few determined days within the month; because they are the cause why the faithful remain long in the state of sin and are kept away from receiving the Sacraments. - See St. Ligorius, n. 58, and elsewhere throughout.

See more where the individual Sacraments are treated; and recall what was said about the office of Parish Priests in the Treatise on states, n. 113 and following.

§ II. On the Obligation of Denying the Sacraments to the Unworthy Who Ask

217. General principle. - The Minister is held under grave obligation, speaking per se, to deny the Sacraments to the unworthy, because natural law obliges a dispenser to dispense the goods of the Lord faithfully and according to His will; but the certain will of Christ is that the Sacraments not be conferred on the unworthy, according to that saying of Matthew 7:6: Do not give what is holy to dogs, nor cast your pearls before swine.

218. Special rules. - Rule I. To a public sinner, whether asking secretly or publicly, the Sacrament must be denied; because there is no reason why an exception should be made to the general rule; indeed grave scandal of the faithful would follow from the concession of the Sacraments. - St. Thomas, p. 3, qu. 80, art. 6. - St. Ligorius, n. 44.

Rule II. To a hidden sinner asking secretly, the Sacrament must likewise be denied; because reverence toward the Sacrament and charity toward neighbor in these circumstances demand this. - St. Thomas, p. 3, qu. 80, art. 6. - St. Ligorius, n. 50. - Salmanticenses, etc.

Rule III. To a truly hidden sinner asking publicly, the Sacrament is not to be denied. The reason is deduced from the inconveniences which would follow from denial of the Sacrament; for scandals and disturbances would arise in the Church, and especially the faithful, brought into suspicion lest they be prohibited from the Sacraments, would withdraw from them. - Thus all with St. Thomas, p. 3, qu. 80, art. 6. St. Ligorius, ibid.

It is confirmed from the Roman Ritual, on the Eucharist, where these things are read: Hidden sinners, if they ask secretly and he (the Minister) has recognized them as not amended, he is to repel; but not if they ask publicly and he cannot pass them over without scandal.

219. Questions. - **QUESTION 1º. When is a sinner considered PUBLIC OR NOTORIOUS, or HIDDEN; or as asking the Sacrament SECRETLY?**

Resp. 1º That one is called a public sinner whose crime or very bad life is commonly known. But if his infamy has not yet come into common knowledge, yet is so known that it can no longer be hidden, he is called a notorious sinner [1]; but if danger is absent lest his wickedness become known, he is called a hidden sinner.

[1] ** The Author here seems to include notoriety both of law and of fact. For if the discussion is only about the latter, notorious does not differ from public, and indeed in the broadest acceptance of this word. See Reiffenstuel, Lib. 5, Tit. 1, n. 245. But notoriety of law can occur without notoriety of fact; and then he is not known as a public sinner, for example one condemned for some hidden crime by the secret tribunal of the Holy Inquisition.

Resp. 2º A sinner asking secretly is called one who is found alone with the Minister or with a few others of whom deservedly no account is had, such as little boys, etc. Otherwise he is judged to ask publicly.

QUESTION 2º. Must the Sacrament be denied to an unworthy person asking publicly, whose crime is indeed notorious, but not yet public?

Resp. Negatively, according to the more probable opinion, because he cannot yet be called a public sinner; moreover the denial would be liable to various inconveniences. Indeed more probably the Sacrament would not have to be denied even if very many of those present knew the crime, since it is not simply public. - St. Ligorius, n. 45 [2].

[2] ** The Author alleges St. Alphonsus; but in reality St. Alphonsus discusses another hypothesis. For Gury disputes about a crime which is notorious; but he defines notorious as that which can no longer be hidden. On the contrary St. Alphonsus treats of a sinner whose sin is not simply public, and public (Lib. 6, n. 44) he calls when the crime is notorious.

But to the question whether the sacrament is to be denied to a sinner whose sin is not simply public, but is known to most of those present, but not to all, he responds thus: There are three opinions. The first with Coninck (De Sacram., Q. 80, n. 29) affirms: because relatively to these the sin seems to be public. - The second with Suarez (In 3 Part, Disp. 67, Sect. 5, vers. Dico secundo) and Bonacina more probably denies; because the one asking still possesses reputation relatively to all who are ignorant of his crime. - The third with Diana and Croix (Lib. 6, p. 1, n. 139) says it must be denied if from those present only one or another upright man is ignorant, who is thought not likely to divulge it; and this is sufficiently probable according to what was said Lib. 5, n. 973. But Croix took this last resolution from Dicastillus (De Sacram., Tract. 1, Disp. 3, Dub. 12), and in it nothing is contained except a certain limitation of the opinion of Suarez. Besides, the last words of St. Alphonsus still more evidently show the difference of the question from Gury's question. For it is supposed that among the few present one or another is ignorant of the crime, who is upright, and who is thought likely to preserve the secret. Wherefore the holy Doctor refers the reader to that place where it is asked whether reputation is gravely injured if someone's crime is revealed to one or another upright man. But this condition is sought irrelevantly in the hypothesis of Gury, who supposes that the crime otherwise cannot be hidden.

220. ○ **QUESTION 3º. Must the Sacrament be denied to a sinner when his crime is not public where he asks, but is public elsewhere?**

Resp. Negatively, at least more probably; because on the one hand, by ministering the Sacraments to him there is no scandal of others, and on the other hand if it were denied, those inconveniences and harms would arise which come from a denial made to a hidden sinner. - St. Ligorius, n. 46, and others more commonly. But it must be said otherwise if knowledge of that crime will easily come into that place. - St. Ligorius, ibid.

QUESTION 4º. Is it licit to simulate the administration of a Sacrament, lest it be conferred on an unworthy person?

Resp. Theologians distinguish a twofold simulation: one formal, by which the Minister directly intends to deceive; but another material, by which someone does not directly intend to deceive, but is induced to simulate from another motive, for example if he is compelled by grave fear, etc.

I say: It is never licit, not even materially, to simulate a Sacrament. The reason is that every simulation is an injury and grave irreverence toward Christ, whom the Minister mocks by abusing

sacred things instituted by Him. - This is also clear from the 29th proposition condemned by Innocent XI, which lies thus: Urgent grave fear is a cause for simulating the administration of Sacraments. But in this condemnation even material simulation is reproved, since in this proposition it is treated specially. - It is clear again from the authority of Innocent III, c. De celebrat. Missae, where it is said that he who fraudulently has presumed to simulate that he consecrates sins more gravely than if he celebrated in mortal sin, because he seems to mock God.

221. ○ **QUESTION 5º. In what precisely does the simulation of a Sacrament consist?**

Resp. Theologians do not agree. Some say that it consists generally in that which can lead those receiving or others into error. More probably, according to the common opinion, it consists in the fictive application of the form to the matter, or in the fictive pronouncing of the form; or only then does simulation seem to be present when that which essentially pertains to the thing which is simulated is fictively placed [3], so that neighbor is necessarily deceived. - Mazzotta, on the Minister, at the end.

[3] ** You will say more clearly: when something fictively is placed which pertains to the essence of the sacrament. But this definition differs from the preceding one, which extends much more broadly; for by some fiction an opinion of a conferred sacrament can be induced, even when no form or matter has been applied.

222. Hence you will resolve. - 1º A Priest would sin most gravely who in Mass would pronounce the consecratory words over bread and wine while excluding the intention of consecrating. Nor can those be excused in good faith who, laboring under crass ignorance and celebrating in mortal sin, simulate consecration lest they become guilty of sacrilege, even if they altogether omit the words of consecration.

2º A Confessor would sin gravely who would pronounce the words of absolution without the mind of absolving, even if he did this in order more easily to extricate himself from an indisposed penitent who asks urgently for absolution, or even demands it by most grave threats. Several say that in this case a Confessor can say: I do not absolve thee... pronouncing the not so low that it is not heard by the penitent. St. Ligorius, n. 59, judges this not improbable; but the Confessor could then easily pronounce other words or prayers rather than the form of absolution; besides, this case seems almost chimerical.

3º But a Confessor does not simulate the Sacrament of Penance who recites prayers over an indisposed penitent, lest the bystanders notice that he is dismissed without absolution; for it is clear among all that penitents are often dismissed with only a blessing, and sometimes approach the sacred tribunal without the intention of confessing or of completing a confession. - St. Ligorius, n. 59, and others commonly.

4º A Priest sins gravely who gives an unconsecrated host as consecrated even to one knowing and consenting, as sometimes happens to miserable Priests with an accomplice who, for the sake of preserving reputation, approaches the sacred table. The reason is that in this way an unconsecrated host is exposed to the adoration both of those present and even of the knowingly receiving person himself with external reverence, which constitutes external and material idolatry, and therefore something intrinsically evil. - St. Ligorius, n. 61.

5º Nevertheless, according to the common opinion, those who, compelled by grave fear, simulate entering matrimony do not sin, at least not gravely. The reason is that, since voluntary consent is lacking, according to the now certain opinion which holds that the spouses are the ministers of this Sacrament, matter and form are lacking, and therefore there is no simulation of a Sacrament, but only simulation of a contract. From another side, the error could sufficiently be adverted to from the circumstances, and thus necessary deception would not be present.

§ III. On the Manner of Conferring the Sacraments

223. ○ It is not enough if the minister diligently observes those things which pertain to the matter and form; but he ought studiously to observe all the laws of the Holy Church concerning the administration of the Sacraments. Let him take care that all things be performed gravely, religiously, and with the edification of the faithful. Let him beware lest because of excessive speed, or custom of acting, or even defect of memory, he omit anything. It will generally be safer if in reciting the prayers he has the Ritual before his eyes.

224. Questions. - **QUESTION 1º. Whether the use of the Roman Ritual in the administration of the Sacraments is of precept?**

Resp. Affirmatively. For more than once the Sacred Congregation of Rites declared that those books alone are to be employed, and in them only those blessings which are conformable to the Roman Ritual, and that no others are to be employed, provided it is not clear that they have been approved by this Sacred Congregation (S. C. Rit. 7 April 1832, and 23 May 1835. In Gardellini 4681).

Therefore it must be guarded against most carefully, lest formulas of blessings be employed which it is not clear have been approved by the Sacred Congregation of Rites. To this end it will be very useful to consult the recent edition of the Roman Ritual procured by the presses of the Sacred Congregation de Propaganda Fide, with the Supplement or collection of new blessings which the Pontiff conceded and approved.

225. ○ Very recently, however, to this question proposed to the Sacred Congregation of Rites: Even if the Church of Le Mans may provide for itself concerning the Breviary and Missal again and again, as it pleases, whether a faculty of this sort is to be extended to the Pontifical, Ceremonial of Bishops, Martyrology, and Roman Ritual; namely, so that, with the Most Reverend Bishop tolerating, permitting, or even otherwise establishing something, Canons or other Priests can with uninjured conscience infringe or omit the preceptive rules of the aforesaid books, and thus the will of the Most Reverend Bishop in these cases is for them a sufficient dispensation? - the Sacred Congregation responded: Negatively and no further (S. C. Rit. 10 January 1852).

226. ○ **QUESTION 2º. What sacred vestments are required for the administration of the Sacraments?**

Resp. With the case of urgent necessity excluded, a stole and surplice are generally required. It is said, surplice; for however much a contrary use may prevail in many places, the rochet is not a sacred

vestment to be employed in the administration of the Sacraments, and therefore for administering them the surplice must necessarily be used. Thus the Sacred Congregation of Rites, 10 January 1852, in the Le Mans case. But the stole ought not to be worn except in the confection of Sacraments and sacramentals, and in the act of preaching where the custom prevails, and also in certain other functions, as is prescribed in the Roman Ritual. But the use of wearing the stole as a sign of jurisdiction and preeminence is reproved as an abuse. - Thus the Sacred Congregation of Rites, 10 September 1816, 11 September 1847, and 7 September 1850.

More concerning the manner of administering the Sacraments will be treated where the individual Sacraments are treated in particular.

Chapter IV. On the Subject of the Sacraments

227. ○ The subject of a Sacrament is called he who receives the Sacrament, and is capable of the effect of the Sacrament.

The subject of the Sacraments is only man as wayfarer; because, as is plain from Sacred Scripture and tradition, the Sacraments were instituted for wayfaring men alone. Yet not all men are capable of all the Sacraments. For neither women can receive the Sacrament of Order, nor children not yet using reason can receive the Sacraments of Penance and Extreme Unction.

The reason a priori why only wayfaring man is capable of the Sacraments is the will of Christ the Lord, the institutor of the Sacraments. But the reason of fittingness is that according to the order of present Providence, only wayfaring man is capable of first grace or an increase of grace; but of this kind are not the Blessed or souls detained in purgatory, for whom the measure of glory corresponding to the grace which they had in mortal life has already been determined. But the damned are much less capable of grace, as being already separated from God for eternity. With these things posited, we must treat of the requisites both for the valid and for the licit reception of the Sacraments.

Article I. On the Requisites for the Valid Reception of the Sacraments

228. Principles. - I. For receiving the sacraments validly, no probity, nor properly Faith, is required in the subject, if you except the Sacrament of Penance. This is clear from the practice of the Church, which never permitted heretics and wicked men duly baptized and ordained to be baptized or ordained again. It is also clear, as to Faith, from the express definition of the Council of Trent, sess. 7, Can. 13, on Baptism.

II. In infants or the perpetually insane, no disposition, nor intention, is required, so that they may validly receive the Sacraments of which they are capable, namely Baptism, Confirmation, Order, and Eucharist, which was once ministered to them. This is clear from the practice of the Church and the common opinion, etc.

III. In adults, for the valid reception of the Sacraments, some intention is required; because it is not fitting that an adult be sanctified unless he wills it. But for most Sacraments a habitual intention suffices, even sometimes only confused, or implicit, with the nature of each Sacrament considered; because the conferral of the Sacraments is a certain donation and benefit, for accepting which a habitual intention suffices. But it must be said otherwise of one conferring a Sacrament; because since he ought to act in a human manner, it is necessary that he have at least a virtual intention.

IV. For validly receiving the other Sacraments, reception of Baptism is pre-required; therefore an unbaptized man is in no way capable of the other Sacraments. The reason is that the other Sacraments were instituted for the Church alone; but through Baptism alone men become members of the Church. Therefore... etc. Thus Eugene IV defined in the Decree for the Armenians.

229. Questions. - **QUESTION 1º. Is attention required in an adult subject, so that he may validly receive a Sacrament?**

Resp. Negatively, altogether. For intention suffices, as has already been explained, even in Sacraments which require a virtual intention; the reason is that a human act does not proceed from attention, but from the will or from intention. Moreover most Sacraments, as has been said, do not even require a virtual intention; therefore a fortiori they do not require attention on the part of the subject. Moreover attention is not required in the Minister for confecting a Sacrament, as is clear from what was said above, n. 96; therefore a fortiori it is not required in the subject. - Sporer, n. 157.

Hence penitents are sometimes troubled by scruples in vain from the fact that they suffered distractions while they were being absolved, or that they were absolved without noticing it.

230. ○ **QUESTION 2º. What intention is required in adults for receiving the individual Sacraments?**

Resp. 1º For Baptism to be validly received in adults, an intention at least habitual is required, which was previously expressed and never retracted. Nevertheless some say that an implicit will of Baptism suffices, such as would be in him who had the will of performing all things necessary for salvation. See St. Alphonsus, n. 81 [1].

[1] ** La Croix (Lib. 6, Part 1, n. 288) says: It is probable that an implicit habitual intention suffices, according to what was said n. 168. Hence it is probable... that an intention suffices by which someone generally desires that the means necessary for salvation be applied to him, because Christ could have instituted baptism thus; and Suarez grants that extreme unction was instituted thus; but baptism is much more necessary for salvation. And again (in the cited place, n. 168): An implicit intention alone suffices, contained in contrition or attrition; hence according to them (namely the Doctors whose opinion he brings forward), a Jew or even a Heathen in danger of death could be baptized, if it were probably judged that he had at least attrition, because in this there is included the vow of observing all the precepts, and likewise of receiving all the means necessary for salvation, and therefore also of receiving baptism. For this opinion he brings forward nine Doctors, while for the opposite he enumerates only four. Nor ought it to be passed over here that the reasons which Lugo objects after Suarez (De Sacram., Disp. 9, nn. 129, 130) are in truth not of great weight.

2º For Confirmation a habitual will suffices, even implicit, or, as St. Ligorius says, interpretative. - Thus it can be conferred on a dying person destitute of senses. Yet this is foreign to the practice of the Church, because Confirmation is not necessary for salvation. - St. Ligorius, n. 81, etc. [2].

[2] ** St. Alphonsus in this place does not treat of a dying person destitute of senses, but of those sleeping, drunk, or fallen into insanity, who previously had the intention of receiving the sacraments, and whom he teaches, with the most common opinion of the Doctors, validly to receive them. But if he adds with Suarez that sacraments are illicitly conferred on them, nevertheless he excepts: unless they are in probable danger of death; for otherwise the time is to be awaited when the one receiving becomes possessed of reason.

But concerning confirmation he has these things (n. 82): Thus also, by an interpretative or general will, the sacrament of confirmation can be conferred on a dying person destitute of senses, as Lugo, Sporer, Elbel, and Croix say with Con. (that is, Coninck, not Conc., as certain editions of St. Alphonsus have it: for how would Croix, much earlier than Concina, have alleged Concina?!), Arriaga, and Bernal. Aversa alone was the one who (In part. 3, q. 64, Sect. 9) wrote: It is not, however, in use that this sacrament be supplied to such a one destitute of senses: because it is not conferred except by a Bishop and with greater solemnity, and it is not of such necessity, nor per se instituted for the dying. And I would think that Blessed Alphonsus, who had seen this opinion mentioned at least in Croix (Lib. 6, part 1, n. 169), did not consider it worthy even of mention, both because use has the contrary, and because those reasons are truly of no moment.

3º For Penance an intention either actual, or at least virtual, is required; and therefore a habitual intention does not suffice [3]. - St. Ligorius, n. 82.

[3] ** St. Alphonsus is not to be understood thus, as if either actual or virtual intention must then necessarily be present when the sacrament is perfected, that is, when absolution is conferred. For someone could have sought the sacrament before, which nevertheless is conferred on him much later when he is now destitute of senses. And if indeed you call habitual the intention which, once previously had, afterwards perseveres neither in itself nor by force in any effect, but only was not retracted, certainly in the aforesaid hypothesis you will be able to affirm that even a habitual intention suffices.

But the opinion of St. Alphonsus in reality looks to another thing, as the reason which he adds makes clear. It is required, he says, that there be an intention either actual, or at least virtual, since there are required there, for matter, acts of the penitent, which indeed cannot be had without a will at least virtual of receiving the sacrament... according to what is to be said n. 447. But in that place he does not treat of the intention necessary for receiving the sacrament, but raises the question whether sorrow must have been elicited with the intention of Confession. And he himself indeed adheres to the affirmative opinion rather than to the negative, although he confesses this latter to be absolutely more probable; concerning which matter it will be said in its place. Meanwhile it is manifest, according to this latter opinion, that someone can approach the sacrament not only with a virtual, but plainly with an actual intention, although he had not then ordered to confession the sorrow elicited before. From which things it is plain that the sense in which Blessed Alphonsus disputes concerning the intention necessary for the sacrament of Penance has no bearing on the present question concerning intention.

4º For Extreme Unction a habitual intention suffices, or an implicit, or interpretative one, as Theologians commonly say, and as is clear from the Roman Ritual, where it is said concerning it: This Sacrament is to be supplied to those destitute of senses who asked it before, or probably would have asked it. - St. Ligorius, ibid.

5º For Order certainly an interpretative intention in an adult does not suffice, because without explicit will no adult can undergo the most grave obligation of the clerical state. Nevertheless a habitual intention seems to suffice. But in practice an actual intention, or at least a virtual one, ought to be required. - St. Ligorius, n. 82. 6º For Matrimony an intention at least virtual is required, because Matrimony is perfected by contract, for which deliberation and full will are necessary. - St. Ligorius, ibid.

Article II. On the Requisites for the Licit Reception of the Sacraments

231. Principles. - I. For receiving the Sacraments of the living licitly and fruitfully, besides the intention of receiving them, the state of grace is pre-required. For these by their primary institution from Christ are ordered, not to conferring first grace, but its increase, since they already suppose first grace in the subject. Hence they sin gravely who knowingly receive the Sacraments of the living in the state of mortal sin, and indeed more gravely than those who unworthily minister or confect them. - St. Ligorius, n. 86. - But the state of grace is to be procured through confession if one must approach the Eucharist; or at least through perfect contrition if there is question of other Sacraments, as was said above about the Minister. But it is better, insofar as can be done, always to premise confession also to the reception of the other Sacraments.

II. For the Sacraments of the dead to be licitly received by adults, acts at least implicit of Faith and Hope are required, according to the words of the Apostle, Heb. 11:6: He that comes to God must believe that He is, and is a rewarder to those who seek Him. There is required besides an act of

sorrow for sins, because no pardon of sins is given without retraction or sorrow for sins committed. But in the Sacrament of Penance these things are necessary also for validity, because they pertain to the disposition of the penitent. - Trent, sess. 14, on Penance, c. 4. - But attrition suffices, as will be said in its place. - St. Ligorius, n. 86.

232. Questions. - **QUESTION 1º. Do Sacraments received validly but illicitly, when the obstacle has been removed, revive, or produce the graces proper to themselves [1]?**

[1] ** Here you have the question about sacraments which are to be held valid, but at the same time unformed. But in truth nothing compels that a question of this kind be restricted to those cases in which a man approaches the sacrament itself illicitly. For it can happen that the force of the sacrament finds an obstacle, although someone receives the sacrament in good faith, for example if, from inadvertence, an adult approaching baptism in no way sorrows for actual sins. Indeed this hypothesis is necessarily required, so that among such valid but unformed sacraments the Sacrament of Penance also can be numbered. For the absolution which has been imparted to one confessing in bad faith and sacrilegiously cannot be held valid, and therefore fit to exercise its force after the obstacle has been removed. See Cardinal De Lugo, De Sacram., Disp. 9, nn. 100-102, and De Poenit., Disp. 14, nn. 68, 74, 89.

Resp. Affirmatively, at least for most Sacraments. The reason is that it happens only per accidens that they do not produce their proper effects, namely on account of the obstacle; and therefore those effects indeed remain suspended while the obstacle remains; but when this has been removed, they ought to be applied to the soul. This is admitted as certain for Sacraments impressing a character. The same must probably be said also of the Sacrament of Extreme Unction and of Matrimony, which cannot be repeated during the same illness or the same marriage. - St. Ligorius, nn. 6 and 87.

QUESTION 2º. What disposition is required in the subject so that an unformed Sacrament may revive?

Resp. This general rule is commonly established: that disposition is required which was lacking, and whose absence caused the obstacle to the effect of the Sacrament; or precisely that must be placed which was necessarily required in the reception of the Sacrament. Hence per se attrition suffices for the reviviscence of Baptism and Extreme Unction [2]. But perfect contrition, or attrition with confession, is required for the other Sacraments, namely for Confirmation, Order, and Matrimony. Likewise, if Baptism was unformed because of the defect of Faith alone, it will revive by an act of Faith with attrition for the sin of infidelity. The reason is that just as the obstacle was introduced because of the lack of some required disposition, so it is removed by the placing of the same: for then no reason remains why the effect of the Sacrament should remain suspended. - Thus St. Thomas, 3 part, qu. 69, art. 10 (for Baptism). - Lugo, D. 9, n. 50 and following. - Lacroix, n. 207.

[2] ** The same must be said, as is plain, about the sacrament of Penance, if it happens to have been valid, but because of a defect of sorrow for some sin to have been at the same time unformed. See Lugo, cited place in the preceding note.

233. ○ **QUESTION 3º. Does attrition suffice so that unformed Baptism may revive, if the one receiving has committed other grave sins?**

Resp. I deny, because sins committed after Baptism are necessary matter of the Sacrament of Penance, and therefore cannot be remitted except through that Sacrament, or through perfect contrition with the vow of the Sacrament of Penance included in it. - Lugo, D. 9, n. 55. - Lacroix, n. 207.

QUESTION 4º. Is it licit to ask a Sacrament from an unworthy minister?

Resp. 1º It is not licit without cause, because thus without reason an unworthy minister would be induced to sin gravely. But this is illicit per se, because charity demands that we impede the sin of neighbor which we can easily impede. - St. Ligorius, n. 89, and others commonly.

Resp. 2º But it is licit if the Sacrament cannot easily be sought from another Priest, nor can its reception easily be deferred; for no one is held with great inconvenience to yield from his own right in order to impede the free sin of another. Then the one asking the Sacrament simply permits sin, but is not the cause of the sin. - St. Ligorius, ibid. - But a sufficient cause would be, for example, the Paschal precept to be fulfilled, or if someone otherwise would have to remain long in the state of mortal sin, or be deprived of Communion, etc.

QUESTION 5º. Is it licit to ask a Sacrament from an excommunicated or heretical minister?

Resp. If the minister is excommunicated as one to be avoided, it is not licit except in extreme necessity; but if he is tolerated, it will be licit even without grave cause, because the Council of Constance conceded absolutely to the faithful that they can communicate with the tolerated. - St. Ligorius, n. 88. - See what is to be said in the Treatise on Censures.

Treatise On Baptism

We must treat: 1. of the nature, properties, and necessity of Baptism; 2. of the matter and form; 3. of the Minister; 4. of the subject and the accessory solemnities.

Chapter I. On the Nature, Properties, and Necessity of Baptism

234. ○ The word *Baptismus* or *Baptisma* signifies the same as immersion and washing; whence Baptism is also called a laver, because it wipes away sins.

Baptism is defined: *The Sacrament of regeneration through water in the word*. Thus the Roman Catechism; or: It is the first Sacrament of the new law, and most necessary for the spiritual regeneration of man, instituted by Christ.

From Baptism of water, which is called that of the stream, Baptism of the Spirit and of blood are distinguished, by which Baptism properly so called can be supplied, if this latter is impossible [1]. The former is an ardent desire of receiving Baptism of water, with full conversion to God, namely with contrition or perfect charity [2]. The latter is the shedding of blood, or death endured for the Faith, or for another Christian virtue. But Baptism of water alone is properly called Baptism in reality. Baptism of the Spirit and of blood are called Baptisms in vow.

[1] It is not at all necessary that Baptism of water be impossible. For even before Baptism of water, which otherwise is possible but is delayed, Baptism of the Spirit can have place.

[2] The desire here is to be understood not as explicit, which would presuppose some notion of real Baptism, but as implicit; and it signifies not so much a longing in the proper sense of the name, as a prompt will of doing all those things which are commanded by God. Since this prompt will is necessarily contained in an act of perfect contrition or charity, therefore this Baptism of the Spirit in reality consists in conversion to God through contrition or charity, which will contain the vow or purpose, either implicit or explicit, of receiving Baptism of water, according as the notion of this Baptism is, or is not, present to the mind of him who is thus converted to God.

235. ○ The chief effects of Baptism are numbered as three, namely:

1. the remission of original sin and of actual sins, if there are any, through the infusion of sanctifying grace; 2. the total remission of eternal and temporal punishment due to sins; 3. the impression of the character, by which the baptized person is marked as a son of God and coheir of Christ, and is rendered incapable of receiving Baptism again. As to the first, it is clear from Trent, sess. 5, in the Decree on original sin; as to the second, from Trent, ibid., and from the Council of Florence in the Decree for the Armenians; as to the third, from the Council of Florence, ibid., and from Trent, sess. 7, on Baptism.

Baptism, therefore, is as it were the gate of the Church and of the kingdom of heaven. Hence if anyone has not been validly baptized, he can validly receive no other Sacrament.

Baptism of water, in reality or in vow [3], by divine institution is altogether necessary for salvation by necessity of means. This is clear from the words of Christ, John 3.5: *Unless a man be born again of water and the Holy Spirit, he cannot enter into the kingdom of God.* And from Trent, sess. 7, can. 5, on Baptism: *If anyone shall say that Baptism is free, that is, not necessary for salvation, let him be anathema.*

[3] According to what was said in the preceding note, understand: in vow, either explicit or implicit.

Chapter II. On the Matter and Form of Baptism

Article I. On the Matter, Both Remote and Proximate, of Baptism

§ I. On the Remote Matter of Baptism

236. Principles. - I. The valid matter of Baptism is natural water alone, or elemental water, suitable for washing. It is of Faith. This is clear: 1. from the words of Christ, John 3.5: *Unless a man be born again of water*, etc. - It is clear: 2. from the Councils, especially from the Council of Florence in the Decree for the Armenians, and from Trent, sess. 7, can. 2, on Baptism: *If anyone shall say that true and natural water is not of the necessity of Baptism, and therefore shall twist to some metaphor those words of our Lord Jesus Christ: Unless a man be born again of water and the Holy Spirit, let him be anathema.*

II. The licit matter of Baptism, outside a case of necessity, is only blessed or consecrated water, and mixed with chrism according to the rite of the Church, at least for solemn Baptism. This is clear from Canon Law. See below, on the ceremonies of Baptism. But he certainly sins gravely by a sin of sacrilege who, without grave necessity, uses impure, turbid, or feculent water, although this matter is valid. - St. Ligorius, n. 102, etc.

III. In danger of death, if matter certainly valid cannot be had, doubtful matter must be used under this condition: *If this matter is sufficient...* Then even a slight probability concerning the value of the matter suffices, because in necessity one must come to the aid of the neighbor in the best way in which it can be done. But if one so baptized survives, when there is an abundance of matter certainly valid, he must again be baptized under this condition: *If thou art not baptized, I baptize thee*, etc. - Common.

237. Resolves. - 1. Valid matter is: 1. water of springs, wells, rivers, the sea, ponds, marshes, lakes, cisterns; 2. water resolved from ice, snow, or hail, because it preserves the same substance, although accidentally it has been changed as to color, taste, or smell; 3. sulphurous or mineral water, water collected from vapor, dew, or flowing in stormy weather from a wall, leaves, etc.; 4. turbid water, mixed with another substance, provided that water is the matter truly and certainly predominating, so that according to the use or estimation of men it can still be called water. - St. Ligorius, n. 103. - Elbel, n. 8, and others commonly.

2. Invalid matter is: 1. milk, blood, tears, sweat, saliva, spittle, urine; 2. wine, oil, beer, thick broth from fat, etc.; 3. mud, ink; 4. snow, ice, hoarfrost, and other similar things not yet resolved, because in this state they are not natural water [1].

[1] ** Better, as the VV. observe (p. 929, n. 87), St. Alphonsus (lib. 6, n. 104): *It is doubted, 4. whether ice or snow not melted is suitable matter. Concina and Croix likewise deny it (lib. 6, p. 1, n. 262) with Tanner; but Aversa, cited by Croix, and Hurtado, Praepositus, and Puteanus, cited by Renzi, doubt; therefore they say that in necessity it can be used under condition.*

3. Doubtful matter is: 1. very thin broth, lye, weak beer, water from dissolved salt; thus commonly with St. Ligorius, n. 103; 2. humor flowing from a vine and from other plants. - St.

Ligorius, n. 104.

§ II. On the Proximate Matter of Baptism

238. ○ The proximate matter of Baptism is washing, which can be done in three ways, namely by immersion, sprinkling, and pouring, according to the practice of the different Churches, so that by the moral judgment of men the baptized person is judged to have been washed. This is clear from the words of the form, and from the perpetual practice of the Church, as well as from Paul, Eph. 5.26: *Cleansing by the laver of water in the word of life.*

239. Questions. - **QUESTION 1. Whether a child can be validly baptized in the mother's womb?**

Resp. The answer is affirmative, more probably, if the child in the womb is reached by water through some intervening instrument; because, since the infant already exists as a wayfarer man, he can be validly baptized. Nor is it an obstacle that the child is still wrapped in the secundina, because this is considered as a kind of part of the infant. Nevertheless, he must be baptized under condition, because it is not certainly established whether Baptism conferred in this way is valid. Therefore, if the child is born, he must again be baptized under condition. - St. Ligorius, n. 107. More recently, however, the skill of physicians has introduced another method by which a child not yet brought forth into the light can be baptized more certainly. Namely, an instrument has been invented by which the secundina is cut; and thus water, by another instrument being applied, can arrive so as immediately to touch the very body of the fetus [1].

[1] Compare the things said in Vol. I, in the note to n. 401, where abortion is treated.

** Yet here the doubt must be satisfied which the VV. raise at this place (p. 929, in note): Since St. Alphonsus, they say, calls the validity of Baptism conferred on a child existing in the mother's womb only sufficiently probable, Father Ballerini certainly errs in the note to n. 401, tom. 1, when he says: *According to those things which St. Alphonsus discusses in lib. 6, n. 107, after Benedict XIV, we can be altogether certain concerning the validity of Baptism thus conferred on infants enclosed in the womb.*

Resp. This remained: that the VV. should give the reason for that word, *ERRS*. Indeed they would rightly have written so if in Father B.'s note it were said that the validity of Baptism thus conferred is handed down as certain both by St. Alphonsus and by Benedict XIV. But no such assertion is seen there; rather it is merely said that we can be certain according to those things which St. Alphonsus discusses after Benedict XIV. Now behold the easy and obvious reason for this affirmation. For, to prevent us from being able to be certain concerning the validity of this Baptism, two things especially stood in the way: one, that he who has not yet been born cannot be reborn; the other, that an infant in the womb cannot be washed, as St. Thomas objected. But the first difficulty St. Doctor Alphonsus has now solved so lucidly that he has utterly destroyed it. To this response it will be useful to have added this other reason (in Comitolius, lib. 1, q. 3, n. 1): *If it is not a Sacrament, it is not one because birth from the womb is necessary; but that this is not necessary by essential necessity is clear from this: because a child enclosed in the womb of a dead mother is baptized after the mother has been cut open; which child cannot properly be called born. And an illustrious example stands forth in St. Raymond, to whom for this reason the surname NON-BORN was given.* But as to the other difficulty, even if the matter could have seemed less certain to the St. Doctor, who merely intimates that the child can duly be washed in the womb, citing only the testimony of Benedict XIV after Comitolius, yet concerning that matter there can now be no further doubt. Hence, indeed, the argument which Comitolius (l.c.) also reports thus: *Where nothing essential is lacking to Baptism, there it is necessary that there be true Baptism, since four essentials are considered in Baptism: matter, form, the minister with the intention of the Church, and the human supposit receiving the Sacrament. Here those four are found; therefore there can be no doubt concerning Baptism.*

But, you will say, why did St. Alphonsus call this opinion merely sufficiently probable? Resp. Let it be permitted to conjecture that the St. Doctor thus moderated his judgment because what was being maintained concerning the necessary

washing did not seem sufficiently certain to him. Hence (l.c.) he also has recourse to the doctrine of Sylvester and Vasquez, who say that an infant wrapped in the secundina is validly baptized; and he adds that this is judged probable by Laymann. And from these things it is clear how the state of the controversy, treated so clearly by St. Alphonsus, paved the way for us, so that what could seem to him only probable can now already be certainly established.

And from these things it is concluded that certainly in the state of the controversy as St. Alphonsus handles it, room is left for other questions concerning the dangers which would seem to have to be undergone by the mother, in order that the eternal salvation of the offspring may be provided for. But from this it cannot likewise be inferred that the same thing has place when the condition of the controversy has become different.

QUESTION 2. Whether Baptism is valid if the water touches only the clothes or the hair of the person to be baptized?

Resp. 1. If the water touches only the clothes, Baptism is certainly invalid, because thus no one would say that the man is washed; 2. however, it is more probably valid if the water touches the hair. But in practice the safer part must be followed. - St. Ligorius, n. 107, q. 3. - Hence, if the person to be baptized has hair, the Priest should either part his hair with the fingers of the left hand while he pours the water with the right, or baptize him on the forehead. - Scov.

QUESTION 3. Whether Baptism conferred on another part than on the head is valid?

Resp. The answer is affirmative, more probably, especially if Baptism is conferred on some more principal part, for example on the breast, shoulders, etc. Nevertheless, if necessity compelled this, afterwards, if it can be done, Baptism should be repeated under condition. - St. Ligorius, ibid., q. 4.

240. ○ **QUESTION 4. Whether one or another drop of water suffices for baptizing?**

Resp. The answer is negative, more probably, especially if the water does not flow, because that cannot be called washing, which is altogether required for Baptism. - Thus commonly. Nevertheless it seems to be doubtful matter, which in a case of necessity should be used. - St. Ligorius, n. 107, q. 6. - Elbel, n. 16. But they commonly say that the matter is then certain if the one baptizing, by movement of a moistened finger, washed a part of the body. - St. Ligorius, ibid.

QUESTION 5. Whether triple washing is required for Baptism?

Resp. 1. It is certainly not required for validity; for one washing suffices, so that someone is judged truly washed. - Thus all with St. Thomas, part 3, q. 66, art. 8.

Resp. 2. But it is required for liceity, and indeed under grave obligation, where this triple pouring of water is prescribed, as in the Roman Ritual. Yet these things seem to be understood of solemn Baptism.

Article II. On the Form of Baptism

241. ○ The form of Baptism is: *I baptize thee in the name of the Father and of the Son and of the Holy Spirit*. Thus the Council of Trent defined, according to that saying, Matt. 28.19: *Going therefore, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit*. Among the Greeks, however, it is said: *Let the servant of Christ be baptized in the name of the Father*, etc. Or: *The servant of Christ is baptized*, etc. This form is valid from the instruction of Eugene IV to the Armenians; but it is licit only in the Greek Church.

Several Theologians, among whom is St. Alphonsus, judge that the omission of the word *Amen* at the end of the form of Baptism is venial, which word, however, is not found in the Roman Ritual. Therefore it is asked whether it is to be used or omitted? Resp. The Sacred Congregation of Rites: *In the case the Roman Ritual is to be strictly observed* (June 9, 1853, Cochinchina).

This form can be vitiated in many ways, either accidentally or substantially, as was said above in the Treatise on the Sacraments in general, n. 198.

The omission of the word *I* does not pertain to the essence of the form, nor would it exceed a venial sin. - St. Ligorius, n. 111. The same seems to have to be said, at least more probably, concerning the omission of the conjunction *and*, especially if it is omitted only once and is placed before the third person. The same also more probably concerning the word *in*, although several grave Theologians contradict. But the other words are altogether required for validity.

242. Questions. - **QUESTION 1. Whether the form of Baptism is valid if it is said: I baptize thee in the name of the Most Holy Trinity, or in the name of Christ?**

Resp. to the first: No, at least more probably, because in such a form the several persons of the Holy Trinity are not sufficiently distinctly expressed; since the word *Trinity* signifies the persons only confusedly and implicitly; but Christ willed that they be distinctly expressed, as is clear from Matt., last chapter. - Thus commonly. - St. Ligorius, n. 111.

Resp. to the second: No, at least *a fortiori*, because the Trinity is in no way expressed through the phrase *in the name of Christ*. - Thus all, at least now after St. Thomas, 3 part, q. 66, art. 6; and it is clear from Canon Law in c. *Si revera*, 30, De Consecrat., dist. 4. - St. Ligorius, n. 112.

QUESTION 2. Whether Baptism is valid if there is added to the accustomed form: and in the name of the blessed Virgin Mary?

Resp. A distinction must be made: It is not valid if someone, doing this, intends to confer Baptism in the name of the blessed Virgin, namely by attributing to such names true efficacy in the value of Baptism. - But otherwise, if he does this from importunate devotion. - St. Ligorius, n. 111.

Chapter III. On the Minister of Baptism

The minister of Baptism is one thing as ordinary, and another as extraordinary. Again, the extraordinary Minister is twofold: namely the Minister of solemnity and of necessity.

243. Principles. - I. Every Priest, and only a Priest, by force of his ordination is the ordinary minister of Baptism. This is clear from various places of Canon Law and from the Council of Florence in the Decree of Union, as well as from the universal practice of the Church.

II. A Deacon is the extraordinary Minister and one of solemnity, that is, he is able to baptize solemnly, but only by delegation and for a grave cause. This is clear from Canon Law and from the Roman Pontifical, or from the instruction of the Bishop to Deacons in ordination, etc.

III. Any human being using reason, whether man or woman, whether Catholic or heretic, whether faithful or infidel, is an extraordinary Minister of Baptism, so that he can always validly baptize, and in necessity also licitly. This is drawn from the same sources as was said above in the first principle.

IV. Although every Priest by force of ordination has the power of baptizing, nevertheless he cannot licitly use it, even privately, outside a case of necessity, unless he has ordinary or delegated jurisdiction. This is clear from Canon Law and from the Roman Ritual on Baptism.

244. Resolves. - 1. Neither a Parish Priest nor a Bishop, without commission, licitly baptizes outside his own diocese or parish, or strangers within it. And therefore parents also sin who, without the license of their Prelate, bring their offspring to another to be baptized, since they violate the right of the Parish Priest. - St. Ligorius, n. 114.

2. Travelers or vagrants can be baptized in any Church which they have chosen. If by chance a woman gives birth in a village not her own, the offspring is to be baptized by the Parish Priest of that village, unless perhaps her own village is not far distant from there. - St. Ligorius, n. 114.

3. According to the more common and more probable opinion, all can receive Baptism and the other Sacraments from the Parish Priest of the place where they have already contracted quasi-domicile [1]. - St. Ligorius, n. 115.

[1] This doctrine is to be held not merely as more probable, but as certain.

4. But a stranger can be baptized with the license, either express or reasonably presumed, of his proper Priest. - St. Ligorius, n. 115.

5. Religious can baptize in a case of necessity, or with the same license of the Parish Priest and of their own Superior, since this is prohibited by no law. - St. Ligorius, ibid.

245. Questions. - **QUESTION 1. What order must be observed among the Ministers of Baptism?**

Resp. In the Roman Ritual it is thus had: *If a Priest is present, he is to be preferred to a Deacon; a Deacon to a Subdeacon; a Cleric to a layman; and a man to a woman, unless, for the sake of modesty, it is becoming that a woman, rather than a man, baptize an infant not wholly brought forth, or unless the woman knew better the form and manner of baptizing.* See St. Ligorius, n. 117.

QUESTION 2. Whether a layman sins mortally who, in necessity, with a Priest present, baptizes?

Resp. The answer is affirmative, with the common opinion. The reason is that then he truly usurps the right of the Priest, to whom by the power of Order the office of baptizing has been committed. Therefore the Priest himself also sins gravely if he yields the administration to a layman. - St. Ligorius, ibid.

246. ○ **QUESTION 3. Whether a layman sins gravely by baptizing before a Deacon?**

Resp. It is controverted. The first probable opinion affirms; because a Deacon by force of ordination is deputed to baptize, although from the actual practice of the Church he cannot baptize solemnly except for a grave cause and with the license of the Parish Priest.

The second equally probable opinion denies, because a Deacon baptizing in a case of necessity without commission does not baptize from office, but in the same way as an inferior Cleric or a layman. - St. Ligorius, ibid., says that both opinions are probable.

Chapter IV. On the Subject of Baptism

The subject of Baptism is every and only wayfarer human being not yet baptized.

247. Resolves. - 1. Infants are validly baptized, likewise those perpetually insane who have never used reason, and consequently are considered of the same condition as infants. But if they have at some time used reason, Baptism more probably is not valid unless before their insanity they had asked for it. Yet in practice these would have to be baptized under condition, both because it is not altogether established that they did not ask for Baptism, and also because according to many it is enough if someone had the will of receiving all things necessary for salvation. - On the Sacraments in general, n. 228.

2. If there is doubt whether an infant is alive, he is to be baptized under condition. Hence Theologians rightly judge generally that all abortive fetuses are always to be baptized under condition, if they are alive; especially since today the opinion flourishes, commonly received by experts, that the fetus is informed by the soul from the beginning of conception, or at least not long after [1].

[1] This opinion, midway between two opinions, one of which sets animation immediately from conception, the other at forty or even eighty days, seems to be the opinion of those who never knew or understood the reasons of either opposite opinion, and who therefore also cannot assign the reasons which impelled them to tread that middle way.

** St. Alphonsus writes (lib. 6, n. 124): *Cardenas, Roncaglia, Mazzotta, and Croix, with other very grave Authors, judge very well that all abortive fetuses, if by some movement they give a sign of life, and it is not established that they are destitute of a soul, are always to be baptized under the condition if they are alive; especially since today there flourishes the opinion, received not without applause by experts, that fetuses are informed by the soul from the beginning of conception, or at least after some days.* And in these words the St. Doctor seems to intimate that these fetuses are to be baptized both if they give a sign of life and even if they do not give a sign of life, provided at least that it is not established that they are destitute of a soul, that is, dead. And the reason is that it is established by experience that sometimes a sign of life does not appear unless microscopic instruments are applied.

But perhaps what the St. Doctor adds in the same place will be less pleasing to someone: *Besides, Tournely rightly observes* (that is, Collet), tom. 4, p. 363 (namely, On Baptism, chap. 7, art. 1, sect. 2, concl. 2), *that a fleshy mass which has no disposition of organs ought not to be baptized, since it is everywhere received that the soul is not infused into the body before that body has been formed; and then, in order that it be baptized, it is required that it indicate some vital movement, as the Roman Ritual prescribes concerning the Baptism of little children.* What Collet meant seems somewhat obscure. For he adds these things as though as an inference from those things which he had said about baptizing monsters. But it is not obscure that those things do not cohere with those things which St. Alphonsus had set forth beforehand. For the opinion concerning the soul of the fetus, whether from the beginning of conception or after some days, in no way coheres with the antiquated opinion concerning the animation of the fetus, which follows after the disposition of the organs, so that the body has been formed.

That a fleshy mass ought not to be baptized, Collet endeavors to prove thus: The Ritual of Paul V, to which in this matter more credence is to be given than to certain physicians fighting against the rest, whether physicians or philosophers, forbids that a fetus be baptized before signs of vital motion. But: 1. It is not to be thought that in the Ritual it is established that the animation of the fetus is to be determined according to time from Peripatetic opinions; 2. The sign of life of which the Ritual speaks seems to St. Alphonsus to be taken in this way: that it is not established that the fetus is already lifeless. Besides, Collet may have written those things in whatever way according to the more received opinions of his age; but in our age, since those opinions have become obsolete, surely neither right reason permits, nor does the practice of the Church allow, that ancient prejudices of that sort prescribe for us the manner of acting in that most grave business, in which the eternal salvation of souls is at stake.

3. He is validly baptized whom the Minister thinks to be another; indeed even if it is a female whom he thinks to be a male; because he intends to baptize the one present and not another.

4. Several are validly baptized at the same time with this form, *I baptize you*, provided that they are washed at the same time. But outside a case of necessity this is illicit.

248. Questions. - **QUESTION 1. Whether the children of infidels can licitly be baptized?**

Resp. 1. The answer is affirmative in the following cases, namely: 1. if they have the use of reason and consent, even if the parents oppose; 2. if the parents have fallen away from the Faith, as heretics are; because the Church has the right to coerce parents; 3. if the children are soon to die, because necessity presses, and no danger at all is to be feared; 4. if one of the parents consents, while the other resists. - St. Ligorius, n. 127.

Resp. 2. The answer is negative in other cases, for example if both parents resist, and the children are going to remain in the power of the parents; the reason is the danger of perversion. This is clear from the Decree of the Sacred Congregation of the Holy Office, 1703. And for Hebrews in particular it is clear from the Constitution of Julius III. - St. Ligorius, n. 132.

QUESTION 2. Whether Baptism can or must ever be repeated?

Resp. It can and must be repeated under condition, whenever there is some not contemptible doubt concerning its value; otherwise it cannot be repeated without grave sin, because the attempt to administer a Sacrament to an incapable subject is sacrilege. - Recall the things said above, n. 200.

249. ○ **QUESTION 3. Whether exposed infants are to be baptized?**

Resp. The answer is affirmative if those exposed infants have been exposed without testimony of Baptism having been conferred, unless from elsewhere it is established that they were duly baptized. But if they have been exposed with a note attesting that they have been baptized, it is controverted. The more common and truer opinion teaches that all these are to be baptized under condition. - St. Ligorius, n. 135.

QUESTION 4. Whether infants baptized either by midwives or by lay persons are to be rebaptized?

Resp. No, unless there is a probable suspicion of error in the Baptism conferred. Thus the very common and true opinion, says St. Ligorius, n. 156, where he commemorates the decision of the Sacred Congregation.

QUESTION 5. Whether those baptized by heretics must be rebaptized?

Resp. It is certain, of Faith, from Trent, that Baptism conferred by heretics is valid when all things required for the Sacrament are used. But Theologians commonly and deservedly think that all children baptized by Protestant ministers are to be rebaptized under condition, because there must be doubt about the matter, form, and intention of such ministers, who do not judge this Sacrament to be absolutely necessary. - St. Ligorius, n. 137 [2].

[2] To the doctrine on the subject of Baptism belong those things which St. Alphonsus hands down concerning monsters (lib. 6, n. 125): *When*, he says, *it is doubted whether a monster is a man, it is to be baptized absolutely if the head is human, although the*

members are beast-like; but under condition if the head is beast-like and the members human; this, indeed, if it proceeded from intercourse of a man with a woman. For if it proceeded from a man with a beast (which I think incredible), *then it should always be baptized under condition; otherwise, if from a woman and a brute; for then it should in no way be baptized, because it would not descend from Adam, since it was not conceived from virile seed.* To these things observe that the last consequence would be legitimate if it is established that a fetus of this sort cannot be a participant in human nature. But if you suppose otherwise, the consequence is not valid; for from the fact that he could not be called a son of Adam, it would follow only that he does not have original sin, according to those things which St. Thomas also has, 1.2, q. 81, art. 4, and 2, dist. 31, q. 1, art. 2, ad 3, but not that he does not need sanctification, which can be from grace alone. St. Alphonsus continues: *But if it has duplicated members of a man, and it is doubted whether it is one man or two, a double Baptism is to be conferred, one absolutely, the other under condition on that part in which the members appear more imperfect*... Then he refers to the Roman Ritual, in which these things are had: *But in baptizing monsters, if the case happens, great caution must be used; concerning this, if there is need, the Ordinary of the place or other experts are to be consulted, unless danger of death threatens. A monster which does not present the human species must not be baptized; but if there is doubt about this, let it be baptized under this condition: If thou art a man, I baptize thee*, etc. *But that concerning which there is doubt whether it is one person or several is not to be baptized until this is discerned; and it can be discerned if it has one or several heads, one or several breasts; for then there will be as many hearts and souls, and distinct men; and in that case each is to be baptized separately, by saying to each: I baptize thee*, etc. *But if danger of death threatens, and time does not suffice that each be baptized separately, the minister, pouring water on the heads of each, will be able to baptize all together by saying: I baptize you in the name*, etc. *But when it is not certain that there are two persons in the monster, as because it does not have two heads and two breasts well distinct, then first one must be baptized absolutely, and afterwards the other in this way: If thou art not baptized, I baptize thee*, etc.

Chapter V. On the Accessory Solemnities of Baptism, Namely on Sponsors and Ceremonies

Article I. On Sponsors

Sponsors are, as it were, spiritual fathers, who lift the baptized person from the sacred font, and, in default of the parents, undertake care of him upon themselves.

250. Principles. - I. In solemn Baptism, under grave obligation, at least one sponsor must be used, whether the sponsor is a man or a woman; nor can more than two licitly be used. Thus the Council of Trent established, sess. 24, c. 2, on Reformation. But if the Parish Priest admitted more than two sponsors, he would sin gravely, because he would harm the precept of the Church imposed under grave obligation, lest relationships be multiplied. - St. Ligorius, n. 154, at the end.

II. That someone be truly a sponsor, the following conditions are required: 1. that he have the use of reason, and himself be baptized; 2. that he have been designated as sponsor by the parents or the Parish Priest; 3. that he touch the baptized person by himself, or at least through another; 4. that he have a true intention of carrying out the office of sponsor. - St. Ligorius, n. 146.

251. Questions. - **QUESTION 1. What are the obligations of sponsors?**

Resp. They are bound to fulfill the office of teacher in a case of necessity, or when the parents of the little spiritual child are lacking. Hence they are bound to instruct the baptized person concerning the Faith, morals, various obligations, etc. But they are freed from every obligation when they can prudently presume that the baptized person is diligently instructed by the parents. - St. Ligorius, n. 147.

From this, the Priest, after Baptism has been conferred, must admonish the sponsors concerning the obligations undertaken, and besides concerning the spiritual relationship contracted. - But concerning that relationship contracted through Baptism we shall speak where the impediments of matrimony are treated.

QUESTION 2. Whether in private Baptism a sponsor must necessarily be used?

Resp. No, because it does not seem to be required by the Church except for solemn Baptism. Nevertheless, even in private Baptism a sponsor can be used, and is more laudably used. - Thus commonly. - St. Ligorius, n. 147, who nevertheless, n. 149, more probably judges that then spiritual relationship is not contracted.

QUESTION 3. Whether sponsors can be two males or two females?

Resp. No, because Trent established that at most two sponsors can be used, namely a man and a woman. But it is probable that it is only venial if it is done thus. Nevertheless, several with Bonacina think it to be mortal. - This seems truer, says St. Ligorius, n. 155, if the sponsors were of different sex

from the infant, because thus relationships would be multiplied, which Trent wished to prohibit; otherwise if they were of the same sex.

252. ○ **QUESTION 4. Whether the sponsor of a male, if he is the only one, must be male, and of a female, female?**

Resp. No, more probably; because Trent says: *Whether a man or a woman*; therefore a man or a woman can be used indiscriminately. - St. Ligorius, ibid.

QUESTION 5. Who are prohibited from being sponsors?

Resp. Validly indeed, but illicitly, the following are sponsors: 1. an Abbot and Monk, or a Religious and Nun of any Order; 2. spouses with respect to spouses, and parents with respect to children; 3. all who are of wicked morals and lost reputation, as heretics, etc. - St. Ligorius, n. 156.

Article II. On the Ceremonies of Baptism

It is mortal to omit all the ceremonies of Baptism, or some notable one from them, because thus a grave precept of the Church is violated.

253. Resolves. - 1. Necessity being excluded, it is mortal to baptize without the anointing of Chrism, because this has a special and grave signification. - St. Ligorius, n. 141.

2. Outside a case of necessity it is mortal to baptize solemnly with water not consecrated, because an omission of this sort in the ceremonies of Baptism is very grave. More probably also the same must be said if private Baptism is in question [1], as the Salmanticenses, Roncaglia, and Diana judge. Nevertheless Lacroix, n. 263; Gobat; St. Ligorius, n. 102, and in *Homo apostolicus*, n. 8, hold the opposite opinion, and not improbably.

[1] It scarcely appears why this opinion is called by the Author more probable. Indeed the authors alleged by him are conveniently explained of solemn Baptism, as St. Alphonsus also interpreted them, and they do not make any word about private Baptism. Nay, in the Synod of Genoa held under His Eminence Cardinal Tadini (chap. 5, section 1, On Baptism) it was forbidden that anyone use consecrated water in Baptisms conferred privately. See Frassinetti, *Comp. Theol. mor.*, note 90.

3. It is mortal to baptize without necessity outside the Church, unless proximate danger of death threatens, or there is some other great inconvenience. - St. Ligorius, n. 142.

4. It is mortal to omit the anointing with the oil of catechumens, or other similar things, because it is grave matter, at least from the end of the Church, just as the mixing of water with wine in the holy Sacrament of the Eucharist. - St. Ligorius, n. 144.

254. Questions. - **QUESTION 1. If Baptism solemnly conferred is discovered to be invalid, whether the ceremonies also must be repeated?**

Resp. It is controverted. There is a twofold probable opinion. Hence the ceremonies need not necessarily be repeated; nevertheless it is to be advised that they be repeated, if this can be done without scandal or infamy.

QUESTION 2. How is the prohibition of using old chrism, or chrism of another year, to be understood?

Resp. 1. It is to be taken rigorously when new chrism is had. Therefore a Priest would sin gravely who, disregarding recent chrism, used old.

Resp. 2. But in solemn Baptism it is permitted to use chrism of the preceding year until fresh consecrated chrism has been received. Therefore the anointing with chrism and oil must not be omitted for this reason, that oils recently blessed could not yet have been had, nor for that cause must Baptism be deferred to another time, however brief. - Thus against not a few, from the recent decision of the Sacred Congregation of Rites, given on September 19, 1859, in Cadurcensis.

But the blessing of the baptismal font on Holy Saturday must be done with chrism of the preceding year, unless the Parish Priest has been able to procure recent oils for himself; nor must the infusion of chrism and oil be omitted until another is received. - Thus from the decision of the Sacred Congregation of Rites just cited.

255. ○ **QUESTION 3. Whether the interrogations which, from the Rubric of the Roman Ritual, are to be made to the sponsors, can be made in the vernacular language?**

Resp. No; but all things must be done as they lie in the Roman Ritual. Thus very recently the Sacred Congregation of Rites, on August 12, 1854, in Lucionensis. - Besides, nothing prevents those things which pertain to the Sacrament of Baptism itself from being explained in the vernacular language. - Thus from the response of the Sacred Congregation of the Holy Office to the Vicar Apostolic of Siam, April 30, 1808.

Appendix. On the Caesarean Operation

In order to baptize an infant not yet born.

The operation or Caesarean section consists in this: that the uterus of the pregnant mother is opened, so that the fetus may be extracted. A twofold chief question occurs, namely whether or when it can be done, or must be done.

256. Questions. - **QUESTION 1. Whether or when it can be done?**

Resp. The following rules seem to have to be established:

Rule I. When the mother is dead, it is certain that the Caesarean operation can be done, and indeed immediately when her death is established. Yet the Prefect or Superior of the place must be admonished, and witnesses approved by him must be used both for recognizing the death, and for greater certainty of the matter, and especially lest the author of the operation be traduced as guilty of homicide. But the reason why it can be done is evident: for if anything stood in the way, it would be the danger of the mother; but from the hypothesis her death is certainly established; and from another side the life spiritual, indeed perhaps also temporal, of the infant can be saved. - See Gangiamila in the work whose title is *Sacred Embryology*.

Rule II. While the mother is living, the Caesarean operation can never licitly be done whenever there is danger, either proximate or probable, of the death of the mother to follow from it, although, if it is

not done, the mother and the offspring will certainly perish. The reason is that this would be the same as directly killing the mother, which is never permitted. - Thus St. Thomas, 3 part, q. 68, art. 11, ad 3, where he says: *A man ought not to kill the mother in order to baptize the child.* - St. Ligorius, n. 106. - Hence the operation cannot be done when a very skilled surgeon is lacking, nor when the mother is so debilitated by disease that the operation, otherwise not dangerous, is going to induce proximate danger of death from the circumstances, etc.

257. ○ Rule III. While the mother is living, the Caesarean operation can licitly be done, with these circumstances posited, namely: 1. if she cannot give birth naturally, or is going to die before she gives birth, with the greatest danger of the infant's death before he can be baptized; 2. if, from the judgment of a skilled surgeon, proximate danger of the mother's death is absent. But such danger can be absent if the mother is robust, as is clear from innumerable examples and from the more common opinion of physicians and surgeons, whose art, especially in our times, has become much more advanced and perfect. - See *Sacred Embryology*, lib. 3, c. 9. - Elbel, n. 60, etc. - The reason is clear; for there is no danger, or at least it is very slight and remote, and therefore if perhaps death follows, it will seem to follow only *per accidens*.

258. ○ **QUESTION 2. Whether or when it must be done?**

Resp. 1. When the mother is dead, it is certainly to be done under grave obligation, even with the parents or relatives unwilling or resisting, if it can be done; because from the law of charity the eternal salvation of the infant must be procured with every care and labor. - Thus St. Thomas, ibid., where he adds: *If, however, the mother has died while the offspring is living in the womb, she must be opened, that the child may be baptized.* - Thus also the Roman Ritual establishes. This especially holds if the time of delivery is imminent, because, since the fetus is more robust, a greater hope of baptizing him shines forth.

The operation is not for that reason to be omitted if it is known that the mother has been pregnant for a short time; because it is clear from many examples that the animation of the fetus occurs a little after conception. - See *Sacred Embryology*, lib. 1, c. 7.

Moreover diligent care must be used that the region of the uterus of the deceased woman be kept warm until the operation has been done; otherwise the infant would more easily withdraw from life before he could be baptized.

259. Resp. 2. The operation is to be done even while the mother is living, if from the judgment of experts the infant cannot otherwise be baptized. But the mother is bound per se, and speaking speculatively under grave obligation, to suffer it, if it can be done without proximate danger of death. The reason is that anyone is bound to suffer a temporal inconvenience for preserving the spiritual and eternal life of the infant. This follows from the general law of charity. - Thus commonly with Elbel, n. 60. - St. Ligorius, ibid. - *Sacred Embryology*, lib. 3, c. 4.

I said: *per se and speaking speculatively*; for in practice the Confessor must take care not to urge the mother under grave obligation on account of the too great danger that, by denying consent, she die in

the state of mortal sin; and thus, while he wishes to save the spiritual life of the infant, the mother herself be damned. Therefore it will be enough to exhort her to consent to the incision.

Besides, since it is clear that the fetus very often survives the deceased mother, great hope shines forth of baptizing him when she has died, and therefore a lesser obligation of incision presses.

The mother is not bound to undergo the operation if, with the operation omitted, she alone is judged to be going to perish; because no one is bound to preserve life by extraordinary and so arduous means. - But if there were only a slight hope of preserving the offspring, the mother indeed could undergo the operation, but would not be bound to do so, because charity does not press so much amid so great uncertainty of the outcome. - Thus commonly with St. Ligorius, ibid.

Besides, from the new art of physicians, the infant can be baptized in the mother's womb with moral certainty by the aid of some instrument, as was said above, without there being need to recur to the Caesarean operation [1].

[1] Compare the things said above (vol. I, note to n. 401), where abortion is treated, and the things which you have on the same argument in the note to n. 239 of this volume.

End of the Treatise on Baptism.

Treatise On Confirmation

260. ◦ Confirmation is defined: A Sacrament of the new law, by which, through an anointing with chrism, under a certain form of words, there is given to the baptized the fullness of the Holy Spirit, for firmly believing and for intrepidly confessing the Faith.

It is clear that Confirmation is a true Sacrament distinct from Baptism: 1. from the definition of the Church. For thus Eugene IV in the Decree of Faith: *Through Baptism we are spiritually reborn; through Confirmation we are increased in grace and strengthened in faith.* - See also Trent, sess. 7, can. 1, on Confirmation; 2. from the fact that there are found in it the three things essentially required and sufficient for every Sacrament, namely an exterior rite, the promise of grace, and the institution of Christ. For: 1. the exterior rite is had in the things and words, or in the matter and form; 2. the promise and conferral of grace is had in Acts 8.17, where it is said that Peter and John, sent to Samaria to confirm the faithful already baptized, *laid their hands upon them, and they received the Holy Spirit*; 3. the divine institution is sufficiently understood from the power itself by which the Apostles, after Baptism, conferred the Holy Spirit through the imposition of hands; for they could not do this from their own virtue.

But when this Sacrament was instituted is not established. More probably it was instituted after the resurrection, when Christ said to the Apostles (John 20.21): *As the living Father sent me, so I send you*, etc., by which words he conferred on them full episcopal power over the mystical body of the Church. According to others, Christ instituted the Sacrament of Confirmation at the supper, after the institution itself of the Eucharist.

We must treat: 1. of the matter and form of Confirmation; 2. of its Minister; 3. of the subject of the same.

Chapter I. On the Matter and Form of Confirmation

Article I. On the Matter of Confirmation

261. ○ I. The remote matter of Confirmation is chrism made from olive oil and balsam, and blessed by a Bishop. - Thus commonly, and it is clear from the Council of Florence in the Decree on the Sacraments. It can also be said that the partial remote matter is the hand of the Bishop formally as such, inasmuch, namely, as the imposition of the hand is the partial proximate matter, as will soon be said.

II. The proximate matter is the anointing with chrism applied to those to be confirmed by the Minister of this Sacrament through the imposition of the hand. This is clear from the Declaration of Benedict XIV, in the Encyclical Letter *Ex quo primum*, where he has these things: *Therefore let this be said, which is beyond controversy: namely, that in the Latin Church the Sacrament of Confirmation is conferred by using sacred chrism, or olive oil mixed with balsam and blessed by a Bishop, and by the sign of the Cross being traced by the Minister of the Sacrament on the forehead of the recipient, while the same Minister pronounces the words of the form.*

Therefore the proximate matter of Confirmation does not partially consist, as several formerly wished, in the general imposition of the hand made by the Bishop on all those to be confirmed. - See St. Ligorius, n. 164, at the end.

262. Questions. - **QUESTION 1. Whether balsam is required by necessity of the Sacrament?**

Resp. The answer is affirmative, more probably, as it seems, from the Decree of Eugene IV for the Armenians, where he says that the matter of Confirmation is chrism made from oil and balsam. But balsam of any region suffices, and in that quantity alone which is enough that it can give its odor; nor is it necessary that it be mixed with all the parts of the oil. - St. Ligorius, n. 162.

QUESTION 2. Whether the chrism must necessarily be blessed?

Resp. 1. The answer must be affirmative absolutely, if the discussion is about necessity of precept. - Thus all with St. Ligorius, n. 163.

Resp. 2. The answer seems to have to be affirmative even if the discussion is about necessity of the Sacrament. For the constant practice of the Church and the Decree of Eugene IV persuade this, in which it is read that the matter of Confirmation is blessed chrism. - Thus commonly with St. Ligorius, ibid. - But whether chrism must necessarily be blessed by a Bishop will be said below, where the Minister is treated.

263. ○ **QUESTION 3. Whether the chrism must necessarily be of that year?**

Resp. This is not required by necessity of the Sacrament, because whether it is old or new, the matter is not changed; but it is required from the precept of the Church. Hence a Bishop who confirmed with old chrism would sin gravely. For to this end new chrism is consecrated on the Lord's Supper, the old having been burned. - St. Ligorius, n. 163, and others commonly.

QUESTION 4. Whether for the value of the Sacrament the oil must necessarily be of olives?

Resp. The answer is affirmative. The reason is that this is properly called oil. Hence oil made from another matter, for example from nuts, is not valid matter, because it does not come simply under the name of oil. - Thus commonly with St. Thomas, p. 3, q. 72, art. 2. - St. Ligorius, n. 162.

264. ◦ **QUESTION 5. How must the anointing be done?**

Resp. It must be done with the right thumb of the Bishop, in the manner of a cross, on the forehead of the confirmed person. Nevertheless the anointing would be valid if it were done with another finger of the Bishop, and even if it were a finger of the left hand, because it would truly be done through the imposition of the episcopal hand. Yet the Bishop would sin who did this without necessity, because he would depart from the practice of the universal Church; although it does not appear that the inversion of the said ceremony reaches grave fault. - St. Ligorius, n. 165, and others.

QUESTION 6. Whether the anointing can validly be done by means of an instrument?

Resp. No. The reason is that the immediate imposition of the hand of the Minister would be lacking, which from what has been said is altogether required. Nor may you say that Extreme Unction is validly ministered by means of an instrument; for in that Sacrament the imposition of the hand is not required for validity, as it is in Confirmation. - St. Ligorius, n. 166, and others commonly.

Article II. On the Form of Confirmation

265. ◦ The form of the Sacrament of Confirmation consists in these words: *I sign thee with the sign of the cross, and I confirm thee with the chrism of salvation, in the name of the Father and of the Son and of the Holy Spirit.* - Thus Eugene IV defined in the cited Decree. - It is also clear from the constant practice of the Church.

By the words *I sign thee with the sign of the cross*, it is signified that, as a soldier is accustomed to be adorned with the insignia of his leader, so a man through this Sacrament is signed exteriorly with the cross, and interiorly with an invisible character, as with the military sign of Christ. - By the words *I confirm thee with the chrism of salvation*, it is expressed that a man through this Sacrament is anointed like an athlete, exteriorly with chrism, but interiorly with the grace and strength of the Holy Spirit. - But by the remaining words, *in the name of the Father*, etc., there is expressed the principal cause conferring the fullness of spiritual strength, which is the Most Holy Trinity; and at the same time the principal mystery of the Christian Faith, which both is proposed to men in Baptism to be believed and in this Sacrament to be held and openly professed. - St. Thomas, q. 72, art. 4.

266. Questions. - **QUESTION 1. Which words of this form are essential?**

Resp. For validity the following are altogether essential: 1. the word *confirm*, unless it is supplied by another synonymous word; 2. the expression of the Most Holy Trinity, as in Baptism; 3. the word *thee*, by which the subject of the Sacrament is designated; 4. the words *I sign thee with the sign of the cross*, and also the words *with the chrism of salvation*. But to say *I strengthen* for *I confirm*, or *of sanctification* for *of salvation*, would be only an accidental change. - St. Ligorius, n. 168, with others commonly.

QUESTION 2. Whether the form used among the Greeks is valid: THE SEAL OF THE GIFT OF THE HOLY SPIRIT?

Resp. The answer is affirmative, with the common opinion of Theologians. For the sense is: by this sign the gifts of the Holy Spirit are given, with the verb omitted according to the custom of the Greeks. Otherwise one would have to say that the Greeks do not have the Sacrament of Confirmation, which is very hard. It is clear besides from the Declaration of Benedict XIV, in the encyclical letter *Ex quo primum* to the Bishops of the Greek rite, March 1, 1756. - In St. Ligorius, n. 164.

Chapter II. On the Minister of Confirmation

267. ○ I. The Bishop alone is the ordinary Minister of this Sacrament. Thus Innocent III and the Council of Trent declared, sess. 7, can. 3: *If anyone shall say that the ordinary Minister of holy Confirmation is not the Bishop alone, but any simple Priest, let him be anathema.*

II. A simple Priest can confirm as extraordinary Minister from the special delegation of the Supreme Pontiff. This is clear from the practice of the Church and from the Bull of Benedict XIV, *Eo quamvis tempore*. - See St. Ligorius, n. 170. - But the Priest must use chrism blessed by a Bishop. This is clear from the Decree of Eugene IV, where it is said that the matter of Confirmation is chrism blessed by a Bishop.

268. Questions. - **QUESTION 1. Whether the Pope is able to delegate also to a simple Priest the power of making chrism?**

It is controverted. Not a few affirm with St. Ligorius, n. 163; but several others deny.

QUESTION 2. Whether a Bishop can confirm faithful who are not his subjects?

Resp. 1. As to validity, he can confirm all, as follows from the power of Order.

Resp. 2. As to liceity, he cannot confirm except those who are found in his diocese; and he would sin gravely by confirming even his own subjects in another diocese, because Confirmation is an exercise of jurisdiction of the external forum, which cannot be performed without the license of the Ordinary of the place.

But he can confirm strangers in his own diocese, because unless the contrary is established, the tacit consent of other Bishops is always presumed. - Thus more probably and more commonly. - St. Ligorius, n. 173.

269. ○ **QUESTION 3. When is a Bishop bound to confirm?**

Resp. 1. He is bound to confirm those asking, whenever he conveniently can, if he cannot defer it to another proximate time.

Resp. 2. He is also bound at times to provide his subjects an opportunity of receiving this Sacrament. Hence he would sin gravely if for a long time he abstained from conferring Confirmation, for example for eight or ten years, and did not go around the diocese, at least through the principal places, unless he were excused by moral impossibility. - St. Ligorius, n. 175. - Lacroix, n. 388, and others commonly.

QUESTION 4. Whether a Bishop sins gravely by omitting to confirm a dying person asking for the Sacrament?

Resp. No, at least probably. The reason is that since this Sacrament is not necessary for salvation, the inconvenience of going to sick persons lying in their own homes excuses. It is also confirmed by common practice. - St. Ligorius, n. 175. - Lacroix, n. 390 [1].

[1] From those things which Lacroix brings forward in this place, you will gather that more probably a Bishop in the case does not sin gravely; but probably he is not bound even by light fault, when inconvenience excuses. But whether the common practice is that of not ministering when it can conveniently be done, I would not dare to say.

Chapter III. On the Subject of Confirmation

The subject of the Sacrament of Confirmation is every and only baptized human being not yet confirmed, although lacking the use of reason. For Confirmation perfects the spiritual life which is received in Baptism, and was instituted for all, as Baptism was.

Yet from the practice generally prevailing in the Church, children who have not yet attained the use of reason are not to be confirmed, unless a legitimate custom of places permits it, which flourishes, for example, among the Greeks and in Spain [1].

[1] Yet those things must be noted which Benedict XIV writes on this matter (*De Synodo*, lib. 7, chap. 10, n. 8). If a Bishop, he says, in his Constitutions were to say that he is prepared to confer the Sacrament of Confirmation on baptized children and infants, but constituted in danger of death; or were to order that children and infants be presented to him when he is going to minister the Sacrament of Confirmation in this or that place of his diocese, since easy access to them is not going to be possible for him later, either because of his increasing age, or because of their distance from the city, or because of the difficulty of the journey; certainly nothing in synodal Constitutions of this sort would seem to be reprehensible.... Yet the Bishop must note three things: first, that in his Constitution he say nothing by which he may seem to insinuate a necessity or precept of receiving the Sacrament of Confirmation at that age and state; secondly, that he administer the Sacrament with that dignity for which the Church wished to provide when it denied it to infants before they had attained the use of reason.... thirdly, finally, lest after he has said that he is ready to confer Confirmation on all children placed in danger, he willingly hasten to the more noble and to those pleasing to himself, and refuse to go to the poor or to others of the lowest common people; for this indeed would be done with acceptance of persons and with the scandal of many.

if, when they can approach Confirmation, they refuse and neglect it.

270. Questions. - **QUESTION 1. Whether, or of what sort, is the obligation of receiving the Sacrament of Confirmation?**

Resp. 1. There is no obligation by necessity of means. For even through Baptism alone there can be had the remission of sins and eternal life.

Resp. 2. According to St. Ligorius, there is an obligation under grave sin from divine precept, at least during the course of life and when a suitable occasion is given; and he proves this from the Declaration of Benedict XIV in the Bull *Etsi pastoralis*, on the rites and dogmas of the Greeks, where he says, section 3, n. 4: *They are to be admonished by the Ordinaries of places that they are held by the guilt of grave sin* Scavini notes, however, that the words of Benedict XIV do not conclude for all; because the Pontiff speaks only of those invalidly confirmed by Greek Presbyters, who therefore refused to approach Confirmation again, because they regarded the first as valid. Whence there was here a particular reason for obliging them to receive the Sacrament of Confirmation, namely, that they might thus retract their error [2].

[2] The VV. observe (p. 930, n. 89) that St. Alphonsus thought the same on this question not only in the works of Moral Theology, but also in the dogmatic work written in Italian; and they bring forward these words of the St. Doctor: *Let it be noted here that the same Benedict XIV in the Bull Etsi pastoralis declared that those who refuse or neglect, when they can, to take Confirmation while they are among the Greeks, must be admonished by their Bishops concerning the grave sin which they commit. And certainly the same must be said of those who are among Latins.* In these words it remains somewhat obscure what he means when he says, *Those who, while they are among the Greeks*, and below, *Those who are among Latins*. Indeed the question was about Italo-Greeks, namely about those Greeks who, refugees from their country occupied by the barbarous Turks, had betaken

themselves to Italy or the adjacent Islands, and there, after they had fixed their seat, preserved the Greek rite in sacred things, as they preserve it even now.

But that what Gury says after Scavini concerning the sense of the Constitution of Benedict XIV is most true is manifestly clear to one reading the Constitution itself. For in section III, where the Sacrament of Confirmation is treated, the Pontiff first (n. 1) thus speaks concerning Confirmation invalidly conferred: *Latin Bishops should confirm absolutely on the forehead infants, or others in their Dioceses* (for those Greeks are subject to the Latin Bishop in whose Diocese they reside), *baptized by Greek Presbyters; since neither by our Predecessors nor by Us has faculty been granted, or is granted, to Greek Presbyters in Italy and the adjacent Islands, that they confer the Sacrament of Confirmation on baptized infants; nay rather, as far back as the year 1595, by Clement VIII of happy memory, our Predecessor, it was expressly forbidden to Italo-Greek Presbyters that they confirm the baptized with Chrism.* Then (n. IV), concerning those who had been invalidly confirmed by Greek Presbyters, he thus decrees: *Although those confirmed by a simple Priest are not to be compelled to receive this Sacrament of Confirmation from a Bishop, if scandals could arise from such compulsion, since the Sacrament of Confirmation has no such necessity that without it someone cannot be saved; nevertheless they are to be admonished by the Ordinaries of places that they are held by the guilt of grave sin if, when they can approach Confirmation, they refuse and neglect it.* Therefore it is manifest that here a general question is not being treated, but one concerning those who, invalidly confirmed, perhaps even to favor the presbyters who had wished to confirm them badly, were refusing to approach again.

There is added the fact that it is beyond the custom of the Apostolic See, and especially of Benedict XIV, abruptly to define a controversy against the most common opinion of the Doctors without any cause.

QUESTION 2. What is to be done in doubt whether someone has been confirmed?

Resp. He can be confirmed again under condition, as is clear from the things said in the Treatise on the Sacraments in general, n. 206. But someone is not bound to this if he truly and probably believes that he has received this Sacrament. - St. Ligorius, *Homo apostolicus*, n. 48.

271. ○ **QUESTION 3. What dispositions are required in those to be confirmed?**

Resp. There is required: 1. the baptismal character for the validity of the Sacrament, and besides, in an adult, the intention of receiving the Sacrament, as is clear from the things said on the Sacraments in general, n. 230.

2. The state of grace, because Confirmation is a Sacrament of the living. Wherefore he who is conscious of mortal sin must have recourse to the Sacrament of Penance, unless he is perfectly contrite. The general custom is that no one be confirmed unless he presents a schedule signed by the Parish Priest.

3. That the one to be confirmed be imbued with the rudiments of Christian doctrine, especially those things which are of necessity of means, and which pertain to the Sacraments of Penance and Confirmation. - Thus commonly.

QUESTION 4. Whether the one to be confirmed must be fasting?

Resp. No, with attention to present custom. For the canonical laws which prescribed fasting for receiving Confirmation have gone into desuetude. Therefore the practice of conferring this Sacrament in the evening time also has prevailed. - St. Ligorius, n. 184, at the end, and others.

End of the Treatise on Confirmation.

Treatise On the Eucharist

Venerable, wonderful, and supremely adorable is the Most Holy Eucharist; for it is, as it were, a compendium of all the mysteries which the divine wisdom and the infinite goodness and mercy of God devised and perfected for the salvation and sanctification of men, according to that saying of Psalm 110.4, 5: *The merciful and compassionate Lord has made a memorial of his wonders; he has given food to those who fear him.*

Hence St. Augustine exclaims, tract 26 on John: *O Sacrament of piety! O sign of unity! O bond of charity! He who wishes to live has whence he may live. Let him approach, let him be incorporated, that he may be vivified.*

The Eucharist can be considered either as Sacrament or as Sacrifice. Hence the present Treatise has two parts.

First Part. On the Eucharist as Sacrament

We must treat: 1. of the nature and efficacy; 2. of the matter and form; 3. of the Minister; 4. of the subject of the Eucharist.

Chapter I. On the Nature and Efficacy of the Eucharist

The Eucharist is defined: The Sacrament of the Body and Blood of Christ, under the species of bread and wine, for the spiritual refreshment of souls.

Or: A Sacrament of the new law instituted by Christ the Lord for the spiritual refreshment of the soul, in which the Body and Blood of Christ are truly, really, and substantially contained under the species of bread and wine. This is clear from the Council of Trent, sess. 13, ch. 2 and 3.

272. Matters To Be Established As Of Faith. - I. In the Sacrament of the Eucharist Christ is really present in body and soul, together with the divinity. This is clear: 1. from the words of the promise of the Most Holy Eucharist in John 6.52: *The bread which I will give is my flesh for the life of the world*, etc.; 2. from the words of institution of the Most Holy Eucharist at the last supper, Matt. 26.26: *This is my body*, etc.; 3. from the whole tradition, and also from the definition of the Church; for thus Trent, sess. 13, can. 1: *If anyone shall deny that in the Sacrament of the most holy Eucharist there are contained truly, really, and substantially the Body and Blood, together with the soul and divinity, of our Lord Jesus Christ, and consequently the whole Christ, but shall say that he is in it only as in a sign, or figure, or virtue, let him be anathema.*

II. In the Sacrament of the Eucharist the whole Christ is contained under each species, and, when separation has been made, in any part of the species, at least a sensible part, and indeed permanently.

Hence Christ is contained as much under either one species as under both; as much in the least part of either species, at least when separation has been made, as in a greater part or in the whole species.

Therefore the entire Body of Christ is had under the species of wine, no otherwise than under the species of bread. For although, by force of the words, the Body is placed under the species of bread, and the Blood under the species of wine, nevertheless the whole Body exists undivided under the individual species. The reason is that, since the Body of Christ is living, all its parts by force of natural concomitance are inseparable, since *Christ rising from the dead now dieth no more*, as the Apostle says, Rom. 6.9. The divinity also exists under each species because of the admirable hypostatic union by which the body and soul are joined to the person of the Word. Concerning all these things it is clear from Trent, sess. 13, ch. 3 and can. 1 and 3. - Likewise from the Decree of the Council of Florence to the Armenians.

III. In the Sacrament of the Eucharist there is true transubstantiation, or the real conversion of the whole substance of bread and wine into the Body and Blood of Christ, so that, when the consecration has been completed, nothing remains of the bread and wine, the species alone excepted. This is clear: 1. from Sacred Scripture, namely from the words of Christ: *This is my body*, etc.; for these words signify simply that the present matter is the body of Christ, nor would they be simply true if the substance of bread remained together with the body of Christ; 2. from the whole tradition, and from the definition of the Church in many Councils, especially in Trent, sess. 13, can. 2.

273. Questions. - **QUESTION 1. How long does Christ remain really present in the Eucharist?**

Resp. He remains as long as the species remain entire; but he ceases to be under them as soon as the species are corrupted in such a way that, according to the estimation of men, they no longer seem to be bread and wine. - Then, by the law established by God in the institution of this Sacrament, the same matter is substituted for the species which would succeed corrupted bread and wine. - St. Ligorius, n. 225. - Lacroix, n. 474.

QUESTION 2. How long are the sacred species judged to remain entire after reception of the Sacrament?

Resp. It is not established; some say after a minute, others after five minutes, others after half a quarter of an hour [1]. But they remain longer in a Priest, who in Mass communicates under each species and with a larger Host, than in a layman, who according to custom receives only a small Host. - St. Ligorius, ibid., etc.

[1] Concerning this matter it seems that no general rule at all can be handed down. shorter or longer delay is chiefly to be sought from the different digestive power of different men. Nor is it only ascertained that some have easier digestion, others more difficult digestion, but that the same man also, according to different circumstances, both internal, namely the habit of the body and especially of the stomach, and external, for example according to the temperature of the weather, digests foods now more quickly, now more slowly; and we know that not rarely it has happened that, after vomiting had been provoked after a longer space, for example of half an hour or even an hour, the sacramental species were returned almost entire.

274. ○ **QUESTION 3. Whether the Eucharist is one Sacrament or a twofold Sacrament?**

Resp. It is one Sacrament in species, although there are several signs. For although there is a physical plurality of sign, nevertheless there is moral unity; for the Sacrament of the Eucharist, although it is composed of the species of bread and wine physically distinct, nevertheless is ordered to one spiritual refreshment in species, as to the end and signified effect, just as material food and drink are ordered

to a single bodily refreshment. Thus in Extreme Unction there are several anointings, and nevertheless one Sacrament is had, because those several anointings are ordered to one end and effect, namely to taking away the remains of sins. - Thus most commonly and certainly with St. Thomas, 3 part, q. 73, art. 2. - St. Ligorius, n. 194 and 199.

275. ○ **QUESTION 4. What are the effects of the Sacrament of the Eucharist in the soul?**

Resp. The principal effects are the following, namely: 1. the increase of sanctifying grace, which constitutes the principal effect of the Eucharist. For according to the words of Christ (John 6.56), *My flesh is truly food*, this Sacrament was instituted as spiritual nourishment; and nourishment supposes life in him who receives it; from this it happens that through this nourishment the very life of the soul, which chiefly consists in sanctifying grace, is strengthened and increased; 2. the attainment of eternal glory, for Christ promises this: *If anyone shall eat of this bread, he shall live forever* (John 6.52, etc.); 3. a most abundant bestowal of actual graces, which flow from habitual grace and infused habits; 4. the weakening of evil habits and correction of vices, especially of lust; 5. the remission of venial sins; this is clear from Trent, sess. 13, ch. 2, where the Eucharist is called the antidote by which we are freed from daily faults and preserved from mortal sins; 6. the remission of temporal punishment due to sin, not indeed of the whole, but according to the manner of devotion and fervor, as St. Thomas says, part 3, q. 79, art. 5; 7. special union with Christ and his members, as is clear from John 6.57: *He who eateth my flesh and drinketh my blood abideth in me, and I in him*; 8. preservation from future sins, both because, charity being increased through this food, the soul becomes stronger against corrupted nature, and because it is an efficacious memorial of the Lord's Passion, through which the demons were conquered. - St. Ligorius, n. 268 and 269, *Homo apostolicus*, n. 5.

QUESTION 5. Whether the Eucharist can ever delete mortal sin?

Resp. The answer is affirmative, more probably, not indeed per se, but per accidens and mediately through the infusion of grace, namely when someone, ignorant that he is in a state of mortal sin, approaches the Eucharist in good faith and with attrition concerning sins committed beforehand. Then nothing prevents the Sacrament from producing its effect; but it cannot produce the effect while mortal sin remains. Therefore it must indirectly remove that sin. - St. Ligorius, n. 268. - Recall the things said on the Sacraments in general, n. 192.

Chapter II. On the Matter and Form of the Eucharist

We must treat: 1. of the matter; 2. of the form of the Eucharist.

Article I. On the Matter of the Eucharist

I. On Remote Matter

276. Principles. - I. Bread and wine are the remote matter of the Sacrament of the Eucharist. This is clear: 1. from the institution itself of this Sacrament; for Christ at the last supper took bread and wine and consecrated them into his Body and Blood; 2. from the definition of the Church in the Lateran Council, ch. *Firmiter*; in the Council of Florence, in the Decree of Union; and in Trent, sess. 13, in almost all the chapters. - To all these is added the unanimous tradition of each Church, Latin and Greek.

II. Only wheaten bread and only wine from the vine are valid matter of the Sacrament of the Eucharist. This is clear from the Council of Florence in the Decree cited above, where it is said: *The third is the Sacrament of the Eucharist, whose matter is WHEATEN BREAD and WINE FROM THE VINE.* The perpetual tradition and practice of each Church, Latin and Greek, also agree.

277. ○ III. A very little water must be mixed with the wine, and this not by necessity of the Sacrament, but of ecclesiastical precept.

The first reason is drawn: 1. from the perpetual practice of the Church and the universal tradition of the Fathers; 2. from the Declaration of the Councils, and especially of Florence, which declares that the matter of the chalice is wine from the vine, to which a very little water must be mixed; and from the Council of Trent, sess. 22, ch. 7.

The second reason is drawn from the fact that Christ, in the institution of this Sacrament, designated only wine, and the Councils, in making mention of this mixture, speak only of precept, as Trent in the place cited; there is added the doctrine of the Catechism of the same Council, which, after it taught that this mixture cannot be omitted without mortal sin, adds: *Yet if it* (water) *is lacking, the Sacrament can stand.*

278. Questions. - **QUESTION 1. Whether bread made from rye or secale is valid matter?**

Resp. It is controverted. Some affirm, because rye, they say, seems to be of the same species as wheat, although it is of a different quality. - But others, much more commonly and more probably, deny; because rye bread is of a different species, nor is it commonly accustomed to be used by the rich. Therefore in practice this matter is prohibited under grave obligation. - See St. Ligorius, n. 200.

QUESTION 2. Whether bread made from far or spelt is valid matter?

Resp. It is likewise controverted, as concerning rye. Hence that matter also is to be held as doubtful, and therefore as gravely illicit. - St. Ligorius, ibid., and others commonly. - Nevertheless it must be observed that in various regions there are given different species of true grain, which come under the name of spelt. Hence it seems that attention must be paid to the common estimation of men.

279. ○ **QUESTION 3. Whether both unleavened and leavened bread are valid and licit matter of the Eucharist?**

Resp. 1. As to validity, affirmatively. The reason is that each is true bread, and is also simply called bread in Scripture; and each is made from wheaten flour and natural water. This is also clear from the definition of the Church. For thus the Council of Florence in the Decree of Union: *We define that in unleavened, or in leavened wheaten bread, the body of Christ is confected.*

Resp. 2. As to liceity, Latins are bound under grave obligation to consecrate in unleavened bread, and Greeks in leavened bread, each according to the rite of his Church. This is clear: 1. from the practice of each Church; 2. from the Council of Florence in the cited Decree, where it is added: *And priests ought to confect the very body of the Lord in either, namely each according to the custom of his Church, whether Western or Eastern.*

QUESTION 4. Whether a Priest consecrating in souring wine sins gravely?

Resp. The answer is affirmative, although that wine is still valid matter of the Sacrament. Indeed a mortal sin is committed not only if the wine is near vinegar, but also if it certainly begins to sour and to be corrupted, because even thus grave irreverence seems to be inflicted on the Sacrament. - Thus commonly with St. Ligorius, n. 207. - This is also clear from the Rubric, tit. 4, n. 2, where it is said thus: *If the wine has begun to sour or to be corrupted, or has been somewhat sharp..., the Sacrament is confected, but the one confecting sins gravely.*

Nevertheless Gobat, Sporer, and Lacroix probably say that, if other wine is lacking, it is permitted without scruple, as good men are accustomed, to use wine slightly souring, or not notably acid [1]. - St. Ligorius, ibid. - Hence the Rubric does not seem to be taken with so much rigor that it comprehends even all the first degrees of sharpness, but only those which proximately begin to constitute souring wine. - St. Ligorius, *Homo apostolicus*, appendix 3, exam. ordinand., n. 98.

[1] The preceding things will scarcely seem in reality to cohere with these. For if it is probably permitted to use wine slightly souring, how is whoever uses wine which begins to sour guilty of grave fault?

280. **QUESTION 5. Whether frozen wine is valid matter?**

Resp. It is controverted. The answer is affirmative, more probably. The reason is: 1. because it remains substantially wine, since it retains the same color, taste, and smell; 2. because from the Rubric of the Missal the species of wine frozen after consecration must be liquefied by applying heated cloths, and then consumed, since it is the true Sacrament (rubr. *de defect.*, section 10, n. 11). Therefore it supposes that the species of frozen wine retains the Blood of Christ; therefore the sacred species are not substantially changed through freezing after consecration; therefore neither before. - Thus St. Ligorius, n. 207, where he says that it is the truer opinion because of the reason drawn from the cited Rubric.

QUESTION 6. What quantity of water is to be mixed in the chalice?

Resp. A very small quantity of water suffices, as the Council of Florence says above, n. 277. Probably water can be poured up to an eighth part of the wine, indeed up to a fifth part according to Lugo, disp. 4, n. 58. Busembaum adds that it suffices that the water not exceed a third part. But in practice this last opinion is not to be admitted, although a third part does not corrupt the wine if it is generous. Generally, it must be counseled that the Priest not exceed eight or ten little drops. But if by chance he has poured in too great a quantity of water, some quantity of wine can again be added. - St. Ligorius, n. 210.

II. On Proximate Matter, or on the Use of the Matter Required in the Consecration Itself

281. Principles. - I. For valid consecration, besides suitable matter, it is required: 1. that the matter to be consecrated be physically present, because the demonstrative pronouns of the form, *hoc*, *hic*, necessarily require this; otherwise the form would be false, because that would be demonstrated as present which was not present; 2. that it be determined in the individual through the intention of the Minister, because just as the Minister does not consecrate unless he intends to consecrate, so also he does not consecrate this matter unless he determinately intends to consecrate it. Nevertheless actual determination is not required, but virtual determination suffices. - St. Ligorius, n. 211-214.

II. For licit consecration it is required: 1. that the Priest in no way depart from the use of the Church, especially as determined by the Rubrics of the Roman Missal; hence especially it is necessary that the matter to be consecrated be becoming and clean, because of the reverence due to so great a Sacrament;

2. that it be placed on the altar and on the corporal, indeed also on the sacred stone, according to Benedict XIV, *On the Sacrifice of the Mass*, sect. 2, n. 139; 3. that the ciborium or chalice to be consecrated be uncovered; 4. that it be done at the time of the canon prescribed by the Rubric. - See St. Ligorius, n. 218 and 219.

282. Resolves. - 1. Hosts hidden under others, or otherwise covered, are validly consecrated. Likewise wine is validly consecrated in a chalice covered with a veil, pall, or in any way whatever, because for the true presence of the matter it suffices that it can be demonstrated by the pronouns *hoc* or *hic*. - St. Ligorius, n. 212, etc., and others very commonly [2].

[2] Here the question is usually added: what must be done if unconsecrated particles are mixed with consecrated ones? Busembaum, cited by St. Alphonsus (lib. 6, n. 216), intimates a twofold opinion, namely either the whole heap must be brought to the altar, so that the priest may intend to consecrate the unconsecrated ones, or rather he should consecrate the whole heap under condition, if they are not consecrated.

And St. Alphonsus follows the latter opinion, adding: *And this is rather to be done, because in consecrating unconsecrated hosts the true determination of the matter is lacking, nor can the word hoc be verified, whence all the hosts must be consecrated under condition, that they may be validly consecrated. Thus Lugo, disp. 4, n. 136, the Salmanticenses, chap. 4, n. 129, with Laymann, Dicastillus, Aversa, Leander, Diana, etc.*

It is displeasing that the St. Doctor, after the Salmanticenses, numbers Laymann and Aversa among the patrons of this opinion, who manifestly stand for the opposite. For thus Laymann (lib. 5, tr. 4, chap. 2, n. 12): *The whole heap can and must be brought to the altar, so that the priest may intend to consecrate only those which have not received consecration.* And Aversa (*De Eucharistia*, q. 2, sect. 2): *If some unconsecrated hosts are mixed with other consecrated ones..., and the priest determines to consecrate that which is not consecrated, Lugo judges that it does not avail and does not suffice.... Yet it seems to avail and to suffice.*

To these Marcus Struggl acceded (tr. 10, q. 1, art. 2, n. 52), saying: *In such a case that whole heap of hosts is to be consecrated in another Mass with this intention: I will to consecrate this whole thing, according as it is consecrable.* Thus Laymann, Tamburini, and several others. And indeed Tamburini has it thus (*Method of Celebrating Mass*, lib. 2, c. 1, section 3, n. 10): *If through someone's carelessness it happens that consecrated particles are mixed with unconsecrated ones, let the whole heap be consecrated with the intention of consecrating those which have not been consecrated.* Nor otherwise Kresslinger (appendix to *Anacl.*, tr. 14, dist. 4, q. 4, add. 4): *I answer that such a heap can still be consecrated in such a way that the intention of consecrating is borne toward the unconsecrated ones.* Then he alleges five others, among whom also is Felix Potestas. From these it is sufficiently gathered that whoever embraces either of these opinions relies on sufficiently grave authority.

Yet this can seem singular: that Lugo, who can be held as the author of the opinion more approved by St. Alphonsus with the Salmanticenses, then doubts whether it is done licitly. *But whether*, he says, n. 139, *one could licitly consecrate all under condition, so that that other unconsecrated one might not remain mixed in, I do not see a sufficient necessity for repeating the form under condition over all those consecrated hosts... Otherwise it would also be permitted to consecrate again under condition the chalice into which after consecration a drop of unconsecrated wine had by chance been poured; yet no one will admit this.*

St. Alphonsus (l.c.), after the Salmanticenses, merely responds that this can be done licitly, as the Salmanticenses, Laymann, Dicastillus, Diana, and Leander say; nor do the Salmanticenses add anything else. But indeed, Laymann being omitted, whom we have said is cited to no purpose as thinking the contrary, Dicastillus certainly does not solve the difficulty. For Lugo (l.c.), to avoid the inconvenience and the difficulty of repeated consecration, although conditional, over particles which certainly are established to be consecrated, proposes that two of those particles be given to each person in Communion; for thus it would be certain that each person receives some consecrated host. But Dicastillus (*De Eucharistia*, disp. 4, n. 139) merely replies that this way indicated by Lugo is subject to several and grave inconveniences; and therefore

that inconvenience is rather to be tolerated, namely of consecrating conditionally even particles certainly consecrated. But this response, as is clear, does not prove against Lugo that a consecration of this sort is not illicit. Hence there is nothing wonderful that others judged the different opinion of Laymann to be preferable, and did not defer much to the reason which Lugo had objected to this opinion. *If the priest*, says Lugo (l.c., n. 139), *directed the words only to that host which was not consecrated, and wished to speak of that alone, then he would not have a conditional intention of consecrating, but an absolute one, which we have said is probably impossible, because the host of which the priest wishes to speak could not be designated in any way.* But those who have followed the opinion of Laymann do not see that probable impossibility of designating the host. This indeed will appear much more easily if it is observed that the formula of consecration is not merely indicative, but effecting transubstantiation, so that the particles *hoc* or *hic* serve rather for determining than for indicating the matter to which the intention of the consecrating priest is borne; and this determination of matter in the case seems in reality to present no difficulty.

2. Consecration is valid if the Priest thinks that only one or two hosts to be consecrated are present, when there are several, whether placed by himself or by another; the reason is that the Priest is always presumed to will to consecrate whatever is becomingly consecrable. Hence if after consecration the celebrant notices that two hosts are joined together, let him consume each as consecrated according to the Rubric of the Missal. But if before consecration, after he has offered, he notices this, let him set the other aside, and after Mass let him himself or another consume it as blessed bread. - St. Ligorius, n. 216, and all others.

3. The same must be said if someone has brought several hosts to the altar to be consecrated, or before the Sacrifice has been admonished concerning hosts to be consecrated already placed on the altar, or has observed them being brought by another that they may be consecrated, even if while he consecrates he does not so expressly remember them, or even did not uncover them at the oblation, provided that they are present on the corporal; because the preceding intention virtually perseveres. - St. Ligorius, n. 216.

4. Hosts would not be consecrated if, the Priest being unaware, they were placed even on the corporal [3], because the Priest, being wholly unaware, did not have the intention of consecrating them.

[3] There will nevertheless be those who desire the coherence of this resolution with the principles on which the preceding second resolution rests.

5. If small hosts for communicating the people are brought to the Priest a little after the oblation has been made, he will be able licitly to consecrate them, the oblation being supplied mentally. - St. Ligorius, ibid.

283. Questions. - **QUESTION 1. Whether a ciborium left outside the corporal through forgetfulness is to be judged consecrated?**

Resp. It is controverted. The first probable opinion affirms. The reason is that the positive will of consecrating that ciborium in the beginning of the Mass, nor was that will retracted; therefore it persevered virtually at the time of consecration.

The second opinion denies. The reason is that that intention of consecrating outside the corporal would have been a grave sin, and therefore the Priest is not presumed to have had it [4].

[4] That reason supposes this general principle: that an intention of consecrating cannot be presumed in a priest whenever some circumstance, although unknown to the same priest, intervenes, which, if it were known by him, would deter him from consecrating, lest namely he act illicitly. But I think that no one has ever admitted, or ever will admit, a principle of this sort. And indeed it is illicit, and according to the opinion of the Doctors gravely illicit, to celebrate Mass in an unconsecrated chalice or on an unblessed corporal, or to consecrate matter which is valid indeed but illicit, for example leavened bread in the Latin Church. Now who would contend that, if such a chalice or corporal, or such matter, were presented to a priest who did not notice it, it cannot be presumed that he had the intention of celebrating illicitly, and therefore that he did not consecrate validly? I would add that certain persons undeservedly hand down the second opinion as common. See St. Alphonsus, lib. 5, n. 217. For easily not fewer Doctors could be alleged for the first opinion also.

** Against this brief Note the VV. wrote fifteen columns (pp. 379-386). Led by Roncaglia, however, they rest in the examples which are brought forward in the Note, of an unconsecrated chalice, or an unblessed corporal, or leavened bread, in which, as they reason, if indeed intention were lacking, there would follow a most grave and altogether to-be-avoided inconvenience of a sacrifice either altogether void or mutilated. In these circumstances, therefore, they say, the intention of completing the sacrifice always prevails. But this inconvenience is absent if it is only a question of particles which the consecration does not reach; with regard to these, therefore, the intention of avoiding a defect against the rubrics, which otherwise must always be presumed in the priest, must prevail over the intention of consecrating. Therefore particles placed outside the corporal are not to be held as consecrated.

Resp. That argumentation of Roncaglia shows itself to be too weak, since, although it could perhaps have some force by resting in those examples, nevertheless it loses all force if the examples are changed. And indeed suppose with Elbel (*De Sacram.*, conf. 12, n. 49) that the priest did not uncover the pyx, or that the pyx was not consecrated, or that the pyx remained outside the corporal. Indeed, as Elbel observes in the cited place, in these circumstances the particles would per se be consecrated illicitly. But in the first two hypotheses the pyx was lying upon the altar or corporal; and in the third hypothesis the base of the pyx, by chance, while the priest wishes to move it nearer, remains under the corporal and therefore outside it. Meanwhile, however, the priest either is ignorant of those circumstances which per se would render the consecration illicit, or in no way notices them; and otherwise he renews the intention of consecrating the particles even within the canon; indeed in the third case he consecrates the particles with actual intention and with the pyx uncovered. I ask: shall we conclude, in that threefold hypothesis, that the particles are not to be held as consecrated, on this reason, namely, that apart from the absolute intention necessarily to be posited for completing the sacrifice, an intention of consecrating can never otherwise be presumed whenever some circumstance, however much unknown, would make the consecration illicit?

Namely, that one may judge suitably about these things, it is necessary that the different hypotheses be distinguished, which certainly permit or even require a different judgment. Indeed no one would deny that it can happen that, for example, a Priest admonished in the sacristy concerning particles to be consecrated then set his intention; nevertheless the particles must be judged not doubtfully but certainly unconsecrated if, for example, the cleric serving the Mass left the particles brought by himself in the epistle corner, enclosed in a wooden or paper box. And certainly the reason here will be given that that single aforesaid intention of the priest in no way extended itself to a consecration of this sort in those circumstances. But must it therefore be concluded that, if anything even slight from those things which are prescribed in the rubrics by chance and inadvertently falls away, there is always to be presumed in the priest an absence of intention, however much the same priest, acting in good faith, even has actual intention while consecrating, because, as they say, a more general intention is presumed in him never to consecrate in those circumstances in which someone conscious of the matter would not consecrate without some fault? If the matter stands thus, it would have to be said, as Reuter well observes (part 4, n. 155), that intention would be lacking in the one acting whenever he acts against a law invincibly unknown or not known here and now. For example, he adds, in one baptizing, ordaining, or contracting matrimony, intention would be lacking when the subject receiving the Sacrament did not have the disposition required for the fruit of the Sacrament, invincibly unknown to the one conferring it. But these things can in no way be admitted; and Reuter himself adds the reason, ibid., because grave inconveniences would follow from it, and therefore, from the will of Christ, the intention must nevertheless be present.

And indeed Reuter, l.c., says that these grave inconveniences do not follow from an intention of not consecrating hosts placed outside the corporal; and we shall think this most truly said if we suppose that a defect of this sort does not remain hidden, but is noticed at once. But suppose, I ask, that neither the priest nor others noticed the defect, and consequently that those particles are adored, placed in the tabernacle, and distributed to the faithful asking for Eucharistic bread, indeed

even carried to the sick as Viaticum. Would less grave inconveniences occur? Therefore that most grave reason by which Reuter proved the falsity of that principle taken generally, namely that intention is lacking in the one acting whenever he acts against a law invincibly unknown, this reason, I say, manifestly retains all its force in our case also.

Rather, it seems that one must inquire whether and how the opinions of Doctors apparently dissenting in this question can be reconciled. Now it can contribute much to this if it is inspected whether the Authors dispute about the same hypothesis or about a different one. For who does not see that, even concerning a pyx situated outside the corporal, multiple hypotheses can be imagined? And indeed we can think of two from among these, extremely opposed, concerning which hardly, or not even hardly, does dissent seem possible. One is about a pyx which the priest does not notice to be situated outside the corporal, and which he at the same time consecrates with actual intention. For who could deny or doubt that the particles were validly consecrated? The other is about particles brought by the cleric, but then left by him through forgetfulness in the epistle corner, enclosed in a box, however much in the sacristy mention had been made with the priest about their being consecrated. For neither does anyone seem able to judge these consecrated.

Therefore doubt remains concerning the case when the priest is supposed to have had only virtual intention while consecrating, and nevertheless the particles have not been placed in a position so distant or less becoming that the conjecture about intention concerning them is plainly improbable. The solution of this question does not seem to be sought elsewhere than from the preceding actual intention of the priest being weighed, namely how far that intention is to be thought to have extended itself, and therefore how far the virtual intention also extended itself; for the virtual cannot extend more than the preceding actual intention; wherefore in reality the validity or invalidity of the consecration must be said to depend on this. But once that norm of measuring intention has been rejected, which is taken from the will of not doing whatever would per se be in any way illicit, it already seems to remain that we say that this virtual intention suffices for consecrating those particles concerning which the priest, not then noticing the improper position of the particles, could have had actual intention. Therefore if the particles have been placed there where the priest, not noticing that they are outside the corporal, nevertheless could think them sufficiently present, and therefore could have an actual intention of consecrating them, we shall say that the intention of consecrating them was not lacking; but otherwise, if the particles lie in such a place that the priest could not have judged them sufficiently present, and therefore could not have had actual intention of consecrating them.

And from these things it is now clear what must be said about all those Authors whom the VV. (pp. 380-384) collected with immense labor, that they might confirm that the opinion of St. Doctor Alphonsus can be called common. Namely it must be inspected about what hypothesis they speak. For if they treat those circumstances in which all must confess that the intention of the priest cannot be presumed, it is manifest that they are improperly objected against us. But if anyone further contends that the opinion which the Authors gave about a particular hypothesis must be transferred, as some general principle, to any other hypothesis whatever, let him have this paralogism for himself.

In practice that ciborium will have to be consecrated again under condition in another Mass. Those particles can also be consumed after both Communions, but before the purification. - St. Ligorius, n. 217.

QUESTION 2. Whether a ciborium placed indeed on the corporal, but which through forgetfulness remained closed at the time of consecration, is judged consecrated?

Resp. The answer is affirmative. The reason is: 1. because hosts in a closed ciborium certainly can be validly consecrated, as was said above; 2. because the Priest is always judged to have the absolute intention of consecrating whatever, with his knowledge, is upon the corporal, is becomingly consecrable, and is had by way of a continuous thing. - Thus Reuter, etc.

You will object: From the things said in the preceding question, a ciborium left outside the corporal probably is not consecrated, because the Priest is not judged to will to sin; by parity, in the present case for the same reason.

Resp. I deny the parity. For although the Church wills the ciborium to be opened for greater reverence, nevertheless since this irreverence does not seem notable, and this can happen more

frequently, this precept does not urge so much as the precept of not consecrating outside the corporal. Reuter asserts that this is the common opinion of the Doctors.

284. ○ **QUESTION 3. Whether drops of wine adhering to the chalice, either exteriorly or interiorly, are judged consecrated?**

Resp. 1. Drops adhering exteriorly are never judged consecrated. The reason is that the intention of the Priest is deservedly presumed to be to consecrate that one thing which is licitly consecrable; but those little drops would be consecrated illicitly and irreverently and without any utility. Therefore... - Thus all. - St. Ligorius, n. 215.

Resp. 2. More probably neither are the drops adhering interiorly and altogether separated from the greater quantity judged consecrated. The reason is that it does not seem to be the intention of the Church, and therefore neither of the Priest, to consecrate anything except the wine which is potable by way of one thing and is found gathered together in the chalice. - Thus more commonly with Suarez, Laymann, etc., against others. - See St. Ligorius, ibid.

QUESTION 4. What sort of sin is it to consecrate a broken or stained host?

Resp. Scandal being excluded, it is only venial [5], unless the stain or fracture is enormous. If, however, some fracture or stain, even notable, is discovered in the host after the oblation, such a host will licitly be consecrated [6], because already through the oblation it has been somewhat dedicated and sanctified to God. - St. Ligorius, n. 204, and others commonly [7].

[5] St. Alphonsus (cited n. 204) says that it is venial if it is done without reasonable cause.

[6] St. Alphonsus limits: unless scandal of the people is feared.

[7] Here the question is usually added: whether the consecration of one species without the other is valid. And St. Alphonsus (lib. 6, n. 196, dub. 3) distinguishes a twofold case: the first, if this happens by chance; the other, if the priest has a positive intention of consecrating only one species without the other. As to the first, however, he responds: No one doubts that it is valid if this happens by chance. But as to the other he responds: Lugo denies, *De Eucharistia*, disp. 19, n. 103, whom Renzi follows.... Others commonly affirm.

But this absurd opinion is attributed to John Lugo altogether undeservedly, for he writes most expressly, ibid., n. 104: *All priests consecrating, whether by error or deliberately, one species without the other, validly consecrate*. Now he who deliberately consecrates one species without the other certainly has the positive intention, as St. Alphonsus has it, of consecrating only one species without the other.

Certainly Lugo, after he had written, ibid., n. 102, that the opinion of those who said that the consecration of one species would be invalid is rejected by all, because it asserts this without any foundation against the truth of the words - since the consecration of either species is absolute, it immediately has its effect before the consecration of the other species - then adds concerning that opinion of theirs, ibid., n. 103: *Besides, this opinion, if it is explained in the due manner, as perhaps it was understood by its Authors, is not absurd, but true*. But he does not affirm this about the hypothesis of St. Alphonsus, namely if the priest has the positive intention of consecrating only one species without the other; rather, he affirms it about an altogether different hypothesis, namely of a priest consecrating, and indeed consecrating not one species only but both species, yet with the intention of offering sacrifice wholly and efficaciously excluded.

Namely Lugo explains how one must reason about the sacrifice of the Mass no otherwise than we are accustomed to speak about the sacrament of matrimony, namely that the sacrament of matrimony was so instituted by Christ the Lord that for the baptized the character of sacrament can in no way be separated from the character of matrimony; and by parity the character of sacrament in the Eucharist is so constituted that from the institution of Christ the Lord it has at the same time the character of sacrifice. Therefore, just as no matrimony can exist among Christians which is not a sacrament, so in no way can it happen that a consecration of the Eucharist is confected and at the same time does not have the character of

sacrifice. From this, indeed, the consequence is that, just as the matrimony of one who would indeed wish to contract it, but at the same time would absolutely and efficaciously be unwilling to receive the sacrament, would be void and invalid, so also the consecration of each species would be invalid if the priest, pronouncing the form, should will absolutely and efficaciously to exclude the sacrifice by his intention.

Thus Lugo: *I suppose that which our Theologians commonly suppose and teach, namely that Christ so instituted this Sacrament that he at the same time instituted it in the character of sacrifice, and did not will sacrifice to be made without Sacrament, nor Sacrament without sacrifice...; so that priests could neither consecrate outside sacrifice, nor offer sacrifice without consecration, as Suarez proves....*

He applies this doctrine to the hypothesis of one consecrating one species in this way, l.c., n. 104: *It is consequent that he who wishes to consecrate the host alone,*

and not to offer sacrifice, but by excluding the oblation of sacrifice, would do nothing, because he does not have power for consecrating except by way of sacrifice. Yet in fact all priests consecrating one species without the other, whether by error or deliberately, validly consecrate: because they do not altogether efficaciously exclude the intention of sacrificing, but will to consecrate in the better way in which they can, and therefore will at least implicitly, through the consecration of the host, for example, to begin the sacrifice in such a way that, as far as lies in them, it can be completed through the consecration of the chalice, if it is applied; whence then they already have some intention of offering partially in the consecration of the host. Besides, if a Priest... foreseeing that sacrifice cannot be offered without the consecration of each species, and foreseeing that both cannot be consecrated, should will to consecrate one, altogether excluding the intention of offering even partially, or of beginning the sacrifice through that consecration, by an altogether efficacious will in the manner explained, then we say that he would not consecrate, because the will of consecrating must be at least an implicit will of offering partially, or of beginning the oblation of the sacrifice; and in this sense the aforesaid opinion would be true.

Therefore Lugo does not say that the consecration of one species is invalid when someone only has the positive intention of consecrating one species without the other; for he affirms that it is valid, although he deliberately consecrates one species without the other. But he pronounces it invalid when in this very consecration of one species someone efficaciously excludes any will whatever, even partially, of beginning the sacrifice, or of offering partially, no otherwise than if someone efficaciously excluded the will of receiving the sacrament while he intends to contract matrimony. This efficacious will of the sacrament is judged excluded when someone is of such a mind that, if he knew that true matrimony could not be celebrated unless at the same time the sacrament is received, he then would be unwilling even to have the contract of matrimony itself.

Article II. On the Form of the Sacrament of the Eucharist

Just as in the Sacrament of the Eucharist the matter is twofold and distinct, so also the form of consecration is twofold, one of bread and the other of wine.

285. Principles. - I. The form for the consecration of bread consists in these words: *Hoc est enim Corpus meum.* But these words, or equivalent ones, are altogether essential to the form, if you except the word *enim*.

This is clear: 1. from the universal practice of the Church and from its precept in the Roman Missal; 2. from the Council of Florence in the Decree of Union, and from Trent, sess. 13, ch. 1; 3. from the divine institution itself, for Christ transubstantiated bread into his Body by pronouncing the aforesaid words.

II. The form for the consecration of wine is this: *Hic est enim Calix sanguinis mei, novi et aeterni testamenti, mysterium Fidei, qui pro vobis et pro multis effundetur in remissionem peccatorum.*

This likewise is clear: 1. from the practice and prescription of the Church; 2. from the various Evangelists, who, although they do not report altogether the same words, nevertheless agree perfectly as to this sense.

286. Resolves. - 1. The consecration is valid but illicit if the one consecrating says: *Hic cibus est Corpus meum, hic calix est Sanguis meus*. Likewise if you pronounce *Colpus* for *Corpus* [1], *meus* for *meum*, *es* for *est*, *calis* for *calix*, *Sanguis* for *Sanguinis*, etc. Hence it is deduced that he cannot be excused from venial sin who does not use due diligence for rightly pronouncing the words of consecration. - St. Ligorius, n. 221.

[1] Except unless the imperfect manner of pronouncing arises from a natural defect of the priest, to whom the pronunciation of some letter is difficult or impossible.

2. The consecration will be invalid if you say: *Hic* (adverbially) *est Corpus meum*, *hoc Corpus est meum*, or *hic Sanguis est meus*, because these words do not have the sense by which they signify that which they must operate. - St. Ligorius, ibid.

3. The consecration is doubtful if you say: *Haec est Caro mea; illud est Corpus meum; ille est Sanguis meus*. - St. Ligorius, ibid.

4. The words of the form must be pronounced in the person of Christ formally and assertively, or recitatively and at the same time significatively, but not historically only; namely, the words of Christ must be pronounced by applying their signification to the present matter, so that this may be transubstantiated into the Body and Blood of Christ. Nevertheless, a scruple is not to be had whether the words are pronounced in the due sense; for any Priest is presumed to have the intention of doing that which Christ did and instituted, and thus he sufficiently intends to pronounce the consecratory words in each aforesaid sense. - Elbel, n. 34. - St. Ligorius, on the Eucharist, n. 220..., etc.

287. Questions. - **QUESTION 1. Whether the omission of the word ENIM in the form of consecration is grave?**

Resp. It is controverted. The first opinion probably denies, because that word is not found in the words uttered by Christ, and otherwise, as to the precept of the Church, it does not seem to constitute grave matter. - Thus St. Ligorius, n. 220.

The second opinion affirms, and St. Ligorius says that this is not improbable. The reason is that in so grave a matter there does not seem to be light matter in any deliberate change. But this opinion seems to be of little account [2].

[2] When it is a question of imposing an obligation, or even of asserting the gravity of guilt, it is altogether useless to bring forward probabilities for that end. For no one is bound to use these probabilities as the norm of his own conscience, nor can a Confessor licitly use this norm with others. But this holds much more when those probabilities are besides uncertain, and because of defect of solid foundation appear limping or wavering. As to how cautiously one must proceed concerning the gravity of fault, compare the unanimous sense of the Doctors in the note to n. 152, vol. 1.

QUESTION 2. Whether in consecration those preceding words are required as essential: QUI PRIDIE QUAM PATERETUR, etc... SIMILI MODO, etc...?

Resp. No, with the common opinion, which St. Ligorius, n. 222, holds. - Lugo, etc. The reason is that these words are pronounced only historically, nor do they seem to have any sacramental efficacy. Nevertheless, if at some time, because of doubtful consecration, the form must be repeated,

according to the Rubrics one will have to begin from the words: *qui pridie*, and *simili modo* [3]. - See St. Ligorius, n. 222.

[3] No one in reality asserted that those words, *Qui pridie*, etc., are required as pertaining to the essential form of consecration; Scotus, however, contended that they are necessary, because otherwise the essential words, *Hoc est corpus meum*, seem to be referred to the priest himself rather than to Christ.

Now the VV. (p. 931, n. 92), at this place of Father Gury, judged that readers should be warned that St. Alphonsus (lib. 6, n. 222) wrote concerning the opinion of Scotus: *I do not dare to call it improbable*.

Resp. But it seemed otherwise to others. For concerning it Vasquez (*In 3 Part.*, disp. 198, chap. 1, n. 3) says: *Nevertheless this opinion of Scotus is deservedly rejected by all as improbable.* And Suarez (*In 3 Part.*, tom. 3, disp. 59, sect. 1): *But this opinion is certainly improbable.* And Coninck (q. 78, n. 25): *It is repugnant to the common sense of the other Doctors, nor is there any reason for asserting this.* And Lugo (*De Eucharistia*, disp. 4, n. 39): *This opinion is rejected by all.* But Escobar (lib. 20, sect. 2, probl. 33, n. 220): *Deservedly almost all authors rise up against Scotus, whose foundation labors under manifest weakness.* And these things, lest more be heaped up uselessly, can suffice.

QUESTION 3. Whether in the consecration of the chalice these words alone: HIC EST CALIX SANGUINIS MEI... are of the essence of the form?

Resp. The answer is affirmative. The reason is: 1. because the words of consecration of bread are these: *Hoc est Corpus meum*. Therefore by parity the words of consecration of wine are only these others: *Hic est sanguis meus*, or other equivalent ones. 2. Because those words alone of themselves express the presence of the blood of Christ under the species of wine. - Thus commonly against some. - See St. Ligorius, n. 223 [4].

[4] Here the VV. (p. 931, n. 92) report this judgment of St. Alphonsus (lib. 6, n. 223): *Each opinion is speculatively probable. But in practice it is certain that the priest would sin gravely if he did not pronounce all the words which are had in the consecration of the chalice; and if perhaps he had said only the first words, he certainly should repeat the whole form under condition... according to the rubric, tit. 16, n. 3.*

To these things others perhaps will observe that there is certainly no ambiguity about those things which pertain to practice. But as to the statement that speculatively each opinion must be called probable, whoever greatly doubts this certainly cannot be reprehended. Compare Lugo (*De Eucharistia*, disp. 11, n. 61), where he deservedly says that the negative opinion of certain persons has most valid arguments against it. Compare also Suarez (disp. 60, sect. 1), saying that that opinion has against itself a most urgent argument.

QUESTION 4. Whether the form is valid if it is said: HOC ENIM CORPUS MEUM, with EST understood, as is frequently customary in the Latin language?

Resp. No. For although in continuous speech the substantive verb can easily be understood, nevertheless in the present case it cannot be done; both because there is not continuous speech, and especially because in the matter of which we are treating, the form has not only an assertory sense, as in common speech, but also a force effecting transubstantiation. - St. Ligorius, n. 223, and others very commonly.

Chapter III. On the Minister of the Eucharist

We must treat: 1. of the power of the Minister; 2. of the obligation of the same; 3. of the things required for ministering rightly; 4. of the manner of ministering the Holy Eucharist to the sick; 5. of the manner of preserving it.

Article I. On the Power of the Minister of the Eucharist

The Minister of the Eucharist is twofold, namely one of consecration, another of dispensation.

288. Principles. - I. Every Priest, and only a Priest, is the Minister for confecting the Eucharist. This is clear: 1. from Scripture; for Christ, instituting the Sacrament, said to all and only the Apostles reclining with him, and therefore to all and only those who would succeed them in the priesthood: *Do this in commemoration of me*, Luke 22.19; therefore all and only Priests received this power from Christ; 2. from the Council of Trent, sess. 22, can. 2, 3; 3. finally from the universal and perpetual tradition of the Church.

II. Only priests or presbyters are the ordinary Ministers of the dispensation of the Eucharist. This is clear: 1. from the Council of Trent, sess. 13, ch. 8, where it is said: *It has always been the custom in the Church of God that laymen receive Communion from Priests, but that celebrating Priests communicate themselves*; 2. from the universal practice of the Church.

289. ◦ III. Deacons, by force of their ordination, are extraordinary Ministers of the Eucharist, so that the dispensation of this Sacrament can be committed to them. This is clear: 1. from the practice of the earlier centuries, in which Deacons everywhere, from the commission of Bishops or Presbyters, whether general or particular, ministered the Eucharist; 2. from various Councils, for example the first general Council of Nicaea, the fourth of Carthage, etc. - St. Ligorius, n. 237.

IV. By ordinary right only the Parish Priest, or his Superior, can dispense the Eucharist. For this jurisdiction is required, not indeed for the value of the act as in absolution, but for the due order of ministering. This is clear: 1. from the Councils, especially from the first of Carthage, can. 7, and from Milevis, can. 18, etc.; 2. from the universal practice of the Church. Hence he who without license at least presumed of the Parish Priest ministers the Eucharist violates his right in a grave matter, and therefore sins gravely. Nevertheless, when the Parish Priest grants to others license of celebrating in his Church, he is always judged also to grant license of ministering the Eucharist unless he expresses the contrary; this is also confirmed by common practice [1]. - St. Ligorius, n. 250 and following.

[1] Indeed custom has it that in whatever church a priest celebrates Mass, he can distribute the Eucharist to the faithful who desire to become participants of it.

Nevertheless license is not so easily to be presumed if it is a question of receiving the Eucharist from obligation. - See St. Ligorius, n. 235. Wherefore, as to Paschal Communion, custom must be observed [2]; likewise, to minister Viaticum outside a case of necessity without the license of the Parish Priest is illicit.

[2] Elsewhere (vol. I, n. 480) it was noted that by law and by the universal practice of the Church Paschal Communion is to be received in each one's own parish. But if somewhere any different custom flourishes, this certainly supposes the consent of those who have the right of disposing concerning these things.

290. Questions. - **QUESTION 1. Whether, in order that a Deacon may minister, the necessity must be extreme?**

Resp. No, with the common opinion; but grave necessity suffices, namely when there is no Priest present who can conveniently minister the Eucharist. - Thus St. Ligorius, n. 236. - Lugo. - But for this the commission of the Bishop or Parish Priest is required.

QUESTION 2. Whether, or in what circumstances, Religious can minister the Most Holy Eucharist?

Resp. 1. They can always minister the Eucharist in their own Churches, either by themselves or through other Priests, except on Easter day [3]. Thus from the privileges of the Supreme Pontiffs, especially Paul III and Paul IV.

[3] At Rome Thursday in the Lord's Supper is also excepted.

Resp. 2. But they cannot minister the Eucharist: 1. in their own Churches on Easter day, as has just been said. Understand this if the discussion is about secular persons not serving the Monastery [4], even if they have already previously satisfied the precept of annual Communion in their own parish. Thus often the Sacred Congregation of the Council. Nevertheless some assert that there is a constant contrary custom, which builds up a right. - St. Ligorius, n. 240 [5]. 2. In other Churches, unless with the license at least

[4] Those serving, who can receive Paschal Communion in the churches of Regulars, are not to be understood as just any persons whatever, but those who are permanent table-companions of the Regulars and dwell in the monasteries, or, as the Synod of Trent has it (sess. 24, c. 11), who actually serve and reside within their enclosures and houses, and live under their obedience.

[5] Thus indeed St. Alphonsus (l.c.): *Roncaglia (tr. 18, c. 4, q. 2, r. 2) and Wigandt (tr. 12, exam. 4, n. 48) assert that in this there is a constant contrary custom which supplies jurisdiction.* But this assertion in reality is Roncaglia's alone; for Wigandt merely says that modern practice does not disapprove this. But Roncaglia indeed calls as witnesses of that undisciplined assertion Cardinal De Lugo (*De Eucharistia*, disp. 18, n. 50) and Fagundez (*De III Praec. Eccl.*, lib. 1, c. 5, n. 9). But neither of these has anything about such a constant custom; each says only this one thing, that that prohibition, lest Regulars distribute the Eucharist on Easter day, can probably be understood only of Communion by which the faithful satisfy the Paschal precept, but not of Communion which is made from devotion. But I called the assertion undisciplined; for since those Doctors attribute to Regulars the faculty of distributing the Eucharist on Easter day as not contrary to pontifical Constitutions, those things which Doctors are accustomed to dispute about custom conferring jurisdiction pertain nothing here.

Besides, the aforesaid interpretation of the Apostolic Constitutions shows itself to be sufficiently improbable. For when the Supreme Pontiffs conceded to Regulars the privilege that, even in Paschal time, except however on Easter day, they could distribute the Eucharist to the faithful, it is manifest that there was not given to them a faculty by which on the remaining days besides Easter day the faithful receiving the Eucharist from Regulars would satisfy the Paschal precept; rather, it was permitted that they could receive Communion from devotion. Therefore the exception of Easter day pertains also to Communion to be received from mere devotion, and not to Communion by which the ecclesiastical precept is satisfied. And since the Sacred Congregation of the Council has already defined this question several times in this way (see the resolutions cited in Benedict XIV, *De Synod.*, lib. 9, chap. 16, n. 3), these things ought not further to return into controversy.

** The VV. warn (p. 951, n. 94, with note 1) that St. Alphonsus (lib. 6, n. 240) only reports the judgment of others; but that his own opinion is to be taken from *Homo apostolicus* (tr. 12, n. 41), and thus the difficulty which Father Ballerini raises disappears.

Resp. 1. In the Note the difficulty was raised concerning the assertions of Roncaglia, and concerning St. Alphonsus it was merely noted that perhaps he had less to the point associated Wigandt with Roncaglia. But what is said in the Note concerning Roncaglia the VV. seem to have approved by their silence. Besides, whether the St. Doctor was merely reporting, or also thought that account should be taken of Roncaglia's assertions, was passed over altogether. Indeed the words of St. Alphonsus are these: *Benedict XIV reports, De Synod., lib. 7, c. 42, that the Sacred Congregation declared that Regulars cannot on Easter day minister the Eucharist to those communicating from devotion. But Roncaglia and Wigandt assert that there is a constant contrary custom which supplies jurisdiction.* Now this manner of speaking seems to belong to those who judge that the things reported in the first place are opposed by the things which they then add with the adversative particle *but*.

Resp. 2. As to what the VV. add, that the opinion of St. Alphonsus is to be drawn from *Homo apostolicus*, I, however, suspect that there will not be lacking those who think more tolerable the opinion which we have reported from the Moral work.

The words of St. Alphonsus (*Hom. Ap.*, tr. 12, n. 41) are of this sort: *Indeed in Benedict XIV there is a Decree of the Sacred Congregation, July 9, 1644, and confirmed on June 11, 1650, by which it was established that Bishops can forbid Regulars to minister the Eucharist on Easter day to secular persons, even if they themselves had satisfied the precept of the Church. And although on June 31, 1687, the same Sacred Congregation, at the instance of the parish priests of Louvain, who contended that the Fathers of the Society of Jesus could not minister the Eucharist through the whole Paschal time, gave response that they could minister, except on Easter day, nevertheless it must be understood with the prohibition of the Bishop presupposed.* But you would call this opinion especially entangled. For, with regard to the context, those last words of the St. Doctor, *with the prohibition of the Bishop presupposed*, insinuate that Regulars cannot minister the Eucharist on Easter day only because the prohibition of the Bishop stands in the way, as though, namely, Regulars by their own right, unless the Bishop prohibits it, can minister the Eucharist on that day. But this can be admitted by no reason. And indeed Benedict XIV himself (*De Synod.*, lib. 9, c. 16, n. 3) expressly recalls that in the privilege for Regulars concerning ministering the Eucharist granted by Paul IV and St. Pius V, the day alone of Easter of the Lord's resurrection is expressly excepted. And below he adds that the Sacred Congregation has often judged that on the solemn day of Easter alone Regulars are absolutely prohibited from presenting the Eucharist in their own Churches to secular persons, etc. And again, ibid., n. 5: *In the Apostolic privileges the faculty is given to Regulars of ministering the sacred Eucharist in their own Churches to secular persons, the day of Easter of the Resurrection of the Lord being expressly and by name excepted.* Therefore, even setting aside the Bishop's prohibition, it is in no way permitted to Regulars to present the Eucharist to secular persons on Easter day; for from the premises this is manifestly guarded by higher and more general law, namely Pontifical law. Indeed, if it is not lawful for Regulars to distribute the Eucharist to secular persons on Easter day, both because the privileges granted to them concerning the administration of this Sacrament expressly except this day, and because the Apostolic Constitutions expressly forbid them the administration of the Eucharist through that day, and finally because through multiple Decrees of the Sacred Congregation the prohibition of this administration has been declared and repeatedly confirmed, it is certainly sufficiently clear that this very thing is not in any way to be repeated from some supposed prohibition of the Bishop.

But you will say: 1. Does not Benedict XIV (*De Synod.*, l.c., n. 5) have these things: *But there would be no place for complaint of the Regulars if the Bishop forbade them to dare to minister the sacred Eucharist to any of the seculars on the solemn day of the Resurrection?* 2. Does not the Decree of the Sacred Congregation, July 9, 1644, say that Bishops can forbid the same Regulars that they administer the said Sacrament of the Eucharist to secular persons on Easter day?

Resp. I concede the antecedent; I deny the consequence. Certainly no place would remain for the complaints of Regulars, since they ought to know that the administration of the Eucharist on that day is forbidden to them by so many Apostolic sanctions. Likewise the Bishop could certainly require and urge that what has been sanctioned by so many Apostolic Decrees be handed over to execution. But it does not follow from this that the administration of the Eucharist is lawful for Regulars if no prohibition of the Bishop has intervened.

Article II. On the Obligation of Dispensing the Eucharist

291. Principles. - I. A Parish Priest, or any Priest having care of souls, is bound from justice to minister the Eucharist to his subjects not only at Easter and in death, but also whenever they reasonably ask, yet a legitimate cause of impediment being excluded. The reason is that it belongs to the Parish Priest from a quasi-contract to provide not only that the faithful fulfill the precepts, but also that they not lack helps which greatly profit spiritual progress. - St. Ligorius, *Homo apostolicus*, n. 8.

II. Any Priest, whether secular or regular, is bound, when the Parish Priest is lacking, to minister the Eucharist to one about to die; otherwise in other cases. The reason of the first is that anyone from charity is bound to come to the aid of his neighbor placed in so great an extremity by this salutary and most efficacious remedy. The reason of the second is clear. For no obligation intervenes, whether from justice, since there is no contract, or from charity, since a case of necessity is not supposed to be present.

292. Questions. - **QUESTION 1. Whether the Parish Priest is bound also to seek out the sick who are not asking for the Eucharist, in order that he may minister it to them?**

Resp. The answer is affirmative, at least if they are in grave danger of death. The reason is that it is the office of a good Pastor to take care that this so salutary remedy be supplied to his sheep constituted in so great a danger. It is besides gathered from Canon Law, title *On the celebration of Masses*.

QUESTION 2. Whether the Parish Priest is bound to minister the Eucharist to his subjects by himself?

Resp. No. For it suffices if he provides that whoever opportunely asks, or needs, is not deprived of the same. Therefore he can fulfill the obligation even through others. Nevertheless he must take care lest he seem idle and unconcerned if he habitually fulfills his duties through others.

QUESTION 3. Whether the Parish Priest sins gravely whenever he denies the Eucharist to one reasonably asking?

Resp. No. For if he rarely does this, for example toward one or another, scandal or grave sadness of the petitioner being excluded, he will sin only venially. The reason is that thus neither grave injury nor grave harm is inflicted, and if there is harm, it can easily be repaired. - Thus all. - Recall the things said on the Sacraments in general, n. 216.

QUESTION 4. Whether the Parish Priest is bound to minister the Eucharist even with danger of life, for example in time of plague or contagious disease?

Resp. No, very probably with St. Ligorius, n. 233. - See the things said, n. 214. Nevertheless certain persons affirm, relying on the doctrine of Benedict XIV, *De Syn. dioec.*, lib. 13, c. 19.

293. ○ **QUESTION 5. When is the Parish Priest judged to be excused from ministering the Eucharist to subjects asking?**

Resp. He is legitimately excused: 1. when subjects, because of some circumstances, do not ask reasonably, for example if they ask before Mass when they can easily wait, etc.; 2. if the parish priest himself is impeded because of infirmity or other necessary occupations, etc. Nevertheless one must act cautiously, because in these matters the faithful can easily take scandal and be kept away from receiving the Sacraments more often. - Thus all.

Article III. On the Things Required for the Licit Dispensation of the Holy Eucharist

294. Principles. - I. Besides jurisdiction [1], it is required that the Minister be free from every excommunication, interdict, and suspension from Sacred things; for otherwise he would sin gravely and contract irregularity.

[1] We have already observed above, in the note to n. 289, that the custom has prevailed that any priest celebrating Mass in any church can minister the Eucharist to those asking.

II. It is required that the Minister be in the state of grace, because the most august and most holy Body of Christ ought not to be handled by impure hands. Hence the Priest sins as often as, being

guilty of mortal sin, he distributes Communion, although probably he does not commit as many sins as there are persons communicating in the same distribution of the Eucharist. - St. Ligorius, n. 30 and following. - Nevertheless very grave Theologians, for example Lugo, *De Sacramentis*, disp. 8, n. 155, and others cited by St. Ligorius, lib. 6, n. 35, excuse from grave sin.

III. It is required that the Minister distribute the Eucharist by the customary rite of the Church. Hence, generally speaking, the administration of this Sacrament must be omitted when it cannot be done in the manner prescribed by the Roman Ritual or by the custom of the place. - See St. Ligorius, n. 241 and following.

295. Resolves. - 1. The Minister of the Eucharist must treat this most august Sacrament with great reverence, in whose presence the venerating Powers tremble and the whole heavenly Court suppliantly adores. But it is not enough that the Priest touch the holy Eucharist worthily and devoutly and minister it to the faithful; for if he is the Parish Priest, or his assistant, it belongs to him to take care that it be preserved in an honorable place, or in a becoming tabernacle. A notable omission of the care due for this can easily become mortal. - Elbel, n. 76. - St. Ligorius, *Homo apostolicus*, n. 81, and all others.

2. The Eucharist is not to be ministered except with a becoming habit, that is, with stole, surplice, and light.

3. According to the common opinion, he sins gravely who outside a case of necessity distributes Communion without any sacred vestment, because this is very indecent and against a grave precept of the Church. - St. Ligorius, n. 241. - Yet if only the stole is omitted, it seems to several and grave Theologians to be only venial, which seems sufficiently probable. - St. Ligorius, ibid.

4. It is reputed only venial to minister the Eucharist without light, or without the usual confession, *Confiteor*, etc., having been said beforehand. - Thus commonly with St. Ligorius, n. 241. - Similarly, it is held only venial to transfer the Eucharist without sacred vestments from place to place, for example from one altar to another. - Reuter, n. 168. - Mazzotta.

296. Questions. - **QUESTION 1. Whether a Priest laboring under infirmity in thumb and index finger can minister the Eucharist with other fingers?**

Resp. It seems it must be denied, at least more probably, a case of most grave necessity being excluded [2]. - Thus St. Ligorius, n. 244. - The reason is that although the whole hand is consecrated, nevertheless the index finger and thumb by the rite of the Church are specially destined for exercising this office.

[2] Here a most grave necessity seems to be required a little too severely. On this matter La Croix (lib. 6, p. 1, n. 480) writes thus: *It is probable that a priest licitly distributes Communion with the latter fingers, if he cannot with the first because of gout of the hand or another impediment, as Toletus, Arriaga, Leander, and others with Gobat have it.... Because although only the first fingers are anointed, nevertheless the whole hand seems consecrated; hence Gobat infers that a priest who without cause touched the host with the last fingers would sin only venially.*

QUESTION 2. What must be done if the Host falls to the ground?

Resp. The place into which the holy Host has fallen must immediately be covered with some clean thing and afterwards washed. If it falls onto the cloth or little linen cloth by which the hands of the communicant are covered, the place must be marked and afterwards washed in the same way. Thus the Rubric, which nevertheless according to the common opinion does not oblige under grave obligation; yet it would oblige gravely to wash the place into which the sacred species of wine had fallen, since it is imbibed; nevertheless there is no need to burn them [3]. - St. Ligorius, n. 250. - Lacroix, n. 484.

[3] Those last words: *There is no need to burn them,* although taken from St. Alphonsus (lib. 6, n. 250), do not cease to be obscure. For to what does the word *them* refer? Therefore more clearly in La Croix (lib. 6, p. 1, n. 484), whom St. Alphonsus alleges here: *Pasqualigus adds that there is no need to burn that into which the sacred blood has fallen, but that it is enough to wash it.*

QUESTION 3. What must be done if the Host falls onto the face, beard, or garments of the communicant?

Resp. In the aforesaid cases purification is to be omitted, because it is better to avoid the astonishment, disturbance, or offense of the people than to observe the Rubric, which obliges only under light obligation. - St. Ligorius, n. 250, and others commonly.

QUESTION 4. What must be done if the Host falls into the bosom or within the garments of a woman?

Resp. The woman herself must extract the Host and hand it to the Priest, from whom afterwards she is to receive it into her mouth. - Thus Benedict XIV, *On the Sacrifice of the Mass*, sect. 2, n. 176. But the fingers of the woman are to be washed, and the ablution is to be thrown into the sacrarium. If the woman cannot easily extract the Host there, let her withdraw apart, for example into some chapel, or into the sacristy, etc.

297. ○ **QUESTION 5. At what hour can Communion be dispensed?**

Resp. Regularly it must be ministered at the hours at which it is permitted to celebrate Mass either from custom or from a special Indult. But commonly with St. Ligorius it is taught that it can be ministered at any hour of the day, except, however, the last part of the day, that is, toward night. The reason is that no prohibition exists concerning this matter. St. Ligorius, lib. VI, n. 259. - Nor does the Decree of the Sacred Congregation of Rites given in the month of December 1816 stand in the way, permitting the administration of Communion from the time to the time in which Masses are celebrated in any Church on a day of great concourse. For that Decree is not exclusive, since the Sacred Congregation gave a response according to the petition, in which the matter was precisely about a day of great concourse for gaining a plenary Indulgence or Jubilee.

Here it must be added that, from a decree of the Sacred Congregation of Rites in the year 1641, Communion is not to be given in the Mass of the Nativity of the Lord which is celebrated at midnight. In St. Ligorius, ibid. Nevertheless the faculty of permitting this is sometimes conceded by privilege; and very recently it was conceded to some Bishops of France by this law, that no danger of scandal be present.

298. ○ **QUESTION 6. Whether Communion can be given outside Mass?**

Resp. Generally speaking, it is to be given, as far as can be done, after the Communion of the Priest. Thus from the Roman Ritual [4]. Yet from received usage Communion can easily be given before or after Mass, or even at any other time at which Mass can be celebrated, as was said above. Indeed, where there is a great influx of communicants, it is expedient to defer Communion until the Sacrifice has been completed, lest those who are present at Mass be detained in Church longer than is fitting and be affected with weariness. Communion outside Mass is very easily to be conceded to the sick, children, old persons, and all those who, because of weakness of stomach, cannot prolong the fast [5]. Thus St. Ligorius, n. 249, with others commonly after Benedict XIV, *On the Sacrifice of the Mass*, sect. 2, n. 162. - Indeed because of present custom there now exists no precept of giving Communion only within Mass. - Thus Billuart, diss. 7, art. 4. - Nay rather, it must be held as certain that because of the custom which has prevailed everywhere, and which cannot be abrogated by Parish Priests, there exists no precept by force of which Communion must be distributed only within Mass. - Thus the Sacred Congregation of Rites, December 7, 1844, in Januensis.

[4] The Roman Ritual does not treat of Communion to be ministered generally, but of Communion to be distributed by a priest celebrating Mass. And to this alone pertain those words: *But the Communion of the people within Mass ought to be done immediately after the Communion of the celebrating priest* (unless sometimes for a reasonable cause it is to be done after Mass), *since the prayers which are said in Mass after Communion pertain not only to the priest, but also to other communicants.* For otherwise the same Ritual prescribes in the prior place the manner which is to be observed outside Mass in imparting Communion.

[5] Add also those, and these are almost all, who, pressed by domestic cares or business, unless they are dispatched as quickly as possible, would often be forced to be deprived of the sacred table.

299. ○ **QUESTION 7. Whether Communion can be given with black vestments immediately before or after a Mass of the dead [6]?**

[6] In the preceding edition of the year 1866 we observed that the Rev. Fr. Aloysius Marchesi, Priest of the Congregation of the Mission and Consultor of the Sacred Congregation of Rites, very recently wrote an excellent Commentary on the argument of this and of the following question; in which, after the Decrees of the Sacred Congregation which are circulated had been brought forward and weighed with equal judgment and diligence, he judged that one must conclude: It is not against the rite, in Masses of the dead with black vestments, to minister Sacred Communion to the faithful, even from preconsecrated particles, by extracting the pyx from the repository. Communion can also be ministered in black vestments immediately after a Mass of the dead; but when grave necessity is given (I would think, when otherwise the faithful would be forced to lack sacred Communion) even immediately before the same Mass; yet in each case the blessing is to be omitted. But Masses of the dead are altogether to be celebrated in black vestments, so that violet cannot be used unless in the case in which, on November 2, the Sacrament of the Most Holy Eucharist is exposed for the public adoration of the faithful for the solemn prayer of the Forty Hours; but that the Sacred Congregation of Rites again responded to these things: *Deferred*.

Finally, on July 23 in the year 1868, Our Most Holy Lord Pope Pius IX confirmed the Decree of the Sacred Congregation of Rites issued on June 27 of the same year, by which an end is imposed on these questions. This Decree indeed we are pleased to transcribe here, and the more willingly because it also exhibits a certain history of the whole controversy. It is as follows.

After the more recent liturgical laws enacted by the Supreme Pontiffs Pius V, Clement VIII, Paul V, and Urban VIII, a grave controversy blazed up among Doctors and Rubricists: "Whether in Masses of the dead the tabernacle can be opened for refreshing the Faithful with Eucharistic bread." The Sacred Congregation of Rites, asked the first time, in one of Albenga, July 24, 1863, responded to the fourth: "It is not against the rite to minister Communion in a Requiem Mass, or after it with black vestments, the blessing being omitted, if it is administered after Mass." But the controversy not yet being composed, the Sacred Congregation of Rites from time to time gave responses in particular cases, without ever coming to a general Decree. Meanwhile, from the opinions of some Doctors, both the opinion spread that the holy Eucharist could be ministered to the faithful only with particles consecrated in the Mass for the dead, and in some places the custom prevailed

of celebrating Masses of the dead in violet vestments, so that not only within Mass, but also before or after the same, satisfaction might be given to the piety of the faithful desiring to be refreshed by the sacred Eucharist. Wherefore, Bishops especially very often asking the Sacred Congregation of Rites to establish by a general Decree what must be done in this matter, the same Sacred Congregation on April 12 of the year 1823, in one of Palermo, declared that this grave question should be considered particularly and officially. This again obtained in the year 1837, in one of Modena, where to the third doubt: "Whether the custom which still endures of communicating in Masses of the dead with preconsecrated particles can be permitted, or etc.," the response was: *Deferred, and let the rescript in the case of Palermo, April 12, 1823, be observed.* Nevertheless, because of the circumstances of times and things, this special inquiry of this difficult business was delayed even to our age; since in the meeting gathered on September 16 of the year 1865, when there was a question concerning the use of violet color in Masses of the dead at an altar where the Most Holy Sacrament of the Eucharist is preserved, the response was given for the third time: "Deferred, and let it be proposed again together with another doubt, whether a Priest can open the ciborium for communicating the faithful with black vestments." Finally, with new prayers of sacred Prelates intervening on March 3 of the year 1866, in the Ordinary Assembly of the Sacred Congregation of Rites a Doubt was proposed, together with the opinion which another of the Consultors opened from office: "Whether a priest can open the ciborium for communicating the faithful in black vestments?" But the Most Eminent and Most Reverend Cardinal Fathers responded: *Deferred, and let another Consultor write, and also the Assessor, all things bearing on the matter being resumed; with regard especially to opportunity.* These opinions having been printed and communicated, both of the Most Reverend Assessor and of another specially deputed from the Masters of Apostolic Ceremonies, the Sacred Congregation of Rites was assembled in Ordinary Meeting on this day at the Vatican; where the Most Eminent and Most Reverend Lord Cardinal Nicholas Clarelli-Paracciani, in the place and stead of the absent Most Eminent and Most Reverend Cardinal Constantine Patrizi, Prefect, proposed the same Doubt, and the Most Eminent and Most Reverend Cardinal Fathers set over the protection of sacred Rites, the matter having been maturely and accurately weighed also as to opportunity, responded: *Affirmatively, or that in Masses of the dead, with black vestments, Sacred Communion can be ministered to the faithful, even from preconsecrated particles, by extracting the pyx from the tabernacle. Likewise Communion can be ministered in black vestments immediately after a Mass of the dead; but when* reasonable cause being given, also immediately before the same Mass; yet in each case the blessing is to be omitted. But Masses of the dead are altogether to be celebrated in black vestments, so that violet cannot be used unless in the case in which, on November 2, the Sacrament of the Most Holy Eucharist is exposed for the public adoration of the faithful for the solemn Prayer of the Forty Hours, as was guarded in the Decree of this Sacred Congregation on September 16 of the year 1801. And thus they decreed, and commanded that it be observed everywhere, if it should please Our Most Holy Lord, on June 27, 1868.

Then, a faithful report concerning the premises having been made by me, the Secretary, to Our Most Holy Lord Pope Pius IX, His Holiness approved and confirmed the Decree of the Sacred Congregation on July 23 of the same year.

Resp. 1. It can be given after Mass if the Priest has not yet departed from the altar at which he celebrated; but then he does not give the blessing to those who communicated. - Thus from the Decree of the Sacred Congregation of Rites confirmed by Our Most Holy Lord Pius IX, July 23, 1868.

Resp. 2. According to the same Decree, Communion can also be given before Mass if there is a reasonable cause, yet the blessing being omitted. But a reasonable cause is never lacking if there are some who then ask for Communion. For very often it happens that among those asking there are certain persons who otherwise would either depart without Communion, or, by staying longer, would necessarily undergo no light inconvenience either in domestic matters or in conducting business.

QUESTION 8. Whether Communion can be given with black vestments WITHIN a Mass OF REQUIEM?

Resp. The answer is affirmative, both if Communion is given with Hosts alone consecrated in the same Mass, and if it is given from preconsecrated ones which are preserved in the tabernacle. Thus the Decree of the Sacred Congregation of Rites cited above.

300. ○ **QUESTION 9. Whether Communion can be given with violet vestments, even before or after Mass?**

Resp. This question could long be controverted, especially because of the Response which was reported of the Sacred Congregation of Rites in the cause of Orihuela (mistakenly in St. Alphonsus, lib. 6, n. 249, dub. 2, it is read Pritana) in the year 1670. But the aforesaid Decree of the Sacred Congregation also removed this doubt, by which it is established that in Masses of the dead violet vestments cannot be used, except in some Church on November 2, if the Sacrament of the Holy Eucharist is exposed for public adoration of the faithful for the solemn Prayer of the Forty Hours.

301. ○ **QUESTION 10. How is Communion to be ministered outside Mass?**

Resp. 1. If Communion is to be ministered immediately before or after Mass, one must act as in the Mass itself; but the priest, having returned to the altar, can say: *O sacrum convivium*, etc.; then he says: *Domine exaudi*, etc. - *Dominus vobiscum*, etc., with the Prayer for the time; finally, his fingers having been washed, and the sacred ciborium having been placed back in the tabernacle, he blesses those who communicated with the formula: *The blessing of Almighty God, Father*, etc., as in the Roman Ritual.

Resp. 2. If it is to be distributed at another time: 1. according to the Roman Ritual, two candles are to be lit. Yet if time presses and two candles cannot easily be lit, one will suffice. 2. The Priest, his hands washed, vested in surplice and stole of the color fitting the Office of that day, ministers, as above, and, having returned to the altar, proceeds with the rest, as above; then he gives the blessing with the right hand, but not with the pyx, except over the sick. But the versicles *Domine exaudi*, etc., *Dominus vobiscum*, etc., with the proper Prayer, are of precept. Sacred Congregation of Rites, September 24, 1842. - But prayers of this sort seem to have to be said in a voice at least moderately raised, since response is to be made to them by the minister.

302. ○ **QUESTION 11. What must be done if a minister is lacking for the Priest: can a man about to communicate, or a woman, supply?**

Resp. 1. Certainly any person about to communicate, if he is a man, can serve the Priest; or even the Priest himself can supply, by saying the *Confiteor* and responding *Amen*.

Resp. 2. A woman cannot supply, unless she is a Nun, who according to received custom answers within the cloister; then therefore the Priest himself must perform all things. Nor may you say that in necessity a woman can answer Mass, provided she stands at a distance; for in Mass the Priest alone could not answer all things. - Thus commonly. - Bouvier, *On the Eucharist*, c. 4, art. 2. - Gousset, n. 212.

QUESTION 12. Whether several particles, or one larger particle for the sake of devotion, etc., can be given to one communicant?

Resp. No. For this was expressly prohibited by a Decree of the Sacred Congregation of the Council, approved by Innocent XI on February 12, 1679. But the words of the Decree, in Benedict XIV, are these: *Let Bishops, Parish Priests, or Confessors admonish that several Eucharistic forms or particles are not to be given to anyone, nor larger ones, but the customary ones.*

303. ○ **QUESTION 13. Whether particles can be broken if they are lacking; and what must be done if some remain over, and there is no tabernacle in which they may be placed?**

Resp. to the first: The answer is affirmative from the common opinion and general practice, provided that a just cause is present, for example if another Mass is lacking or the faithful cannot wait. Indeed, when it had been requested from the Sacred Congregation of Rites whether the Rule of the Parisian Ritual expressed thus can be followed entirely: *If, when Communion is to be given, a sufficient number of Hosts has not been found, some Hosts can be divided into several particles which are distributed to individuals*, the Sacred Congregation responded: *Let the custom be observed of dividing consecrated ones, if necessity is present*. March 16, 1833, in Veronensis. Nevertheless the Priest must then divide the Hosts only into two or at most three parts, because otherwise Communion could scarcely be given with due reverence. - Lacroix, n. 508.

Resp. to the second: They are to be consumed by the celebrant before the ablutions, if this can easily be done. Otherwise they would have to be carried to the nearest tabernacle with the customary rite; nor is it to be committed that several Hosts be ministered to the faithful. - See below, n. 315.

QUESTION 14. Whether, when smaller Hosts are lacking, a Priest can take away a part of the larger Host to be consumed by himself, in order to communicate the faithful?

Resp. 1. The answer is affirmative in the case of Viaticum to be carried to one dying, by reason of urgent necessity. - Thus all. - 2. The answer is affirmative also if there would be one or another faithful person about to communicate who otherwise would have to wait for Communion not without inconvenience. - Thus commonly with St. Ligorius, n. 217.

Article IV. On the Manner of Ministering the Eucharist to the Sick

304. The Roman Ritual establishes the following. - I. Let the Parish Priest forewarn that the room of the sick person be cleaned, and that in it a table be prepared, covered with a clean linen cloth, on which the Most Holy Sacrament may be decently placed. Let lights be prepared, two small vessels, one with wine to be handed to the sick person after Communion, that he may more easily swallow the holy Host, the other with water for washing the fingers of the Priest; besides, a clean linen cloth to be placed before the breast of the one communicating. Often a vessel of holy water is added, whenever it is not customary for it to be carried with the Most Holy Sacrament. Often also wine is not used.

II. The Eucharist must be carried from the Church to the private homes of the sick in becoming habit, a clean veil being placed over it, manifestly and honorably, with all reverence, always with a light and with a little bell continually rung going before. But the Priest, vested in surplice and stole, and having first placed on each shoulder a becoming oblong veil, should receive with both hands the vessel with the Most Holy Sacrament, to be carried before his breast, and then should enter under the baldachin or umbrella, if it can be had, and should proceed with head uncovered. But while going he says the *Miserere* and other Psalms, and on returning *Praise the Lord from the heavens* and other Psalms and Hymns; but these are only of counsel.

III. When the Priest has arrived at the house of the sick person, let him say: *Peace to this house*. Resp.: *And to all dwelling in it*. Then, the Most Holy Sacrament having been placed upon the table, he adores it; he sprinkles the sick person and the room with holy water, saying: *Thou shalt sprinkle me*, etc., and the other prayers placed in the Roman Ritual. Afterwards, the sick person having been questioned and exhorted, he presents the Most Holy Eucharist according to custom. But if Viaticum is in

question, he does not say: *The Body of the Lord*, etc.; but: *Receive, brother, the Viaticum of the Body of Our Lord Jesus Christ*, etc., as in the Ritual.

IV. When death is imminent, most of the prayers, or even all, are omitted. The Priest, his fingers having been washed and the prayers completed, if particles remain, blesses the sick person with the ciborium, saying nothing. From the Roman Ritual, the ablutions must be given to the sick person. - The Priest, having returned to the Church, the ciborium having been placed upon the altar, recites the verse and prayer concerning the Most Holy Sacrament.

305. Questions. - **QUESTION 1. Whether the Eucharist can be carried to the sick at night?**

Resp. No. For this is expressly prohibited, except in a case of necessity. For thus the Roman Ritual: *But this Sacrament ought not to be carried at night, unless necessity urges.* But when necessity urges, it must be carried at any hour of the night, but without noise and without the sound of the bell. But the cited words of the Ritual do not regard Communities which preserve the Most Holy Eucharist in a domestic Chapel, because the danger of irreverence, on account of which the law was made, is then absent.

QUESTION 2. Whether the Eucharist can be carried to the sick secretly?

Resp. No, generally speaking. This is clear from the Roman Ritual, where it is said: *This holy Sacrament must be carried manifestly and honorably.* Yet certain circumstances are excepted, for example places of heretics, where it cannot be carried manifestly. Likewise sometimes even in places of Catholics, if otherwise the holy Viaticum cannot be carried to the sick person without some inconvenience. Yet this ought not be done without the license of the Bishop, where he can be consulted.

306. ○ **QUESTION 3. Whether a Priest, when necessity urges, can minister Viaticum without any sacred vestment?**

Resp. The answer is affirmative. The reason is that it is not to be presumed that the Church, which is so benign a mother, wished those rites to be observed in the administration of Viaticum to the detriment of the dying. For the Sacraments were instituted primarily for the salvation of souls. - St. Ligorius, n. 241.

QUESTION 4. Whether, when necessity urges, it is permitted to run in carrying Viaticum?

Resp. The answer is affirmative, probably. The reason is that the urgent necessity of carrying Viaticum to a dying person can excuse from greater decorum in walking. - Thus St. Ligorius, n. 242. - Lacroix.

QUESTION 5. Whether it is permitted in time of plague to present the Eucharist by means of some instrument?

Resp. The answer is affirmative, probably, because so great a necessity seems to excuse from the customary rite of the Church. - St. Ligorius, n. 244.

307. ○ **QUESTION 6. Whether it is permitted to carry the Eucharist with the head covered on the journey?**

Resp. No, on account of the reverence due to the Sacrament. Therefore in carrying the Most Holy Sacrament to the sick, whether this is done by day or by night, neither under the pretext of any infirmity nor under another pretext can a biretta or even a small skullcap be used. - Sacred Congregation of Rites, March 5, 1633; January 23, 1695; January 23, 1700.

Wherefore a Priest laboring under catarrh or another infirmity must abstain from carrying the Most Holy Sacrament, or commit that office to another, or nevertheless proceed with uncovered head, unless the use of the skullcap has been granted to him by indult. - Sacred Congregation of Rites, May 23, 1846. Yet the use of the skullcap is not conceded with so much difficulty on a journey, although less within a city or town. According to several, the Bishop can concede license of carrying a skullcap on a journey; but the faculty of using a skullcap through the city or town is of apostolic right. - De Herdt, *Practice of Sacred Liturgy*, tom. 1, part 1, n. 50. The Holy See conceded dispensation from that law for the diocese of Cologne, especially in winter weather. November 3, 1862. - See *Analecta Iuris Pontif.*, 53rd delivery, November and December 1862.

St. Ligorius, *Homo apostolicus*, tr. 15, n. 12, has these things: Pasqualigus says, probably, that the Bishop can dispense that Viaticum be carried with a skullcap on the head, when one must proceed far and through villages.

QUESTION 7. Whether a Priest can carry the Holy Eucharist sitting on a horse?

Resp. The answer is affirmative if it must be carried to a sick person far distant, or through an arduous journey, or if there is danger in delay. But the horse must be gentle, so that danger of fall and irreverence is absent. But it is never permitted to give the pyx to a layman to be carried, however much the priest is fatigued; but then he must carry it in a burse suspended from the neck. This is clear from the Roman Ritual on the Eucharist, and also from the decision of the Sacred Congregation of Rites. And previously: *That Viaticum, because of distance of places, difficulty of journeys, and roughness of roads, may be carried by the Parish Priest riding*, the Sacred Congregation of Rites grants, yet with the consent of the Bishop. January 23, 1740, in Laudensis. - See St. Ligorius, n. 242, 243.

308. ○ **QUESTION 8. Whether the Eucharist can be carried several times to the sick who are not fasting, or by way of Viaticum?**

Resp. The answer is affirmative, and not only if a new danger of death recurs, but also if the same danger endures. - Thus the common and true opinion, says St. Ligorius, n. 285. It is confirmed by the authority of Benedict XIV, who in *De Syn.*, lib. 7, c. 12, testifies that no Theologian of any name denies this opinion; and he adds, ibid., n. 5: *Let the Bishop intimate to Parish Priests that Viaticum can and ought to be administered again and a third time in the same infirmity, especially if the sick person asks; and if he wishes, let him decree a penalty against Parish Priests who refuse to carry the Eucharist again and a third time to sick persons devoutly asking, under false pretexts.*

QUESTION 9. Whether the Eucharist can frequently be carried to those lying sick?

Resp. The answer is affirmative per se. Yet this depends on circumstances, namely on their particular dispositions and on the greater or lesser frequency with which they previously approached the Eucharistic table [1]. The Parish Priest must, as far as lies in him, exhort the sick to frequent Communion. - Gousset, n. 235.

[1] That someone, while he enjoyed good health, was accustomed to approach the Most Holy Eucharist less frequently would not indeed be a sufficient reason why more frequent Communion should seem to be denied to him when sick, if indeed he desires it.

QUESTION 10. What must a Priest do if, arriving at the sick person with the Most Holy Sacrament and hearing his confession, he finds him indisposed?

Resp. First the Confessor must strive, as best he can, to bring the penitent to better fruit. If the matter does not succeed, and for example the sick person does not promise either to break off the proximate occasion of sin, or to make grave and certainly owed restitution, he certainly cannot be absolved. But what about Communion? The penitent must earnestly be induced, after the confession has been completed, to declare publicly that he does not yet wish to receive the Holy Eucharist. But if he makes this declaration, the difficulty now vanishes; for it is clear that the Eucharist is not to be ministered to him. But if he refuses to declare this, and wishes to communicate, the Eucharist must be ministered to him, although indisposed, namely in order to preserve intact the seal of confession. - Gousset, n. 237, and others.

Article V. On the Manner of Preserving the Holy Eucharist

309. These Things Must Be Held. - I. In any parish and cathedral Church the Holy Eucharist must be kept, so that it can always be given to those asking opportunely. Thus expressly the Roman Ritual, etc. For by common right it can be preserved in Churches of Regulars emitting solemn vows. But in other Churches it cannot be preserved without the special license of the Pope. Thus the Sacred Congregations of the Council and of Bishops established, cited in Ferraris, word *Eucharist*, art. 1, n. 46.

II. The Eucharist is to be preserved in a clean tabernacle, well closed, and in a becoming pyx placed upon a corporal and covered with a white veil. Now the tabernacle in which the Most Holy Sacrament is kept must be covered with a conopaeum of silken cloth, or of wool or cotton. - Roman Ritual. - Sacred Congregation of Rites, July 21, 1855.

III. Nowhere is the Holy Eucharist to be preserved without a light, which must always burn. For thus it is established in the Roman Ritual: *Several lamps before it* (the tabernacle), *or at least one, should perpetually shine day and night*. Thus also it was defined through Decrees of the Sacred Congregation, which will that if the Church is too poor, a collector of alms be appointed, that sufficient oil may be had. - See Ferraris, word *Eucharist*, art. 1, n. 45.

310. Questions. - **QUESTION 1. Whether other sacred things can be placed in the tabernacle?**

Resp. No. This is clear from the Roman Ritual on the Eucharist. Hence neither Relics, nor Chrism, nor the Oil of the sick can be placed in it.

QUESTION 2. Whether the ciborium must be consecrated and silver?

Resp. to the first: It need not necessarily be consecrated, but it suffices that it be blessed. This is clear from the Roman Ritual, in which the blessing of the pyx is noted among those things which do not need anointing with Chrism. Likewise from the Roman Pontifical. - See St. Ligorius, n. 248, and below, n. 396.

Resp. to the second: Nothing is established by common law. And indeed it would seem to be equated with the chalice and paten, which ought to be of gold or silver, or at least of tin, if the Church is very poor. But it cannot be of bronze, nor of wood or glass, etc. (*De Consecr.*, dist. 1, c. 45). Besides, if sacred vessels are not of gold, they ought to be gilded within.

QUESTION 3. Whether he sins gravely who neglects to preserve a light before the Most Holy Sacrament?

Resp. The answer is affirmative per se, if the time is notable. - Thus commonly the Theologians with St. Ligorius, n. 248. Indeed several authors say that the time is notable if this is done for a whole day. - Thus Busembaum, whose words St. Ligorius reports and implicitly approves, ibid.

311. ○ **QUESTION 4. Whether olive oil is required for nourishing the lamp of the Church, or whether another oil from vegetables, for example from nuts, or from minerals, as petroleum, suffices?**

Resp. Generally olive oil is to be used; but where it cannot be had, another oil from vegetables, as far as circumstances allow, can be permitted by the Bishop. This is clear from a recent decision of the Sacred Congregation of Rites, which is of this sort.

Certain Most Reverend Prelates of the Gauls, seriously weighing that in many Churches of their dioceses olive oil for nourishing at least one lamp day and night before the Sacrament of the Most Holy Eucharist can be procured with very great difficulty and only at great expense, asked that it be declared by the Apostolic See whether in the case, with attention to the difficulties and the poverty of the Churches, other oils which are had from vegetables can be substituted for olive oil, petroleum itself not excluded. Now the Sacred Congregation of Rites, although always solicitous that even in this part what has been introduced from the beginnings of the Church concerning the use of oil from olives be retained, on account of mystical significations, nevertheless judged that the reasons brought forward by the same Bishops should by no means be passed over in silence; and therefore, the vote of another of the Masters of Apostolic Ceremonies having first been sought, the undersigned Cardinal Prefect of the same Sacred Congregation proposed the whole matter in the ordinary Assembly held at the Vatican on this day. But the Most Eminent and Most Reverend Fathers set over the protection of the sacred Rites, after all things had been accurately weighed and most diligently examined, judged that response should be made: Generally olive oil is to be used; but where it cannot be had, it is to be remitted to the prudence of the Bishops that the lamps be nourished from other oils, as far as can be done vegetable oils. July 9, 1864.

Afterwards, a faithful report concerning the premises having been made to Our Most Holy Lord Pope Pius IX by me, the undersigned Secretary, His Holiness held as ratified and confirmed the opinion of the Sacred Congregation. On the 14th of the same month and year.

From this response of the Sacred Congregation it also follows that petroleum is not excluded, and in urgent necessity can be permitted by the Bishop.

312. ○ **QUESTION 5. What must be done concerning fragments of Hosts which are found?**

Resp. 1. If the Priest finds fragments of his present Sacrifice, he must consume them, even after the ablutions, whether they are small or large, because they pertain to the same sacrifice. Thus from the Rubric of the Missal, tit. 7, n. 2. - But this must be observed not only immediately after Mass, but also if the Priest is in the sacristy, yet still clothed in sacred vestments. - Thus commonly St. Ligorius, n. 251, after Benedict XIV, *On the Sacrifice of the Mass*.

But if the Priest has already put off the sacred vestments, he must place the fragments in the tabernacle, if there is one, or reserve them for another Priest about to celebrate that same morning. If neither can be done, let him consume them himself. - St. Ligorius, ibid.

Resp. 2. But if the remains were consecrated in another Mass, they are not to be consumed after the ablutions, but must be placed in a becoming place. The reason is that the Rubric permits a Priest not fasting to consume only those remains which pertain to the same sacrifice. Yet if this cannot be done, and there is grave danger of irreverence, then let the Priest consume them. - Thus commonly. - St. Ligorius, ibid.

Resp. 3. If a layman finds fragments, let him warn a Priest as soon as possible, if one is near, or call him if he can be found. But the Priest, reverently collecting the fragment, will place it in the ciborium, or in a becoming and safe place if the tabernacle is lacking, so that it can be consumed in the next Mass. But if a Priest cannot be had, let the fragment be reverently collected by the layman himself in paper or a clean linen cloth, by means of a little thorn, and let it be placed within the corporal or in a becoming vessel until the Priest arrives.

313. ○ **QUESTION 6. What must be done if there is found on the altar, or elsewhere, a Host certainly or doubtfully consecrated?**

Resp. 1. If the Host is believed certainly consecrated, and from another source seems clean and recently consecrated, it is to be placed with the others in the ciborium. It can also be consumed by the celebrant before the ablutions. But if it is not clean, or if it has been extracted from a place not clean, or is not recently consecrated, it is not to be mixed with the others, but the celebrant will be able to consume it before the ablution; but if he experiences too great repugnance, he will place the Host separately in the tabernacle in a clean vessel until it is corrupted, and when corrupted it is to be thrown into the sacrarium. Thus from the Rubric of the Missal, tit. VII, *On Defects*.

Resp. 2. If it is doubtfully consecrated, it is to be consumed by the Priest in Mass before the ablutions; but if it provokes in him too great nausea, it is to be placed separately in the tabernacle until it has been corrupted, as was just said. - Thus the Rubric of the Missal [1].

[1] To these last words of Gury the VV. oppose (p. 932) that which St. Alphonsus (lib. 6, n. 217) discusses on the occasion of hosts which are doubtfully consecrated. Tournely, that is, Collet, says, says the St. Doctor, that in practice those particles are to be consumed after the Blood; and I add, after the ablution, but before the purification, because the remains of the Blood are certainly the Sacrament; but those hosts... are doubtful.

Resp. When Gury says, before the ablutions, he certainly seems to have wished to denote both the purification and the ablution, which St. Alphonsus better distinguishes; although in the words of St. Alphonsus perhaps there occurs that which we are accustomed to call *hysteron proteron*; for first the Priest purifies himself, and then washes his fingers according to the rubric, which says, n. X: Upon the altar he extends the chalice to the minister at the Epistle corner, and while he pours wine, HE PURIFIES HIMSELF; then with wine and water HE WASHES his thumbs and index fingers over the chalice, etc. Wherefore we shall say that the Holy Doctor wished rather to say: and I add, after the purification, but before the ablution; but by no means after the ablution, but before the purification.

Moreover, the Rubrics seem to favor Gury's opinion rather than that of St. Alphonsus. For where they treat (*On Defects*, sec. III, n. 4, 5) of a priest who has consecrated a host either corrupted or not of wheat, they prescribe that if he has not consumed that former one (namely, corrupted or not of wheat), he should consume it after the reception of the Body and Blood. But nowhere in the Rubrics is it found that under the name of reception of the Body and Blood the purification also is comprehended.

QUESTION 7. What is to be done if the sick person has rejected the sacred species?

Resp. 1. If they are apparent, they must be carefully collected in a clean vessel, carried to the Church, and preserved in a safe and well-closed place until they are altogether corrupted, so that they can be cast into the sacrarium without irreverence.

Resp. 2. If they cannot be discerned, as being altogether mixed with filth, the mouth of the sick person is indeed to be wiped; but whatever has been rejected is to be collected with tow; then, the tow having been burned, the ashes are to be cast into the sacrarium. - Reuter, n. 169. Gousset, n. 232.

314. ○ **QUESTION 8. Whether, or when, the ciborium is to be renewed?**

Resp. 1. The ciborium certainly must sometimes be renewed, lest the consecrated species be corrupted. Indeed it must be renewed frequently, as the Roman Ritual prescribes.

Resp. 2. According to Benedict XIV the consecrated particles are to be renewed every eight days, or at least every fifteen days (*On the Sacrifice of the Mass*, appendix 3, sec. 6, n. 5). And this is the more common practice, although the Ceremonial of Bishops prescribes that the renewal of particles is to be made every eighth day.

315. ○ **QUESTION 9. How is the ciborium to be renewed?**

Resp. The renewal of the ciborium is to be made in the very Sacrifice of the Mass. The celebrant, after having consumed the most precious Blood, will consume the old Hosts, although they are many; and he can consume 20 or 30 Hosts in this way, according to Elbel, n. 77; indeed 50 or 60, according to Lacroix, n. 501. But it will rarely happen that there are more, because there should not be consecrated except as much as seems likely to be sufficient. But if at some time a much greater quantity of Hosts had to be consumed, the Priest can consume them divided among several Masses, or even several Priests celebrating successively can consume them.

But the smaller particles found in the ciborium the Priest will put into the chalice, and, wine having been poured over them, he will consume them, and he will place the new Hosts in the ciborium altogether empty. He can also pour wine into the ciborium in order to collect the smallest particles. Yet the wine is not to be drunk from the ciborium, but is to be poured back into the chalice. - Lacroix, n. 502. If the Priest through inadvertence had first taken the ablution, he could still purify the ciborium and consume the remains, because for the reception it is morally reckoned as one. - Thus Lacroix, n. 502. - Elbel, n. 77. - Tamburini, *On Communion*, c. 2, n. 34.

The particles to be consecrated ought to be fresh. It would be desirable that they not exceed fifteen days, or at most a month, from the time in which they were made. The negligence of Parish Priests and of others in this matter can constitute a grave sin. - Gardellini. - The custom of consecrating Hosts made three or six months earlier is an enormous abuse, altogether to be removed. But if the

Parish Priest, his Vicars, or other Priests seem to tolerate an abuse of this kind, they cannot use those Hosts. - Sacred Congregation of Rites, December 16, 1826.

Chapter IV. On the Subject of the Eucharist

Only a baptized man can receive the Eucharist sacramentally; because only the baptized is capable of the Sacraments. Hence an infidel receiving the Eucharist would indeed receive it truly, but only materially, not sacramentally. But a baptized man who is indisposed does indeed receive sacramentally, but not spiritually, that is, he receives, but without fruit. But a baptized man who is disposed receives both sacramentally and spiritually, or with fruit. - Thus the Council of Trent, sess. 13, c. 8.

We must treat 1. of the obligation of receiving the Eucharist; 2. of the disposition required for receiving it worthily.

Article I. On the Obligation of Receiving the Eucharist

316. Principles. - I. The real reception of the Eucharist is necessary neither for children nor for adults by necessity of means for salvation. This is clear 1. from the universal practice of the Church, which gives Communion neither to little children, nor to adults hindered by infirmity, for example those inclined to vomiting, the frenzied, etc.; 2. from the definition of the Church for little children; and thence it is inferred also for adults [1]. For thus the Council of Trent, sess. 21, can. 4: *If anyone shall say that for little children, before they have arrived at the years of discretion, the Communion of the Eucharist is necessary, let him be anathema.*

[1] Yet this argument perhaps will seem less firm to someone; indeed, using the aphorism that the exception confirms the rule to the contrary, he will rather conclude that by the canon of Trent the necessity of the Eucharist is implied for adults; a necessity, I say, not indeed absolute, but insofar as we know that by the divine economy it has been so arranged that the ordinary means of preserving spiritual life is placed in the use of this spiritual nourishment, according to that saying of Christ the Lord (John 6): *Unless you shall eat the flesh of the Son of man and drink his blood, you shall not have life in you.* See below, n. 318.

II. The reception of the Eucharist is necessary by necessity of divine precept; it is drawn from the words of Christ, John 6:54: *Unless you shall eat the Flesh of the Son of man, and drink his Blood, you shall not have life in you.* It is also clear from the words of Christ, Luke 22:19: *Do this in commemoration of me* [2]. - St. Ligorius, n. 295.

[2] The Author (above, n. 288) had already warned that these words were said to all and only the Apostles reclining with Christ, and therefore to all and only those who would succeed them in the priesthood.

317. ○ III. The reception of the Eucharist is necessary also from a precept of the Church. It is proved from the Fourth Lateran Council, cap. *Omnis, de poenit. et remiss.*, where it is said: *Every faithful person of either sex, after he has arrived at the years of discretion, shall confess all his sins alone at least once a year to his own priest... receiving reverently at least at Easter the Sacrament of the Eucharist, unless perhaps by the counsel of his own Priest, for some reasonable cause, he should judge that he must abstain from a reception of this kind.* It is also clear from Trent, sess. 13, can. 9.

IV. The reception of the Eucharist is not necessary under both species except for Priests alone in the act of celebrating Mass. It is proved from Trent, sess. 21, can. 1, where it says thus: *If anyone shall say that, by God's precept or by necessity of salvation, all and individual Christians ought to receive both species of the most holy Sacrament of the Eucharist, let him be anathema.* It is also clear from the universal practice of the Church, although in the earlier centuries it was different.

318. Questions. - **QUESTION 1. At what time does the divine precept of communicating urge?**

Resp. 1. It obliges per se in the article or proximate danger of death, and indeed under grave obligation. The reason is that the Eucharist was instituted as Viaticum, strengthening against the enemies of salvation. - Thus commonly with St. Ligorius, n. 295.

Resp. 2. It obliges per se also several times in life. This is clear from the fact that the Eucharist was instituted in the manner of spiritual food, by which the soul may be nourished and strengthened; for food is to be taken more than once. It is also drawn from Sacred Scripture cited above, and from the Councils just adduced. Yet Christ did not determine how often one must approach this Sacrament, but left this to be established by His Church. But the Church established annual Communion in Easter time. Hence by Communion taken once in the year at that time the divine and ecclesiastical precept are satisfied at the same time. - St. Ligorius, n. 295.

Resp. 3. This precept obliges per accidens sometimes, and perhaps also several times in the year, if the Eucharist is necessary for overcoming some grave temptation. Yet this rarely happens, since other means can suffice for this, prayers, penances, etc. - St. Ligorius, n. 295.

319. ◦ **QUESTION 2. Whether one is bound to receive the sacred Viaticum when the danger of death is imminent, if a few days before he communicated from devotion?**

Resp. It seems that the answer must be affirmative, at least more probably. The reason is that this precept, from the interpretation of the Church, urges in danger of death, that we may be fortified by this divine aid against spiritual enemies. Therefore it is not fulfilled by Communion made before the illness; because although someone has fulfilled the prescribed work, nevertheless he did not fulfill it at the time at which he was bound. - St. Ligorius, n. 285. - Billuart. - Salmanticenses, etc.

Yet several deny this with Lugo, disp. 15, n. 39. Their reason is that the precept of Communion has already been fulfilled in substance. - St. Ligorius says that this opinion is sufficiently probable, at least if the danger of death occurs naturally, because during that short preceding time it had already morally begun to be imminent, although it was unknown.

QUESTION 3. Whether one who communicated in the morning from devotion is bound, or is able, when danger of death urges, to receive Viaticum.

Resp. There is a threefold probable opinion according to Benedict XIV, *On the Synod*, lib. 7, c. 11.

The first opinion affirms that he is bound, because then Viaticum must be received in order to fulfill the divine precept, which, since it did not yet urge at the time when Communion was taken, therefore could not be fulfilled through that reception.

The second opinion says that he is not bound, but can communicate: 1. indeed, that he is not bound, because the time at which he communicated is morally the same, since it is the same day; 2. that he can, because although strictly he does not seem to be bound, nevertheless he is not therefore prohibited, since favors are to be enlarged.

The third opinion contends that he is neither bound nor able to communicate. The reason is that, since the precept obliges from the intention of the Church, the practice of the Church is that no one communicate twice in a day; nor is there a reason why this case should be excepted. - See St. Ligorius, n. 285. - Therefore in practice one must stand for liberty [3].

[3] ** To these [authors] the VV. oppose (p. 932, n. 96) these things of St. Alphonsus (lib. 6, n. 285, dub. 3): But moreover, the opinion of Lugo seems more probable to me, disp. 16, n. 53 and 54, who distinguishes between a natural and a violent disease, and says that if someone has been struck by a wound, or has fallen from a height, he can communicate (indeed, he is bound, according to our opinion), because here in reality he did not receive Viaticum while placed in the article of death; but otherwise if someone, already placed in sickness, communicated in the morning from devotion.

Resp. I concede the antecedent; and I deny the consequence. For the Holy Doctor had already premised (ibid.): *Our Father Benedict XIV thinks all these three opinions probable* (*On the Synod*, lib. 7, c. 12), *saying thus: In so great a discrepancy of the opinions of Doctors, it will be free to the parish priest to embrace that opinion which has pleased him more.* Now surely, if there is some probability in the other opinions, it does not perish because St. Doctor, in giving his opinion, wrote that one of them seemed to him more probable. Therefore it equally remains free to the parish priest to choose the opinion which he prefers.

I said, moreover: I concede the antecedent. For Lugo, whose opinion St. Alphonsus says that he prefers as more probable, rather than hold this opinion, altogether rejects it. For after bringing forward the opinion which grants that Communion can be given twice on the same day, he adds (*On the Eucharist*, disp. 16, n. 52): *Therefore all Doctors teach the contrary opinion, either in common or even in particular, who, when they say that even he who communicated a little before can afterwards, when danger has arrived, communicate again, add the exception: Unless he communicated on the same day.* Thus Suarez speaks, who adds that the contrary is not only against all Doctors, but also against the custom of the Church. Then, after bringing forward similar votes of others, he concludes: *All others speak in the same way, with no one granting it for the same day; and from this common authority it does not seem easy to depart.*

And indeed, after Lugo wrote these things (l.c., n. 53): *If the discussion is about him who, already placed in sickness, communicated from devotion on that day, I do not see how Communion can be given again on the same day,* he distinguishes another case, as St. Alphonsus has it, and writes (l.c., n. 54): *But if the discussion is about him who was well in the morning, and, struck by a wound or suddenly seized by disease, dies in the evening, it could more apparently be said that he could communicate again; because in reality he had not yet received the Eucharist while placed in the article of death.* These words St. Alphonsus transcribed as if they expressed the true opinion of Lugo.

In reality, however, there Lugo is merely proposing a difficulty which he undertakes to solve for himself. Hence he concludes that same paragraph by saying: *The precept of receiving Viaticum does not oblige one to receive it when it cannot be received; but then it cannot be received on the same day because of the prohibition of the Church, because it is prohibited that anyone communicate several times on the same day.*

Then Lugo proceeds to confirm the same opinion even to the end of the same section (n. 55 to 60); and especially (n. 57) he answers the reason which he had added in the difficulty objected to him. *By Communion*, he says, *made a little before death, even without thought of danger or death, satisfaction has in reality been made for the precept of communicating at the end of life: just as in fact he satisfies it who, while well, knowing that he is to be killed tomorrow, communicates today.... Since therefore the danger is not increased from the fact that a man knows death to be imminent (for the danger is present in reality, although it is unknown), it must be admitted that even he for whom death was imminent on the same day in reality communicated in danger of death, although he was ignorant of it, and therefore satisfied the divine precept. Therefore the Church rightly did not dispense in the prohibition of communicating twice on the same day, since there was no necessity of a second Communion.*

But to the principal foundation of the contrary opinion, which is taken from the obligation of the divine precept concerning receiving Viaticum, which ought to be preferred to the human precept prohibiting communicating twice on the same day, Lugo (ibid.) replies: *The answer is easy: in that case satisfaction has already been made for the divine precept by the first Communion, as*

we said. Add that, even if satisfaction had not been made, the divine precept would not oblige one to receive again on the same day, while the contrary prohibition of the Church stands, just as it does not oblige one to celebrate without sacred vestments because of the prohibition of the Church. Hence Vasquez and others, who say that satisfaction had not yet been made for the divine precept, nevertheless do not concede that Communion ought or could be received again on the same day, but on the following day.

He also solves that which they object (ibid., n. 60), that this opinion is too rigid. *I answer*, he says, *that the contrary opinion is more rigid, since it obliges under mortal sin to receive Communion again on the same day*, on which the same sick person had already communicated. *For what some say, following a middle way, that a second Communion can indeed be received, but ought not to be received from obligation, does not seem to be said with sufficient consistency. For if the precept of receiving Viaticum does not oblige, it does not appear from where that license of communicating several times against the universal prohibition is had, since it cannot be proved either from custom or from some law.*

QUESTION 5. Whether in danger of death Communion is to be given to children who have not yet been admitted to the sacred Synaxis [4]?

[4] Doctors usually inquire in this place, not so much about children in danger of life, but generally about them, whether and when they are obliged by the precept of receiving the Eucharist.

The obvious and easy solution of this question will indeed seem to be available in this Decree of the Ecumenical Fourth Lateran Council under Innocent III (cap. *Omnis utriusque sexus*): *Every faithful person of either sex, after he has arrived at the years of discretion, shall confess all his sins alone once a year to his own priest..., receiving reverently at least at Easter the sacrament of the Eucharist.* And this all the more because, for establishing this obligation, there came also the Tridentine canon striking with anathema those who would deny it. For thus the Holy Synod (sess. 13, can. IX): *If anyone shall deny that all and individual faithful of Christ of either sex, when they have arrived at the years of discretion, are bound each year, at least at Easter, to communicate according to the precept of Holy Mother Church, let him be anathema.*

Therefore concerning the obligation, which no one denies to be grave, it is sufficiently clear. It remains to inquire when children are to be considered to have arrived at the years of discretion, and what discretion is to be required in the present matter. But this can be known under a twofold head.

First, indeed, from the sense of the Doctors. Among these, St. Thomas, who flourished a little after the Lateran Synod, wrote these things (3, q. 80, a. 9, ad 3): *When children now begin to have some use of reason, so that they can conceive devotion for this sacrament, then this sacrament can be conferred upon them.* In these words carefully notice those expressions: *begin to have*, and *some use of reason*. Nor should it move you that the Holy Doctor requires children to be capable of devotion. For already in the body of the article he had said that only some devotion is required. *Some*, he says, *are said not to have the use of reason in two ways: in one way, because they have a weak use of reason, just as one who sees badly is said not to see; and because such persons can conceive some devotion for this sacrament, this sacrament is not to be denied to them.* From these things it is also clear that some use of reason is the same as a weak use of reason. And indeed from the same St. Thomas the celebrated rule was drawn among very many writers, that children can then be made participants in this sacrament when they know how to distinguish bread from bread. For thus the Holy Doctor (*In 4*, dist. 9, q. 1, a. 5, q. 4): *It must be said that to children lacking the use of reason, who cannot distinguish between spiritual and corporal food, the Eucharist is not to be given.... But to children already beginning to have discretion, even before perfect age... this can be given, if signs of discretion and devotion appear in them.*

This very thing you find in Dominic Soto, where (*In 4*, dist. 12, art. 9, at the end) he writes: *But what is the lawful age at which little children can receive this Sacrament? There is no more certain rule than when, by the judgment of prudent men and especially of the Confessor, it appears that the child has reached the fork of the Pythagorean letter Y, namely that he can distinguish between good and evil, and therefore between this food and other secular foods.*

And lest more be brought forward here, let it be enough to have heard Martin Ledesma, who expressed the common opinion of all in this way (*In S. Thom.*, q. 80, a. 9, dub. 6): *I say from the consent of all that the Eucharist is to be given to all having the use of reason, however early they have that use of reason, even though that child still confusedly knows what he does.*

And the Roman Catechism is added (*On the Eucharist*, n. 62), which at last excepts from the precept of receiving the Eucharist only those who lack the use of reason. *But*, it says, *although this law, sanctioned by the authority of God and of the Church, pertains to all the faithful, nevertheless it must be taught that those are excepted who do not yet have the use of reason because of the weakness of age.*

The other thing from which it may be known what the years of discretion are, let it be the common sense not only of Doctors but of all men. And indeed not only Doctors, but all men agree in this, that the use of reason or the years of discretion are required even in a child so that he may be considered capable, and in reality be capable, 1. of sinning mortally, 2. of validly pronouncing vows which induce a grave obligation, 3. of validly receiving the sacrament of Penance. And if indeed scarcely any controversy exists concerning these things, and finally only this one thing is guarded, that a certain rule, by which sufficient use of reason or discretion may be presumed, must be defined from things commonly occurring, and thus, for example, betrothals are to be considered valid from a child in his eighth year (that is, after the seventh year has been completed), unless it is proved that someone has obtained the use of reason later, contrary to the ordinary laws of nature; indeed it does not appear why we ought to hesitate so greatly where the sense of the law given in the Lateran and Tridentine Councils is at issue.

And in reality St. Antoninus defined concerning this matter without any hesitation, and declared that a child, when he was capable of sinning mortally, was subject to the law of receiving the Sacraments both of Penance and of the Eucharist. Thus he says (part 3, tit. 14, cap. 12, sec. 5): *But when he is capable of deceit* (the child), *namely when he can sin mortally, then he is obliged to the precept of Confession and consequently of Communion, which are given together.*

Whence then, you will say, comes the disagreement of certain Authors who, although they all equally venerate the Decrees of the Church, nevertheless as if depart from them, and prolong somewhat the time of approaching the Eucharist? I answer that this seems to have happened from three causes, which nevertheless you would vehemently doubt can be approved by all. And first indeed some, which perhaps you would say must be attributed to special circumstances of places or times, thought that some use of reason arrives much later than now generally happens. Hence St. Antoninus (part 2, tit. IX, cap. VIII, sec. 2), asking: *What, according to the Lateran decree, is called the year of discretion, in which someone is bound to confess?* and premising that *the Gloss on the said chapter Omnis says that the year of discretion is when one is capable of deceit; Richard in 4 says the same; and another certain one*

holds the same, saying that one is capable of deceit when he has the use of reason and recognizes sin; the sign of which is that he gives ordered answers to one asking; but Hostiensis... says that children are bound to confess when they are capable of deceit and not otherwise; then he refutes those who said that the year of discretion is the eighth year, because, he says, in many persons in the eighth year the child does not yet have the use of reason. Hence he infers this: *But it is certain that before the use of reason no one can sin nor is bound by laws; hence neither is such a one consequently bound to confess.* But he adds his own opinion thus: *And since each one is obliged by an equal precept to Communion as to Confession, as is clear from that Decretal itself, Blessed Thomas says in 4 Sent., that children around the eleventh or twelfth year, if signs of devotion appear in them, namely so that they know how to distinguish material bread from sacramental bread, can communicate: which he says because one is presumed already to have the use of reason, and not before.* Into this place, perhaps from a less corrected codex of St. Thomas, an error crept in; for the text of St. Thomas (*In 4*, dist. 9, q. 1, art. 5, q. 4) does not have eleventh or twelfth, but tenth or eleventh, as, among others, Tabiena also read (word *Communicate*, n. 6), and Sylvester (word *Eucharist* III, n. 7). But this is little; for others (see Ledesma, l. sup. c.) judged that discretion of this kind was still lacking in children before the fourteenth year.

Another cause of this quasi-departure from the Lateran and Tridentine sanction we find in Soto; for although he somehow concedes (*In 4*, disp. 12, art. 9, at the end) that children are capable of the sacred Synaxis in the tenth year of age, and approves the opinion of Paludanus, who thinks them fit even in the ninth year (see Tabiena, word *Communicate*, n. 6), and even states that a very lively child in the eighth year cannot be prohibited from the sacred table, nevertheless, having established a certain general principle, that no one is obliged by the laws of the Church except in the twelfth year of age, he teaches that children are bound by neither the precept of Confession nor of Communion before this age. For thus he says (l.c., art. 11): *But if you ask whether all Christians are obliged by this precept* (namely, of the Lateran Synod), *the first response is that children are not obliged up to the twelfth year, when they are bound by other ecclesiastical laws. For although a little before the dawn of reason they can receive it, nevertheless a greater age is required for obliging to the sacrament both of Penance and of the Eucharist.* And after Soto, Valentia (tom. 4, disp. 6, q. 8, punct. 4) hands down the same thing thus: *Certain things are to be noted here. The first is that before the twelfth year that precept of the Church does not oblige, as Soto well notes. For although even before that it happens to some to have that discretion of reason so that the Eucharist can indeed be given to them..., nevertheless before that time of age they do not have that discretion such that they are also bound to receive the Eucharist, or also to confess, says Soto.* Yet he himself (l.c., punct. 2) had conceded that, speaking generally, children can be admitted to the Eucharist in the tenth year. *But the time*, he says, *at which children can be admitted to the Eucharist is that when they begin to be strong with such use of reason that they can sufficiently distinguish this heavenly food from the rest. This ordinarily tends to happen around the tenth year of age, as Soto notes.*

Finally, a third cause of thinking otherwise than the Lateran law seems to bear can be discerned in Suarez. For although he affirms that the opinion of Soto and Valentia is approved by him, namely that children can be fit for Communion, and yet are not therefore bound to it by law, nevertheless he does not seek the reason with Soto from some general principle concerning ecclesiastical laws not obliging before the twelfth year, but he uses other supports, to which perhaps in great part the confusion introduced into this question seems to be owed. It is better to hear him himself (*On the Sacraments*, disp. 70, sect. 1): *Soto adds, and it is also approved by me, that not immediately when these children arrive at the age in which they can lawfully communicate are they bound to it, but after some time, for example after one or another year.* Thus then he gives the reason for these things: *For both the use of the Church seems to have declared this law thus; and it is consonant with reason that the Church not oblige as soon as it can, but grant the faculty of waiting for some time, either on account of the greater reverence of the Sacrament, or on account of the greater fruit of the receiver, or lest these children be exposed to the danger of transgression; and this will be done more safely if it is done by the counsel of the Confessor; for thus there will also be no discord from the words of the law.*

Moreover, I said that it must be greatly doubted whether those three causes of delay can be approved. And as regards the first, even the few things which we touched upon above concerning defining the year of discretion more than sufficiently prove that the opinion of St. Antoninus in this matter is opposed to the common sense of all. And indeed from those things which are commonly handed down concerning the sufficiency of age and therefore of discretion in children, both for contracting obligations either of vow or of betrothals, and for sinning gravely and receiving the sacrament of Penance, an argument can be made a fortiori as regards the capacity of receiving the Eucharist. For who does not see that, for having that some sense of devotion, as St. Thomas says, which alone is required for receiving the Eucharist worthily, a much smaller discretion suffices than either for conceiving the affections necessary for validly receiving the sacrament of Penance, or for perceiving the force of a grave obligation in vows and betrothals?

But as regards Soto's opinion, which denies that children are bound by ecclesiastical laws before the twelfth year of age, this, as is clear, has the common opinion of Doctors against it. Concerning this matter Suarez also (*On Penance*, disp. 56, sect. 2, n. 3) has this: *Some think that they* (children) *are not bound by this precept* (of Confession); *indeed Soto rather says that children before the twelfth year are not bound by this precept, for which he brings forward no reason.... But it must be said that every one who knows how to sin mortally is bound by this precept; hence, just as no certain age can be designated in which a man arrives at the use of reason and is able to discern between good and evil, but some use reason earlier, others later* (which is to be discerned by the judgment of a prudent man), *so no certain age can be prescribed in which a man begins to be bound by this precept. This is the common doctrine.... The Gloss and Canonists also agree on the said cap. Omnis utriusque sexus, and Soto too finally thinks the same, d. 18, q. 1, a. 3, at the end. It is proved from the words of the text: When he shall have arrived at the years of discretion; for years of discretion signify the age in which a man knows how to sin. Secondly, because these are bound by a precept of divine law; but this precept is the determination of that precept, as was said. Thirdly, these can be bound by other precepts of the Church, at least as to directive force, whatever Soto may say; for they are bound to hear Mass on feasts, and to abstain from flesh-meats on a prohibited day: why therefore will they not be bound by this precept, especially necessary?* But what Suarez says, that Soto too finally agrees in this, pertains to defining the year of discretion and the obligation of confessing. For Soto has these things (l.c.): *But concerning that word of the Decretal, After they shall have arrived at the years of discretion, there is no need to dispute. For it does not designate a certain time, such as twelve or fourteen years, as for contracting matrimony, but as soon as the child has been capable of deceit, namely if he has begun to discern between good and evil, and by the judgment of prudent men sins mortally. And the reason is clear: for since the necessity of the precept of Confession, both divine and human, arises from its necessity for salvation, as soon as a man incurs the necessity of salvation, he is also bound to Confession both once a year and in the article of death. Yet it is true that up to the twelfth year of age the Church would compel no one to Confession by censures, although it knows that even before that one can sin...; for from seven years, when infancy ends and childhood begins, they can sin.* These last things agree with those which we brought forward above from him, namely that a lively child even in the eighth year can be capable of Communion.

Finally, to touch upon the opinion of Suarez, truly this could deservedly seem perhaps less reasonable than the preceding opinions of St. Antoninus and Soto. And indeed those opinions, after the principles established by them, at least cohere with themselves. But Suarez indeed admits with Soto that one or another year can be waited even when children could already before that lawfully approach to receive the Eucharist; yet he does not receive the reason brought forward by Soto, namely that children are not bound to observe ecclesiastical laws before the twelfth year; rather, he expressly rejects and refutes it. By what way therefore, or by what reason, does he exempt children, even according to his own opinion fit for Communion, from the obligation of Communion, which the Ecumenical Synods, Lateran and Tridentine, so manifestly proclaim? He has recourse, as we saw above, 1. to the use of the Church; 2. to the congruity of the matter; of which congruity he brings forward a threefold reason, namely 1. greater reverence, 2. greater fruit of the receiver, 3. danger of transgression.

Now, to begin from this last, if he judges that the Church did not wish to oblige children before the twelfth year because of the danger of transgression, namely because a less mature age will easily omit fulfilling the precept, why does he reject the doctrine of Soto, who for exactly this reason denied that that immature age is capable of obligation? Why does he oppose to the same Soto the obligations either of Confession, or of abstinence from flesh-meats, or of hearing Mass, by which he contends that children before the twelfth year are bound? Indeed, if the Church for this cause defers, as he thinks, the obligation of Communion, by stronger right other obligations would have to be deferred; for much more easily, as experience suggests, it will happen that children transgress the precept of hearing Mass on feast days, or of abstaining from flesh-meats.

But what is said about greater reverence is light. For either the child before the twelfth year is considered to furnish sufficient reverence, or he is not. If he does not furnish sufficient reverence, why does Suarez himself concede that even then he can approach to Communion? But if he presents sufficient reverence, why does he exempt him from this grave precept? With the course of age, he says, greater reverence will come. But this reason proves too much. For with equal right another will oppose that greater reverence will be present in the twentieth year than in the twelfth. Will it therefore be lawful, under the pretext of greater reverence, to defer Communion up to that age, the law of the Church being postponed? St. Thomas, as we said above, teaches that one capable of some devotion, not of greater devotion, is bound by the Decree of the Church; and, as Paludanus says (see Tabiena, word *Communicate*, n. 6), innocence compensates for ignorance in children.

But the reason sought from the greater fruit of the receiver, if Communion is deferred, in the first place labors under the same fault as the preceding reason, and proves too much. Moreover it limps also for this reason, that it somehow supposes that the greater fruit which perhaps is hoped for at a more adult age is hindered by the lesser fruit which is received earlier. But this of itself is altogether false. Finally, it is necessary to remember that the Eucharist is numbered among the Sacraments of the New Law, which confer both sanctifying and sacramental grace *ex opere operato*, whenever they do not find an obstacle in the one receiving. But although perhaps it can be conjectured that some greater fruit, which may come *ex opere operantis*, is to be expected from a less tender age, yet will not something more of an obstacle have to be feared from that very age in which the vices of corrupt nature begin to grow, whereas on the contrary the innocence of a more tender age, as the old Doctors used to say, compensates for ignorance? But besides, cause yourself to recall to memory the singular charisms of this Sacrament and its proper fruits (above, n. 275), and that from Christ's institution it is the nourishment and strength of spiritual life, and the antidote of sins and vices. Therefore, under the imagined pretext of some greater fruit, will it be better to have deprived childhood of these excellent and at the same time necessary aids, and of the most abundant supply of graces, by which its innocence may be preserved and fortified?

Finally, as to what is objected concerning common use, which is the interpreter of law: if indeed it is taken for the custom by which children are generally admitted to Confession before participation in the Eucharist, this is easily conceded; nor is a just reason for this custom lacking. Since by the consent of all it pertains especially to the Confessor to judge whether children are capable of deceit and therefore fit for the reception of the Sacraments, and at the same time in this way the danger is absent lest the sacrament be conferred on the incapable, certainly they are most wisely sent to Confession beforehand. But if it is understood as a custom of deferring Communion beyond that age at which the child is capable of it, you would better say that this is an abuse to be ascribed both to negligence and to the prejudged opinion of certain persons, rather than a custom of the Church.

And indeed Suarez himself (cited disp. 70, sect. 1) had premised these things: *Almost all agree in this, that this obligation cannot be defined generally by the ages of men, or by the number of years.... Often before the twelfth year of age many are so capable of deceit, and so instructed in the things of faith, THAT WITHOUT DOUBT THEY ARE BOUND BY THIS PRECEPT.* And then he adds that this happens also in the tenth year, that is, after the ninth has been completed. But if, as he himself admits, almost all Doctors agree (we shall of course except Soto, whom Suarez there also refutes) that the obligation is to be taken from age, to what purpose is the abuse of those who defer Communion further than age requires thrust upon us as a legitimate custom of the Church? He adds (ibid.) that it is consonant with reason that the Church not oblige as soon as it can. Indeed we would confess that these things were excellently said where the mind of the Church had to be conjectured from plainly uncertain indications. But after the Church, most manifestly opening its mind, not only could oblige to receiving the Eucharist, but in reality obliged all whoever had arrived at the years of discretion, and moreover struck with anathema those denying this obligation, what place of doubting concerning this, I ask, now remains? Or shall we say that the Church, when it obliged as soon as it scarcely could oblige, performed something less consonant with reason?

Nor is there any need to linger over certain persons who, after Suarez, recall here those words of the Lateran Decree: *Unless perhaps by the counsel of his own priest, for some reasonable cause, he should judge that he must abstain for a time from reception of this kind*:

as if indeed from these words there is made a free power for the confessor of exempting from the obligation those who otherwise are capable and are obliged. For certainly, to use the words of St. Antoninus (part 2, cap. 9, sec. 1), *according as the Confessor can perceive from their confession concerning their greater or lesser use of reason, so he can and ought to counsel them or bind* (namely oblige) *them to Communion*; where he also warns parents and schoolmasters (ibid.) that *they ought well to exhort them if they see them to have good discretion, or to leave them to the judgment of their Confessors*; and finally he adds that very grave thing also: *But by drawing them back solely from this, that they are small, and because it is not according to the custom of the country that they communicate, however much they have the use of reason, they sin gravely.* But it is one thing that it is deferred to the Confessor's judgment concerning sufficient use of reason; another thing that the Confessor can exempt from the obligation those who have attained the use of reason. But what the cited words of Innocent III have regard to is obvious; namely when, as Gonzalez notes (*On the Decretals*, lib. V, tit. 38, cap. VII), the Confessor defers absolution, that he may test whether the penitent's purpose is firm, or because he has judged it unjust to absolve him until the penitent avoids the proximate occasion of sin: in which cases a faithful person not communicating at Easter will in no way be guilty of the ecclesiastical precept, nor will he suffer the penalties imposed in the present law. And in like manner it is obvious that those words do not regard children; for since Innocent says, *Unless perhaps... by the counsel of the Confessor he should judge that he must abstain*, it is absurd to understand this concerning those children who are led in these matters not by their own judgment but by another's.

Moreover, once that anomalous opinion of Soto concerning children exempt from any ecclesiastical law before the twelfth year has been rejected, and the other little reasons by which Suarez contends that delay can be conceded to children who from the common opinion are obliged have been put aside, there remains the opinion in which, after St. Thomas, Doctors commonly agree, as St. Alphonsus also affirms (lib. 6, n. 301): that children ten years old are regularly both fit for participation in the Eucharist, and therefore capable of this obligation. Concerning this matter the same St. Alphonsus, after he reported from the Ninth Synod of Milan the admonition of St. Charles that Parish Priests should summon those who have reached the tenth year (note well: have reached, not completed), instruct them for knowledge of the Eucharist, and teach them with what reverence they should approach it, gives this reason why it was said regularly: *For*, he says, *as the Doctors note, children can be obliged earlier who before such* (namely, the tenth) *age are seen to be more perspicacious*. Hence Bonacina rightly reproves parish priests who indiscriminately do not admit to Communion except children constituted in a certain age.

320. ○ **QUESTION 4. Whether the Eucharist can be given to a sick person who labors under a cough?**

Resp. Affirmatively, because the danger that the sacred species be rejected together with phlegm is for the most part absent. And the reason is that the path by which spittle is expelled by coughing is not the esophagus, that is, the path by which food and drink are conveyed into the stomach, but is the rough artery, by which respiration extends even to the lungs. Yet if the cough is so continual that it prevents the host from being able to be transmitted into the stomach, then Communion must be abstained from. - Thus the Roman Ritual. - St. Ligorius, n. 292.

But when the sick person labors under continual vomiting, he cannot communicate unless perhaps he has been free from vomiting for at least six hours. But in doubt whether the sick person is going to vomit back the sacred particle, it must not be given to him. - St. Ligorius, n. 291.

Resp. 1. No, if they have not yet attained the use of reason. The reason is that this is against the present discipline of the Church.

Resp. 2. Affirmatively with respect to children who are in possession of reason. Indeed not only can Communion be given to them, but it also ought to be given. The reason is that on the one hand children placed in such danger are bound by divine precept to communicate; on the other hand the utility of the Eucharist then does not demand a greater disposition. Therefore Parish Priests err

gravely who are unwilling to administer Viaticum of this kind to children. - St. Ligorius, n. 301. - Billuart, diss. 6, art. 1. - Gousset, n. 233.

321. ○ **QUESTION 6. Whether Communion in danger of death is to be given to the insane, the semi-fatuous, the delirious, and those deprived of senses?**

Resp. 1. Concerning the insane: 1. If they have been perpetually insane, Communion is never to be given to them. Thus from the Roman Ritual on the Eucharist. 2. If they often have lucid intervals, and have manifested a desire of communicating, Communion can be given to them; indeed it ought to be given, with the danger of irreverence removed. - St. Thomas, part 3, q. 80, art. 9. - Catechism of the Council of Trent. - St. Ligorius, n. 302.

Resp. 2. Concerning the semi-fatuous, Communion is to be given to them when they have sufficient discretion, so that they distinguish this heavenly food from others; but rarely, namely only in the article of death, and where the strict precept of communicating urges. - St. Ligorius, n. 303, and others commonly [5].

[5] I have found no one earlier than Henry Henriquez who teaches that to those who have sufficient discretion to distinguish the heavenly food from others, Communion is to be permitted only once a year. And Henriquez indeed, according to his own manner, alleges in a note a long series of Authors (*Summa*, lib. 8, cap. 42, n. 3) as if for that opinion. But they do unanimously affirm that the Eucharist is to be supplied to these semi-fatuous persons, among whom Henriquez also numbers Ethiopians; yet none of them grants only Easter Communion. And from this it seems to have happened that afterwards certain others adhered to this opinion as if commonly received; although Laymann, departing from them (lib. 5, tr. 4, cap. 5, n. 4), said that these are to be admitted to the Eucharist at least at Easter. Meanwhile, however, no solid reason for this doctrine is brought forward; and on the contrary John Sanchez rightly attacks Henriquez thus (*Select Disputations*, 26, n. 5): *Nor do I know by what reason Henriquez thinks that frequency of Communion must be denied to the foolish* (he means those whom Henriquez calls semi-fatuous), *if he once concedes that it ought to be given at Easter: for if, when they communicate once, they commit no irreverence, neither will they commit it by communicating several times, since both the man receiving and the sacrament received are always one and the same. Nor can I imagine how by communicating today there arises anew an irreverence which did not arise yesterday by receiving the Eucharist, while the action is the same in species, the sacrament the same, and the man who receives is with the same use of reason today as he was yesterday. Does he approach irreverently the second time, who approaches with grace acquired from the first Communion?*

Resp. 3. Concerning the delirious, Communion can be given to them if they are able to communicate, with the danger of irreverence removed. But the best practice is that beforehand a non-consecrated particle be given to the sick person, and so it may appear whether he can communicate becomingly. - St. Ligorius, n. 292.

Resp. 4. Concerning those deprived of senses: they are indeed dispensed from the precept, since they are capable of observing no law. But therefore the Pastor is not dispensed from the obligation of ministering the Eucharist to them, if before the loss of reason they were disposed. For the Sacraments operate *ex opere operato* in those who desired to receive them before they lost the use of reason. Yet except the case if danger of irreverence is present, or if it is feared that they are not able to swallow the Host. - Thus commonly. - Gousset, n. 232.

322. ○ **QUESTION 7. Whether Communion is to be given to deaf-mutes, the possessed, and epileptics?**

Resp. 1. Concerning deaf-mutes: Affirmatively, if from signs it is clear that they have discretion and are sufficiently instructed. But if they enjoy not just any sort, but some sufficient discretion, they will

be able to communicate more often. - Thus commonly with St. Ligorius, n. 303.

Resp. 2. Concerning the possessed, a distinction must be made: Communion is to be denied to them when they are not masters of themselves; otherwise it is to be granted. Indeed it is expedient that such persons communicate more often according to the prudence of the Confessor, since the Eucharist is a special remedy for driving away demons.

Resp. 3. Concerning epileptics: Communion cannot be given to them when they are in an actual paroxysm, on account of the proximate danger of irreverence; but at other times it is not to be denied. - Thus commonly with St. Ligorius, n. 303.

323. ○ **QUESTION 8. Whether Communion can be given to those condemned to capital punishment?**

Resp. Affirmatively. Benedict XIV indeed teaches that the custom which is recognized respectively to exist in each place is to be followed, *On the Synod*, lib. 7, c. 11; but he calls the use of ministering the Most Holy Eucharist to them more conformable to Christian piety, and brings forward the testimony of St. Pius V concerning this matter. Several provincial Councils of Gaul, for example the Council of Soissons, Auch, etc., have very recently commended this pious use. Gousset, n. 230, most greatly urges this practice.

See those things which especially pertain to Easter Communion in the Treatise *On the Precepts of the Church*, n. 489 and following.

Article II. On the Dispositions Required in the Subject of the Eucharist: 1. as to the Soul, 2. as to the Body

sec. I. On the dispositions of the soul

324. Principles. - I. For receiving the Sacrament of the Eucharist there is required the state of grace, at least prudently judged to be present. Otherwise a most grave sacrilege is committed. The reason is clear from the nature of the thing, and also from the words of the Apostle, 1 Cor. 11:28: *But let a man prove himself, and so let him eat of that Bread and drink of the Chalice. For he who eats and drinks unworthily, eats and drinks judgment to himself, not discerning the body of the Lord.*

II. It is not sufficient that the state of grace be acquired by perfect contrition, but it is required that confession of mortal sins be premised and sacramental absolution be received, except in a case of necessity, namely either when there is lacking the supply of a Confessor, and Communion cannot be omitted without grave note or suspicion, or when a Priest must celebrate so that the people may assist at Mass on a feast day. - Trent, sess. 13, c. 7. - See St. Ligorius, n. 256 and following.

325. Questions. - **QUESTION 1. When is the supply of a Confessor considered lacking?**

Resp. It is considered lacking: 1. If no Confessor is present, and, the circumstances of weakness, age, business, distance, air, shortness of time, etc., having been considered, an absent one cannot be approached without grave difficulty.

2. If otherwise no Confessor is present except one ignorant of the language, or lacking jurisdiction, or one to whom you cannot confess without grave harm to yourself or another. Yet in these cases perfect contrition is required. But the supply of a Confessor is not considered lacking if the one to whom you are accustomed to confess is absent, but any approved one must be lacking. - St. Ligorius, n. 264.

But a cause excusing from confession for laymen occurs most rarely. Indeed it can more easily be present with respect to Priests; but they must certainly beware lest, deterred by a vain pretext or by shame and embarrassment, they imagine for themselves a chimerical impossibility.

QUESTION 2. What distance is required for the Priest to be considered lacking?

Resp. It cannot be rigorously determined, but depends on circumstances. Some require a distance of two leagues; others one league and a half or a quarter; others one league only. But besides the account of the journey, other reasons often press, for example infirmity or shortness of time. Thus a priest already about to celebrate can be excused from confession, even if the Confessor is 50 paces distant. - St. Ligorius, n. 264.

326. ○ **QUESTION 3. Whether one who remembers a mortal sin which through inculpable forgetfulness he did not declare in confession is bound to confess it before Communion?**

Resp. 1. Certainly no, if the penitent is already sitting at the sacred table, or there is present a grave cause of communicating, and he can confess again only with difficulty. The reason is that even if the precept of confession were present, it would not urge with so great an inconvenience. - Thus all.

Resp. 2. If the penitent can without inconvenience confess or omit Communion, it is controverted. More probably he is neither bound to confess nor to abstain from Communion, because the sin involuntarily omitted has certainly been remitted, although only indirectly; and therefore it in no way stands in the way of receiving Communion. Nor should you say that the Tridentine precept of confessing before Communion urges; for the penitent, since he has already been duly confessed and justified through the Sacrament of Penance, has been sufficiently proved even according to the mind of the Council of Trent. - St. Ligorius, n. 257, *On the Eucharist*. - Collet. - Pontas. - Gousset, n. 249, and others, against others who more commonly and not improbably held the opposite. - St. Ligorius inclines more to the former opinion, yet judges that the second is to be advised in practice [1], provided that some cause does not advise otherwise. - *Homo apostolicus*, n. 23.

[1] Do not understand this as if in practice you ought to teach with the second opinion that in the case there is present an obligation to confess again before Communion; the meaning of St. Alphonsus here is, namely, that it is more advisable to confess again; especially because the memory of the omitted fault may impede the tranquil peace of conscience, and that devotion which is especially conducive to tasting the sweetness of this divine food and receiving abundant fruit.

327. ○ **QUESTION 4. Whether a Priest who celebrated, or a layman who communicated conscious of mortal sin, without confession, on account of urgent necessity, is bound to confess AS SOON AS POSSIBLE?**

Resp. 1. With respect to the Priest, affirmatively. For thus expressly the Tridentine Council, ibid., c. 7: *But if, necessity urging, a Priest has celebrated without previous confession, let him confess AS SOON AS*

POSSIBLE.

Resp. 2. With respect to the layman, no, more probably. The reason is that the Council of Trent speaks only of Priests, as is clear from the text. - Thus most commonly, says St. Ligorius, n. 268.

QUESTION 5. How is that precept imposed on Priests of confessing AS SOON AS POSSIBLE to be understood [2]?

[2] You have two propositions concerning this matter condemned by Alexander VII. For the thirty-eighth is: *The mandate of Trent made to a priest sacrificing from necessity with mortal sin, of confessing as soon as possible, is a counsel, not a precept*; but the thirty-ninth: *That particle, As soon as possible, is understood when the priest will confess in his own time.*

Resp. More probably it suffices if the Priest confesses within three days; because since this precept is only ecclesiastical, the word *as soon as possible* can be understood morally, as it is understood in other human laws, where that word, or another similar one, by common interpretation is extended to the space of three days. - St. Ligorius, n. 266, and others. - Yet a Priest cannot celebrate again before he has been confessed, because he was not excused from confession except because of the instant necessity. Hence if the same necessity of celebrating urges on the following day, and he can confess [3], he cannot put off confession to another day.

[3] But if the same necessity of celebrating urges on the following day, indeed also on the third thereafter, or even on the fourth, etc., day, and through those days also the supply of a Confessor is not present, the priest will be excused no otherwise than before.

328. ○ **QUESTION 6. Whether a Priest celebrating after confession, in which he inculpably forgot some mortal sin, is bound to confess AS SOON AS POSSIBLE?**

Resp. 1. No, if he remembers the sin after the celebration; because he did not celebrate conscious of that sin, as Trent speaks. - Thus commonly.

Resp. 2. No, more probably, even if he remembers the sin before the celebration; because since he has premised confession, although he forgot some grave sin, nevertheless he cannot be said to have celebrated conscious of mortal sin without previous confession. St. Ligorius, n. 267, says that this opinion is probable after Lacroix and others against Suarez, Lugo, etc.

QUESTION 7. Whether a Priest celebrating SACRILEGIOUSLY, when necessity is not urging, or if it is urging, when the supply of a Confessor is not lacking, is bound to confess AS SOON AS POSSIBLE?

Resp. No. The reason is that the precept of the Council of Trent is ordered only to striking fear into those who, under the pretext of necessity, defer confession, but not to those celebrating sacrilegiously, to whom a precept of this kind would very rarely be useful; for those who, with the divine precept contemned, dare to celebrate sacrilegiously, would certainly more easily contemn the precept of the Church. - Thus most commonly and more truly St. Ligorius, n. 266.

QUESTION 8. Whether affection for some venial sin impedes the whole fruit of Communion?

Resp. No. The reason is that the will can well experience pious movements toward God and the Sacrament, although it retains some lightly disordered affection for a particular thing; therefore one communicating with such an affection is not deprived of every fruit of the Eucharist. - St. Ligorius, n. 270, and others more commonly.

SEC. II. ON THE DISPOSITIONS OF THE BODY

A twofold disposition is required on the part of the body, namely 1. fasting; 2. decency.

POINT I. ON THE FAST REQUIRED FOR COMMUNION

329. Principles. - I. From the precept of the Church, for Communion there is required the natural fast, or total abstinence after midnight from any thing whatsoever, however small, which is taken by way of food and drink, yet with certain cases excepted. This is clear 1. from the universal custom of the Church and unanimous tradition; 2. from all Catechisms and Rituals approved by the Church; 3. from the Councils, and especially from the Council of Constance, sess. 13.

II. For breaking that fast, according to the common opinion, three conditions are required, namely: I. That what is taken be taken from outside [1]; because what does not come from outside, even if it is swallowed voluntarily, is not called eating; for things which are eaten come from without. Hence blood flowing from the mouth, tongue, gums, etc., does not break the fast. - St. Ligorius, n. 279. - Elbel, n. 91, etc.

[1] Add: and be conveyed into the stomach.

II. That something be taken by way of eating or drinking. The reason is that according to common sense the natural fast is broken only in this way. Hence whatever is drawn in by way of respiration or saliva in no way breaks the fast. Thus you remain fasting, although through respiration you have swallowed dust or a fly. - St. Thomas. - St. Ligorius, n. 280.

III. That the thing taken have the character of food or drink, that is, that it be something alterable in the stomach and apt for nutrition. The reason is that otherwise, according to the common way of conceiving, it is neither eating nor drinking. For no one is said to eat iron, glass, wood, etc. - Thus commonly the Theologians with St. Thomas, part 3, q. 80, art. 8. - St. Ligorius, n. 281.

330. Questions. - **QUESTION 1. Whether the passing through of remains of food which adhere between the teeth breaks the fast?**

Resp. 1. No, if it is involuntary, because it does not have the character of food. This is also clear from the Rubric of the Missal, *On Defects*, n. 3. - Thus all.

Resp. 2. If it is voluntary, it is controverted.

The first probable opinion denies it, because such remains are not taken by way of food, although deliberately, but by way of saliva. Thus St. Thomas, *In 4*, dist. 8, q. 1, art. 4, q. 2, ad 3. See also Rubric, tit. 9, n. 3.

The second opinion affirms it, because a passing through of this kind, since it is done deliberately, seems to be a new eating. - Thus Roncaglia, etc. St. Ligorius, n. 279, says that this opinion is more probable [2].

[2] Also for this second opinion those words from St. Thomas are usually alleged (3, q. 80, art. 8, ad 4): *Yet remains of food remaining in the mouth, if they are swallowed accidentally, do not impede the reception of this sacrament, because they are not conveyed by way of food, but by way of saliva; and the same reason holds concerning remains of water or wine with which the mouth is washed, provided they are not conveyed in a great quantity, but mixed with saliva, which cannot be avoided.* To these things Seraphinus Caponi writes: *I*

would wish that he (St. Doctor) *be rightly understood, and that there be most watchfully weighed that which he himself for this reason expressed very cautiously, namely the word mixed with saliva, and the word that it cannot be avoided.*

Yet it must be admitted that it can be drawn otherwise from another place (*In 4*, dist. 8, q. 1, art. 4, q. 2, ad 3), in which he employs a different principle: *The fast of nature*, says the Holy Doctor, *is said by privation of the act of eating.... But eating is said from the taking of exterior food, although it is terminated at the conveyance of food into the belly, and further at nutrition; and therefore things which are carried on within, without the taking of exterior food, do not seem to loose the fast of nature, nor to impede reception of the Eucharist, such as the swallowing of saliva; and similarly it seems concerning those things which remain within the teeth, and also concerning eructations.* Now the principle here assumed is this, that in order to loose the fast there must be the taking of exterior food; which he denies to be present in the passing through of those remains. But this holds, as is clear, whether they are conveyed accidentally or not accidentally. This sense is clear also from the objection which the Holy Doctor solves there. For it is of this kind: *If some remains of food remain in the mouth, someone is not impeded from the reception of the body of Christ; because this could happen to a priest even while he is in the very celebration of the sacrament.... Therefore neither should food put into the mouth impede reception of this sacrament, if taken in a small quantity.* Now if the Holy Doctor had thought that the fast is loosed through those remains voluntarily conveyed into the stomach, he should have answered at least by distinguishing the antecedent, namely whether accidentally, etc.

Moreover, St. Alphonsus notes (lib. 6, n. 279) that the rubrics of the Missal (*On Defects*, n. 3) do not conflict with this opinion, where it is said thus: *If remains of food remaining in the mouth are swallowed, they do not impede Communion, since they are not swallowed by way of food, but by way of saliva.*

Yet the same St. Alphonsus rightly warns that even Doctors who judge that the fast is not loosed by those remains voluntarily conveyed nevertheless give the counsel that they be spat out, as, for example, Suarez (disp. 66, sect. 4, v. *Thirdly*); then he adds that in this one must not act scrupulously, as Suarez wisely warns. Hence, he adds, *I gladly follow the opinion of Lugo* (disp. 15, n. 36), *that remains separated from the teeth, which are sensibly perceived on the tongue, should indeed be spat out; but there is not an obligation of applying diligence to extract those remains from the teeth, even if it is foreseen that they will be swallowed if they are not extracted.... For otherwise this obligation would be exposed to innumerable scruples and perplexities, to which the Church certainly is not presumed to have wished to oblige.* Indeed Lugo (l.c.) adds: *Nor ought we diligently to search for them once extracted from the teeth in the corners within the mouth, that they may be spat out; because to have ourselves omissively in these matters is not to eat, but to permit them to be conveyed with saliva or respiration.* But those solicitous admonitions disclose sufficiently that this obligation of spitting out, whatever it may be, falls back into what Laymann (lib. 5, tr. 4, c. 7, n. 18) better calls decency. For you will not easily compose these things: on the one hand, that the fast is violated through those remains conveyed, and on the other, that almost no care is imposed lest they be conveyed. And since care at least to spit out what is sensibly perceived on the tongue can induce those innumerable scruples and anxieties, whether that thing in reality, or whether the whole thing, has been rejected; now help seems to have to be sought from the other opinion of St. Thomas, which, since it denies that the fast is loosed by those remains, exempts from any troublesome solicitude.

QUESTION 2. Whether little drops of water or broth tasted, mixed with saliva, break the fast if they are swallowed?

Resp. 1. No, if they are conveyed accidentally, beyond the intention, provided they are not in great quantity. The same must be said of little drops which are involuntarily conveyed when washing the mouth. The reason is that they are not taken by way of nutrition. This is also clear from the Rubric of the Missal, *On Defects*, n. 3.

Resp. 2. Affirmatively, if they are swallowed deliberately. The reason is that then nothing is lacking for them to have the character of food or drink [3]. - St. Ligorius, n. 279.

[3] Understand these things concerning him who deliberately wishes to swallow those little drops. For although it cannot be avoided, as St. Thomas says (3, q. 84, art. 8, ad 4), that the little drops drawn in be mixed with saliva, and the Church, to use the words of Cardinal de Lugo (*On the Eucharist*, disp. 15, n. 34), did not wish through this precept to prohibit us from swallowing saliva; for it would be a very harsh precept and smelling of Judaic superstition if one had to convey absolutely nothing with saliva...; for the most anxious diligence would be needed in spitting out a thousand times the water received once for washing the mouth, lest something remain with the saliva; nevertheless, for this reason the mixture with saliva does not change the nature of the act, namely of drinking, when the mind is studiously borne not to swallowing saliva but

to conveying broth or water. Therefore the same matter (little drops mixed with saliva), and the same act of conveying, with the same advertence on both sides, will break or not break the fast, according as from the two mixed elements the conveyance of this one or of that one is studiously intended.

331. ○ **QUESTION 3. Whether powder of tobacco taken through the nostrils looses the fast?**

Resp. No, even if something is sent into the stomach. The reason is that although such matter is nutritive, nevertheless it is not taken by way of eating. - Thus commonly. - St. Ligorius, n. 280.

QUESTION 4. Whether smoke of tobacco or the like looses the fast?

Resp. No, with the more common and more probable opinion, because smoke of tobacco is neither food nor drink, nor is it taken by eating or drinking; otherwise we would have to say that those also break the fast who in a kitchen draw in the smoke of foods both by mouth and by nostrils. And this holds even if the smoke is voluntarily sent into the stomach. - Thus St. Ligorius, ibid. - The same seems to have to be said of the juice or odor of camphor, which is drawn in by way of tobacco smoke (in French: *cigarette de Raspail*).

332. ○ **QUESTION 5. Whether he looses the fast who takes a leaf of tobacco, or an aromatic, so that he may crush it with his teeth and spit out the phlegm?**

Resp. No, probably, even if beyond the intention some small amount of juice inseparably mixed with saliva is swallowed; because if this is swallowed accidentally, it is conveyed not by way of food, but by way of saliva. But all agree that chewing of this kind before Communion is unbecoming; hence it does not seem to be excused from venial fault unless some reasonable cause intervenes. - St. Ligorius, ibid.

QUESTION 6. Whether he can communicate who positively doubts whether after midnight he took food or drink, or on the day itself swallowed something?

Resp. Affirmatively, more probably. The reason is that in the case it is not established that the fast has been violated, and therefore it is not established that Communion is forbidden; for the fact of a violated fast would have to be proved before the law prohibiting the Eucharist to one not fasting is invoked. - St. Ligorius, however, n. 282, with others admits this only for a negative doubt [4].

[4] Yet the reason added by the same St. Alphonsus equally proves the matter also in the case of a positive doubt, namely when there are probabilities on both sides. *You are not bound,* he says, *to abstain from it* (the Eucharist), *as long as you are not certain, and so much the more if you have no probable reason that you have eaten; for then you remain in possession of your liberty.* This is confirmed from lib. 1, n. 38, 39, to which place St. Alphonsus himself refers the reader. For here he distinguishes nothing between positive and negative doubt; and the reason added, that in that case the law prohibiting Communion does not seem certain and, as doubtful, does not oblige, according to the mind of St. Alphonsus, as is clear, holds for both doubts.

** To confirm these things, as it seems, the VV. (p. 932, n. 97) bring forward those things which St. Alphonsus has thus in *Homo apostolicus* (tr. 15, n. 35): *Yet doubt whether he swallowed something after midnight does not impede Communion, as we said, tr. 1, n. 19; because, as we proved there, this precept is not positive, that one approach Communion fasting, but is negative, lest one communicate after the breaking of the fast; wherefore, whenever it is not certain concerning the breaking of the fast, the prohibition no longer possesses, but the liberty of the one wishing to communicate does.* Then from the *Moral Work* (lib. 1, n. 39) the same VV. transcribe those things which St. Alphonsus had brought forward to the same matter from Eusebius Amort, with these words: *He can communicate, because the condition of the possessor is better, as long as presumptions so strong are not given to the contrary that the one acting more probably believes that the twelfth hour has already sounded.* And from this we shall think it happened that the VV. changed the state of the question. For the Holy Doctor (lib. 6, n. 282) raises the question thus only about a negative doubt: *But whether*

in a negative doubt, whether midnight has passed or not, someone can communicate. But they make the question thus (l.c.) about a positive doubt: *Whether he can communicate who positively doubts whether after midnight he took food or drink,* etc.; and they silently passed over the doubt as it had been proposed by the Holy Doctor.

333. ○ **QUESTION 7. Whether it is permitted to eat and drink immediately after Communion?**

Resp. Formerly indeed after Communion the fast was prescribed until Sext. But this precept has long since been abrogated. Yet from decency some delay ought to be observed between the reception of this Sacrament and other foods, at least as long as the consecrated species still persevere in the stomach not yet plainly corrupted, unless nevertheless some reasonable cause is present for taking something immediately; otherwise such eating, on account of irreverence, is not excused from venial fault. - St. Ligorius, n. 287, and others commonly.

QUESTION 8. Whether it is illicit to spit after Communion?

Resp. No, per se, provided no fragment of the Host remains in the mouth. For there is no danger of irreverence toward the sacred species, since the path by which spittle flows together into the mouth is not the esophagus, or path of food and drink, but is the path of respiration. Yet all agree that it is fitting that communicants abstain from spitting for some interval of time. - St. Ligorius, n. 283.

QUESTION 9. When is it lawful to communicate someone not fasting?

Resp. One not fasting lawfully communicates: 1. in danger of death, from whatever cause it may arise; 2. in danger lest the Eucharist perish or be badly treated, for example by heretics or impious persons; 3. in proximate danger of grave scandal from omission of the Sacrifice or Communion; 4. in the necessity of completing the Sacrifice or Communion, for example if, instead of the species of wine, the Priest has taken water, etc. - St. Ligorius, n. 284 and following.

334. ○ **QUESTION 10. Whether moral certitude of the danger of death is required, so that Viaticum can be ministered to one not fasting?**

Resp. No, but a prudent doubt suffices, or probability of danger [5], especially when it is to be feared lest the sick person be seized by sudden death. Indeed, Parish Priests and parents or relatives of the sick who, from negligence or vain fear, so prolong the administration of sacred Viaticum that the sick risk departing without the Eucharist, must be gravely rebuked. - St. Ligorius, *Homo apostolicus*, n. 46.

[5] You will find this same doctrine handed down in other words among the Doctors, who either take the article and danger of death for one and the same, or, supposing the distinction between these two which had pleased some, teach that this exception from the common law holds not only in the article, but also in the danger of death. For a distinction of this kind is such that the article is when death is proximately imminent and is morally certain and almost inevitable; but the danger is when there is probable doubt, and death is frequently accustomed to occur in such a case. See Suarez, *In 3 P.,* tom. IV, disp. 26, sect. 4, n. 2. - Lugo, *On Penance*, disp. 18, n. 20. - Sanchez, *In Decal.*, lib. 2, cap. 13, n. 1. Now St. Alphonsus (lib. 6, n. 561) judges that such danger or probable doubt is present even in a dangerous disease, namely one which of itself is adequate for bringing danger of death. Therefore as soon as it is sufficiently established that someone has been seized by a disease of this kind, so that the Eucharist may be supplied to him even not fasting, there is no need to defer up to the point when no or slight hope of life is left, but immediately such a sick person can and ought to be considered exempt from the common law of the Church. And skillfully, after other Doctors, St. Alphonsus (lib. 6, n. 285, dub. 3, at the end) warns that one must not proceed scrupulously in this, since in the Council of Constance, sess. 13, the sick are simply excepted from the law of fasting. But the decree of the Council of Constance has itself thus: *A sacrament of this kind ought not... to be received by the faithful when not fasting, except in a case of infirmity or of another necessity conceded or admitted by law or by the Church.*

QUESTION 11. Whether it is ever lawful to give Communion to a sick person not fasting, and not lying dangerously ill [6], if the disease is long-lasting?

[6] Extend this to those who, although they are not lying ill with disease, nevertheless cannot preserve the natural fast for some hours.

Resp. It must be denied, with attention to the present practice of the Church, unless the disease is of such a kind that of itself it can induce danger of death. Yet some Theologians sometimes permit this, if the disease is long-lasting and the sick person is never able to communicate wholly fasting, provided it is done rarely, for example a few times in the year. - Thus Elbel, n. 90. - But the most common opinion of Theologians contradicts this with Suarez, who asserts that only the Pope can dispense in this law. In reality the Supreme Pontiff is accustomed to dispense rarely and only for a grave cause. But then there seems to be sufficient reason why the Eucharist sometimes can be administered to a sick person after midnight. And indeed according to very learned Theologians interrogated at Rome, there is no doubt in the case of annual or Easter Communion, which is prescribed not by merely ecclesiastical right, but also by divine right, because a divine command is more excellent than a human one.

335. ○ **QUESTION 12. Whether it is lawful to minister Communion again to a sick person not fasting who has already been fortified with Viaticum?**

Resp. Affirmatively. The reason is that this Sacrament is not given to the sick precisely for satisfying the precept, but as a defense against temptations which press more at the time of death. Wherefore this is lawful not only if a new danger recurs, but also if the same danger endures. - Thus commonly with St. Ligorius, n. 285. - Recall what was said above, n. 308.

QUESTION 13. By how much time ought one Communion to be distant from another if the sick person communicates not fasting?

Resp. The more common opinion teaches that they ought to be distant by about eight days. But not improbably several with St. Ligorius say that a sick person accustomed to communicate more often from devotion can receive Communion without fasting twice in the week [7]. But attention must be paid to the circumstances of places, persons, and particular statutes. Communion can more easily be conceded to sick religious, or to other pious persons living in a monastery, whether they are fasting or not, than to others; because then there is less preparation and less astonishment of the people, since the sacred Eucharist is not to be carried publicly through the streets.

[7] That a custom of communicating frequently from devotion can be held as a sufficient reason why the Eucharist can be supplied more often to one not fasting can indeed be admitted. But that this should be so restricted to these persons that it must be denied to others who were not accustomed to communicate more often, even if they desire and request it, what reason, I ask, proves this?

** To this place the VV. (p. 932, n. 98) note that St. Alphonsus (lib. 6, n. 285, dub. 1) spoke more liberally and brought forward the opinions of Doctors who think that even daily Communion can be conceded to the sick, although not fasting. Then in the note appended, the same VV. refer the reader to *Homo apostolicus* (tr. 15, n. 47), where the Holy Doctor, after bringing forward other opinions, adds: *Not improbably Laymann, Escobar, Roncaglia, and Hurtado confidently say that Viaticum can be repeated even on the following day, when the sick person was accustomed to communicate often and when moral danger of death is imminent; indeed Castropalao, Armilla, Tamburini, and Dicastillo admit universally that it can be repeated on any day.* And these things indeed come most opportunely to be mentioned, so that the difficulties of certain persons either too timid or too morose may be met.

They then add, VV. (l.c. in note), 1. that from the doctrine of St. Alphonsus it in no way follows, as Ballerini seems to hint, that Viaticum is to be denied to others similarly disposed who previously had not been accustomed to communicate so often. And 2. soon they add: Father Ballerini will easily concede that it does not commonly happen that someone can suddenly be admitted to daily Communion.

Resp. To the first: Father Ballerini in no way said or hinted that from the words or doctrines either of Gury or of St. Alphonsus (concerning whom there was not even a word there) that conclusion follows, but judged the warning not inopportune, lest perhaps someone too timid or morose (which can happen not at all improbably) draw the same conclusion.

To the second. Resp. 1. In the note the discussion is not about daily Communion, but about Communion however more frequent according to the Response of Father Gury. 2. Whether it commonly happens that someone can suddenly be admitted to more frequent or daily Communion is an irrelevant question, since in the note it is merely signified that from a preceding rarer use of the Eucharist it does not follow that it cannot be given more frequently to one who is sick. 3. That consideration also, whether he can be admitted SUDDENLY, etc., is irrelevant. For certainly, generally as to others, whether they should be admitted sooner or later to more frequent Communion will seem to have to be defined by the trial of some time. But as to men laboring under so grave an infirmity that Communion is given to them not fasting by way of Viaticum, is there room for asking whether they communicate more frequently suddenly or not suddenly?

Point II. On the Decency of the Body

336. Principles. - I. By natural right there is required that exterior habit and that composition of the body which exhibit the internal reverence and devotion of the mind. The reason is clear: for to this most august Sacrament there is owed not only internal but also external veneration, since Christ Himself, by means of the species, exists and is treated in it in a certain sensible way.

II. No stain at all of the body of itself impedes from Communion, since the Eucharist is only the food of the soul, nor is purity diminished by stains of the body, which contribute nothing to moral goodness or malice. - St. Ligorius, n. 271 and 275. - Yet decency and reverence owed to so great a Sacrament require that, if filth appearing externally can be removed, it be diligently removed.

III. There is no obligation of abstaining from Communion on account of hidden stains of the body, or even those externally apparent but indelible. - St. Ligorius, ibid. - Yet if external stains, here and now indelible, are very notable and ought to cease shortly, it will be becoming, where it can conveniently be done, to defer Communion. But when they last longer, there is no reason why someone should be deprived of heavenly nourishment. - Thus commonly.

337. Resolutions. - 1. Women ought to approach Holy Communion in holy adornment, breathing modesty; if any presented themselves to the sacred table very indecently, Communion would have to be denied to them, yet with due cautions for preventing scandals as far as can be done.

2. Leprosy, flux of blood, and similar things, which happen without the fault of the sufferer, do not of themselves prohibit from Communion, because those stains do not obstruct devotion, which is the disposition required for Communion. - St. Ligorius, ibid.

3. A Priest infected with leprosy or another infirmity exciting horror can celebrate, but not in public; for thus it is established from Canon Law. - St. Ligorius, ibid.

4. It is fitting from decency and Christian humility that soldiers about to communicate should approach the sacred table with their arms laid aside. Yet they are obliged to this by no law. - St.

Ligorius, ibid. - The same should be said of laymen wearing gloves (*gants*).

Appendix I. On Frequent Communion

338. By the name of frequent Communion, commonly with St. Ligorius, there are understood in the stricter sense those Communions which, beyond Sundays or feast days, are made on weekdays, even without previous confession.

No entirely certain rule concerning frequent Communion can be established. Therefore we shall indicate only certain things generally.

It is certain that frequent Communion, even daily Communion, has always been most desired in the Church. This is clear 1. from the common testimony of the Fathers, who always earnestly commended it to the faithful. It is clear 2. from the Council of Trent, sess. 22, c. 6, where it says: *The holy Synod indeed would desire that at each Mass the faithful standing by should communicate not only by spiritual affection, but also by sacramental reception of the Eucharist, so that the fruit of this most holy Sacrifice might come to them.* It is clear 3. from the Decree of Innocent XI in the year 1679, and also from the common testimony of Doctors. Therefore frequent Communion is greatly to be praised, and is to be earnestly urged upon the faithful by Parish Priests and also by Confessors. It is certain besides that days for receiving the sacred Eucharist cannot generally be established; nor are those to be barred from it who desire to approach frequently, unless they appear unworthy. Therefore this whole matter must be left to the judgment of Confessors, who, according to the purity of conscience and the fruit perceived from the sacred table, ought to prescribe that which they judge will profit each one more. - Thus from the same Decree of Innocent XI.

339. ○ It is useful to report the principal things which St. Ligorius has concerning this matter in the book *The Practice of the Confessor* (which is found toward the end of the larger Work):

> We speak here only of the manner in which Confessors ought to conduct themselves in conceding Communion to their penitents. In this, some err by too great indulgence, others by too great rigor. There is no doubt that it is an error, as Benedict XIV notes in his golden book *On the Synod*, to concede frequent Communion to those who often fall into grave sins, and are not solicitous about doing penance and about their amendment, or to those who approach > to Communion with affection for venial sins, without any desire of freeing themselves from them.
>
> It is indeed expedient to concede Communion to some who would be in danger of falling into mortal sins, that they may receive strength for resisting; but with respect to those persons who are not in such danger and, on the contrary, ordinarily commit deliberate venial sins, and in whom no amendment nor desire of amendment shines forth, it will be best not to permit them Communion more than once a week; indeed it may be expedient sometimes to forbid them Communion for an entire week, that they may conceive a greater horror of their defects and greater reverence toward this Sacrament.... (n. 149.)

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Certain Directors surely err, and depart greatly from the spirit of the Church, when, without any regard for need or progress, they indiscriminately deny frequent Communion, led by no other reason than because it is frequent. The Roman Catechism itself, explaining the desire of the Council of Trent that all those assisting at the Sacrifice communicate, teaches that it is the office of the Parish Priest diligently to exhort the faithful to Communion not only frequent but daily, with the obligation of instructing them that, just as the body, so also the soul, needs daily nourishment.... Moreover, in the Decree of Innocent XI it is imposed upon Bishops that they most diligently take care that Communion, even daily Communion, be denied to no one, and that, as is fitting, they seek to nourish this devotion in their subjects.

Certain more rigid spirits readily admit that daily Communion is indeed lawful; but they say that a due disposition is required for this. But we desire to know from them what they understand by this name, due disposition. If they understand a worthy disposition, who then should ever again approach the Eucharist? Jesus Christ alone worthily received the Eucharist, because God alone could worthily receive God. But if they understand a suitable disposition, it has already been said above that it is equitable to deny frequent Communion to those who have actual venial sins, or affection for them without a desire of amendment. But if then we speak of those who, affection even for venial sins now being removed [1], and the greater part of their depraved inclinations having been overcome [2], have a great desire of communicating, St. Francis de Sales says that these, with the previous counsel of their director, could rightly communicate daily. (n. 150.) > And although to abstain from Communion on some day is also a virtue, nevertheless Father Granada, in his *Treatise on Communion*, says that it is the common opinion of Doctors that it is better to approach Communion daily from love than to abstain from reverence. And St. Thomas confirms this, part 3, q. 80, art. 10, ad 3, saying: *And therefore both pertain to reverence for this Sacrament: both that it be received daily, and that one sometimes abstain. Yet love and hope, to which Scripture always calls us, are preferred to fear.* Indeed Father Barisonus rightly says that he who approaches the Eucharist with a desire of growing in divine love also exercises an act of reverence toward Jesus Christ; indeed, the former performs a positive act, whereas he who abstains performs only a negative act.... The Venerable Father Master Avila does not hesitate to say that those who condemn persons who approach the Eucharist more often perform the office of the devil. (n. 151.)

[1] Affection for venial sins is said to be removed, not indeed when someone no longer falls into venial sins; for this perfection belongs not to man journeying on earth, but to the blessed comprehensor in heaven; but when someone, although he sometimes falls into venial sins from infirmity, nevertheless is accustomed immediately to grieve and diligently to guard against a relapse.

[2] Here the words of the Council of Trent must be recalled to memory (sess. 5, Decree *On Original Sin*, n. 5): *But that concupiscence or the tinder remains in the baptized, this holy Synod confesses and perceives; and since it has been left for combat, it cannot harm those who do not consent, but who manfully resist through the grace of Jesus Christ; indeed, he who shall have contended lawfully shall be crowned.* Therefore, to have overcome depraved inclinations is not to have them extinguished, or not to feel their force, however vehement, but not to be led away by them to violating the law of God. Wherefore victory of this kind over depraved inclinations falls back into the preceding condition of a man who strives with all his strength to guard against at least fully deliberate venial faults. For this cannot be furnished by one who does not endeavor to deny himself, that is, his depraved inclinations, through continual and laborious combat against them.

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> Moreover, considering the doctrines related, it seems that a Director cannot without scruple deny frequent, even daily, Communion to certain souls desiring it in order that they may advance in divine love; always, however, provided that, living alienated from affection for any venial fault, they moreover devote themselves much to mental prayer [3], endeavor to tend toward perfection, and no longer fall into sins, even venial sins, that are plainly voluntary.... Except, ordinarily speaking, one day in each week, as certain prudent Directors are accustomed to do; and except that time in which they wish to deprive their penitents of Communion in order to prove their obedience [4], or humility, or for some just cause.... (n. 152.)

[3] This condition is not to be required indiscriminately from all. And indeed it not rarely happens that you find souls distinguished by singular purity of conscience and constantly leading a life especially noble in innocence of morals, which nevertheless do not devote themselves to the exercise of mental prayer, either because they are occupied by other employments, or because God, wonderful in His Saints, does not draw all souls to Himself by the same way, and knows how to feed, direct, and fortify them with the heavenly light of His grace. See concerning this argument the excellent little work of the Reverend Joseph Frassinetti, entitled: *The Pater Noster of St. Teresa of Jesus: A Treatise on Prayer by the Priest Giuseppe Frassinetti*.

[4] This reason of proving obedience seems not to be entrusted everywhere nor indiscriminately to all, but at most sometimes, and indeed to men who have not only been exercised by long experience in the direction of souls and by intensive study in the spiritual way, but who moreover singularly excel in an abundance of divine light and in that heavenly gift which they call discernment of spirits. Otherwise, besides other inconveniences, effects plainly opposite to the intended purpose will very easily follow. Besides, is there lacking some other more suitable matter concerning which the virtue of obedience can be exercised?

But what in the present matter deservedly ought to seem altogether intolerable is that even women who perhaps exercise some power in monasteries or in some pious Congregation, either over nuns subject to them, or over girls who are educated in the same monasteries, or even merely frequent schools or sodalities there, do not hesitate rashly to usurp for themselves the faculty of conceding or denying access to Holy Communion. This abuse, introduced long ago into certain monasteries of Gaul by Jansenist frauds, I do not know how, in no small part, gradually and imperceptibly pervaded especially the more recent Congregations of women, so that women claim for themselves the governance of the spirit and a certain episcopate, as it were. And thus, while the government of souls is called by St. Gregory the art of arts; while decrees of Synods and pontifical Constitutions prescribe that the choicest men of the clergy, who excel in doctrine, prudence, maturity of judgment, gravity, experience in spiritual matters, etc., be appointed to the spiritual cultivation of this assembly, and therefore Bishops approve not all confessors, but a certain few as fit above others for that duty; while in Religious Orders only the most grave men, if there are any, and those distinguished by judgment and prudence, are chosen for the office of Spiritual Father; while even the Saints admonish that he who determines to enter upon the spiritual journey should so labor in taking a guide of the way that he select one out of thousands; while we all confess that in the theological disciplines that part which they call ascetical or mystical is held to be the most difficult, since it requires certain singular gifts of judgment, discretion, etc.; nevertheless we sometimes see this most grave and difficult office now almost wholly committed to the weakness and ignorance of the female intellect. And since weakness and poverty of mind, when some authority and power are added, are accustomed to be followed by a rashness the more audacious, hence one could see recalled into monasteries, as though by right of return, certain of those scenes which elsewhere in Jansenist history provoked us to laughter and at the same time to just indignation. You would have seen, namely, every effort brought to this, that nuns be withdrawn from the care, instruction, and direction of confessors, so that the whole governance of the spirit might be drawn from the venerable mother of all as from its sole fountain; to which end, even in the Constitutions themselves, one could perceive it most cunningly insinuated, under specious colors and by deceitful art, that the work of the Confessor should not be employed except for the absolution of sins, but that all other things should be reserved to the provident care of the spiritual mother; so that that part which is held to be especially arduous in ecclesiastical governance was now to be referred to women, concerning whom otherwise the Apostle prescribed (1 Tim. 2): *Let a woman learn in silence with all subjection. But I permit not a woman to teach... but to be in silence.*

Nevertheless, you would have said that very little except the matter of absolution remained reserved from these spiritual mothers. For to these mothers and mistresses the fullest account of the whole conscience was prescribed to be rendered. To this certainly pertained not only to disclose all movements of the soul, depraved inclinations, and temptations, but also lapses and sins. And, what surpasses all belief, while even in communities of Religious men which observe this law of rendering an account of conscience it is prudently guarded that some matter, if perhaps there has been sin in it, be reserved to sacramental confession to be made before the Superior himself, so that provision may be made for decency and shame; the levity and imprudence of women had progressed so far that even those things which pertain to vices contrary to chastity had to be narrated to female curiosity in familiar conversation, so much so that even in the Constitutions themselves, under the pretext obtained of teaching the manner in which this was to be furnished, the necessity of this narration appeared expressly inserted. Anyone easily sees how similar these abuses were to the confessions which the most celebrated Mondonville, as the history of the Jansenist Institute of the Holy Childhood relates, was accustomed to receive from her nuns.

Most wisely, therefore, the Sacred Congregation of Bishops and Regulars, which did not permit even male religious, if they were merely laymen, the office or duty of spiritual direction, either of receiving an account of conscience even rendered in writing, or even merely of knowing the temptations of subjects (see *Method of the Sacred Congregation of Bishops and Regulars in Approving New Institutes*, etc., pp. 30, 31), and which willed that this duty with respect to nuns be so proper to the Confessor that it did not approve an account of conscience to be rendered by them even to Directors or Superiors (ibid., pp. 28, 29), took care that abuses of this kind be removed from Congregations of women. First, therefore, it restricted the matter concerning which nuns are permitted to render some account to the moderator or Superior General to two heads, namely, to exterior or public transgressions of the Constitutions, and to progress in virtues (ibid., p. 26, n. 3, and p. 28, n. 16). Then it conceded this manifestation of conscience itself not obligatorily but only facultatively (ibid.); that is, it willed that there be no obligation of manifesting conscience even concerning those two heads, but permitted it to the free judgment of each. Finally, what is of greatest importance, it did not concede this absolutely, but always added that it permitted this *for the present*; by which it is openly signified that these things are tolerated meanwhile by way of a certain experiment. And this indeed was most prudently guarded, both because it is manifest that the moderator does not lack means and arts by which she may easily compel to that which is called facultative nuns who do not wish to have that offense, and because the argument concerning progress in virtues furnishes a very easy and almost necessary transition to defects against virtues, and thus the inconvenience of confessions concerning any sins whatsoever to be made by nuns to the moderator can perhaps return under an obvious pretext.

Moreover, from this spiritual governance and inspection of consciences committed to these moderators, behold that inconvenience from which the occasion of this Note was taken. For while the Constitutions of Religious Orders which prescribe an account of conscience to be rendered at the same time most severely prohibit Superiors from using the knowledge drawn from it in any way for external government, it could not be hoped that the female disposition would patiently bear this bridle. Hence that which pertains to the prudent judgment of the Confessor, namely what frequency of Holy Communion is suitable for each of the nuns, the president of the monastery, as moderator of consciences, seizes as her own office; and therefore whether this nun may approach Holy Communion once, that one three times, this one twice a week, another daily, is left to be determined by the decisive judgment of a petty woman.

But there arises from this also another most wicked abuse, which indeed it was natural to expect from so great a power given to a disposition not mistress of itself. For that which formerly, as the gravest punishment, by the canons of Synods and at the judgment of Bishops was sometimes accustomed to be inflicted for graver sins and more atrocious crimes, namely that offenders be barred from sacred Communion, the female mind, lacking judgment, uses as a weapon for avenging certain very slight faults, whether real or imagined. Nor is the president of the monastery accustomed to do this easily only with subject nuns, but, according to the proverb, the lesser ox learns to plow from the greater: individual mistresses of girls who are educated in monasteries also rashly assume this power for themselves; and where you would think that some light disobedience of a girl, or some annoyance caused to another pupil, or a violation of the law of silence could suitably be punished by withdrawing an apple or a sweetmeat or even part of breakfast, for these most slight heads they foolishly and cruelly withdraw the heavenly food of the Eucharist and the grace of the Sacrament.

Nor is this enough. For since the weakness of woman has now imbibed this opinion of her authority, that, according to the phrase of the Apostle (1 Cor. 4:1), she considers the dispensation of the mysteries of God entrusted to herself, and that the use of the Sacraments with respect to the girl pupils resides entirely in her own power and judgment, she exercises a blind tyranny not only with respect to the Eucharist, but also with respect to the Sacrament of Penance. And that which is

unheard of in ecclesiastical discipline, that which nowhere was denied even to the most criminal malefactors, is forbidden to girls on account of some light fault, namely that they confess on the day on which the other pupils confess. These things, namely, and others of this kind had to happen when, the due grades and offices of each not being observed, the matter is brought to that place concerning which Sacred Scripture prophesied (Eccles. 10): *There is an evil which I have seen under the sun, as though proceeding by error from the face of the prince: the fool set in high dignity, and the rich sitting below. I have seen servants upon horses*, etc.

Nor indeed should anyone object here that certain Constitutions of nuns have been approved by the Apostolic See in which it is not only permitted, but even prescribed, that the fullest account of the whole conscience be rendered to the president of the monastery. What this argument is worth in a disciplinary matter, learn from similar examples, which you have innumerable at hand. Formerly Parish Priests could choose for themselves and their sheep a confessor from whatever priests they wished; but after the Council of Trent they cannot choose one unless approved by the Ordinary. Formerly Mendicant Regulars could receive the confessions of any faithful even when their Ordinaries were unwilling and resisting; but afterward it was established that they could not exercise this ministry unless approved by the Ordinaries of places. Formerly Bishops, after a process instituted by themselves concerning virtues and miracles, could grant and decree to someone the honors of the heavenly citizens; but afterward this was reserved to the Apostolic See. Formerly, when Sees were vacant, a chosen Bishop was handed over by the Metropolitan; but afterward the institution of Bishops had to be sought and awaited from the Apostolic See. Formerly nuns were not bound by the severe discipline of enclosure; but afterward solemn profession of vows is not permitted except where the strictness of enclosure can be observed. In a few words: the Apostolic See, according to its wisdom and the power handed down to it by Christ the Lord, uses now this, now another discipline according to diverse circumstances; but it pertains to the sheep of the Lord's flock, whoever they may be, not to judge concerning these things, but faithfully and most lovingly to obey the Shepherd.

And although some soul should sometimes fall into a voluntary venial sin from mere frailty, but soon afterward should grieve and propose amendment, if it should then desire Communion in order to receive strength from the Sacrament, lest it fall, and in order to advance in the way of perfection, for what reason should Communion be denied to it?...

342. ○

Moreover, that which St. Francis de Sales says on this subject must be noted (*The Devout Life*, c. 21): *If they ask you why you communicate so frequently, answer them that two kinds of persons ought to communicate more often: the perfect, namely that they may be able to arrive at perfection; the strong, lest they become weak; the weak, that they may become strong; the sick, that they may be cured; those in good health, lest they become sick.... Those who are not involved in worldly affairs ought to communicate more often because they have the opportunity; but those who are detained by affairs of this kind, because they need Communion....* (n. 153.) > But if afterward it is recognized that, notwithstanding the frequency of Communion, the soul advances nothing in the way of perfection, nor amends itself from deliberate faults, even venial ones, as if it adheres to pleasures of the senses in seeing, hearing, eating, and dressing with some vanity, then certainly the use of Communion will advisedly have to be restricted, so that it may begin seriously to think about its amendment and to provide for its spiritual perfection. Moreover, it must be noted that, although in order that someone may approach Communion it is required that he approach with great devotion, nevertheless it is not necessary that this be the highest and sensible devotion.

343. ○

It suffices for the Director to discover in the innermost will of his penitent a certain alacrity for executing whatever things shall please God. He who would abstain from Communion because he did not feel in himself some great fervor, says the learned Gerson, would be compared to

one who, being exceedingly cold, would be unwilling to approach the fire because he experiences no heat in himself. Hence Father Granada, with Cajetan, teaches that pusillanimous persons who omit Communion on account of a disordered fear of their unworthiness inflict great prejudice upon their own progress. Nor, says St. Lawrence Justinian, in order to continue Communions is it necessary that the soul feel, or openly discern in itself, an increase of fervor, since not rarely this Sacrament operates without our noticing it.... (n. 155.) [5].

[5] The little work of the Most Reverend de Segur, *Holy Communion*, is to be earnestly commended to the faithful; in it, by solid principles and reasoning most suitably accommodated to the common understanding of all, the sophistical little reasons by which certain pusillanimous persons deter themselves, and certain pseudo-ascetics deter others, from frequent participation in the Most Holy Eucharist are refuted.

344. From the things said, according to the mind of St. Ligorius and of others related by him, the doctrine concerning frequent Communion can thus be confined to a few general rules.

First Rule. - Monthly Communion is to be denied to no one sufficiently disposed; indeed it is especially to be recommended to all, even if they lead a life involved in worldly affairs; for otherwise it is very difficult to persevere long in divine grace because of innumerable occasions and the almost obliteration of eternal things. - Thus commonly.

Second Rule. - Weekly Communion is to be permitted, indeed recommended, to those who do not commit grave faults from habit; yet if they labor under several light vices and are in no way solicitous about amendment, it will sometimes be useful to forbid them Communion for some week, so that they may be aroused with some alacrity to cast away their vices [6]. - St. Ligorius, n. 149.

[6] Yet take care lest you be deceived by the principle which the Author also shortly afterward calls most false, namely, as though Communion ought to be regarded as the reward of virtue, since it is a means for acquiring virtue.

Third Rule. - Frequent Communion, or several times in the week, can be permitted or even recommended to those faithful who, although weak, observe the duties of a good Christian, desire both to love, worship, and pray to God, willingly devote some time daily to mental prayer when they can, and do not frequently fall into deliberate faults. - St. Ligorius, n. 150, 153.

Fourth Rule. - Daily Communion is to be conceded to those who lack affection even for light faults, have for the greater part overcome evil desires, and seriously endeavor to tend toward Christian perfection. Yet it is expedient, if cause is present, sometimes once, and at times even several times in the week, to withdraw Communion from them. - St. Ligorius, n. 150. - See *Cases*, tom. II, n. 13 and following.

Finally, it must be noted that authors opposing frequent Communion rest upon a most false principle. For they suppose Communion to be the reward of virtue; but according to the doctrine of the Holy Fathers, the Eucharist is a means of acquiring virtue.

Appendix II. On Spiritual Communion

345. Spiritual Communion is called a pious desire of receiving the Sacrament of the Eucharist when it cannot be received in reality. Hence for it there is required: 1. an act of Faith, by which the one about to communicate spiritually sets before himself Christ truly present in the Eucharist;

2. an act of the mind, by which he imagines to himself in his mind that he is now approaching the sacred table and receiving the Host from the hand of the Priest [1]; 3. an act of desire, by which he longs to receive Christ in the Sacrament and to be united with Him with his whole heart. This Communion was very much among the delights of the Saints, and is commended by the Council of Trent, sess. 13, c. 8. It is very useful to the pious faithful. For if God rewards a pious desire for any virtue, how much more the desire of possessing Him Himself! Therefore it must be diligently insinuated and most vehemently commended by Confessors to their faithful penitents. Spiritual Communion can be made at every time and in every place, both morning and evening. Yet the more opportune time is the time of Mass itself, namely when the Priest communicates; for then, since the most august Sacrament is exhibited to the eyes and represented more vividly to the mind, it will more ardently inflame hearts with divine love. - Scavini, etc.

[1] This imaginative representation is by no means necessary. For the chief part of this very useful and most sweet practice consists in this: that someone, turning over in his mind both those things which moved the immense charity of our Lord to prepare this heavenly banquet for us, and those things which invite and impel us to participate in it, should burst forth into an ardent desire of enjoying this table; and, dwelling upon an affection of this kind together with acts of faith, humility, and love, should ask with great confidence the most abundant benignity of the Lord and Savior that He deign mercifully to bestow even now that abundance of graces which He is accustomed to impart when, by His presence, He invisibly visits our soul. For otherwise imaginative representations do not come easily to all; and if perhaps they are languid, those affections also will languish and miserably wither in which the chief, indeed the whole, fruit of this pious exercise consists.

Second Part. On the Eucharist as Sacrifice

346. The Eucharist has not only the character of a Sacrament, but also of a Sacrifice. Concerning this matter the Roman Catechism, *On the Eucharist*, n. 71: *But these two characters differ very greatly from one another. For the Sacrament is perfected by consecration; but the whole force of Sacrifice is in this, that it be offered. Wherefore, while the sacred Host is contained in the pyx or carried to the sick, it has the character of a Sacrament, not of a Sacrifice.*

Then also, insofar as it is a Sacrament, it brings to those who receive the divine Host a cause of merit and all those benefits which were commemorated above. But insofar as it is a Sacrifice, it contains not only the efficacy of meriting, but also of making satisfaction; for as Christ the Lord in His Passion merited and made satisfaction for us, so those who offer this Sacrifice, whereby they communicate with us, merit the fruits of the Lord's Passion and make satisfaction.

The Eucharist, as a Sacrifice, is called Mass from the verb *to send*, because Christ there is the Victim sent by God; or, according to others, because at the end of the Sacrifice the people are dismissed, the Priest or Deacon saying: *Go, the Mass is ended.*

We must treat: 1. of the nature and efficacy of the Sacrifice of the Mass; 2. of the application of the Sacrifice of the Mass; 3. of the obligation of celebrating Mass; 4. of the time and place of celebration; 5. of the manner of celebrating.

Chapter I. On the Nature and Efficacy of the Sacrifice of the Mass

Sacrifice taken generally is thus commonly defined: *An external oblation of a sensible thing, with its destruction or alteration, made to God alone through a lawful Minister in protestation of His supreme dominion* [1].

[1] Perhaps not the generic notion of sacrifice, but the special definition of a holocaust is handed down in these words. But these things pertain better to Scholastic Theology.

347. Principles. - I. The Mass is the true Sacrifice of the New Law. For it is an oblation instituted by Christ, in which Christ Himself is mystically slain and is offered as a victim to God the Father in acknowledgment of His supreme dominion. This is also established from the definition of the Church in the Council of Trent, sess. 22, Can. 1: If anyone shall say that in the Mass a true and proper Sacrifice is not offered to God, or that what is offered is nothing other than Christ being given to us to eat, let him be anathema.

II. The Sacrifice of the Mass perfectly contains the characters of all the sacrifices of the Old Law. For it is: 1. Latreutic, insofar as it is offered especially to God in acknowledgment of His supreme dominion. 2. Eucharistic, insofar as it is offered to God in thanksgiving for benefits conferred by Him. 3. Propitiatory and satisfactory, or expiatory, insofar as it is offered to God for obtaining both pardon of sins and remission of the punishment due to them. 4. Finally, impetratory, insofar as it is offered to God for obtaining benefits from Him through the merits of Christ. This is established from the Council of Trent, sess. 22, Can. 3.

348. III. The unbloody Sacrifice of the Mass is assuredly the same as the bloody Sacrifice of the Cross, not only because the same victim is offered, but also because the same formal character of Sacrifice is present, namely, through the declaration of the supreme dominion which God has over life and death. Therefore, the Sacrifice of the Altar differs from the Sacrifice of the Cross not essentially, but only accidentally, namely, as regards the manner of offering. 1. For in the Sacrifice of the Cross a real death took place; but in this one only a mystical death. 2. The Redeemer offered the former by Himself upon the altar of the Cross; but He offers the latter through the ministry of priests. 3. The former was meritorious, because in it the price of our redemption was paid; but through the latter the merits of Christ are applied.

349. Questions. - **QUESTION 1. In what does the essence of the Sacrifice of the Mass consist?** [2]

[2] These matters contribute little to practice, except perhaps where the precept of hearing Mass is in question. But since scarcely more than probable opinions are adduced concerning them, hardly anything can be deduced from them even as regards that precept.

Reply. It is disputed. More probably, it consists in the consecration alone, because in the consecration alone are found all the things required to constitute a Sacrifice, namely, an oblation and the mystical destruction or immolation of the victim. - Thus more commonly. Nevertheless, not a few hold that the essence of the Sacrifice consists in the consecration and partly in the consumption, because in the consecration the victim is set forth, and in the consumption it is consumed. St. Lig., no. 305, regarded this opinion as the more probable.

QUESTION 2. For whom can the Sacrifice of the Mass be offered?

Reply 1. It is certain that this Sacrifice can be offered for all the faithful, living and dead, and also for sinners who are not excommunicated, but only as regards the fruit of impetration [3]. This is established from the Council of Trent. the gift of penance, and consequently forgives even great crimes and sins. It is manifest, however, that the Sacrifice is offered for sinners in order that this fruit may be received.

[3] Here perhaps the fruit of impetration is confused with the fruit of propitiation, which consists in this: that God, appeased by the Sacrifice, grants grace and

Reply 2. More probably, it is lawful to celebrate Mass even for tolerated excommunicates, because although the Church grants them nothing, nevertheless the faithful are not prohibited from communicating with them even in divine things, as will be stated in the Treatise on Censures. The same is also to be held concerning infidels [4]. - St. Lig., no. 309.

[4] Benedict XIV (*Const. In Superiori*, March 8, 1755, sec. 27), speaking of the discipline of the Orientals, who make commemoration of the king in the sacred liturgy even though he is an infidel, has the following: If anyone should ask by what reasoning this can be tolerated, when it is certainly established that those kings for whom they pray and of whom they make commemoration in the liturgy are infidels, the Venerable Cardinal Bellarmine would answer him (as in fact he did answer...) that it is by no means forbidden by the nature of the matter, as the theologians say, to pray in the Mass even for infidels, since the Sacrifice of the Cross was offered for all. And indeed St. Thomas, *In IV Sent.*, dist. 12, q. 2, art. 2, q. 2, ad 4, teaches that although St. Augustine wrote in the book *On the Origin of the Soul* that the Sacrifice is offered only for those who are members of Christ, nevertheless this opinion must be understood so as to include all those who either already are members of Christ or can become such. Therefore the same Cardinal adds that the whole matter must be measured according to the prohibition of the Church: it is certain from the nature of the matter, if there is no prohibition of the Church, that it is lawful to offer for men of this kind; he is speaking of infidels. And since a prohibition of this kind exists with regard to excommunicates, and thus with regard to heretics and schismatics, but not with regard to infidels, who are not bound by excommunication, he says that this is sufficient for commemoration of them to be made in the Mass, and even for the Sacrifice to be offered for them, according to the manifest tradition on this matter and the Apostolic Constitution. But someone will ask whether, if a king is an infidel, as in Greece, where the Turk rules, and in India and Japan and among the Chinese, where pagans reign, it is lawful for priests who are there expressly to offer for the king. I answer: I think it is lawful, provided that that king is not excommunicated, as heretical kings are, but is a pagan or heathen. For this tradition, and indeed the Constitution, is Apostolic, as we showed a little above. Nor, so far as I know, does any manifest prohibition of the Church exist. To these considerations the text of Tertullian, *Ad Scapulam*, ch. 2, which occurs as follows, may usefully be added: We sacrifice for the welfare of the emperor, but to our God and his, and as God has commanded, with pure prayer; for God, the Creator of the universe, has no need of anyone's honor or blood. But leaving assertions of this kind in their probability, etc. Thus far Benedict XIV.

Reply 3. It is not lawful to offer the Sacrifice in the name of the Church for excommunicates who are to be avoided, because this is specially prohibited by Canon Law, c. 2, *De sententia excommunicationis*. A priest may, however, lawfully offer Mass for them in his own name. - St. Lig., no. 308. - Lacroix, no. 33. - Suarez, etc.

350. **QUESTION 3. How many kinds of fruit are there from the Sacrifice of the Mass?**

Reply. The fruit of the Mass is distinguished under a twofold head, namely, on the part of the offerer and on the part of the victim.

I. On the part of the offerer. Since there is a twofold offerer, namely, Christ and the priest, there is therefore a twofold kind of fruit of the Mass on the part of the offerer. The first proceeds from Christ offering, and is called *ex opere operato*, because it is received in consideration of the merits of Christ and His promise.

The other proceeds from the priest offering, insofar as it is received in consideration of the merit and devotion of the celebrating priest, and is called the fruit *ex opere operantis*. Hence it follows that the Sacrifice offered by a holy priest, insofar as it is considered *ex opere operato*, does not profit more than if it were offered by an unworthy minister; because the Sacrifice, considered in this way, is the work of Christ, and its fruit flows solely from the merits of Christ. Therefore, in this sense it can rightly be said that the Mass of a bad priest is worth as much as the Mass of a good priest. But the contrary must be said if the merit *ex opere operantis* is considered; for the worthier the priest is and the greater the devotion with which he is endowed, the greater the fruit of the Mass becomes.

351. II. On the part of the victim. Under this head a threefold fruit of the Sacrifice is distinguished, namely, general, special, and most special.

1. The general fruit is that which corresponds to the Sacrifice insofar as it is a work performed by the priest as he acts in the name of the whole Church. And all the faithful, although the priest does not think of them, receive this fruit; but it is granted to them only by way of impetration [5], and not, as it seems, by way of satisfaction, because from the thousands of Sacrifices that are offered daily, every just person, even unknowingly, would obtain the remission of an immense punishment, which appears incredible. Those who are present at the Sacrifice, and *a fortiori* those who cooperate in it, for example, those serving the priest, etc., share in this general fruit in a more abundant or more special manner. But this fruit, as being *ex opere operantis*, is more abundant in proportion as the devotion and holiness of those assisting and cooperating are greater. Hence, although several persons hear Mass or serve at it, each will receive the whole fruit proportioned to his devotion, just as if he alone were hearing or serving at it.

[5] Here also understand impetration in such a way that it includes propitiation as well.

2. The special fruit is that which comes to him or to those to whom the priest specially applies the Sacrifice. They share *ex opere operato* in the Sacrifice insofar as it is impetratory and propitiatory; and indeed also, provided that nothing prevents it, insofar as it is satisfactory.

3. The most special fruit is that which comes to the offering priest insofar as he offers as a private person. For if every cooperator receives from the Sacrifice a fruit altogether special to himself, much more ought the priest who sacrifices to receive this fruit. Whether the priest can apply this fruit to others, however, is uncertain [6]. - St. Lig., no. 312.

[6] This, however, is certain: the priest cannot apply this most special fruit to another in such a way that he receives another stipend on that account; yet understand this unless it is done with the consent of the one giving the other stipend.

352. **QUESTION 4. Is the value of the Sacrifice of the Mass infinite?**

Reply 1. It is certainly infinite if it is considered in itself, or in the thing offered and in the excellence of the dignity of Christ offering. For Christ Himself in this Sacrifice is at once the victim and the principal offerer. Therefore, the Mass is the oblation of a victim of infinite price made by Christ as the primary offerer, Who has infinite merit.

Reply 2. It cannot be infinite with regard to its application made to individual men, or with regard to its effect or fruit. The reason is that creatures are not capable of receiving an infinite fruit; but the

application can be greater or less according as the disposition or capacity of the one to whom it is applied is greater or less.

It is disputed, however, whether the application of the fruit of the Sacrifice is restricted to a certain degree or is made without a determinate limit according to the capacity of those for whom it is offered.

The first and much more probable opinion contends that the application is made without a determinate limit according to the capacity of the faithful for whom it is offered. And this is the opinion most commonly received today, says St. Lig., no. 312. The reason is that the value of the Sacrifice is infinite in itself; hence, of itself, it can be applied to innumerable men without being capable of exhaustion. Therefore, if the Sacrifice is offered for one hundred or one thousand persons, each one will receive as much fruit as the single person would receive for whom alone it was offered [7]. The second opinion holds that the fruit of the Mass is restricted to a certain degree. The reason adduced is that, although the Mass in itself and with regard to sufficiency is of infinite value, nevertheless its effect is limited and restricted to a certain quantity by the will of Christ, Who instituted this Sacrifice so that *ex opere operato* it would produce a certain effect, or a certain degree of satisfaction, independently of the disposition of men. Nevertheless, the patrons of this opinion concede that this degree of fruit can be increased *ex opere operantis*, that is, according to the greater devotion of the offering priest and of the person for whom it is offered [8]. For the rest, they assert entirely without grounds that a restriction of this kind was made by Christ.

[7] Although, according to this most common opinion of the more recent authors, a priest can apply one and the same Sacrifice for several persons, nevertheless it is not lawful for him to receive several stipends. For this has been prohibited by decrees of the Church; and St. Alphonsus (*Lib.* 6, no. 312) adds the reason: because the stipend is given for the support of the minister; therefore, as often as his support is furnished to the minister, the title for receiving another stipend is lacking. Indeed (as the same St. Alphonsus rightly warns), since the opposite opinion is not altogether lacking in at least some extrinsic probability, a priest who receives a stipend from one person ought not to apply the same Sacrifice for others except under the condition, namely, that nothing be withdrawn from the one furnishing the stipend. Nevertheless, the addition of this condition, which St. Alphonsus suggests for the sake of greater security, can and ought by no means to prevent the priest from also applying the same Sacrifice for others, or even from being able, through the application of the same Sacrifice, to satisfy some obligation to another which he contracted otherwise than by an accepted stipend, and therefore under a title other than that of justice. On this matter Cardinal de Lugo (*De Eucharistia*, disp. 19, no. 249) has the following: It does not appear why a priest would not satisfy his debt by conforming himself to that opinion which the adversaries admit to be probable; just as one who has promised a fast would satisfy by fasting in this or that manner, even if there were a question, under a probable opinion, whether that was a fast, provided nevertheless that it was probable that it was a fast. Therefore, one who has promised (from liberality) to apply a Mass for someone will satisfy by applying it with a probable application. For since elsewhere (vol. 1, no. 80), according to the most common opinion of the Doctors, it was established that one who has probably satisfied an obligation that is not from justice requiring equality is thereby freed from the obligation, so that he is bound to nothing further; and since the opinion that the same Sacrifice avails equally for others besides the one offering the stipend is now much more probable and most commonly received, the reason is evident why Cardinal de Lugo said that an obligation of Sacrifice arising under a title other than that of justice, for example, from a gratuitous and liberal promise, and furthermore from a debt of mere fidelity, can be satisfied in this manner. See also the following note.

[8] Moreover, these Doctors also concede that the diverse fruits of the Sacrifice, namely, the latreutic, eucharistic, impetratory, and satisfactory fruits, can validly be divided by the celebrant, or be applied to diverse persons. And they teach that this can even be done lawfully in a free Mass, that is, one which the celebrant is bound to offer for no one in particular.

But in a Mass that is owed solely from fidelity and a liberal promise, they consider that division altogether lawful if the Sacrifice of the Mass was liberally promised to diverse persons for diverse ends. The reason is that a liberal promise is to be

interpreted so that it is as little burdensome as possible to the one promising, as is said in L. 99, *Quidquid adstringendae*, ff., *De verborum obligationibus*.

Finally, in a Mass owed solely from obedience, whether by command of a Superior or by a statute of an Order, it is lawful to divide the fruits that do not tend directly to the prescribed end. The reason is that, according to the common opinion of the Doctors from Cap. *Intelligentia*, *De verborum significatione*, the obligation of a law or precept is not to be extended beyond the end of the law. Hence, when a Superior or the statute of an Order prescribes a Mass precisely in honor of the Most Holy Trinity, or of some Saint, or in thanksgiving, the satisfactory fruit, and in the last case also the impetratory fruit, can be freely applied by the priest for another, as Gobat and Sporer, with others, teach on the authority of St. Francis Borgia, who, when he was Superior General of the Society of Jesus, wrote to his subjects in the year 1564 in these words: When Superiors enjoin Masses for purposes other than for the dead, it is clear that the application for freeing a soul remains free to the priest.

353. **QUESTION 5. Does the Mass benefit the dead by an infallible promise of Christ?**

Reply. Affirmatively. For the Mass is profitably offered for the dead, as is established from the Council of Trent, sess. 22, ch. 2 and Can. 3. Moreover, this cannot be done except by the promise of Christ, which is declared in Matt. 26:28: This is My Blood... which shall be shed for many unto the remission of sins. This is also established from the words of the form in the conferral of Orders: Receive the power to offer Sacrifice to God and to celebrate Masses both for the living and for the dead, in the name of the Lord. Amen. Nevertheless, temporal punishment is not remitted to the dead by a fixed law, but it profits them only by way of suffrage, according as it shall please God to accept it. - See Perrone, vol. 8, no. 282.

QUESTION 6. Does a Requiem Mass benefit the dead more than a Mass of the Saints?

Reply. Negatively, as regards the substance, or on the part of the Sacrifice; but affirmatively as regards the accidental elements, or on the part of the prayers, the deficiency of which devotion can supply. - St. Lig., no. 309, after St. Thomas, *Suppl.*, q. 71, art. 9. It must be noted here that a Requiem Mass and a Mass in black vestments can be applied for a living person, provided that the one who gave the alms has not expressly declared the contrary. - S. C. of Rites, Nov. 29, 1856.

Chapter II. On the Application of the Sacrifice of the Mass

The application of the Sacrifice of the Mass is the intention by which the priest wills that the fruit of the Sacrifice pass to the benefit of a certain person.

354. Principles. - I. In order that a share of the general fruit may be received, the application of the priest is not necessary; it suffices that he will to celebrate according to the mind of the Church, for such an application is always implicitly included in the general intention of the celebrant. Likewise, in order that the most special fruit may come to the priest himself, it is not necessary that he will specially to apply it to himself; for this is always applied to him of itself. Indeed, there are some who think that this fruit is so proper to him that it cannot be applied to another.

II. The application of the priest is required, however, in order that the special or ministerial fruit may come to someone. For the priest, and he alone, bears the person of Christ; therefore, just as he alone offers the Sacrifice for others in the person of Christ, so also he alone applies its fruit.

III. Although the priest has promised the Mass to no one, he ought to make some application of the special fruit. The reason is: 1. Because in his ordination he received, by the institution of Christ, the power of effecting the Sacrifice and, consequently, of applying its fruit; but that power would remain useless if the priest did not use it. 2. Moreover, if no application is made, there is no reason why it should profit one person more than another; therefore, the unapplied fruit remains in the general treasury of the Church, and consequently becomes less useful. - Billuart, diss. 8, art. 4.

355. Questions. - **QUESTION 1. Must the application of the fruit of the Mass be actual?**

Reply. Negatively; it suffices that it be habitual, namely, that once made it is not retracted. The reason is that this application is made by way of donation, and thus through an intention once possessed the priest has already donated the fruit of his Sacrifice; consequently, it is owed to the one to whom he donated it and, when the Mass is celebrated, it comes to that person unless the donation is revoked. - St. Lig., no. 335. It is expedient, however, to make the application of the Mass before it is begun. But if the priest has not done this either before the consecration or at least in the consecration of the second Species, he cannot afterward apply the Sacrifice specially to anyone. - St. Lig., ibid.

QUESTION 2. If a priest, forgetful of a prior intention, elicits a new one while celebrating, which is to be judged valid?

Reply. It cannot be determined in general. The priest should consider which intention was predominant in his mind [1]. For the rest, in practice it matters little; for since one or the other is certainly valid, it will be sufficient on another occasion to apply the Mass to the one to whom it was not applied.

[1] Lugo (*De Sacramentis*, disp. 8, nos. 121, 123) explains which intention prevails in this way: If today you wish tomorrow's Mass to be applied altogether for Peter, so that this application is from now on to be preferred to any application to be made through forgetfulness of it, but tomorrow you apply the Mass for another, today's application will not be judged revoked, because it was more universal and revocatory of tomorrow's application.... If each act of the will were equal, the later would prevail. For just as a later testament always prevails over an earlier one, even if, when he makes the later one, a man does not remember the earlier one made by him, so, if yesterday you applied today's Mass for Peter, and today, forgetful of that act of will, you apply it for Paul by an equally absolute and efficacious act of will, this later one seems to be preferred.

QUESTION 3. Must the intention of the celebrant be explicitly determinate?

Reply. Negatively. It suffices that it be determined implicitly. Thus the application is valid if you say: I offer this Sacrifice for the one who gave the stipend; for the one for whom the Superior wills the Mass to be said; for the one for whom the foundation requires it; for the greatest sinner; for a soul afflicted by a graver temptation; for the soul in Purgatory needing greater help, or more pleasing to God; for all the souls in Purgatory; for the one to whom I am bound to apply it; for the person or intention determined in writing or in the mind at the beginning of the week, etc. On the contrary, this application is not valid: I offer so that God may apply this Mass. - See *Cases*, vol. II, no. 325 et seq.

356. **QUESTION 4. If a priest has accepted stipends from ten persons, does he satisfy his obligation by celebrating with a confused and indeterminate intention?**

Reply. Entirely negatively, because an intention determined at least to a certain person is required; otherwise, there is no reason why the Mass should be applied to one rather than to another, and thus

it would be applied to no one. - St. Lig., no. 335. Nevertheless, if he were to intend to apply each Mass to those ten persons, applying one tenth of each Mass to each, he would satisfy the obligation, because the fruit of the Sacrifice is divisible and there is allotted to each what is owed to him. For, by receiving a tenth part of the fruit in each of ten Masses, each one, when the tenth Mass has been offered, has already obtained the whole fruit owed to him [2]. - St. Lig., no. 335, with many others.

[2] The Author replies thus according to the opinion of those who teach that only a limited fruit is received from the Mass, namely, that which the divine disposition has determined; yet he himself had said above (no. 352) that this opinion rests upon no solid reason. But according to the more probable and most common opinion, of which there was discussion above (no. 352 with the note), each person would receive the whole fruit owed to him from each of the ten Masses. Therefore, when the tenth Mass had been offered in this manner, each would have received a fruit ten times greater than if one Mass had been applied for each individually.

357. **QUESTION 5. How must the application be determined when stipends are given by many unknown persons, as commonly happens in pious pilgrimages?**

Reply. The intention must be made for those who gave the earlier stipends. This is easily accomplished when the same priest is to satisfy all the obligations; nor does it hinder that he may happen to distribute a portion of the Masses to be celebrated to other priests, because he can distribute them in the same order in which he received them, and thus the application appears sufficiently determined. A greater difficulty seems to be present if a sacristan or another person has collected many stipends from diverse persons and distributes the commingled money to several priests, which is an ordinary and frequent case. For how, then, must the application of the Mass be made? I answer: nothing else must be done, nor can anything else morally be done, except that the application be made according to the temporal order in which the stipends were given by the faithful, in accordance with the axiom sometimes employed in a matter of justice: He who is prior in time is stronger in right. Indeed, it is not even necessary that the priest attend to this explicitly, since he is judged to will to act in this way, because natural equity demands it. Hence, if from a common fund, for example, from a box placed in the church, or from a distributor of Masses, you have received stipends for twenty Masses, no other care ought to rest upon you except that you say Mass twenty times according to the intention of the giver. The distributor himself is judged to have the same implicit intention, namely, successively to assign the stipends according to priority of time. The priest can, however, interrupt the aforesaid order by an express intention for some grave cause, for example, if some other Mass is urgent, or if he has received a larger stipend so that he should not delay the Mass, etc.

358. **QUESTION 6. Is an application made for a living person whom you believe to be dead valid, if you were bound to celebrate for him only after he had died?**

Reply. Entirely negatively. The reason is that the obligation bears upon making the application for the dead person in order to relieve his soul from the punishments of Purgatory; but that end is not obtained while the Sacrifice is offered for a living person. Hence, because of an error of this kind, the priest must suffer the loss of his stipend [3].

[3] The Author's resolution perhaps regards a chimerical case. Whatever may be said of the probability of the case, the resolution, if considered in itself, can deservedly appear somewhat too severe. The reason is that the satisfactory fruit of the Sacrifice can benefit even a living person and exempt him from the punishments of Purgatory. Moreover, a living person is capable of, and shares in, those fruits also of which the dead are not capable. And from this comes the practice of some

who, solicitously seeking this assistance for themselves, endeavor to have all or a large part of the Masses determined by them offered in advance while they are among the living.

Chapter III. On the Obligation of Celebrating

This obligation can be considered under a threefold aspect: 1. By reason of the priesthood. 2. By reason of office. 3. By reason of a stipend.

Article I. On the Obligation of Celebrating by Reason of the Priesthood

359. I say: All priests, by reason of the priesthood, are bound by divine law under grave obligation to celebrate at some time. This is proved from the words of Christ, Luke 22:19: Do this in commemoration of Me. By these words, according to the testimony of the Council of Trent, Christ commanded the Apostles and their successors to offer the Sacrifice. Moreover, all priests receive in their ordination not only the power, but also the charge and office of sacrificing annexed to it. Hence the Apostle, Heb. 5:1: For every high priest taken from among men is ordained for men in the things that appertain to God, that he may offer up gifts and sacrifices. Moreover, in a grave matter everyone is gravely bound to discharge the charge he has undertaken. Therefore.... - Thus St. Thomas, part 3, q. 82, art. 10. - See St. Lig., no. 313.

360. Questions. - **QUESTION 1. How often in his life or in a year is a priest bound to celebrate?**

Reply. It is not clearly established. More probably, he does not seem bound to celebrate except three or four times in the year, namely, on the more solemn feasts. Indeed, it does not appear improbable that a priest has sufficiently fulfilled his office if, on whatever days they may be, he offers the Sacrifice three or four times in the year. - St. Lig., no. 313.

QUESTION 2. Is one who celebrates only four times in the year exempt from every sin?

Reply. Negatively. For he does not seem excusable from at least some venial sin. Thus commonly, according to the mind of the Council of Trent, sess. 25, ch. 14, *De Reform.*, where it is said: Let the Bishop take care that they (the priests) celebrate Mass at least on Sundays and solemn feasts. Indeed, holy mother Church desires that a priest offer the Sacrifice every day, and devout priests are accustomed to omit it very rarely.

Hence St. Lig., no. 359, deservedly concludes: Wherefore, I would not know how to excuse from light fault that priest who could celebrate daily (one day of the week excepted out of reverence), and who, without any just cause, but solely from sloth, abstained from celebrating; for a priest celebrates not only for himself, but also for the good of the whole Church and of the Christian people, whose minister and intercessor he has been constituted, according to that saying of the Apostle: EVERY HIGH PRIEST taken from among men is ordained for men in the things that appertain to God, that he may offer up gifts and sacrifices for sins.

Deservedly, therefore, the author of the excellent work *The Imitation of Christ* says, bk. 4, ch. 5: When a priest celebrates, he honors God, gladdens the Angels, edifies the Church, assists the living, affords rest to the dead, and makes himself a partaker of all good things. Thus also St. Bonaventure, *On Preparation for Mass*, ch. 5: A priest who does not celebrate, so far as lies in him, deprives the Trinity of

praise and glory, the Angels of joy, sinners of pardon, the just of assistance and grace, those existing in Purgatory of refreshment, the Church of Christ of a special benefit, and himself of medicine and remedy against daily sins and infirmities.

Article II. On the Obligation of Celebrating by Reason of Office

361. I say I: All pastors of souls are bound by natural and divine law to celebrate at some time for their sheep. The reason is that they ought to feed them. This is also established from the Council of Trent, sess. 23, ch. 1, *De Reform.*, where it says: Since by divine precept it has been commanded to all to whom the care of souls is entrusted to know their sheep, to offer Sacrifice for them..., etc.

I say II: By ecclesiastical law, the same persons are bound to celebrate for their sheep on all Sundays and feast days on which the faithful ought to hear Mass. This is established from several decrees of the Church, but especially from the Constitution of Benedict XIV, *Cum semper*, of August 19, 1744. Not only secular parish priests but also regulars are bound to this; likewise those who are deputed, temporarily or removably, for example, because of the absence or infirmity of the parish priest, to supply his office, such as assistant parish priests. - Benedict XIV, Constitution cited. Indeed, a parish priest placed over two parishes is bound to apply two Masses when feast days recur, unless the union of the two parishes is plenary and extinctive, so that from two parish churches there has become altogether one through the extinction of the title of the other. - S. Congr. of the Council, March 11, 1774. This burden *a fortiori* rests upon Bishops after they have taken possession of the See, but not upon Vicars Capitular. - S. Congr. of Rites, Nov. 12, 1831. Missionaries and Vicars Apostolic, however, are by no means bound to apply Masses, although it is fitting to do so from charity. - S. Congr. for the Propagation of the Faith, April 1862 [1].

[1] Namely, a response had formerly proceeded from the Congregation for the Propagation of the Faith as though missionaries were bound to this by a strict obligation of charity. But later, namely in the year 1862, that resolution was rejected by the Sacred Congregation itself. For the rest, the title of charity of which the Author speaks presses missionaries equally, as is evident, and all priests throughout the whole world. Hence the Author here indicates not an office proper to missionaries, but one common to all.

362. Questions. - **QUESTION 1. Can a very poor parish priest accept a stipend for a Mass to be celebrated on Sunday?**

Reply. Negatively, of itself. This is established from the declaration of Benedict XIV in the aforesaid Constitution [2]. - St. Lig., no. 325.

[2] Nevertheless, in sec. 8 of the same Constitution Benedict XIV grants Bishops the faculty of dispensing so that needy parish priests may, even on feast days, receive an alms from some devout offerer and apply the Sacrifice for him, on this condition, however, that within the week, by applying a Mass for the people, they supply whatever was omitted on the feast days.

QUESTION 2. Is the obligation of celebrating Mass for the people personal?

Reply. Affirmatively. The reason is that it rests upon the parish priest as pastor. Hence parish priests ought by themselves to apply Mass for the people on Sundays and feast days; nor is any custom to the contrary valid.

To a doubt proposed to the S. Congr. of the Council:

What is to be thought of the custom by force of which a parish priest on Sundays and feast days applies a private Mass for some devout benefactor and, being detained by no legitimate impediment, transfers to another priest the burden of celebrating Mass?

The Sacred Congregation replied: The custom in question is not to be regarded. Sept. 25, 1847, *in Mechlinien*. - See D. Bouix, *Treatise on the Parish Priest*, p. 590.

363. **QUESTION 3. Does a parish priest satisfy the aforesaid obligation by a private Mass?**

Reply. It seems that the answer must be altogether affirmative, because he fulfills the precept of the Church in reality; nor is he bound to celebrate a solemn Mass, or at some certain fixed hour, although the Bishop can prescribe that parish priests by themselves read or sing the more solemn Mass. - Thus D. Bouix, ibid., pp. 591-592.

Moreover, on Sundays and feast days the parish priest ought to celebrate Mass in his own church and not in another, notwithstanding any custom whatever to the contrary. - Thus S. Congr. of the Council, Sept. 15 and Nov. 17, 1629. - D. Bouix, *Treatise on the Parish Priest*, p. 591 [3].

[3] In some places, however, custom provides that if a solemn feast is celebrated in another church subject to the same parish priest, the honor of celebrating a sung Mass with a double stipend is reserved to him by a certain right.

QUESTION 4. If a parish priest has deputed a vicar to celebrate Mass for the people, must he give him a stipend?

Reply. Affirmatively, because it pertains to the parish priest to take care that the parochial Mass, or Mass for the people, is celebrated, nor is the vicar bound to be deprived of a stipend.

QUESTION 5. Is a parish priest or Bishop who is infirm, or prevented from celebrating by some other cause, bound on feast days to have another celebrate for the people?

Reply. The answer is affirmative, because that burden is not only personal, but at the same time real, just like the burden of preaching, which consequently can and ought to be fulfilled through another. - St. Lig., no. 327. - S. Congr. of Rites, May 11, 1720.

QUESTION 6. Is a parish priest who could not substitute another for himself to celebrate for the people on one or another day during the time of a Retreat (*Retraite pastorale*) afterward bound to apply as many Masses for the people?

Reply. Affirmatively, from the response of the S. Congr. of the Council to the Most Reverend Maupoint, Bishop of Saint-Denis (Bourbon), on Dec. 14, 1859.

364. **QUESTION 7. Are pastors of souls bound to celebrate for the people on feasts suppressed by Pius VI?**

Reply. Affirmatively. The reason is that on those days the Church exempts the faithful only from the obligation of hearing Mass and abstaining from servile works; hence the obligation of the parish priest to celebrate for the people continues to bind, just as it bound before. This is established from various Declarations of the S. Penitentiary.

QUESTION 8. Which feasts were suppressed by Pius VI?

Reply. They are the following: the feasts of the Apostles, except the solemnity of SS. Peter and Paul; the two weekdays that follow Easter and Pentecost; the Finding of the Holy Cross; the feasts of St. Anne, St. Lawrence, St. Stephen, the Holy Innocents, St. Sylvester, St. Michael, and St. Joseph. - See what was said in vol. I, no. 476.

365. **QUESTION 9. Are pastors of souls in France bound to celebrate Mass for their sheep on suppressed feast days whose solemnities were transferred to Sunday by the concession of Pius VII in the year 1802?**

Reply. Affirmatively. This is established from various decisions of the Holy See, especially from the Declaration of the S. Congregation of the Council of Trent approved by Gregory XVI, in the response given to the Most Reverend Bouvier, Bishop of Le Mans, on June 14, 1841, as well as from the response to the Most Reverend Archbishop of Toulouse on August 6, 1842; and again from the decision of the Sacred Congregation on Sept. 25, 1847.

Therefore, in order that a parish priest may satisfy this obligation, it does not suffice for him to apply Mass for the people on the Sundays to which the solemnity of the Epiphany of Our Lord, Corpus Christi, SS. Peter and Paul the Apostles, the Patron of the place (but not the Titular of the church), and the Immaculate Conception is deferred or transferred, where by Apostolic Indult that feast is celebrated on the second Sunday of Advent; but in addition he is bound to apply Mass on the very day on which the Offices of the aforesaid feasts are commonly recited in the Church [4].

[4] With regard to transferred feast days, an exception must be made when the divine Office also has been transferred to Sunday together with the solemnity. Thus the Constitution of Our Most Holy Lord Pope Pius IX, May 3, 1858: But as regards transferred feast days, We make this one exception, namely, that when the divine Office has been transferred to Sunday together with the solemnity, only one Mass for the people is to be applied by parish priests, since the Mass, which is the principal part of the divine Office, must be judged to have been transferred together with the Office itself.

366. **QUESTION 10. Is there any prescription or custom against the obligation of applying Mass for the people on suppressed or transferred feasts?**

Reply. Negatively. This is openly established from the Declaration of the S. Congregation of the Council on Sept. 25, 1847, and especially from the Constitution of Pius IX, *Amantissimi*, May 3, 1858 [5].

[5] Concerning this obligation with regard to reduced feasts, Pius IX established the following: ... Wherefore, by these letters We declare, establish, and decree that parish priests and all others actually exercising the care of souls ought to celebrate and apply the most holy Sacrifice of the Mass for the people entrusted to them, both on all Sundays and other days that are still observed by precept, and also on those which, by the indulgence of this Apostolic See, have been removed and transferred from the number of feast days of precept, just as the curators of souls themselves were bound to do while the aforesaid Constitution of Urban VIII was in its full force, before the feast days of precept were reduced and transferred.

QUESTION 11. Which feasts were suppressed by Pius VII and transferred to Sunday for France?

Reply. They are the following: the Circumcision, the Epiphany, the solemnity of Corpus Christi, the Purification, the Annunciation, the Nativity, and the Immaculate Conception of the Blessed Virgin Mary, the feasts of SS. Peter and Paul, and of the Patron of the Parish. - Recall what was said in vol. I, no. 476.

Article III. On the Obligation of Celebrating by Reason of a Stipend

367. Principles. - I. A stipend or alms may lawfully be accepted for a Mass which one is not bound to say for another. For a stipend is not given as the price or compensation for the Mass, but as a means for the support of the minister. This is also established from Sacred Scripture (1 Cor. 9:13): Know you not that they who work in the holy place eat the things that are of the holy place; and they that serve the altar partake with the altar?

II. Priests are bound in justice to celebrate Mass and determinately to apply it according to the intention of those who have given a stipend for this purpose. For an onerous agreement is entered into with them, which must be observed by the title of justice, just as in any other contract. Hence a priest who, either by himself or through another minister, omits to apply according to the intention of the one who gave the stipend is bound to restitution by strict right.

III. A priest cannot satisfy two stipends by one Mass, but must offer a distinct Sacrifice for each. The reason is: 1. Because it is not certainly established that a Mass offered for several persons profits each as much as it profits one person when applied for him alone, although this is far more probable. 2. Because in this way the priest, in receiving an honorarium, would exceed the measure of decent support [1]. 3. Because this same thing is established from proposition 8 condemned by Alexander VII, which is as follows: A priest can accept a doubled stipend for the same Mass by applying to the petitioner even a part of the most special fruit corresponding to the celebrant himself.

[1] According to this argument, this could have seemed sufficiently firm at the time when the amount of the stipend could appear proportionate to the decent support of a priest, that is, support becoming the condition of a priest.

368. Questions. - **QUESTION 1. What is to be judged a just stipend for a celebrating priest?** Reply. The amount of a just stipend cannot be determined universally. It is lawful to demand the stipend established by the Bishop or by custom. - St. Lig., no. 319. Regulars also are bound under grave obligation to conform themselves to this rule, according to a Decree of the Sacred Congregation cited by Benedict XIV, *Instit.* 56, no. 10. - St. Lig., no. 320. Indeed, at least with regard to manual alms, the Bishop can prohibit acceptance of a stipend smaller than the established rate. - Benedict XIV, ibid. [2]. Nevertheless, just as a smaller stipend can be accepted from charity or friendship, so also a larger one may lawfully be received from the liberality of the giver. Likewise, a priest can receive more for extraordinary labor, for example, for celebrating Mass at such an hour or in such an inconvenient place, etc.

[2] The decrees which Benedict XIV (*Instruct.* 56, no. 20) reports regard only perpetual obligations of Masses; and in them it is established that the Superiors of Regulars should not permit a larger or smaller sum of money to be fixed in the future for perpetual Masses. The rate established there by Innocent XIII, namely, sixty scudi annually, is not now observed and cannot be observed because of the changed value of money. The same occurs with regard to stipends for adventitious Masses, which at that time reached ten Roman asses at Rome and which the Sacred Congregation then decreed were not to be changed, as the same Benedict XIV relates (*loc. cit.*, no. 23). But although a stipend twice as great is now given, who would say that it is adequate for the decent support of a priest? And it is indeed astonishing that some are now found so foolish as to clamor against the riches of clerics, when, because the value of money has now changed so greatly, we see that the wages both of laborers and craftsmen and of those devoted to public or private offices have been increased; but we know that the stipends established for the support of clerics have until now been fixed at that amount which, although it was adequate some centuries ago, now scarcely suffices for living a most straitened life!

QUESTION 2. Does a priest who, after accepting a stipend, delays celebrating Mass sin gravely?

Reply. Affirmatively. The reason is that he violates a contract in a grave matter. This is also established from the Decrees of the S. Congregation of the Council of the year 1652. - St. Lig., no. 317.

369. **QUESTION 3. What delay is judged grave?**

Reply. It is disputed; certainly a delay that exceeds three months can be considered grave. - Thus commonly with St. Ligorius, against others who require an entire year. More probably, however, a priest who celebrates the promised Mass within two months does not sin gravely. But in Masses to be celebrated for persons recently deceased, a delay of one month is to be regarded as grave according to St. Ligorius, the Salmanticenses, Lugo, etc. Moreover, the statutes of Bishops must also be attended to. But certainly a priest sins gravely whenever he omits to celebrate, within the time suited to the circumstances, a Mass requested and promised for obtaining some pressing grace, and for that reason he is bound to restore the stipend received, even though he afterward celebrated.

For the rest, although burdens undertaken cannot be fulfilled within a short time, nevertheless, if the one giving the alms for the celebration of other Masses knows this and consents that they be celebrated only when the burdens already undertaken have been satisfied, this is not prohibited. - Thus the S. Congregation of the Council. - Cavalieri, vol. 5, p. 107, ad duodecimum.

QUESTION 4. Does a priest who omits to celebrate Mass sin gravely if the stipend accepted for it does not constitute grave matter?

Reply. It seems that the answer is affirmative, unless perhaps the stipend is so slight that the Mass appears to have been promised gratuitously. The reason is that the one who gave the stipend suffers notable spiritual detriment. Thus St. Lig. and others commonly, against others.

370. **QUESTION 5. Whether and how does one who omits a Mass gratuitously promised sin?**

Reply 1. He does not sin whenever there is no contract of a true promise, but the one promising manifests only a benevolent purpose.

Reply 2. More probably, he sins only venially when a true promise has intervened, because a simple promise does not bind under grave obligation unless, as Lugo says, the one promising expressly binds himself under grave obligation and in justice.

QUESTION 6. Can a priest satisfy several Masses gratuitously promised by one Mass?

Reply. Affirmatively. The reason is that Masses promised gratuitously by no means induce the obligation of a contract properly so called, not even by the title of mere fidelity [3]. Moreover, it is much more probable that an application of the Sacrifice made for several persons profits each as much as it profits one alone. Besides, the reason of justice which requires that the safer part be chosen does not press here, for no remuneration is received. - Thus Elbel, *De Contr.*, no. 337, etc.

[3] The Author here seems to suppose that the priest did not will to assume even the obligation of fidelity which is proper to every true promise, and thus that no contract whatever of a promise properly so called intervened.

QUESTION 7. Is a priest guilty of simony if he celebrates principally in consideration of the stipend?

Reply. Negatively, of itself, unless, namely, he regards the stipend as the true price of the celebration. Yet he cannot be excused from sin, since it is odious that anyone should abuse sacred ministry for the sake of making money. Nevertheless, a priest does not sin who secondarily celebrates in consideration of the remuneration to be received, especially if it is necessary for him. Nor is he stained by any fault if, after accepting a stipend, he is thereby determined to celebrate, although otherwise he would have omitted the Mass; for then he is moved not by reason of the stipend, but by the obligation to be fulfilled. Thus commonly.

371. **QUESTION 8. Can a priest entrust a Mass to another to be celebrated while giving him a smaller stipend than he himself accepted?**

Reply. Negatively. The reason is that, on account of the appearance of base gain, the S. Congregation of the Council prohibited this by a Decree approved by Urban VIII and confirmed by Innocent XII, in which the following is contained: The Church, wishing to remove every damnable gain, prohibits a priest who has undertaken to celebrate a Mass with a certain alms from entrusting the same Mass to another to be celebrated while retaining for himself a part of the alms for that Mass. Hence Alexander VII also condemned the following proposition expressed under no. 9: After the Decree of Urban, a priest to whom Masses to be celebrated are entrusted can satisfy through another by giving him a smaller stipend and retaining another part of the stipend for himself. Indeed, Benedict XIV, in the Encyclical Letter *Quanta cura* of June 30, 1741, condemns with the penalty of suspension incurred by the very fact and reserved to the Apostolic See a priest who, collecting stipends of a greater value for Masses to be celebrated according to the custom or statutes of places, arranges for the Masses to be celebrated there, or in places where smaller stipends are given, while retaining a part for himself. - See St. Lig., no. 321.

Except: 1. Unless the excess of the stipend was given in consideration of the person, friendship, poverty, gratitude, or kinship. 2. Or if the other priest remits the excess entirely of his own accord and without being asked. - St. Lig., ibid., etc., and others commonly.

372. **QUESTION 9. Is one who retains part of the stipend bound to restitution?**

Reply. Affirmatively. The reason is: 1. Because this is deduced from the condemned proposition of Alexander VII related above. For the proposition said that a priest who retained a part of the stipend could satisfy through another; therefore, it follows that the contradictory is true, namely, that he cannot satisfy. But satisfaction regards not only the moral goodness of the act, but also its justice; and one who does not satisfy an obligation of justice is bound to restitution. 2. Because a priest who divides the stipend acts against the will of the giver; for the will of the giver is not only that the Mass be celebrated, but that it be celebrated for such a stipend. For he does not wish gratuitously to give anything to one who does not celebrate. - Thus St. Lig., no. 322, saying that this opinion is to be held. It is disputed, however, to whom restitution ought to be made, namely, whether to the one giving the alms or to the celebrant. It seems it should be made rather to the celebrant. - St. Lig., ibid.

QUESTION 10. Can a priest to whom a generous stipend is offered for today's Mass, retaining it, ask another priest to celebrate in his place, while promising to celebrate on the following day for the person for whom that other priest was going to celebrate for the ordinary alms?

Reply. It is disputed. The first opinion denies it, as though this could not be excused from the appearance of base gain [4]. - Thus St. Lig., no. 322, dub. 4, who nevertheless adds that this does not seem to be condemned as a grave sin.

[4] For this opinion St. Alphonsus adduces nothing except the authority of Concina, who leaves the matter to the judgment of prudent men if the priest is poor - as though poverty could remove from sacred ministries the appearance of base gain! For the rest, the second opinion is not only far more probable because of the solidity of its reasons and the weight of authority, but is also confirmed by the most common practice of devout and prudent priests.

** The VV. found several things (pp. 386-388) to criticize in this little note. Nevertheless, they admit (p. 387) that this exchange of intentions is lawful in itself, even when the stipends are retained by both priests. Thus they say: We do not deny, nor does the Holy Doctor disapprove, that a priest can, speaking *per se*, exchange an intention with another, while each priest retains his own... stipend. And in fact occasions for requesting this of another priest are not so infrequent, as happens, for example, if you have accepted a stipend for a Mass to be celebrated on a certain day, and on that day it unexpectedly happens that you ought to celebrate Mass either for a sick person, or for a deceased person, or for a bridegroom and bride, etc. But since, as the VV. admit, St. Alphonsus finds nothing that can in itself be censured in an exchange of intentions of this kind, those things which the VV. object readily fall of themselves.

Concina (*De Eucharistia*, diss. 2, ch. 6, sec. 2, no. 16) speaks thus on this matter: Nor do I see how this can be excused from the appearance of base commerce. For this exchange of days and Masses tends to produce greater gain. The sole end of the exchange is commerce. The meaning is somewhat obscure, for the word *mercimonium* of itself signifies the same as merchandise. But the VV. bring assistance by interpreting *appearance* as semblance, and by understanding base commerce (p. 387) as base gain. Meanwhile, it is sufficiently astonishing that in former times no one saw this baseness until Concina at last brought some light into the world! The VV. note (*loc. cit.*) that few of the Authors have touched upon this question. But since both the VV. themselves and St. Alphonsus (as they themselves admit) found nothing to disapprove in this exchange of Masses, is it not evident that the matter was scarcely treated by anyone for this reason, namely, that there was no ground for calling its uprightness into doubt? But let us come more closely to the point.

Let it now pass that, as we have said, other causes are often present on account of which this exchange of intentions happens to be requested; nor, moreover, is it customary to inquire which priest accepted the larger stipend. But why, finally, is it base gain? Concina answers: because greater gain is sought; and the VV.: because he seeks another priest lest he lose a *julius*. But what if a priest wishes to preserve the larger stipend, which he thinks has been offered to him by divine providence, so that he may bring assistance to a sick person, or help a needy old woman, or buy a moral work of St. Alphonsus either for himself or to give to another priest? For, with St. Alphonsus approving, it is honorable to exchange an intention while retaining one's own stipend. But to will to use an honorable means for assisting the poor is also honorable. Where, then, is the baseness? But if the VV., with Concina, imagine that it is done inordinately, namely, for a less honorable end, then certainly the end of the agent accidentally adjoined will be called depraved, but not the work considered in itself.

The VV. add (*loc. cit.*): In the Note the weight of authority is vaunted, but which authorities these are is not indicated.

Reply. The fact that throughout so many centuries there existed only the most rigorous Concina (as St. Alphonsus says), who found here the guilt of base commerce, as he calls it, already proves more than sufficiently that against him stood both those who touched upon the question and those who, by the very fact that they raised no question about it, taught that none was to be raised. Did not St. Alphonsus also (as the VV. admit) find no guilt in this matter unless recourse is had to some inordinate end by which the priest might perhaps be moved? And does not the suffrage of all against Concina alone have some weight of authority?

The VV. insist (*loc. cit.*), saying that they wonder that in the Note it is remarked as less coherent that Concina excepted the case of a poor priest, as though poverty could remove the appearance of base gain. For, say the VV., if a poor priest does this, he acts not as moved by desire for gain, but in order to provide for necessity; and then the appearance of base gain is in fact removed.

Reply. This excuse of Concina confirms what was said above: that the act which, considered in itself, can be judged indifferent should not generally be presented as culpable, since it can become good or bad according to the diversity of the end.

For poverty alone cannot furnish a priest with an honorable end on account of which he may honorably judge that the stipend offered to him is to be preserved for his own uses. But that an act of this kind, honorable in itself, should be painted with those terms full of odium, gain and commerce, ought indeed to have been left to Concina's heated imagination; for verbal sallies of this kind are not to be regarded as theological reasons.

The VV. add (*loc. cit.*) that they do not know whence it was established that devout and prudent priests most commonly observe a practice disapproved by St. Alphonsus.

Reply. Whoever is not a stranger in this world plainly knows that occasions are not infrequent for exchanging an intention among priests so that the will of one offering a stipend for a Mass to be celebrated on a stated day may be satisfied. Yet when devout and prudent priests act thus, they do not observe a practice painted by Concina's fervid genius with the colors of base gain and commerce, but the practice which the VV. themselves testify was not disapproved by the Holy Doctor Alphonsus.

Finally, the VV. recall that in the year 1860 the S. Congregation of the Council replied concerning certain doubts about Mass stipends: Let the petitioner consult theologians, especially St. Alphonsus de Liguori and Benedict XIV, and conform himself to their opinions.

Reply 1. The present question is by no means found among the doubts proposed to the Sacred Congregation. Therefore, this does not pertain to the matter. 2. Do not the VV. themselves admit that this practice is not disapproved by St. Alphonsus?

The second opinion affirms it, with Lacroix, no. 134, and others.

373. **QUESTION 11. How are Masses to be assessed for the saying of which a testator left a certain sum of money?** Reply. They are to be assessed according to the custom of the place or the diocesan law in force for private Masses. But if the testator himself fixed the stipend below the custom of the place or the standard of the accepted rate, the number of Masses is to be reduced by the Ordinary according to due proportion. - Thus the S. Congregation established, as cited by St. Ligorius, no. 320. - Gousset, no. 295.

QUESTION 12. Can wealthy priests accept a stipend?

Reply. Affirmatively. The reason is that every laborer, whether rich or poor, is worthy of his hire, as Christ Himself says, Luke 10:7, and according to the Apostle, 1 Cor. 9:13. Besides, if they could not accept a stipend, and on the other hand they are not bound to celebrate without a stipend, since there is no law obliging them to celebrate in this way, the faithful would often be unable to obtain Masses. This is established, moreover, from the practice of the universal Church. - St. Lig. and others commonly.

374. **QUESTION 13. Can the editor of a religious periodical accept from a priest who is a subscriber a certain number of Masses to be celebrated in place of the annual subscription price?**

Reply. Affirmatively. This is established from a Declaration of the S. Penitentiary. For when the editor of a certain religious periodical had asked the S. Penitentiary whether he could with a safe conscience give his periodical to priests on the condition that they celebrate a number of Masses corresponding

to the price paid by others for the periodical, the S. Penitentiary, on Oct. 6, 1862, having maturely considered the aforesaid doubt, replied: Affirmatively, provided that the Masses are celebrated.

Consequently, it is not unlawful to give books on matters pertaining to Religion in return for Masses to be celebrated, provided that equality is preserved between the stipends of the Masses and the price of the works. For the same reasoning applies both to a periodical sheet published, for example, every month, and to complete works that are published and disseminated at one time.

375. **QUESTION 14. Can a priest, for the dissemination of good books, buy them by means of a stipend equivalent to certain Masses to be celebrated by him, and afterward sell them at the current price in the book trade, so that he receives a notable profit from it?**

Reply. Negatively, because any trading on the occasion of Masses to be celebrated is prohibited on account of the appearance of base gain [5]. This is also established from the response of the S. Penitentiary on Nov. 19, 1863. For when the following questions had been proposed: 1. Can a priest, under the pretext of disseminating religious books, with a safe conscience buy them and afterward sell them at the current price among booksellers, so that he gains twenty, thirty, or forty percent? 2. Can he accept Mass stipends for books sold, and gratuitously offer the buyer books proportionate to the profit received? 3. Can the same priest sell the aforesaid books to other priests who lack Mass stipends, with the obligation of celebrating Masses corresponding to the price of these books, so that he himself obtains a profit of thirty, forty, or fifty percent?

[5] According to the resolution of the preceding question, it is equivalent whether you pay a price for acquiring books or assign the stipends of Masses to be celebrated by you. Therefore, the circumstance of books which are acquired by assigning Mass stipends has no bearing here. The reason of baseness, therefore, is to be sought in the trading which is prohibited to clerics by the sacred canons.

** From this, when the doubt was proposed whether those act unlawfully who, for Masses celebrated, receive books or other merchandise in place of a stipend, every appearance of trading or base gain being excluded, the S. Congregation of the Council replied on Sept. 9, 1874: Negatively.

The S. Penitentiary, having maturely considered the aforesaid doubts, replied that every kind of trading or commerce relative to Masses to be celebrated is prohibited to priests by Canon Law, and especially by the Constitution *Apostolicae servitutis* of Benedict XIV. But if any doubt remains for the aforesaid priest, let him submit it to the S. Penitentiary [6].

[6] ** The responses of the S. Congregation of the Council of Sept. 9, 1874, pertain here.

1. Does it savor of base commerce, and therefore is it to be disapproved and, if necessary, restrained by Bishops even with ecclesiastical penalties, when booksellers or merchants act in such a manner that, by employing public inducements and rewards, or in any other way, they collect alms for Masses and repay the priests to whom they entrust the celebration of them not with money but with books or other merchandise? The S. Congregation replied: Affirmatively.

2. Can this manner of acting be rendered honorable either because, without any diminution being made, as many Masses are entrusted for celebration by the aforesaid collectors as correspond to the alms collected, or because by it assistance is given to poor priests who lack Mass alms? The S. Congregation replied: Negatively.

3. Are collections and disbursements of alms of this kind also then to be disapproved and restrained by Bishops, as above, when the profit derived from the exchange of merchandise for alms is expended not for the collectors' own benefit, but for the use and increase of pious institutions and good works? The S. Congregation replied: Affirmatively.

4. Do those participate in base commerce, and therefore are they to be disapproved and also restrained, as above, who hand over to booksellers, merchants, and other collectors of them the alms for Masses received from the faithful or from pious

places, whether or not they receive anything from them by way of reward? The S. Congregation replied: Affirmatively.

5. Do those participate in base commerce, and therefore are they to be disapproved and restrained, as above, who receive from the said booksellers and merchants books or other merchandise for Masses to be celebrated, whether at a reduced or full price? The S. Congregation replied: Affirmatively.

But then, you will say, how do these Resolutions, and especially this fifth one, cohere with those cited above (no. 374 and the Note), one of which proceeded from the S. Penitentiary and the other from the same S. Congregation of the Council, and indeed on the same day, Sept. 9, 1874?

Reply. The Responses cohere very well with one another when account is taken of the grave disadvantages which can be present or absent. For, as had to be noted in discussing these matters, first of all the intention of those who offer Mass stipends must not be neglected. Certainly, if the faithful offering Mass stipends granted the faculty that those Masses could be celebrated by priests who were going to subscribe to periodicals, there would be no doubt that the editors of the periodicals acted lawfully. For it belongs to those offering to prescribe not only the celebration, but also the time, place, and persons of the celebration; but only those who hand over adventitious Masses can grant the faculty that the sacred rites be performed by others without limitation of time or places. But it not rarely happens that even perpetual Masses, and Masses from distant regions as well, are handed over to the editors of periodicals. In that case, unless those who founded or bequeathed them permitted them to be offered at any time and place, those who transmit them altogether lack that faculty. Moreover, the mind of pious founders, whose devotion is generally directed toward some Sanctuary or Church, is not easily presumed unless it has been expressed. From these things it is evident how greatly unbecoming it is that editors of periodicals, by their own authority, entrust Masses for celebration to whomever, wherever, and whenever it pleases them, as though they were the owners of the alms and could disburse them at will. And this manner of acting will appear still more to be disapproved if it is observed that, in order to be able to satisfy those requesting them, these editors must necessarily gather for themselves not some small number of Masses, but an immense accumulation of them, contrary to the mind of Benedict XIV, who in the Apostolic Constitution beginning *Quanta cura* disapproves collections of Masses of this kind, since innumerable disadvantages can arise from them. Among these, this must be noted above all: it is impossible for so many obligations undertaken to be satisfied within a short time.

The response of the Sacred Congregation, which is related on page 258 concerning the Decree of the Bishop of Caltanissetta, ought to be read thus: **THE DOUBT HAVING BEEN REFORMULATED - Whether, and how, a response is to be made to the Bishop of Caltanissetta in the case?** - Negatively in all respects, to both.

For the Decree of the aforesaid Bishop, by which it was forbidden that Masses to be celebrated should be entrusted or accepted in exchange for books or journals, etc., had in view the averting of certain inconveniences, which the Sacred Congregation also disapproves.

Therefore, the Sacred Congregation did not wish to disapprove that Decree; but it gave the aforesaid Response to the twofold doubt proposed by the same Bishop, **whether, those inconveniences having been removed, both those entrusting and those accepting Masses to be celebrated as above would act illicitly.**

Indeed, to the doubt again proposed to the same Sacred Congregation: Whether, and how, editors or administrators of religious periodicals are to be disapproved who entrust Masses to priests for celebration, retaining from their alms a price corresponding to the periodicals themselves, in the case? In May of the current year 1875, the response was: Negatively, provided that nothing be withdrawn from the will of the founders or offerers concerning the amount of the stipend and the place and time of the celebration of the Masses; that every deliberate collection of alms for Masses be excluded; and that testimony of the completed celebration of the Masses be given to the one to whom it is due by right. In this Response of the Sacred Congregation, the disadvantages on account of which the same Sacred Congregation had otherwise disapproved this practice are indicated at the same time.

376. **QUESTION 15. Can administrators of churches retain something for themselves from the alms for Masses for the expenses of altars, lights, etc.?** Reply. Negatively, unless the churches have no other revenues; and then the value of the expenses which are necessary for the Sacrifice of the Mass itself must in no way be exceeded [7]. - Thus the S. Congregation of the Council established (as cited by Lacroix, no. 95, and St. Lig., no. 322). An archpriest, however,

is not bound to furnish utensils to adventitious celebrants unless their expenses are paid. - Thus the S. Congregation on March 18, 1686. - St. Lig., no. 322.

[7] The Decree also adds the following: And nevertheless, even in that case care must be taken that, from the monies which remain after the expenses have been deducted as above, absolutely as many Masses be celebrated as were prescribed by those offering the alms.

QUESTION 16. Must one make restitution who, having accepted a stipend to celebrate Mass at a privileged altar, celebrates it at another altar?

Reply. It seems that the answer is negative; but he will be bound to gain a plenary indulgence applicable to the dead, such as the indulgences of the Way of the Cross, etc. For in this way a proportionate compensation is furnished. If, however, he accepted for this purpose a stipend larger than the ordinary one, he is bound to restore the excess. - Thus St. Lig., no. 229. - Elbel, no. 210. - Sporer, nos. 137 and 355.

But if anyone accepts a stipend to celebrate in a certain place, for example, at a miraculous Statue, or in a Chapel so that the people may hear Mass, or at a certain time, for example, on Saturday in honor of the Blessed Virgin, in such a way that the place and time are intended in themselves, he cannot retain the stipend unless he has said Mass at the prescribed time and place [8]. The reason is that otherwise the one giving the stipend is judged to be gravely unwilling. But it is otherwise if the time and place are not intended in themselves.

[8] This last clause will perhaps appear somewhat too severe; for the will of one who establishes agreements of this kind does not seem generally to be extended to that degree. This is also confirmed by the doctrine proposed in the following Question 18.

377. **QUESTION 17. Must one who is bound by a stipend to celebrate at a privileged altar for a deceased person say a Requiem Mass when the rite permits it?**

Reply. Affirmatively. The reason is that this is required for gaining the indulgences. But on days on which Requiem Masses are prohibited, the priest gains the indulgences by saying the Mass of the day, as has been declared several times by the Sacred Congregation. Thus to the question: Whether those who celebrate at a privileged altar on individual days must always use black vestments on days not impeded, in order to obtain the indulgence of the privilege? The S. Congregation of Rites replied affirmatively on April 11, 1840 [9]. - St. Lig., no. 339.

[9] According to another response of the same Sacred Congregation, the priest, in order to gain the indulgence, must wait for a day on which he can celebrate a Requiem Mass, provided, however, that a day of this kind occurs within the same week.

QUESTION 18. Does one who is bound by a stipend to say a Requiem or votive Mass satisfy if he says another Mass?

Reply. Affirmatively. The reason is that the Mass is the same as regards its substance; and if a just reason is present, there will be no sin. Hence, if the Rubrics do not permit a Requiem or votive Mass to be said on that day, the Mass of the day must be said, and in this way the obligation is truly satisfied. But one who does this without a legitimate reason cannot be excused from venial sin; nor is private devotion regarded as a sufficient reason. - Thus St. Lig., no. 328, etc.

QUESTION 19. Can a stipend be received for a Mass to be celebrated on the day of the Commemoration of All the Faithful Departed?

Reply. Affirmatively. The reason is that not all priests are bound on this day to apply Mass for all the dead; indeed, neither are they obliged to celebrate. Therefore, they can apply Mass at will, either for all the dead dwelling in Purgatory or for some only. This is established from the Decree of the Sacred Congregation of Aug. 4, 1663. This being so, nothing whatever prevents a stipend from being accepted for the Mass. - Thus commonly, St. Lig., no. 338 [10].

[10] ** A question is commonly raised concerning a priest who applies the Mass for the one who first offers a stipend. On this matter St. Alphonsus writes (*Lib.* 6, no. 337): Lugo (*De Poenitentia*, disp. 13, no. 137) and Palaus (tr. 22, q. unica, punct. 6) say that the application of the Mass made for the first offerer is valid, but unlawful by reason of the prohibition of Clement VIII, which Paul V promulgated on Nov. 15, 1605, forbidding this custom as dangerous under several titles, liable to scandals of the faithful, and too greatly at variance with the ancient custom of the Church. But more probably, as Croix rightly says, bk. 6, part 2, no. 222, such an application will be not only unlawful, but often invalid, because it will often happen that the Mass is then said for a cause which does not yet exist, for example, if a stipend is offered for liberation from prison, from infirmity, etc. Since that cause is not now present, the effect of the Mass would have to remain suspended, which does not seem credible.

But on this matter La Croix deceived St. Alphonsus when he imagined Lugo to be contrary to him, although Lugo otherwise hands down the same doctrine as he. Behold the words of Lugo (*loc. cit.*): Concerning the application of the Mass under that condition (namely, for the one whom God already now foresees will offer the first stipend to him, etc.), there are two sufficiently common opinions, the one conceding that it is valid, the other denying it.... Diana with others follows the latter..., many of whom, however, do not speak of that case, but of the anticipated application of a Mass for the one who afterward will come first, without referring the condition to the knowledge of God already present. And indeed, if the former opinion is understood with a certain moderation, namely, that the priest applies today's Mass not indifferently for whoever will first come and offer a stipend, but for the first one whom God already sees will offer a stipend for a Mass to be said for some necessity already existing at that time, namely, for someone already now deceased, and not for a necessity which will arise afterward, then, speaking speculatively, there is nothing which prevents the validity of such an application, as the adversaries themselves seem to admit.

Moreover, this very thing is what, after Vasquez, Aversa, etc., neither Croix nor St. Alphonsus rejects, provided, namely, that the cause for which the stipend will later be offered already exists now. Indeed, since Lugo (*loc. cit.*, nos. 138, 139) judges that even the case in which he himself thinks the application valid is included in that prohibition of Clement VIII, or rather of Paul V, and since he himself finds other disadvantages in an anticipated application of this kind, he can perhaps appear more severe even than St. Alphonsus, who, after Collet, seems in no way to disapprove this anticipated application (*loc. cit.*, no. 337, at the end).

Appendix. For Priests of the Society of Jesus

378. I. A priest of the Society can accept a stipend neither for himself nor for another for the Masses which he says. The same is to be observed also concerning any other sacred ministries. This is established throughout the Institute of the Society. See especially the *Epitome*, new ed., p. 185. - Lacroix, bk. 4, p. 136.

II. If money is offered for Masses to a priest of the Society or to a Community, it can be admitted through the Superior, not indeed with an obligation, but with a promise of saying, under the title of gratitude, some Masses, or even one or another in individual years. Thus Castropalao. Burghaber, cent. 3, case 25, testifies that Mutius Vitelleschi, the General, so declared. - Lacroix, bk. 6, part 2, no. 146.

III. Likewise, money liberally offered can be accepted, and in turn Masses can be liberally promised, yet in such a way that the latter promise is not as though a compensation or reciprocal payment, as if for stipends, but the money is admitted under the title of alms alone, so that the offerer plainly

understands that it cannot be accepted under another title and gives it himself under this same title of alms. - Lacroix, bk. 6, part 2, no. 146.

379. Hence you will resolve. - 1. A priest of the Society to whom money is offered for Masses to be said can tell the offerer that he will say the Masses gratuitously according to his intention, and in turn ask him to will liberally to apply the money offered to this or that pious cause. Thus the offerer will have a twofold fruit: namely, the ordinary fruit of the Mass, and then the fruit of cooperation in that pious cause. - Thus expressly Lacroix, ibid.

2. Titius, a priest of the Society, can say Masses according to the intention of Sempronius, a secular priest who accepted stipends for Masses to be said, when the latter can neither restore them, as having been consumed, nor satisfy for all the Masses; because in these circumstances Titius is judged to celebrate the Masses gratuitously from pure charity, as Lacroix, bk. 4, no. 138, gathers from a declaration of Claudius Aquaviva.

3. If Titius, a priest of the Society, does not indeed receive a stipend, but nevertheless disposes concerning it, for example, if he says to Caius: Give the stipend to this poor man, and I will say Mass according to your intention; or if he says to Sempronius: You accept the stipend, and I will say Mass in your place; he acts unlawfully, because while he thus disposes concerning the stipend through a contract *facio ut des*, he virtually accepts the stipend and gives it again to another. Each of these is contrary to the vow of poverty [1]. - Pellizzarius. - Lacroix, bk. 4, no. 138. - Sanchez, etc.

[1] Understand the first case in this way: that Titius imposes a strict obligation upon Caius by that agreement; for if he merely asks that Caius do this from liberality, we fall back upon what was defined in the first Resolution and is defined again in Resolution 5. But with regard to the second case, according to the opinion of Michael Vasquez, John Salas, and Castropalao against Sanchez (see Lacroix, bk. 4, no. 139), the reason for the unlawful disposition readily ceases when Titius, having been asked by Sempronius to celebrate some Mass, does this liberally, caring nothing and asking nothing about whether Sempronius has accepted stipends for those Masses or whether he retains them for himself, etc. Some are moved rather by this: by what title Sempronius retains stipends perhaps accepted. But this difficulty also, which otherwise does not at all touch the cause of Titius celebrating Masses gratuitously, has an easy solution. For the one giving the stipends requires this one thing from Sempronius: that he assume the burden of the Masses to be celebrated. But whether he satisfies either by himself or through another, and whether this other celebrates either after exacting a stipend or gratuitously, he does not care, unless perhaps he chose Sempronius to celebrate the Masses because, as the cited Lacroix says, he is believed to say them more devoutly.

4. If Paul, a man of the Society, supplies for a Chaplain bound by a foundation in singing Mass, he sins in no way, although the Chaplain receives his revenues, because Paul disposes concerning nothing. The same is to be said if he preaches, or otherwise exercises an office for someone who receives the customary honoraria from it. - Lacroix, bk. 4, no. 139.

380. 5. If Sempronius, a parish priest who has already accepted a stipend, asks Titius, a priest of the Society, to supply for him in saying Mass, Titius will lawfully supply, provided that he disposes concerning nothing of the stipend. - Lacroix, bk. 4, no. 139. - Vasquez. - Salas. - Castropalao, against Sanchez. The reason is that the stipend is not even virtually received by Titius, since he disposes concerning nothing of it, and it is altogether indifferent to the one who gave the stipend by whomsoever the Mass is said. This is

confirmed: if Titius, being about to go to Paris, were gratuitously to carry letters in favor of Sempronius, for the carrying of which Sempronius had been hired for a wage, Titius certainly would not act against poverty, nor would he be judged to acquire the wage for himself and donate it to Sempronius. Therefore, it is similar in our case. - Lacroix, ibid.

You will say: Sempronius has no right or title to retain those stipends except by means of the Masses of Titius; therefore, Titius, by saying the Masses, confers upon him the right and title to retain the stipends, and consequently it is the same as if he accepted the stipends and gave them to Sempronius.

Reply. I deny the antecedent; for Sempronius has the right and title to retain them by force of the innominate contract *do ut facias*, by which he is bound to have the Masses said either by himself or through another. But he is relieved of this burden by Titius, who merely supplies the Masses as a condition without which Sempronius could not enjoy that right and title of retaining the stipends. - Lacroix, ibid.

You will say again: At least Decree VIII of Congregation XII stands in the way, prohibiting the General himself from applying the Masses which are celebrated according to his intention... by priests of the Society, according to the intention of any other person who could derive gain from it.

Reply. I deny the antecedent; for in positive matters an inference from the greater or from an equal does not hold. But reasons are present why these things are prohibited to the General but not to others, for example, the necessities of the Society, etc. Therefore, that Decree has no bearing with regard to others. - Lacroix, ibid.

QUESTION. What obligation exists in the Society with regard to Masses or prayers customarily enjoined?

Reply 1. Religious of the Society who do not discharge the prayers and Masses enjoined do not sin, speaking *per se*, because no precept is strictly imposed, nor is there any obligation other than from the Rule, which of itself does not bind under sin. - Suarez and others commonly. Nevertheless, Superiors will sin if through negligence they do not take care that persons be designated to celebrate Masses or pray, especially for benefactors and founders. Thus it was answered at Rome in the year 1604. But those who have the Masses which they themselves are to say said by others do not satisfy the Rule, because it is a personal burden. - Thus it was answered to the Province of the Rhine in the year 1634 [2]. Nevertheless, one satisfies by asking another to celebrate in his place today or this week, while he himself is to compensate on another day or in another week. Likewise, those satisfy who, foreseeing a difficulty for the following week, anticipate the Masses in the preceding week. - Lacroix, bk. 6, part 2, no. 168.

[2] The law in force in the Society is that responses of the Superior General to the requests of a certain Province, unless they are duly promulgated or communicated elsewhere, have force only for that Province to which they were given.

Reply 2. Masses enjoined for deceased members of the Society do not bind under mortal sin, whether they are determined by the general Constitutions of the Order, by particular Rules, or by the prescription of Superiors. The reason is that these have only the character of a simple command, unless a precept of obedience is added. - Thus according to the judgment of all, as Pellizzarius testifies, vol. 1, tr. 5, ch. 9, no. 12. - Lacroix, ibid., no. 169 [3].

[3] The Author transcribed these words literally from Lacroix, and Lacroix from Pellizzarius; but he presented the latter's text in a mutilated form. For Pellizzarius in that place gives this reason: Because the prescription of these suffrages commonly does not exceed the obligation of a simple Rule or of obedience, and consequently has the character of a simple ordinance. Then he adds that these things are gathered from Suarez (*De Religione*, tr. 10, bk. 8, ch. 2, no. 5), who therefore infers that these obligations do not bind under sin. Therefore, even an express obligation under venial sin is excluded, and only the obligation of the Rule remains, which of itself does not bind under sin.

Reply 3. Masses affixed to a time, for example, those which ought to be said every week or every month, if they could not be celebrated at that time because of an impediment or illness, do not necessarily have to be supplied afterward, but can be omitted. Thus it was answered to the Province of the Rhine in the year 1585. On the contrary, if they were omitted through negligence, they ought afterward to be supplied. - Thus it was answered to the Province of Toulouse in the year 1629. - Lacroix, ibid., no. 171.

Reply 4. If Masses or prayers are enjoined without a definite time, it is sufficient to say them within two or three months. - Thus it was answered to the Province of Naples in the year 1603. - Lacroix, ibid., no. 172.

Chapter IV. On the Time and Place of Celebration

Article I. On the Time of Celebration

381. Principles. - I. It is lawful to celebrate daily, and indeed this is praiseworthy, unless the unworthiness of the celebrant or a special prohibition of the Church stands in the way. The Church prohibits Mass from being celebrated on the day of Parasceve, or Friday of Holy Week; likewise, it prohibits several Masses from being offered in the same church on Thursday and Saturday of the same Week without necessity. This is established from various Decrees of the Congregation of Rites [1]. - St. Lig., no. 350.

[1] These Decrees provide that no private Mass be said in churches besides the conventual Mass. By these decrees, however, it is not prohibited that in churches of Regulars who lack a private oratory, another Mass be celebrated on Thursday of Holy Week for distributing Easter Communion to the sick. It is prescribed, however, that this be done with the doors closed.

It is not ordinarily lawful, apart from a special privilege, to celebrate before dawn or after midday, nor before the recitation of the Matins of the Office [2]. For it is thus stated in the Rubrics of the Missal: A private Mass can be said, at least after Matins and Lauds, at any hour from dawn until midday. It is lawful, however, to begin Mass before dawn, provided that it is not completed before dawn. It is likewise lawful to prolong the celebration beyond midday, provided that it is at least begun at midday; for the time of dawn and midday is to be understood not mathematically, but morally. - St. Lig., no. 341, and others.

[2] This clause from sec. XV regards not the hour of celebrating commonly prescribed for priests, but the order to be observed between the recitation of the Breviary and the celebration of Mass for canons who sing in choir. Therefore, it is added in the same place when the Mass must otherwise be celebrated after the recitation of Prime, or Terce, or Sext. But with regard to the other Rubric (sec. 1, *De ritu servando*, etc.), where it is said: The priest who is to celebrate Mass... after at least Matins together with Lauds has been completed, should devote himself somewhat to prayer, and should say the prayers placed below according to the opportunity of the time; it could be observed that, just as no one until now has judged a privilege necessary for omitting the prayers in question, so it could not absurdly be thought concerning the recitation of Matins by force of that context.

III. In like manner, a privilege of celebrating one hour before dawn or after midday ought to be understood as one hour before or after the time assigned to others who are not privileged; otherwise the privilege would be of little benefit. - Thus St. Lig., no. 346, and others commonly.

382. Questions. - **QUESTION 1. Does one who celebrates before dawn or after midday sin gravely?**

Reply. Affirmatively, if he anticipates or prolongs by much the time established by the Church; but otherwise, if the change is slight. Indeed, if a just cause is present, he will be free from every fault. But what is to be regarded as a notable change is disputed. According to the more common and more probable opinion, it is not held grave unless the celebration is begun a full hour before or after the established time. - St. Lig., no. 346.

QUESTION 2. When is it lawful to anticipate the time of celebration?

Reply. 1. In necessity, for example, so that Viaticum may be administered to a dying person, in which case it would be lawful to celebrate even at midnight. 2. Where there is a reasonable custom, for example, so that artisans and servants may be able to hear Mass very early in the morning. 3. By force of a privilege granted by the Pope or Bishop [3]. - See St. Lig., no. 343 et seq.

[3] St. Alphonsus (*Lib.* 6, no. 344) adds other cases, namely: 1. After the solemn Mass on a feast, if the solemn Mass is prolonged to an hour or more after midday, and indeed probably even after two hours..., lest a large part of the people be deprived of Mass. 2. For the cause of a journey, for one hour after midday or before dawn. 3. Likewise on account of the funeral of some great person, or of a sermon, or of a public supplication.

QUESTION 3. What kind of sin is it to celebrate Mass before the recitation of Matins?

Reply. More probably, it is only a venial sin, because no grave disorder appears in this, unless it is done from contempt and habitually without any cause. But any reasonable cause excuses from every sin. - Thus St. Lig. with others commonly [4].

[4] St. Alphonsus (*Lib.* 6, no. 347) says that there are three opinions of the Doctors concerning this question. The second of them holds that there is no fault in this, because no law appears which prescribes it under fault; and the rubric is only of counsel, not of precept. See the preceding Note.

383. **QUESTION 4. Is it lawful to celebrate more than once in a day?**

Reply. Negatively, speaking generally, according to the present practice of the Church, although formerly it was not prohibited. This is established from various places of Canon Law and from the Decree of Benedict XIV of March 16, 1746.

Except: 1. The feast of the Nativity of the Lord, on which it is lawful to celebrate three Masses. 2. If a pastor, before the ablution, is informed that Communion is to be given to a sick person, and he has already consumed his own Host, and no other fasting priest can be found. Thus commonly. - St. Lig., no. 351.

QUESTION 5. When is it lawful to celebrate Mass twice in a day with the permission of the Bishop?

Reply. With the Bishop permitting, Mass can be celebrated twice by the same priest on Sundays and feast days of precept if a grave cause or some necessity requires it, but not on account of custom

alone. - Benedict XIV, Const. *Declarasti nobis*, and Const. *Consuluisti de celebratione Missae*. But the abuse of celebrating twice in the same church in which several Masses had already been offered was reproved by the S. Congregation of Rites, and the response was: It is not expedient, and the abuse is to be eliminated. - May 22 and Sept. 11, 1841.

QUESTION 6. When is there judged to be a necessity of celebrating twice in a day? Reply. In three cases, according to the common opinion of theologians, namely: 1. When a parish priest has two parishes to govern, and the inhabitants of one cannot go to the church of the other, nor is there available another priest who could celebrate in either one. 2. When in the same parish some part of the people is too far distant from the church and could easily assemble in some chapel or in another church; it was answered to the Bishop of Langres in the year 1847 that it was sufficient for this if a certain community consisting of twenty persons were one mile distant from the church. - *Revue des sciences ecclesiastiques*, vol. 6, July 1862, pp. 93-94. 3. When the whole people cannot assemble in a parish church that is too small, and there is no other priest who can celebrate another Mass; for then the Bishop can permit the parish priest to offer Mass twice in the same church. - See Bouix, *De Parocho*, no. 470. - Likewise *Revue des sciences ecclesiastiques*, ibid.

QUESTION 7. Can one who celebrates two Masses accept a doubled stipend?

Reply. Negatively; and Pius IX strictly prohibited this. - Thus the S. Congregation of the Council, Sept. 25, 1858, *in una Galliarum*. But does the supplement to his allowance, which is generally given to a priest celebrating two Masses in consideration of his fatigue, have the character of a stipend?

The S. Congregation of the Council replied negatively in March 1861.

QUESTION 8. In this case would it be lawful to accept a double stipend on the condition that the second stipend be expended for a pious use?

Reply. Negatively, without an Indult of the Supreme Pontiff, which the Pontiff indeed refused to grant to the Archbishop of Cologne. - Thus the S. Congregation of the Council, March 21, 1863.

384. **QUESTION 9. Is it lawful on the night of the Nativity of the Lord to celebrate all three Masses before dawn?**

Reply. Negatively, without the permission of the Bishop for a just cause, or without an Apostolic indult. For the Rubric of the Missal expressly prohibits this, which reads thus: The first Mass is said in the night; the second at dawn; and the third in the day. This is also established from the Decree of the S. Congregation of Rites issued on Dec. 18, 1702, which reads thus: It is not lawful at midnight of the Nativity of the Lord successively to celebrate the other two Masses and to distribute Holy Communion. - St. Lig., no. 343.

QUESTION 10. For what length of time ought a Low Mass to last?

Reply. The general rule is that the Mass ought neither to be longer than half an hour, lest those present be affected with weariness, nor shorter than a third of an hour, because otherwise it cannot be celebrated becomingly. But you will not excuse from mortal sin a priest who, in offering Mass, does not reach a quarter of an hour, according to that couplet received by custom:

> If your Mass shall have been shorter than one quarter, You will be believed guilty of mortal fault.

St. Ligorius adduces the reason: because in so short a space he must necessarily commit two grave defects, the one of grave irreverence toward the Sacrament, the other of grave scandal toward the people. But it is to be desired, and earnestly commended to all priests, that in offering Mass they complete half an hour [5].

[5] On this matter St. Alphonsus speaks thus (*Lib.* 6, no. 400): Preachers cry out, writers rightly teaching cry out, that the completion of Mass in less than a quarter of an hour cannot be excused from grave fault; but how many are there who take care to avoid these things? Corruption of this kind ought to be pursued not with the pen, but with tears, while daily we see the greatest part of priests perform this tremendous Sacrifice worse than they treat temporal affairs of lighter moment, yawning in such a way that they seem to have no faith in so great a mystery.

385. **QUESTION 11. How much time, after Mass has been completed, ought to be spent in giving thanks to God?**

Reply. There is no altogether certain rule. But the more lenient require at least a quarter of an hour. - St. Lig. earnestly advises that at least half an hour be devoted to this pious exercise by a priest, who ought to furnish an example to the faithful [6]. On this matter, see St. Alphonsus (*Lib.* 6, no. 400).

[6] Thus St. Alphonsus (*Prax. Confess.*, no. 156): Let the Confessor take care to suggest to the penitent that after Communion he remain in thanksgiving for the time that he can. Very few are the Directors who diligently do this, namely, inculcate in their penitents that they give thanks for some notable time after receiving the Eucharist; and the reason is that there are very few priests who, after the Sacrifice of the Mass, remain with Jesus Christ in thanksgiving, and therefore they are ashamed to suggest to others what they themselves do not do. Thanksgiving ordinarily ought to last for a full hour; let it be done at least for half an hour, in which the soul may exercise itself in loving and petitioning. St. Teresa says that after Communion Jesus exists in the soul as upon a throne of mercy, that He may bestow graces upon it, saying: What wilt thou that I do to thee? And elsewhere: After Communion let us not omit so excellent an opportunity for conducting business. His divine Majesty is not accustomed to repay hospitality badly if He is well received in the soul.

Article II. On the Place of Celebration

386. Principles. - I. It is not commonly lawful to celebrate except in a church, and one consecrated or at least blessed, which is not polluted, execrated, or interdicted. This is established from the Council of Trent, sess. 22, Decree *De observandis et vitandis in celebratione Missae*.

Concerning a polluted and execrated church, see Questions 2 and 3 below. But concerning an interdicted church, we shall speak toward the end of the Treatise on Censures, no. 1002 et seq.

II. A Bishop can no longer, as formerly, grant the faculty of celebrating in private houses or in a private Oratory. Council of Trent, sess. 22, in the Decree just cited. This is also established from the declaration of the S. Congregation of the Council, May 27, 1617, and Jan. 23, 1847, in which it is said: It is not lawful for any Bishop to grant licenses of this kind, not even for a transient act; this faculty is reserved to the Roman Pontiff alone (*Revue des Sciences ecclesiastiques*, Sept. 1862, vol. 6, p. 265). Hence it follows that the doctrine of St. Ligorius, somewhat more favorable to Bishops, must be moderated [1]. An exception is made, however, if grave and urgent causes are present, and only by way of a transient act. - S. Congregation of the Council just cited, May 27, 1617, and Dec. 20, 1856.

[1] But I do not know why St. Alphonsus is said to favor Bishops beyond what is right in this matter. For (*Lib.* 6, no. 359) he attributes to Bishops the faculty of dispensing only in a case of necessity or for a just cause and by way of a transient act, and he affirms this with very weighty and altogether numerous Doctors preceding him, so that he was able to conclude that this doctrine could be called common. Moreover, this is the very thing which the Author also proposes in this place.

III. A Bishop can, however, grant the faculty of offering Mass in public Oratories and of performing there the other sacred functions which are not strictly parochial. Nevertheless, he cannot permit the Most Holy Eucharist to be reserved there without an Indult of the Pontiff, unless an immemorial custom is present: thus the S. Congregation, April 27, 1709. Regulars who profess solemn vows, however, have the privilege of reserving the Most Holy Eucharist in their churches.

387. Questions. - **QUESTION 1. In which Oratories can Bishops give permission to celebrate?**

Reply. They can permit this to be done in every religious and pious place. A religious place is said to be one in which works of piety and mercy are exercised and which has been erected by the authority of the Bishop or of another ecclesiastical Prelate. Such are monasteries, any religious Communities, Seminaries, etc. But a pious place is called one which is constituted and deputed for works of piety and mercy, even if without the authority of the Bishop or an ecclesiastical Prelate. Hence any Hospitals and Orphanages ought to be regarded as pious places, in which the Bishop can therefore permit the erection of an Oratory, even if places of this kind were erected and constituted by the civil power [2]. - Thus the S. Congregation of the Council, March 27, 1847. - Recall what was said about private and public Oratories, vol. 1, no. 348.

[2] Add also Oratories which are erected in prisons, although prisons are not customarily called pious places.

388. **QUESTION 2. How is a church polluted, and how must it be reconciled?**

Reply to the first. A church is polluted or violated when certain base or indecent actions injurious to the sacred place are exercised in it, on account of which it is considered indecent that the immaculate Victim be offered there and the divine Offices celebrated until it is reconciled.

Therefore, a church is polluted: 1. By voluntary and unjust homicide [3]. 2. By the shedding of human blood from a blow or a gravely injurious wound. 3. By the voluntary emission of human semen [4]. 4. By the burial of an unbaptized person or infidel. Except, more probably, if he is a catechumen, because he is not regarded as an infidel. Likewise, if it is an infant whose parents are Christians, because then the parents desire Baptism for him. - Thus Pichler. - Gousset, no. 310, against others. 5. By the burial of a baptized person excommunicated by name; but not if he is indeed excommunicated but is not to be avoided. These things are established from Canon Law. - See St. Lig., no. 362. But in order that a church be regarded as polluted, these crimes must be notorious, so that they can in no way be concealed. They must also be perpetrated in the church itself, and not merely in the tower, roof, sacristy, or other rooms adjoining the church. - St. Lig., nos. 362 and 364.

[3] The VV. rightly observe (p. 933, no. 99) that it must be sought from Busembaum (*Lib.* 6, tr. 3, ch. 3, dub. 4, res. 1) how far unjust homicide extends in this place. Busembaum, from Lugo, speaks thus: A church, as also a cemetery, is violated or polluted... 1. By homicide committed in it which is mortally evil or injurious, at least to the immunity of the Church, such as even that which would otherwise be just by the sentence of a judge, unless, however, a disturber of the Republic could not otherwise be apprehended.

[4] Understand an emission unlawful either in itself or by reason of the sacred place. Therefore, it would not be polluted by marital intercourse when a just cause for having it was present, for example, to avoid incontinence. See what was said elsewhere, where Sacrilege was treated.

389. Reply to the second. 1. If the church was only blessed, it can be reconciled by a priest delegated by the Bishop, with the customary prayers and with water blessed by the Ordinary. If, however,

such water could not easily be obtained, it could be blessed by the priest himself delegated to reconcile the church. - St. Lig., no. 363 [5].

[5] St. Alphonsus (*loc. cit.*), as the VV. rightly observe (p. 933, no. 100), does not say that the water can be blessed by the priest himself if water blessed by the Ordinary cannot easily be obtained; but after other Authors he says absolutely: But the water can be blessed by the priest himself. Indeed, he adds, Benedict XIV, *De Synodo*, bk. 13, ch. 15, no. 2, says: If it (the church) was simply blessed, then the same Gregory IX (in Cap. *Si Ecclesia*, *De Consecr. Eccl.*) established that, without any delegation first obtained, a polluted church can be reconciled by a simple priest, using blessed water, which they call holy or lustral water.

2. But if that church was consecrated, it must be reconciled by the Bishop himself or by a priest delegated by the Pope, according to the rite of the Roman Pontifical. Nevertheless, if the divine Offices cannot be omitted without grave inconvenience, the Bishop, being detained by some impediment, can delegate a priest to bless the church with a simple blessing until he himself can consecrate it. - Cabassut, etc.

Private Oratories, however, although blessed and deputed for worship, are not regarded as capable of being polluted, and therefore do not need reconciliation.

390. **QUESTION 3. How is a church execrated, or rendered fit for worship again?** Reply 1. A church is execrated when it loses its blessing or consecration. It is regarded as execrated when it falls or is destroyed totally or for the greatest part, so that it must be rebuilt anew, at least for the greater part, or if all the plaster of the walls, or at least the greater part, is removed at the same time. - St. Lig., no. 368.

Reply 2. An execrated church must be blessed or consecrated again, according to the rite and form prescribed for the blessing or consecration of churches.

A fixed altar loses its consecration when the table or upper stone is removed from its support. - Thus the S. Congregation of Rites, May 15, 1819. Altars, whether portable or fixed, lose their consecration through the breaking of the sepulcher in which the sacred Relics are enclosed, or through the loss of those Relics. - S. Congregation of Rites, Sept. 23, 1848. Nor is it sufficient for other authentic Relics to be enclosed in them; rather, the altars must be consecrated anew. - Thus the S. Congregation of Rites, Dec. 7, 1844.

Finally, sacred vessels and other consecrated things are execrated when they lose their form and can no longer serve for their use.

From the things said, moreover, it is evident what the distinction is between the pollution of a church and its execration. When part of a church is polluted, the whole church is regarded as polluted, even together with the adjoining cemetery. On the contrary, when a church is execrated, the cemetery is not for that reason execrated, nor do fixed and intact altars lose their consecration.

Chapter V. On the Manner of Celebrating

Namely: 1. On the requisites for Mass. 2. On the Rubrics.

Article I. On the Requisites for Mass

391. These things are required: 1. A stone altar, fixed or portable, consecrated by the Bishop. 2. Three altar cloths made of linen or hemp. 3. Sacred vestments, that is, blessed by the Ordinary. 4. A consecrated chalice and paten. 5. A corporal of linen or hemp, blessed by the Ordinary. 6. A pall likewise of linen or hemp. 7. A linen purificator. 8. A Missal with a cushion. 9. A Crucifix, and not merely a cross. 10. Two lighted wax candles. 11. A burse, veil, hand towel, and glass cruets. 12. A male server.

The vestments to be blessed by the Ordinary are the amice, alb, maniple, stole, chasuble, and more probably also the cincture. The other paraments do not need a blessing. More probably, the pall must also be blessed together with the corporal; but the contrary is to be said concerning... the purificator, according to the decree of Sept. 7, 1816, apud Gardellini, IV, 4376. With regard to the altar cloths, see Question --. See St. Lig., from no. 376 to no. 389.

As regards candles, however, in private Masses it is not lawful to light more than two wax candles, unless a Bishop celebrates, or unless some extraordinary solemnity or the exposition of the Most Holy Sacrament requires a greater number. - De Herdt.

392. Questions. - **QUESTION 1. Must the altar cloths necessarily be blessed?**

Reply. Affirmative. The reason is that this is prescribed in the Rubric; and whatever some may say, no sufficient reason appears for acting contrary to the Rubric, which lays down the following: *Let the altar be covered with three cloths... blessed by the Bishop or by another having the faculty.* To celebrate upon an unblessed cloth, however, does not exceed a venial fault; and therefore, when a reasonable cause urges, it is free from every fault, according to St. Lig., no. 375.

QUESTION 2. Is it mortal to celebrate without any sacred vestment, or without a stole, alb, chasuble, maniple, or cincture?

Reply 1. It is mortal to celebrate without any sacred vestment in every case and for any cause whatsoever. 2. Likewise, to celebrate without a chasuble or alb, or without both stole and maniple together. 3. It is probably not mortal to celebrate without a maniple, or without a blessed maniple. The same is true of celebrating without an amice, at least for those who do not use it to cover the head, but only the shoulders. The same must also be said of celebrating without a cincture [1]; hence a reasonable cause easily excuses from all these things.

[1] The Author seems to have taken these things from Busembaum (bk. 6, tr. 3, ch. 3, dub. 5, no. 3), who, after saying that Filliuccius concedes that, in a case of necessity, to celebrate without one or another of the minor vestments, for example, a stole or cincture, is not mortal, adds: See Diana, ... where, against Filliuccius and Henriquez, together with six others, he teaches it to be probable that, by reason of slightness of matter, one who, apart from scandal and contempt, omits one of these, namely, of the minor vestments, outside a case of necessity, can be excused from mortal sin. Now, since slightness of matter excuses from so great a sin, but not from every sin, Diana's opinion therefore comes to this: the omission of one of the minor vestments, apart from contempt and scandal, is a venial fault. But what Filliuccius concedes, namely, that in a case of necessity one does not sin mortally on this account, can, and indeed must, be understood as also excusing from venial sin. For it is not consonant with reason that a grave obligation should cease because of necessity, and nevertheless a light obligation remain. And those who, with Suarez (*Disp.* 82, sect. 3, dub. 1, at the end), maintain that grave men judge it not to be a mortal sin in a case of necessity to omit one or another of these vestments, especially the minor ones, such as the stole or cincture, seem to be understood in this way.

As regards, however, lightness of fault by reason of slightness of matter, St. Alphonsus also mentions the opinion of Escobar, who has the following (bk. 21, sect. 2, no. 485): I judge with the common opinion of the Doctors that the

omission of any sacred vestment is sufficient matter for mortal sin.... Yet I acknowledge that the first opinion is sufficiently probable. For since the gravity of the obligation concerning this or that matter depends greatly upon the judgment of prudent men, and so many prudent men judge the obligation of wearing the cincture or maniple to be light, one can probably adhere to their judgment. The same Escobar reports the first opinion thus (*loc. cit.*, no. 483): In every precept, especially a human one, slightness of matter excuses from mortal sin. Therefore, it will excuse in this precept, which is human and pertains not to the substance of the Sacrifice but to its adornment. And, after adducing the patrons of this opinion, he adds: These men consequently assert that to celebrate with an unblessed cincture or maniple is a venial sin by reason of slightness of matter. Lugo and Aversa judge this not improbable.

Finally, when Gury says at the end that a reasonable cause excuses from all these things, namely, from these venial faults, he seems to be understood as speaking of that necessity on account of which Suarez, as was said, likewise gave an excuse together with others. Indeed, Tamburini discusses this matter thus (*Methodus celebrandi Missam*, bk. 4, ch. 3, sec. 1, no. 4): The degree of necessity is not to be taken very strictly here. Therefore, the necessity of hearing and celebrating Mass on a feast day, fervor of devotion, and the temptation of an assailed will to be overcome by this remedy, and even, for a priest who is not wealthy, an opportunity of receiving an alms, will be more than sufficient, in the aforesaid slight matter, to excuse the celebrant even from venial sin. St. Alphonsus (bk. 6, no. 377) does not disapprove this doctrine, but indeed presents it as probable.

Wherefore, this response of Gury agrees almost entirely with the doctrine of St. Alphonsus, which the VV. otherwise oppose (p. 955, no. 101). I said *almost*; for some disagreement appears only concerning the maniple. If in this matter it pleased Gury to follow the judgment of Suarez and of other grave Doctors, the VV. can certainly bear this with equanimity.

393. ○ **QUESTION 3. Is the color of the vestments a matter of precept?**

Reply. Affirmative, because all the Rubrics which concern the ceremonies accompanying the Mass are regarded as preceptive [2]. Nevertheless, this Rubric does not seem to bind under grave sin unless scandal is present, for example, if Mass were celebrated on Easter or another solemn day in black vestments. Hence a cause that is not very grave can excuse from this precept. - St. Lig., no. 378.

[2] St. Alphonsus indeed holds this general principle concerning the proper obligation of the Rubrics as the more probable opinion (bk. 6, no. 578, dub. 5); but, as we have said elsewhere, other Doctors deny this very principle. However that may be, a merely probable principle is not of such a kind that firmer conclusions can be deduced from it; here, therefore, we have a merely probable precept or obligation. Add, moreover, that St. Alphonsus himself (*loc. cit.*), in support of the opinion denying a strict obligation concerning the use of colors, adduces decidedly more Doctors than he does in support of the affirmative opinion. Moreover, the same St. Alphonsus, after Lacroix (bk. 6, part 2, no. 340), praises the opinion of Sporer, namely, that it is better on any day to celebrate Mass in any color than to omit it; hence, St. Alphonsus adds, Sporer rightly says that, *a fortiori*, every reasonable cause excuses. From this someone could conclude that, if you must celebrate a votive Mass in order to satisfy an obligation, but the rector of the church, in order to avoid an incongruous diversity of colors, as they are accustomed to object, refuses to give you suitable vestments, you can safely use the counsel of Sporer; especially because, although you hold that some precept has force here, the Author nevertheless also observes that a cause which is not very grave can excuse from it.

QUESTION 4. What colors are required in the vestments?

Reply. Vestments of white, red, green, violet, and black color are required. Vestments made from vitreous silken fabrics are entirely rejected. Thus the S. Congregation of Rites, Sept. 11, 1847, *in Atrebatensi*. Likewise rejected are vestments of various colors (in French, *de toutes couleurs*), which not a few persons maintain can be used on every feast because flowers of every color are intermingled in them. The S. Congregation of Rites prohibited these on Sept. 23, 1837; and thus they can represent only that color which is primary and predominant.

Vestments of yellow and blue color are entirely prohibited. - Thus the S. Congregation of Rites, Nov. 12, 1831. Vestments of cloth of gold (*drap d'or*) are permitted, however, and according to the usage of

Rome they are employed for the colors white and red.

394. ○ **QUESTION 5. Must the chalice and paten be consecrated under grave sin, or only under light sin; and from what material must they be fashioned?**

Reply to the first. They must be consecrated under mortal sin, for the precept concerns a grave matter. - St. Lig., no. 379. - Gousset, no. 525.

Reply to the second. According to the present discipline, at least the cup of the chalice must be of gold, or of silver gilded within. In a case of necessity, however, a chalice of tin or copper could be used. The paten must be of gold, or of gilded silver.

QUESTION 6. Do the chalice and paten lose their consecration if the gilding is lost?

Reply. Affirmative [3]. Therefore, after being gilded anew, they need a new consecration. Thus from a recent Declaration of the S. Congregation of Rites, June 14, 1845. For when the Bishop of Liege asked whether a chalice and paten lose their consecration through being gilded anew, and thus need a new consecration, the S. Congregation replied: Affirmative, namely, that they lose it and need one according to the matters set forth. Thereby the controversy which previously existed is settled.

[3] By this absolute affirmation the Author does not seem to have wished so much to resolve the question concerning a chalice in the state in which its gilding has been lost, as concerning the state of that same chalice as it must again be perfected by the necessary regilding which it needs, namely, concerning the state into which it must necessarily pass. For otherwise it is sufficiently clear that the Doctors disagree among themselves on the question whether a chalice and paten, if their gilding is lost, remain by that very fact execrated; and the more common opinion is that which denies it. See St. Alph., bk. 6, no. 370, dub. 1 and 2.

It must be regarded as an abuse, however, for a Priest to wish to execrate the aforesaid sacred vessels before handing them to an artisan to be repaired or cast anew. Therefore, if there is need, they must be handed to him without the Priest attempting to execrate them either directly by hand or by means of some instrument. - Thus the S. Congregation of Rites in the general Decree of April 23, 1822.

395. ○ **QUESTION 7. Must the alb, amice, altar cloths, corporal, purificator, and pall necessarily be of linen or hemp?**

Reply. Affirmative as to all. Thus from the practice and precept of the Church. - Nevertheless, according to a general Decree of the S. Congregation of Rites, May 19, 1819, amices, albs, and altar cloths, if any made of cotton were possessed, could meanwhile be used until they were worn out; they were not, however, to be replaced except with ones of linen or hemp. It was prescribed, however, that, after the lapse of one month from the publication of the Decree, only corporals, palls, and purificators made of linen or hemp could be used.

396. ○ **QUESTION 8. Must the pyx necessarily be consecrated?**

Reply. Negative, according to the truer and common opinion. The reason is that in the Roman Ritual the blessing of a pyx is numbered among those things which do not require an anointing with chrism. - St. Lig., no. 384. In practice, however, according to the more probable opinion, it must be counseled that the pyx be blessed. For this is in conformity both with the Rubric and with reason.

The same must be said of the circle or lunule in which the consecrated Host is placed when it is exposed in the Monstrance. - St. Lig., no. 385.

QUESTION 9. What sin is it to celebrate with an unblessed corporal?

Reply. This cannot be excused from mortal sin unless a grave necessity of celebrating urges. In a case of necessity, however, one could even celebrate without a corporal. - Thus commonly. - St. Lig., no. 386. It is likewise mortal to use a very soiled corporal; but it is venial if it is not very soiled. Indeed, in a case of necessity, namely, if the precept of hearing Mass urges, there would be no sin. - St. Lig., no. 376.

397. ○ **QUESTION 10. Is it mortal to celebrate without a pall, or with an unblessed pall?**

Reply. It is controverted. The first probable opinion affirms it. The reason is that formerly the pall was the corporal itself with which the chalice was covered; hence, although it is now separate from the corporal, it is just as necessary as the corporal.

The second opinion, itself also probable, denies it. The reason is that today the same reason of reverence does not apply to the pall as to the corporal, which immediately touches the sacred Species. In a case of necessity, when a pall is lacking, the purificator or burse can be used to cover the chalice. - See St. Lig., no. 388.

QUESTION 11. Is it lawful to use a pall covered with silk cloth and interwoven with gold?

Reply. Affirmative. For although this is prohibited, nevertheless, at the request of several Bishops of France, it was conceded that it could be used. Hence, to the question: *Notwithstanding the Decrees issued by the S. Congregation of Rites, is it lawful to use a pall covered on its upper part with silk cloth and interwoven with gold?* the S. Congregation replied: It can be permitted, provided that the linen pall placed beneath covers the chalice, and the upper cloth is not black in color or bears any symbols of death. Jan. 10, 1852.

QUESTION 12. Must the purificator be blessed?

Reply. Negative, according to the more common and more probable opinion. The reason is that in the Ritual there is no proper blessing for a purificator, just as there is none for a veil or burse. Indeed, if a purificator cannot easily be obtained, it is probably lawful to celebrate without one, and in its place a clean small cloth can be used, which afterward must not be applied to profane use. - St. Lig., no. 589. - Suarez. - Gavantus, etc.

398. ○ **QUESTION 13. What sin is it to celebrate without a server?**

Reply. It is mortal according to all. Nevertheless, the Doctors commonly say that it is lawful to celebrate without a server when the necessity of administering Viaticum urges. Others likewise concede it so that the people may hear a Mass of precept. - Thus Lugo. - St. Lig., no. 319, etc. [4].

[4] Certain examples suggest, however, that the Roman Pontiff can dispense in this matter, and sometimes is accustomed to do so, even apart from the necessities noted in the text.

QUESTION 14. Can a Priest sometimes celebrate with a woman making the responses?

Reply. Affirmative, if necessity urges, especially among nuns, provided that the woman responds from a distance and does not directly serve at the altar by handing the cruets, etc.; for this could not be excused from mortal sin, because the Church entirely forbids women to serve the celebrant. - St. Lig., no. 392. - This is confirmed by a Decree of the S. Congregation, Aug. 26, 1836. For to a question of this kind: *Can a Priest, after arranging beforehand in a convenient manner all the things which can be needed for the Sacrifice, so that women do not serve at the altar, use the service of a woman only for the responses?* the Sacred Congregation of Rites replied: Affirmative, when necessity urges.

399. ○ **QUESTION 15. Is it mortal to celebrate without a cross; and what kind of cross is required?**

Reply to the first. Negative; for this does not appear to be grave. - Thus theologians commonly.

Reply to the second. The cross which is required in the celebration of Mass must not be small, but must rise above the candlesticks, so that the Priest and the people can easily and conveniently look upon it. Thus Benedict XIV, Constitution *Accepimus*, July 16, 1746. If a large statue of the Crucified is present on the altar at which Mass is celebrated, this suffices, and there is no need to add another cross in the midst of the candlesticks. - S. Congregation of Rites, June 16, 1683. - If Mass is celebrated at an altar where the Most Holy Sacrament is publicly exposed, the cross can be exposed or not exposed according to the custom of the place. - Thus Benedict XIV, *On the Sacrifice of the Mass*.

400. ○ **QUESTION 16. What sin is it to celebrate without a light, and is it ever lawful?**

Reply to the first. It is mortal to celebrate with no light at all. To celebrate with only one wax candle lighted, however, will be only venial. - From cap. *Littera*, sec. ult., *de celebratione Missae*. - St. Lig., no. 394.

Reply to the second. In one case alone it is lawful to perform the sacred rite without any light, namely, when the light is extinguished after the consecration has been completed and another cannot be obtained; for then the reason of completing the Sacrifice urges.

QUESTION 17. Is it lawful to celebrate with tallow candles, or with one wax light?

Reply to the first. Negative, except in a case of necessity; and there are some who condemn this as a mortal sin. - St. Lig., no. 594 [5].

[5] Pasqualigus, Gobat, and others say, with whom Suarez agrees when speaking of a light of oil, that it is not unlawful to celebrate with lights of oil or tallow, even from devotion alone, if others cannot be obtained. - Thus St. Alphonsus (bk. 6, no. 394).

Reply to the second. Likewise negative, according to the more common and more probable opinion; but if it is done, it does not exceed a venial sin, and any reasonable cause will excuse from every fault. Therefore, when the other wax candle is lacking, the Priest can celebrate even from mere devotion. - St. Lig., ibid.

401. ○ **QUESTION 18. Is it at least lawful to persist in the use of the new candles made from stearin (*stearine*)?**

Reply. Negative. This is established from two Declarations of the S. Congregation of Rites, namely, Sept. 14, 1843, *in Massiliensi*; and Sept. 7, 1850, *in Divion*.

Article II. On the Rubrics

402. Priests must observe with the greatest care and solicitude the laws of the Church which concern the manner of celebrating Mass, since among all sacred things this is the most sacred of all, and therefore worthy of the greatest reverence. On this matter Clement XI should be heard, in his encyclical Letter to all the Bishops of the world, March 10, 1708:

With diligence and zeal greater than can be expressed, the Bishop must take care that the Sacrifice of the Mass, than which nothing more holy, nothing more divine can be conceived, be celebrated by Priests alone, not only with that purity which befits those who each day offer to God the Father the heavenly holocaust of the Only-begotten Son who assumed our mortality, but also that they diligently and devoutly observe the sacred ceremonies prescribed in the Rubrics. This is also necessarily required lest the Priest, placed between men and God to appease His anger, should provoke God all the more if he performs his office negligently and immodestly.

403. Questions. - **QUESTION 1. Are all the Rubrics of the Mass preceptive?**

Reply 1. According to the common opinion [1], all the Rubrics which are observed within the Mass are preceptive, since they concern so sacred a matter. They bind, however, under grave or light sin according to the gravity or lightness of the matter, as will be said below. - St. Lig., no. 399. Reply 2. The Rubrics which are observed outside the Mass, that is, before or after the sacred rite, are commonly regarded as merely directive [2], as, for example, the prayers for preparation or thanksgiving; for other prayers can be recited. There is controversy, however, concerning the prayers which according to the Rubric are to be recited while the vestments are put on; but it must be held with the common opinion, says St. Lig., no. 410, that their omission is venially culpable. Others, however, maintain with Suarez that this omission is free from every fault.

[1] It scarcely appears in fact why the Author calls this opinion common and adduces St. Alphonsus in its support. St. Alphonsus, as we have observed elsewhere, writes (bk. 6, no. 399) that there are four opinions of the Doctors concerning this question. The first says that all the rubrics are directive, and for this he adduces two authors. The second teaches that all the rubrics are preceptive, and for this he adduces eight. The third holds that some are preceptive and others, even those pertaining to the Mass, are directive, and for this he cites nine Authors. Finally, the fourth holds that those which are observed within the Mass are preceptive, while those which are observed outside it are directive, and for this he adduces three. Now, by joining the Authors of the second and fourth opinions, we have eleven; and by joining the Authors of the first and third, we likewise have eleven. How, then, is that called the common opinion which, taken according to all its parts, has only three patrons, but, taken according to its individual parts, has no more than its contrary?

They also derive this from the decree of St. Pius V: *Mandating and strictly commanding each and all... by virtue of holy obedience, that, all other methods and rites from other Missals... being henceforth entirely omitted,... they chant and read Mass according to the rite, manner, and norm which is now delivered by Us through this Missal; nor in the celebration of Mass are they to presume to add or recite other ceremonies or prayers than those which are contained in this Missal.* Now, 1. it is manifest that by these words merely the use of one Roman Missal is prescribed. 2. In the Missal, however, there are also things which are to be done or said outside the Mass; and nevertheless the Author, with St. Alphonsus, maintains that these rubrics are merely directive. 3. Indeed, St. Alphonsus (bk. 6, no. 412) judges it probable that it is not forbidden to add one collect for some cause or devotion, although the decree seems to prohibit every addition. Let us therefore conclude that Pius V certainly prescribes that the things contained in the Roman Missal be observed, but as they are proposed in the Missal, namely, either as commanding or as merely

directing; while additions are forbidden, not those which are taken from the same Roman Missal, but those which are taken from other Missals, as the words and context of St. Pius most clearly suggest.

[2] The VV. object here (p. 933, no. 103) that St. Alphonsus (*Exam. Ordin.*, no. 112) judged only some of them to be directive according to the opinion of the Doctors; whence it must be concluded that others are therefore regarded as preceptive.

Reply. In order that rubrics of this kind may truly be regarded as preceptive, it must be certain that they are so, because merely probable precepts have no power to bind, as St. Alphonsus teaches as certain.

404. ○ **QUESTION 2. Can an infirm Priest celebrate even though he is unable to observe all the Rubrics?**

Reply. Affirmative, if he omits only a few and the lighter ones, especially if he celebrates privately. Indeed, several authors of grave authority permit an infirm celebrant even to use a staff if he needs it, etc. [3].

[3] St. Lig. reports and approves these things (no. 402): Lacroix (bk. 6, part 2, no. 402), with Vasquez, Dicastillo, and Gobat, says that one who could not celebrate without a staff could lawfully use it. And Gobat adds that, if someone were unable to celebrate unless he leaned with both arms upon the altar, he could lawfully celebrate thus in private, but not in public unless he did this from necessity. I think, however, that this does not exceed a venial sin, from which one who because of infirmity could not stand upright and wished to celebrate from his devotion seems able to be excused, provided that the astonishment of the people is avoided. Lacroix (no. 427) and Fr. Concina (p. 510, no. 4) also say that if someone cannot elevate the Host but can do the other things, he can celebrate privately, and even publicly if necessity is present and the people are forewarned; but I think it is sufficient merely to forewarn the people if someone celebrates from devotion.

QUESTION 3. Is the use of a small spoon for pouring water into the chalice lawful for all?

Reply. The Rubric must be observed [4]. - Thus the S. Congregation of Rites, Sept. 7, 1840, *in Rupellen.*, ad 13.

[4] The Rubric says nothing about a spoon, but merely says that the cruet of water is to be blessed, and then that drops are to be poured into the chalice.

QUESTION 4. Can a Priest, while distributing the Most Holy Eucharist to the faithful, hold a paten under their chin with the same hand with which he holds the pyx?

Reply. Negative (S. Congregation of Rites, Aug. 12, 1864, *in Lucionen.*).

405. ○ **QUESTION 5. What Mass must a Priest celebrating in another church say?**

Reply. Here are the decisions of the S. Congregation of Rites on this matter:

1. The Decree *in Varsavien.*, May 7, 1746, is to be observed, namely, that the Mass must agree with the Office which one has recited, provided that it accords with the color of the church in which he celebrates (Nov. 12, 1741). Otherwise, when the feast there is a double, Mass must be celebrated of the Saint whose Office that particular church celebrates (Sept. 4, 1746).

2. A Priest celebrating in another church cannot say a votive Mass with the color which agrees with the Office of that church, unless the rite of the aforesaid church permits it (Sept. 11, 1747).

3. In private Oratories the Mass must always agree with the Office of the celebrant (March 12, 1831).

406. ○ **QUESTION 6. Is it lawful to add prayers beyond the prayers assigned or permitted by the Rubric?**

Reply. Negative. Thus the S. Congregation of Rites declared, Aug. 12, 1854, *in Lucionen.* [5].

[5] St. Alphonsus (bk. 6, nos. 411-412), after establishing that one sins gravely if, with the intention of introducing a new rite, he adds new public prayers in the Mass, adds: But if several collects from the same Missal are added from importunate devotion..., this does not exceed a venial fault. Thus commonly.... Croix and Pasqualigus, however, say probably that, although it is better to observe the rubric, it is nevertheless not forbidden for some cause or devotion to add one collect.

QUESTION 7. In a daily Mass of the dead, is it lawful to substitute other prayers for those which are set down in the Missal?

Reply. In the last place the prayer *Fidelium omnium* must always be said (S. Congregation of Rites, Sept. 2, 1741, *in Aquen.*); and as regards the first prayer, the Order of the Missal is to be observed, that is, *Deus qui inter apostolicos* must always be said (S. Congregation of Rites, Aug. 27, 1836, *in Veronen.*). - The second prayer, *Deus veniae largitor*, however, can be varied, and another can be substituted for it, for example, for the one for whom the Mass is applied, etc.... (S. Congregation of Rites, Sept. 25, 1837, *in Mutinen.*).

407. ○ **QUESTION 8. Is it ever lawful to interrupt Mass?**

Reply 1. It is never lawful to interrupt Mass essentially, that is, in such a way that the Sacrifice which has been begun remains truncated, unless a most grave or extreme necessity urges, as in the case of an imminent fire or of an enemy rushing in to kill; for then the Priest, omitting the consecration of the chalice, could consume the Host already consecrated, or carry it away with him as he fled. But if he has completed both consecrations, let him consume both species immediately, if he can; or, if he cannot, let him carry them with him, to be consumed as quickly as possible in a nearby place. - St. Lig., no. 352 et seq.

Reply 2. It is lawful to interrupt accidentally, namely, by interposing something for a just cause before the Canon: 1. On account of a sermon after the Gospel, prayers to be recited for the dead, proclamations of banns to be made, or a procession to be received, etc. 2. For the sake of a Prince who arrives, or of a crowd of pilgrims on a feast day, if otherwise they cannot hear Mass. Then, if the oblation has not been made, the Priest can begin anew so that they may hear the whole Mass. 3. If the Priest remembers some impediment, for example, that he is not fasting, or is not in the state of grace, or is irregular, provided that the Mass can be broken off without scandal or disgrace. - St. Lig., ibid.

Reply 3. It is not lawful, however, to interrupt even accidentally once the Canon has been begun, and *a fortiori* after the consecration has been completed, except for a most grave cause, for example, if a dying person must be baptized or absolved. It is not lawful, however, to administer the other Sacraments between the consecration and Communion, because they are not of such great necessity. Nevertheless, Holy Viaticum could be administered to a dying person who was nearby, so that the Priest would not have to remove the sacred vestments. - St. Lig., ibid. - But for this it is also required that the celebrant not lose sight of the altar (S. Congregation of Rites, Dec. 19, 1829).

408. ○ **QUESTION 9. What must be done if a Priest, overtaken by illness or death, is unable to complete Mass?**

Reply 1. If the Priest fails before the consecration, nothing is to be done by another Priest, because the Sacrifice was not properly begun.

Reply 2. But if he fails after the consecration of even only one species, then another Priest who is fasting, if one is present, must supply; if no one fasting is present, another who is not fasting is to supply and complete the Mass, because the precept of securing the integrity of the Sacrifice urges more gravely. Indeed, even an irregular or excommunicated Priest would have to supply. Nevertheless, if another Priest could not be found immediately, after one hour had elapsed he probably would no longer have to be sought, because moral union would be lacking, and consequently it would not be considered the same Mass. But if the Priest, seized by illness while celebrating, is able to complete the Mass after some interruption, it is better that he himself, rather than another, complete it, even if he is not fasting. - St. Lig., no. 335.

409. ○ **QUESTION 10. Can a Priest wearing a STOLE assist a Priest who is celebrating?**

Reply. Negative. 1. If it is a private Mass, even of a new Priest celebrating for the first time. - Thus the S. Congregation of Rites, March 11, 1837. - 2. Likewise, if it is a solemn Mass (S. Congregation of Rites, March 15, 1721) [6]. Canons are excepted, however, when they celebrate solemnly in place of the Bishop, or when immemorial custom favors them. - Thus the S. Congregation of Rites on several occasions.

[6] The two decrees cited here appear to have less bearing upon the matter, and therefore are less suitable for confirming what the Author affirms.

Resolutions. - 1. It is unlawful to celebrate with the head covered. This is established from cap. *Nullus, de Consecratione*, dist. 1. And indeed, according to the common opinion, it is mortal to celebrate the whole Mass with the head covered; but to celebrate with a skullcap (*calotte, berrettino*) up to the Canon, apart from contempt and scandal, is only venial. Indeed, it is probably free even from venial fault if, even without a dispensation, it is done only up to the Canon for a reasonable cause and in a private place, or even in a public place if the reason is manifest to those present and the Priest cannot celebrate without notable inconvenience. It is unlawful, however, to celebrate the entire Mass with the head thus covered without apostolic permission. Thus expressly St. Lig., no. 397, after others. - Craisson, *Manuale Iuris canonici*, vol. 3, no. 3688.

2. By common law it is unlawful to celebrate with a wig (*perruque*), and this under penalty of suspension from divine Offices. Thus from a Decree of Innocent XI, in which Bishops and Apostolic Nuncios are furthermore prohibited from granting this permission. - St. Lig., no. 386. - But this prohibition has fallen into desuetude in many places, as in France, as is evident from the contrary custom. - Bouvier, *On the Sacrifice of the Mass*, ch. 7, art. 7. - Craisson, no. 3692.

3. A Priest who omits blessings, inclinations, genuflections, etc., is not excused from venial sin. Say the same of one who advertently does not genuflect to the ground, or contrary to the

prescriptions of the Rubric changes the order of the blessings, or performs them too quickly. - Lacroix, etc.

4. It is a grave sin, unless slightness of matter excuses, to omit the parts of the Mass which are called ordinary, or which are always recited or performed. Hence the Doctors commonly say that it is mortal to omit the Confession together with the other things at the beginning of Mass, the Epistle, the Gospel, the principal Collects, the Offertory, the breaking of the Host, and its mingling with the Blood [7].

[7] These things are taken almost word for word from St. Alphonsus (bk. 6, no. 404). But his statement that the Doctors commonly say that it is mortal, etc., must not be understood as though the common opinion asserted grave guilt in each individual thing which is then enumerated. For St. Alphonsus himself adds: Although you will not find all these things in all these authors. Thus, for example, Sporer, cited there, mentions only the whole Epistle with the Gradual and Alleluia, and then the whole Postcommunion.

5. It is mortal to omit any prayer in the Canon of the Mass, or so to change its words that the sense is altered, or to omit some word whose removal causes the remaining words to make no sense. - The same must be said if the *Pater noster* or *Agnus Dei* is omitted; the same of *Libera nos*; *Domine, non sum dignus*; and *Quid retribuam*; the same of the purification of the paten and chalice after consumption [8]. - St. Lig., no. 405. - The Salmanticenses.

[8] Here in reality you have only opinions for which two, three, or four authors are adduced; and indeed those who are eminent among them are not those to whom one must defer greatly. You have these authors in St. Alph. (bk. 6, no. 405).

410. ○ 6. It is venial to omit one of the three principal Collects. If the first prayer has been omitted, it is to be recited together with the Secret, as it seems, and not afterward [9]. But it will not be mortal to omit the other prayers which are added in the Mass besides it [10]. - St. Lig., no. 406.

[9] Suarez alone is adduced for this rule (in St. Alph., bk. 6, no. 405).

[10] In this context of the Author, the word *it* refers to the first prayer. But it is not so in St. Alphonsus, from whom the Author copies. For St. Alphonsus understands the first proper Collect.

7. To mutilate words or introduce syncopation, while preserving the sense and apart from scandal, is no more than venial. - St. Lig., no. 407.

8. To omit extraordinary parts, namely, those which are not said in every Mass, is only venial. - Thus commonly, unless so many parts are omitted that, taken together, they constitute notable matter. - Hence it will be only venial to omit the *Gloria*, *Credo*, Collects besides that proper to the Mass, the Tract, or special things concerning the Preface or the *Communicantes* [11]. - Thus commonly. - Likewise, to celebrate a votive Mass or a Mass *de Requiem* when this is not lawful according to the Rubrics is venial, unless it becomes mortal by reason of contempt or scandal, if, for example, you say a Mass *de Requiem* on the solemn feasts of Easter or the Nativity of the Lord. - St. Lig., no. 420.

[11] Sporer includes here the Sequences of certain feasts, and even the prophecies on the Ember Days, since they are very extraordinarily accidental parts of the Mass (*Theologia Sacramentalis*, part 2, ch. 6, sect. 4, no. 426).

9. The washing of the hands before Mass must be done at least under venial sin [12], and under grave sin if the hands are very dirty, because of the reverence due to the Sacrifice. - But to omit the washing after Mass will be no sin. - St. Lig., no. 409.

[12] This is the opinion of some.

10. Although it is no sin to omit the prayers before and after Mass, nevertheless, a Priest who approached the Sacrifice without any other preparation would not be free from some fault. - St. Lig.

11. A Priest would sin if, in the purification of the chalice, he used water alone, but only venially according to the common opinion. - Thus St. Lig., no. 408. - Lacroix, no. 423, etc. - Several also excuse a Priest from venial sin if he is an abstainer from wine. Thus Tamburini. - See more concerning the Rubrics and Ceremonies in the authors.

END OF THE TREATISE ON THE EUCHARIST.

Treatise On the Sacrament of Penance

411. How important this Treatise is, is evident to all, both because in necessity it surpasses the other parts of moral Theology, and because it contains, resumes, and explains their difficulties.

Without doubt, the Sacrament of regeneration is necessary, without which no one can enter into the kingdom of heaven; but of no less necessity for adults is the Sacrament by which we recover the spiritual life lost through sin. Indeed, Baptism is required only once in life, while Penance is necessary as often as a Christian man has fallen into mortal sin.

Hence Penance is rightly called by the Holy Fathers and Councils a second Baptism or the second plank after shipwreck. And indeed, what would the immense benefit of regeneration have profited most men if, after they had been stripped of the wedding garment by the most savage beast of sin, the compassionate and merciful Lord had not supplied a second or even a manifold redemption? They would surely have been delivered over to eternal death under diabolical tyranny. But the most clement God, with whom there is mercy and plenteous redemption, whose treasure of goodness is infinite and whose mercy is without number, continually extends His hand to the most wretched shipwrecked, and presents to us this second plank, by grasping which we may be saved from shipwreck again and again and without any numerical limit. It is therefore by the mercies of the Lord that we are not consumed, and we are always able to await the blessed hope. The penitential seat is therefore truly to be called a throne of grace and a tribunal of mercy.

In this Treatise especially, a certain diversity of opinions appears among Theologians. For some perhaps seem to have inclined more than is right toward rigor, but others toward benignity. We, however, faithfully following as usual the footsteps of our Leader and Teacher, St. Alphonsus de Liguori, shall endeavor, according to our measure, to walk the middle way, declining neither to the right of rigorism nor to the left of laxity [1]; mindful nevertheless of that principle of St. Antoninus, part 2, tit. 4, ch. 4: *It is better to render an account to the Lord for excessive mercy than for excessive severity.*

[1] You will indeed find no one who does not most firmly believe, and even wish others to be entirely persuaded, that he follows the safest and therefore the middle way between laxity and rigor. Indeed, there has not been lacking one who wished this very claim to be proclaimed on the title page of his work in capital letters, as, for example, Eusebius Amort, who prefixed this title to his moral work: *D. Eusebius Amort's MORAL THEOLOGY, A MIDDLE WAY BETWEEN RIGOR AND LAXITY*. And this declaration is indeed an indication of good will, which otherwise will doubtless receive its reward from divine bounty. But what else is it worth? For since the notion of rigor and laxity supposes certain boundaries from which there is a deviation either to the right or to the left, it will certainly be possible to define what is lax or rigid when, either by the authority of the Church or by some other indication, those boundaries, that is, the truth, are certainly established. But where that lamp which shows the certain way does not shine forth, where the path which alone is to be trodden as certainly the only right one is unknown, whence, I ask, do you know that these have turned aside to the right and those to the left? And while, thinking that you hold the middle, you lament that some have gone into laxity and others into rigor, could it not, on the contrary, have happened that you yourself have strayed from the right way, and consequently that one seems to you to have fallen into laxity because you have fallen into rigor, but another into rigor because you have fallen into some laxity? This one thing, therefore, seems to remain: that, each of us thinking modestly of his own judgment, we leave the office of affixing the marks of rigor or laxity to that judge whose office it is also to point out the right way by a certain judgment. But let that saying which is in the proverb be sacred to us: *In doubtful things, liberty; in all things, charity*; so that

with great charity we permit to others that liberty which we judge should also be permitted to us, namely, that we not be called laxists when we ourselves do not admit, and do not judge should be imposed upon others, the yoke of a law or obligation which is not established by certain reason; nor again be called rigorists when we demonstrate that the force either of authority or of reason exempting from the obligation is not so firm, and therefore judge that the law must be observed.

We must treat: 1. of the essence of the Sacrament of Penance; 2. of its subject, or of the acts of the penitent; 3. of its Minister, or of the Confessor.

First Part. On the Essence of the Sacrament of Penance

Chapter I. On the Nature of Penance

412. Penance, considered generally, signifies the same as sorrow of soul, which anyone experiences after he has done or omitted something which he would wish not to have done or not to have omitted. But in the strict and proper sense, penance is sorrow of soul insofar as it is referred to God offended and hostile to us [1].

[1] Take care to distinguish properly the twofold sense in which an offense against God is the formal object now of charity, now of penance; otherwise you may perhaps fall into the false doctrine which finds penance only where there is contrition perfected by charity. Cardinal De Lugo speaks well concerning these things: It is one thing, and a far different one, to detest sin because it is opposed to God, or because it is an evil of God, at least extrinsically, and because it displeases God, which pertains to charity; but it is another thing to detest sin because it offends God, or because it provokes God and turns Him away from man, which pertains to this other virtue of Penance.... For even among men these two things are distinguished, and I can be unwilling to offend another lest I reasonably render him averse to me, although otherwise I have no friendship with him nor desire to have it; for friendship tends to avoid his evil because it is his evil; but this other virtue tends formally to avoid an offense, not because it is his evil, but rather because it is evil and dishonorable for me to have another reasonably averse to me (*On Penance*, disp. 2, no. 52).

But he had previously explained the object of Penance more clearly thus (ibid., nos. 50-51): Even among men another virtue inclines one to remove an offense, which prohibits giving someone a sufficient and reasonable cause of indignation and aversion..., and inclines one also to remove it when it has been committed, by offering sufficient satisfaction through acts of service, through a petition for pardon, and other similar things according to the magnitude of the offense; for when this satisfaction has been made, the offense is extinguished. For if the offended person were harsh in accepting satisfaction, prudent men would nevertheless no longer judge him to remain reasonably averse, but entirely unreasonably so.... This being supposed, we say that there is another similar virtue of man toward God, which inclines one to have peace with God, or to avoid an offense against God and to remove it by every means when it has been committed. Its formal object is the goodness of peace with God, or not to have God averse and indignant. But since God is offended by all sins, this virtue hates all of them under that formal aspect, because they are offenses against God; and it endeavors to remove all of them, so that it may again have God pacified and appeased. And therefore it is called a reconciliatory virtue, because it tends to this, that it may reconcile to us the God who is averse.... But that this virtue is Penance is proved from the fact that, etc. And in this sense indeed the Author is to be understood when he presently adds that Penance is a moral virtue which inclines to the detestation of sin insofar as it is an offense against God, namely, insofar as it renders God averse and indignant toward us.

I. Penance, as a virtue, is defined: A moral virtue inclining to the detestation of sin insofar as it is an offense against God, and to an efficacious purpose of avoiding it in the future and of satisfying divine justice.

Penance is necessary for the sinner by a necessity of means for salvation. For in the present economy it is repugnant that an impenitent sinner be received by God into friendship.

It is also necessary by a necessity of divine precept, as is clear from many testimonies of Sacred Scripture, for example, Luke 13.5: *Unless you do penance, you shall all likewise perish*, etc.

The effect of penance [2], however, is twofold: 1. the remission of sins, as is established from six hundred passages of Sacred Scripture; 2. the remission of eternal punishment. For a justified man cannot be liable to eternal punishment. This is also established from Trent, sess. 6, ch. 7.

[2] Understand this of perfect penance, namely, that which leads to those acts of service by which God Himself has revealed that, from His immense mercy, He is appeased and reconciled with sinful man.

II. Penance, as a Sacrament, is defined: A Sacrament of the new law instituted by Christ after the manner of a judgment, for remitting, through priestly absolution, to a contrite man who has confessed, sins committed after

Baptism.

This Sacrament differs from the others especially in this, that it is administered after the manner of a judgment; for there is present the penitent, at once the accused, witness, and accuser; and the Priest, the judge pronouncing sentence.

413. Things to be established. - I. Penance is a true Sacrament of the new law.

This is established, 1. from theological reason; for in it are found all the things which constitute a true Sacrament, namely: 1. A sensible sign through confession, or certainly through the absolution of the Priest, etc. 2. The institution of Christ in a permanent manner, as is clear from the text John 20.23: *Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained.* 3. The promise of grace; this is clear from the remission of sins, since sins cannot be remitted without the infusion of grace.

This is established, 2. from constant tradition and the doctrine of the Fathers, to which is added the express definition of the Church; for thus Trent, sess. 14, can. 1: *If anyone says that in the Catholic Church Penance is not truly and properly a Sacrament instituted by Christ our Lord for reconciling to God the faithful as often as they fall into sins after Baptism, let him be anathema.* The same is clear from the Council of Florence in the Decree to the Armenians: *The fourth Sacrament is Penance.* - See what is to be said below concerning the necessity of confession, no. 464.

II. The Sacrament of Penance has the power of remitting all sins committed after Baptism.

This is established, 1. from Sacred Scripture; for Christ generally, without any distinction or restriction, gives the power of remitting sins: *Whose sins you shall forgive....* Indeed, Matt. 16.19, Christ says to Peter: *Whatsoever you shall loose upon earth shall be loosed also in heaven.* And in ch. 18.18 He says to all the Apostles: *Whatsoever you shall loose upon earth shall be loosed also in heaven.*

This is established, 2. from tradition, from all the Fathers, and also from the definition of the Church in the Councils, especially in Trent, sess. 14, can. 1, cited above.

414. ○ III. The necessary parts of the Sacrament of Penance are: 1. contrition; 2. confession; 3. absolution; 4. satisfaction, insofar as it is to be accepted by the penitent. For the Sacrament of Penance was instituted after the manner of a reconciliatory judgment; but this cannot be had without a sorrowful confession of guilt and a disposition of soul to

undergo the satisfaction imposed, and without the absolution of the Priest. - Satisfaction, however, insofar as it is to be imposed or fulfilled, is only an integral part of this Sacrament, because the primary effect, namely, grace and the remission of sins as to guilt and eternal punishment, can be had without satisfaction [3].

[3] This distinction, by which satisfaction is said at one time to be a necessary and even essential part of the Sacrament, namely, insofar as the purpose of fulfilling it is considered, and at another time only an integral part, insofar as its execution is considered, was introduced by some Authors so that they might better defend the acts of the penitent as being the matter *from which*, and thus as pertaining to the essence of the sign causing grace. For since satisfaction is commonly called an integral part by the Doctors (see Lugo, *On Penance*, disp. 12, no. 40), while the Council of Trent (sess. 14, ch. 3) numbers it together with contrition and confession as the quasi matter of this Sacrament, it seemed to follow therefrom that by the name of matter there was designated not merely an essential element of the Sacrament, but also the integral parts of Penance, as the Catechism of the Council of Trent in fact calls them (*On Penance*, sec. 21). Melchior Cano, a theologian at the Council of Trent, also employs this manner of speaking (*Relectio de Poenitentia*, part 6, q. 15), where without hesitation he writes: Contrition is not an essential part of this Sacrament, but an integral part. But not every integral part is necessary for the existence of the whole, as is clear of satisfaction, without which a true Sacrament exists. And Andrew Vega, another theologian of the Council of Trent, according to the testimony of Cardinal De Lugo (*On Penance*, disp. 14, no. 3), called that doctrine common.

Nevertheless, whatever this evasion may be worth with regard to satisfaction, it is not free from another difficulty. For in that opinion the matter of the Sacrament would not in fact be satisfaction, but the purpose of satisfaction, that is, the purpose of supplying the matter. Moreover, if that pertains to the matter of the Sacrament which the penitent must be prepared in the disposition of his soul, as the Author says, to perform, another could conclude by almost the same reasoning that the matter of the Sacrament is the Lenten fast, the hearing of Mass, and finally all things which divine or human law commands; for all these things must also be present in the purpose of the penitent.

Moreover, neither is it our intention, nor does the brevity of this Note permit, even lightly to touch upon those most intricate questions which are customarily disputed on both sides in the schools concerning the matter of this Sacrament. It is certainly very well known that the Council of Trent deliberately abstained from those formulas of words which might seem opposed to either opinion of the disputants. From this it is sufficiently clear that decretory force cannot reside in the arguments which some have attempted to elicit in support of either opinion from the doctrine both of that Council and of the Council of Florence, especially from the fact that the acts of the penitent are called by the name of matter or quasi matter, as though the word *matter* necessarily conveyed the notion of an element causing grace. This persuasion drove some so far that they sought some causality of grace even in sin (see Lugo, *On Penance*, disp. 12, nos. 22 and 37), because it also is the matter of this Sacrament. But this very thing is what others deny concerning the notion of matter; and very many Theologians - for I shall use the words of the Roman Theologian in his note to the *Bibliotheca* of Lucius Ferraris, s.v. Absolution, art. 2, no. 10 - establish the acts of the penitent not as the matter *from which* the Sacrament is made, but as that *concerning which* the Sacrament is occupied. They support this opinion with such reasons (see Maldonatus, *On Penance*, part 3, q. 3, ad Thesis 7) that even Cardinal De Lugo himself (*On Penance*, disp. 12, no. 29), although he fights for the opposite opinion with all his strength, nevertheless, pressed by the difficulties, was compelled to concede that the causality of the Sacrament could probably be attributed to absolution alone: Although the acts of the penitent, he says, are parts of the Sacrament, it is not required that all the parts of a Sacrament cause grace, but it is sufficient that the Sacrament cause it through some part of itself; but this Sacrament causes grace through the absolution of the Priest alone, in whom there is the power of the keys for absolving and destroying sins. Several seem to hold this opinion, whom Suarez adduces, disp. 18, sect. 2, no. 11, and he says that this is a probable solution. And in fact, in support of this opinion Suarez (*loc. cit.*, nos. 1 and 12) adduces, together with Scotus, Major, Gabriel, Vega, Ferrariensis, Capreolus, and St. Bonaventure, even St. Thomas. He indeed contends that the last of these thought otherwise in the *Summa* (III, q. 86, art. 6) (ibid., no. 13); but others will perhaps gather from the reply to the first and to the last objection that the Holy Doctor there added more things indeed, but not contrary things. For since he speaks of acts caused by the grace which remits guilt, these certainly cannot be the cause of that same grace by which sins are remitted, since an effect cannot be prior to its cause. To those adduced by Suarez, not only can several others be added after Maldonatus, but the most grave Theologians, indeed those of the first rank, Francis de Vitoria, Melchior Cano, Dominic Soto, Francis Toledo, Vega, and, omitting others, Martin Navarrus, do not seem capable of being excluded, precisely because of the things which they wrote concerning the power of merely supposed

contrition; for these things cannot in any way be reconciled with the opinion which regards the acts of the penitent as the matter *from which*.

But enough has now been said concerning these matters. They had to be intimated for this reason, lest, since it must be accepted that mere opinions of the school are being treated here, more than is right should afterward be attributed to doctrines which are mere consequences of these opinions; for conclusions cannot possess more force and firmness than the premises bear.

IV. The acts of the penitent required for the remission of sins are: 1. contrition; 2. confession; 3. satisfaction. This is established from the Council of Trent, sess. 14, can. 4: *If anyone denies that for the entire and perfect remission of sins three acts are required in the penitent, AS IT WERE THE MATTER of the Sacrament of Penance, namely, contrition, confession, and satisfaction, which are called the three parts of Penance..., let him be anathema.*

V. The Sacrament of Penance is necessary by a necessity of precept in actual reception, and by a necessity of means in desire, at least implicit, for remitting mortal sins committed after Baptism. Thus in the new law the supreme legislator, Christ the Lord, has established it according to divine goodness and providence.

Hence, for those stained by mortal sin committed after Baptism, the Sacrament of Penance is necessary for salvation at least by a necessity of precept; but penance or contrition [4], together with the desire for the Sacrament, or with a serious purpose, at least implicit, of confessing the sins when a suitable opportunity is given, is always necessary by a necessity of means.

[4] If contrition here is understood as that which is perfected by charity, it is always necessary for justification when there is no opportunity of confessing sins; for, as is said below, imperfect contrition is sufficient with the Sacrament.

415. Questions. - **QUESTION 1. When was the Sacrament of Penance instituted?**

Reply. It was instituted when Christ, after His Resurrection, breathed upon His disciples, saying: *Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them...*, etc. For then, as the Council of Trent, sess. 14, ch. 1, declares, He conferred upon them the judicial power which before the Passion He had only promised. Hence Trent says that this Sacrament was instituted principally after the Resurrection.

416. ◦ **QUESTION 2. Do sacramental and forensic judgments agree, and to what extent?**

Reply. They partly agree and partly differ, as is clear from the form of each.

1. In sacramental judgment the procedure is as follows: 1. The whole matter is conducted between only two persons, namely, the judge and the accused. The penitent himself is the accused, accuser, and witness; but the Priest is the judge, who, after the cause is known, pronounces a sentence which God ratifies if the requisite conditions are not lacking. 2. The investigation of the cause and the pronouncement of the sentence are conducted entirely in secret. 3. The judge is bound to the strictest seal of silence concerning the crimes and the whole course of the cause.

2. In forensic judgment, however, the procedure is as follows: 1. Besides God and the judge, there are assessors who assist the judge by counsel. 2. There are accusers who convict the accused

when he evades. 3. There are procurators and advocates who defend. 4. There are officers, attendants, and sometimes executioners, who execute the sentence.

Moreover, another essential difference is also found between the two judgments, namely, that forensic judgments tend to punish the accused and are vindicatory judgments; but sacramental judgment tends to absolve the accused, or to reconcile the sinner with God.

Chapter II. On the Matter of the Sacrament of Penance

417. As in the other Sacraments, so in the Sacrament of Penance, there is a twofold matter, one remote and the other proximate.

The remote matter consists of all sins committed after Baptism; these are called the matter *concerning which*, because absolution is occupied with destroying them. It is either necessary or merely sufficient and free.

The necessary remote matter consists of all mortal sins committed after Baptism and not yet directly remitted by the power of the keys, because by divine precept sins of this kind must be submitted to the keys. - But the sufficient and free matter consists of all venial sins [1]. It is called sufficient because any sins, even the least, can be the object of sacramental pardon. It is called free because there is no precept of submitting them to the keys. These things are established from the perpetual practice and tradition of the Church, and also from the definition of the Council of Trent, sess. 14, ch. 5.

[1] Add all sins, whether mortal or venial, which have already at another time been duly submitted to the keys, as the Author presently has it (q. 1).

The proximate matter of the Sacrament of Penance consists of the three acts of the penitent, namely, contrition, confession, and satisfaction, which are called the quasi matter of this Sacrament because they are in the likeness of sensible matter which in the other Sacraments is subjected to the form [2]; for through these acts sins are presented to be destroyed by the words of the form. This is established especially from the Council of Trent, sess. 14, can. 4.

[2] St. Thomas teaches thus, however, that in the other Sacraments matter is subjected to the form in a different manner: A form of words is applied to sacramental signs in the other Sacraments for their sanctification, because they contain and cause grace; but exterior penance is not a sign causing grace, and therefore it is not necessary that it be sanctified through some form of words. But the words which are pronounced by the absolving Priest are immediately directed to him who subjects himself to the Sacrament; whence he himself is sanctified by the power of absolution and receives grace, but his confession is not sanctified so that he may receive grace from it, as was the case in Baptism concerning the sanctification of the water (*In IV Sent.*, dist. 22, q. 2, art. 1, q. 1, ad 3). But I have said, in the note to no. 414, that the things which the Holy Doctor handed down in the *Summa* (III, q. 86, art. 6) do not appear contrary to these things. For although in the body of the article he says that the remission of guilt is in some manner an effect of the acts of penance, he nevertheless adds (ibid., ad 1) that this is to be understood of acts which are there as effects of operative grace, produced simultaneously with the remission of guilt. And more clearly (ibid., ad ult.): The act of the virtue of penance has it that without it the remission of guilt cannot take place, insofar as it is an inseparable effect of grace, through which guilt is principally remitted, which also operates in all the Sacraments. If, therefore, an act of this kind is an effect of the grace by which guilt is remitted, it certainly cannot, as something subsequent, be called the cause of the grace remitting guilt.

418. Questions. - **QUESTION 1. Are sins already duly confessed and remitted through absolution sufficient matter for the Sacrament of Penance?**

Reply. Affirmative. This is certain among all, says St. Lig., no. 427.

The reason is: 1. because a sin, although remitted, is always a sin committed; and just as contrition for the same sin can be repeated with fruit, so also can confession. It comes about only *per accidens* that the sin, since it has already been remitted, is not remitted, although *per se*, since it was committed, it is capable of remission. Nor does it stand in the way that the Sacrament then does not destroy this sin; for it suffices that it have its effect in first act, namely, that it provide grace destructive of sin, although *per accidens* in second act it does not destroy the sin. Moreover, the Sacrament will no more lack the other effects, namely, an increase of grace, remission of punishment, etc., than if someone, perfectly contrite, were submitting those sins to the keys for the first time.

2. Furthermore, a sentence already pronounced can be confirmed for greater security and for greater consolation and peace of soul, as is sometimes customary in civil matters; and if perhaps the sin submitted to the keys has not yet been remitted, it can then be remitted.

3. This is also established from the Declaration of Benedict XI in Canon Law, *Extrav.* I, *de Privilegiis*, ch. 4: Although, he says, it is not of necessity to confess the same sins again, nevertheless... we regard it as salutary that the confession of the same sins be repeated. It is established, moreover, from the constant practice of the faithful, with the approval of the Church [3].

[3] John XXII (*Extrav. Vas electionis, de haereticis*) condemns the opposite opinion as false and erroneous. See Croix, bk. 6, part 2, no. 589.

419. ○ **QUESTION 2. Must an adult who is to be baptized conditionally because of doubt concerning a preceding Baptism confess sins already accused?** Reply. Negative. The reason is that those sins have already been remitted through the Sacrament of Penance if the prior Baptism was valid; but if it was not valid, they are not matter for confession and will be remitted through the second Baptism. - Reuter, no. 118.

QUESTION 3. Must the aforesaid adult accuse sins not yet confessed, or committed since the last confession?

Reply. This was hitherto controverted among writers. The first probable opinion denied it, because, they said, given the probable invalidity of the prior Baptism, these sins are probably not matter capable of the Sacrament of Penance; therefore, they probably are not to be submitted to the keys either. For the obligation of confessing sins cannot follow except subsequently to Baptism duly conferred. Hence, if perhaps these sins are not remitted through the second Baptism, which is invalid because of the validity of the first, they can be remitted either through perfect contrition or indirectly through absolution with attrition. - Lacroix, no. 325, *On Baptism*, and others.

The second opinion, also probable, affirmed it, because the obligation of confessing sins urges whenever it is not established that they were committed before a valid Baptism. The Author therefore concluded that in practice confession was very much to be advised [4]. But now attend to the most recent response of the S. Congregation which was issued on this matter toward the end of the year 1868.

[4] This practice was furthermore presented in the preceding Edition as more conformable to the instruction which the Congregation of the Holy Office had given on another occasion, when it taught the order to be observed in reconciling these adults. This instruction indeed supposed confession, if not necessary, at least most opportune. Nevertheless, it was added that if the first opinion were in fact probable - which otherwise could seem consonant with the general principle that the obligation of Confession is not to be imposed when, morally speaking, as St. Alphonsus says, bk. 6, no. 505, it is not established - it should not have been permitted that one be urged to an unnecessary Confession to whom it appeared so hard that, perhaps overcome by the difficulty, he could be deterred from reconciliation.

But now, in favor of the second opinion, there has been added a Response of the S. Inquisition, Dec. 17, 1868. For to the Question proposed in the name of the Bishops of England, *Must sacramental Confession be required of new converts in England, and must it be integral?* the response to both parts of the doubt was: Affirmative; and the decree rendered on Thursday, June 14, 1715, was to be given.

That this response does not concern only the special circumstances of England is proved by the preceding response of the year 1715. For the following Doubt was proposed: whether full credence is to be given to Charles Wipperman of Rostock in the Duchy of Mecklenburg, a preacher and lecturer of quietistic Lutheran theology, superintendent and principal doctor of the sect of quietistic Lutherans, reconciled to the holy faith in the Holy Office of Parma, concerning certain errors detected in his Baptism; whether he is to be believed concerning the things which he relates; and, insofar as the reply is affirmative, that provision may likewise be made both for his salvation and for that of the others of that sect or region, especially if they are ignorant.

It is asked whether the said Wipperman is to be rebaptized; and, insofar as the reply is affirmative, whether absolutely or conditionally; and, insofar as the reply is affirmative, whether he is bound to confess all the sins of his past life; and, insofar as the reply is affirmative, whether the confession is to precede or follow the Baptism to be conferred conditionally.

The Most Holy Father, having heard the votes of the Most Eminent, said: Charles Ferdinand is to be rebaptized conditionally; and, after Baptism has been conferred, let him confess the sins of his past life and be absolved from them conditionally.

** Although this question appears to have nothing to do with the *Vindiciae Alphonsianae*, since St. Alphonsus the Doctor has not even one word concerning it, nevertheless, the VV. did not judge that they should remain silent concerning it, and they devote four columns to this argument (pp. 463-465), perhaps so that, from the example of this doctrine set forth in Gury's *Compendium*, which afterward appears less consonant with the preceding Decree, no one may wonder that in the moral Work of St. Alphonsus also certain opinions are approved which are found to have been condemned by preceding or subsequent Decrees of the Church.

What is now of interest is the conclusion, worthy of notice, which the VV. deduce from the Decree adduced. The Decree of the S. Inquisition, they say (p. 465), proves that a doubtful obligation of confession is not always to be regarded as nonexistent. But if the matter is thus, no more evident apology for Gury's *Compendium* could now be desired. For the VV., unless you say that their words are devoid of meaning, suppose that the obligation of Confession is in itself doubtful. But it cannot be called doubtful unless the opinion which denies the obligation is judged truly probable. Therefore, by the suffrage of the VV. themselves, Gury must now rightly be said to have written after Lacroix that the opinion which denies the obligation of integral Confession is probable!

But further. That a doubtful obligation is not to be regarded as nonexistent can be effected only by the force of some principle which establishes that in the case the safer side must necessarily be followed. But if the integrity of Confession is at issue, behold St. Alphonsus meets us, saying (*Homo apostolicus*, tr. 16, no. 29): *No one is bound to doubtful laws.... Nor does it stand in the way to say here that in the matter of the Sacraments we cannot follow merely probable opinions; because this holds when the validity of the Sacrament is at issue, but otherwise concerning the integrity [of confession].* But the present question is whether confession, and indeed integral confession, is to be required of a neophyte.

But still further. The Decree of the S. Inquisition must here be taken either as a new law of merely ecclesiastical right or as a Declaration of divine right. Yet who would affirm that a new law was enacted by the Church in this case? Where was this law promulgated? It will therefore be a Declaration of divine right. But truly I do not know to whom it could occur to attribute to the S. Inquisition a declaration by force of which a doubtful obligation, with no higher principle supervening, cannot in itself be called nonexistent.

Accordingly, as it seems, the VV. would have devoted their efforts more wisely to bringing forward reasons by which it might be demonstrated, not that a doubtful obligation of Confession is not nonexistent, but rather that the obligation of confession in the case is not doubtful. But, what is to be regretted, they have provided none of these things.

However, we do indeed see certain reasons adduced in the petition which was presented to the Apostolic See concerning this question in the year 1868, and part of which the VV. also relate (*loc. cit.*). Yet you will perhaps not without reason suspect that those reasons pertain to the special circumstances of England. For it presented the following as necessary reasons for requiring of neophytes an integral confession of their whole life: *There is the difficulty of converts in bringing the intellect into the obedience of faith itself, unless through humility and submission of soul, which Christ the Lord deigned to place in the Sacrament of Penance. There is also the impossibility of knowing, except through an integral manifestation of sins, whether the newly converted person is rightly disposed for Baptism itself and is willing, for example, to make restitution of reputation or goods (if he happens to be bound to it), to avoid the proximate occasion of sin, to withdraw from a marriage invalidly contracted, even if through a dispensation of the Holy See (as in the daily more frequent cases of a marriage contracted after a civil divorce) it cannot be convalidated. There is, moreover, the necessity of providing for his salvation through justification*

in the Sacrament of Penance, from the integrity of which no one once baptized in infancy can be exempted, regard being had especially to the diligence of the younger members of the English Clergy in faithfully observing the rite of baptizing, and consequently to the greater number of those concerning the validity of whose infant Baptism it is not lawful to doubt. But since it is certain that after several years the obligation of integral confession will lose its force if Theologians are able in practice to follow as safe the opinion of the aforesaid authors (who say with Lacroix, namely, that the obligation of confession in the case is doubtful), the Archbishop of Westminster and the Bishops of England earnestly petition, etc. Thus indeed reads the petition.

Now, if this alone is considered, namely, that such diligence is employed by the younger English Clergy in observing the rite of Baptism that it is not lawful to doubt the validity of infant Baptism, who does not now see that, whenever it is established that Baptism was duly conferred upon someone in this manner, the matter is thereby brought to this point: since scarcely any cause or necessity for repeating Baptism then appears, the integrity of sacramental confession is altogether necessary for justification from sins afterward committed? Nor should it be judged that the other reasons adduced lack their own force because of the circumstances of England. For although the reasons drawn from the necessity either of overcoming the difficulty in bringing the intellect into the obedience of faith, or of knowing whether the neophyte is rightly disposed for Baptism and bears a ready mind to fulfill whatever obligations may perhaps be present of restoring reputation or another's goods, of avoiding proximate occasions of sin, or of withdrawing from an illegitimate marriage which otherwise cannot be convalidated - although, I say, reasons of this kind, if considered in themselves, might generally appear of little efficacy for inferring the necessity of sacramental confession, all the more because they would induce the same necessity of confession even if the neophyte had been converted to the faith from Judaism, Mohammedanism, or idolatry; since such disposition of soul must be established in all neophytes whatsoever who approach Baptism; although, furthermore, if we adhere strictly to the Decree of the Inquisition, confession would appear to contribute little toward the aforesaid ends, namely, toward foreknowing the suitable dispositions of the neophyte for receiving Baptism, because according to the tenor of the Decree confession must not precede but follow Baptism; and, furthermore, even if it preceded, nevertheless, since the knowledge obtained through sacramental confession is certainly not of such a kind that it may be used in the external forum to determine whether or not the neophyte is rightly disposed to receive Baptism - nevertheless, it does not seem doubtful that the very special condition of affairs in England makes it impossible to meet those necessities except through sacramental confession. The same certainly can also be said of the very grave inconvenience which is touched upon in the last place, namely, of the danger that the obligation of confession would for this reason gradually lose its force. And certainly nowhere else has fear come upon theologians that, while they establish that one who has only doubtful or even doubtfully necessary matter is not bound to confession (see St. Alphonsus, bk. 6, nos. 473-474), and add that this matter may be passed over at pleasure if indeed he wishes to confess while presenting other matter, it would therefore come about in the course of time that the obligation of integral confession would entirely lose its force. Yet the words of the Postulation or petition attest as certain that this would have happened in England. Otherwise, no one certainly will be able to deny that, even if no Decree concerning these matters had been issued, nevertheless the manifest utility of this practice appears for this reason, that the Neophyte, vigorously denying himself in a sufficiently difficult matter according to the words of Christ, no differently, namely, than those who, having left all things, followed Christ, will afterward easily, after that victory over himself and strengthened by more abundant powers of grace, walk constantly in the way of the Lord, and indeed will run.

Moreover, since the Decree of the year 1715 related in the Note, upon which the more recent response of the year 1868 rests, referred not to England but to Germany, and nevertheless, as is read there: *The Most Holy Father, having heard the votes of the Most Eminent, said: Charles Ferdinand is to be rebaptized conditionally; and, after his Baptism has been conferred, let him confess the sins of his past life and be absolved from them conditionally*; it now sufficiently appears that the state of the question altogether required of the VV., not that they contend that a doubtful obligation in the case is not nonexistent, but certainly that they show that the obligation here cannot be called doubtful from an intrinsic reason. But concerning these things in their proper place.

420. ○ **QUESTION 4. Should an adult who is to be baptized and absolved conditionally first be baptized or absolved?**

Reply 1. *Per se* it is of little consequence. The reason is that if he has already been validly baptized, absolution will produce its effect whether it is conferred before or after conditional Baptism; but if the prior Baptism was invalid, there will be no effect of the Sacrament of Penance whether it is received before or after the second Baptism; for only one of the two Sacraments can have efficacy in the case.

Reply 2. From considerations of fittingness, it is better to follow the natural order, namely, first to baptize conditionally and then to absolve under condition. Nevertheless, it is expedient that confession be placed before Baptism for the better disposition of the one to be baptized, but that absolution be conferred immediately after Baptism. - Thus commonly in practice [5].

[5] If, however, the Response adduced above (in the preceding Note) in the case of Charles Wipperman has any force, the order which the Author calls natural will have to be followed.

421. ○ **QUESTION 5. Is a sin accused only in general sometimes sufficient matter for the VALIDITY or LICEITY of confession [6]; for example, if someone says: I HAVE SINNED, or, I accuse myself OF ALL MY SINS?**

[6] The question of liceity can be separated from the question of validity only with regard to the priest, who indeed can sometimes absolve validly and at the same time illicitly. For as regards the penitent, if he acts here in bad faith, the confession will be both illicit and invalid; but if he acts in good faith, the confession will not be illicit.

Moreover, in order to elucidate this question clearly, it is best to distinguish what is required and sufficient for the intrinsic essence of sacramental judgment, and what pertains to the necessity imposed by divine precept. If, therefore, only the essence of this judgment is considered, it can now be doubtful to no one that not merely the formulas adduced by the Author, *I have sinned, I accuse myself of all my sins*, etc., but also any other sign of penance suffices. Hence all agree that, for soldiers when battle is imminent, or sailors when shipwreck threatens, or the sick at the point of death, etc., to be validly absolved, it suffices that they furnish an indication of penance, for example, by grasping a hand, striking the breast, or in any other manner whatsoever.

The entire question, therefore, turns upon the obligation which the positive law of Christ imposes. But the solution will not be very difficult if it is sought from its native and proper source, namely, from the authentic interpretation of the same law which is found in the doctrine of the Council of Trent. And indeed, from the necessity of a judgment to be rendered by the priest with knowledge of the cause, the Holy Synod (sess. 14, ch. 5) certainly concludes that sins must be declared not merely in general, but individually in species; it concludes that not only all sins, but also those circumstances which change the species of the sin, must be explained in confession. Nevertheless, it never fails to add expressly that it affirms this concerning necessary matter, namely, mortal sins which have never been duly subjected to the keys. For as regards merely sufficient matter, it teaches that venial sins are laudably told by pious men in confession, but at the same time may be concealed without fault; and if the substance of this merely sufficient matter can be concealed, *a fortiori* its genus and species, and even circumstances which change the species within the slightness of the fault, can be concealed. Indeed, this doctrine shines forth so clearly set out there that, although some have raised many difficulties against the sufficiency of the

confession of sin in common (see Lugo, *De Poenitentia*, disp. 17, from no. 6), not one has ever existed who thought that assistance against it could be sought from the doctrine of the same Synod.

The difficulties were drawn, namely, either from the fact that a confession of this kind gives no new knowledge to the confessor, since it manifests only that the person is a sinner in general, which the confessor already knew, since we are all sinners; or from the fact that a judge cannot judge prudently unless the cause is known in particular; or finally from the fact that in the case nothing appears to which absolution is directly terminated. After Cardinal de Lugo (*loc. cit.*, no. 11 ff.) easily solves these objections even when necessary matter for confession in a case of necessity is at issue, he then extends the doctrine (*ibid.*, no. 17) to the confession of venial sin in general. Hence it is plain that John de Dicastillo (*De Sacr. Poenit.*, disp. 9, no. 760) rightly concluded from these things that not only in a case of necessity, but also speaking *per se*, the confession of venial sin in general (say the same of even grave sins remitted at another time through absolution) is in itself sufficient matter for absolution in one who has only venial sins. And Suarez agrees (*De Poenit.*, disp. 23, sect. 2, no. 10), both because there is no precept of confessing venial sins in species, and because the confession of venial sin in species declares the conscience no more than if someone should say in general that he had sinned venially, nor does it vary the judgment of the confessor any more. But to what Suarez (*ibid.*) had added, that this is true speculatively, but that in practice the species must be declared so that the matter may be certain, Dicastillo excellently replies (*loc. cit.*, no. 762): *If this is true speculatively, it will also be true practically. For only then in a moral matter is something said to be true speculatively indeed but not practically, when that which is considered in speculation cannot be exhibited in practice without some variation occurring. But when it can be reduced to practice altogether unchanged in the manner in which it is considered in speculation, if it is true speculatively, it must also be judged true practically. Wherefore, since the confession of venial sin in general can be exhibited in practice in the manner which is judged sufficient speculatively, it must also be judged such practically.* Otherwise, however, it scarcely appears what Suarez means when he requires certain matter. Is it not certain that there is a sin, or is it not certainly subjected to the keys? But if he wishes the matter to be certain insofar as the safer opinions must be followed in setting forth the circumstances of the sin, this is indeed asserted contrary to the common opinion of all and the common practice, which holds that the precept of confession is satisfied when the precept is probably fulfilled, according to what was said in vol. 1, no. 80.

These things had to be noted, not only so that the rights of truth might be preserved, but also because they can sometimes be usefully serviceable in practice, as will be evident from what is to be said in the resolutions.

** 1. The VV. here object (p. 954, no. 104), as though opposed to this doctrine, the following doctrine of St. Alphonsus: *Let the Confessor take care, if he wishes to absolve a penitent without sin, either to dispose him to sorrow especially for some light fault..., or to suggest to him that he confess some graver sin of his past life against some precept; for it suffices that he confess in general without number, so that he may have certain matter upon which absolution can rest.*

Reply. Let all of it pass; and I deny the consequence. For we concede that this care of the Confessor is laudable, and likewise that the confession of some sin of one's past life against some precept suffices. But we deny either that the sorrow of the penitent cannot otherwise be established, or that certain matter is lacking for absolution if in the case the particular precept which was violated is not expressed.

2. The VV. relate (pp. 479-480, in the Note) that the doctrine handed down here had already been refuted in the periodical *Nouvelle Revue theologique*, Tournai, 1869, vol. 1, p. 67; and they refer the reader to it.

Reply. Let it be permitted also to us to refer both the illustrious VV. and others to the excellent little Work of the priest Stephen Apicella, entitled: *Ai Confessori, studio sull'Assoluzione a darsi a chi nell'attual confessione non offre materia necessaria*. Scafati: Tipogr. Pompeiana, 1874. There they will find the difficulties against our thesis very learnedly solved. Meanwhile, we shall weigh two drawn from it which the VV. put forward as the chief difficulties.

3. After the Tournai authors, therefore, the VV. object (p. 480, in the Note) that only through a logical fault is it deduced from the absolution which is given either to soldiers when battle is imminent or to the dying that a general accusation is valid and licit outside a case of necessity.

Reply. That it is deduced through a logical fault as regards validity, I deny; as regards liceity, let it pass. Namely, as is said in the Note, certain things pertain to the intrinsic essence of the Sacrament, namely, apt and sufficient matter, both proximate and remote, and the form; but certain other things pertain only to the necessity of precept, as, for example, the integrity of confession. Now, as regards the essence, it is false that elements which suffice in necessity do not suffice to effect the Sacrament outside necessity; for the essence is not mutable and of itself always retains the same intrinsic power. Therefore, as regards the sufficiency of the essential elements, an argument is logically made from a case of necessity to other cases.

Certainly, one would argue defectively from a case of necessity to other cases as regards things of mere precept, because one can be excused from observing laws in necessity, but not outside necessity. Yet an argument of this kind is falsely ascribed to us. For in the case we say that confession in general is licit, not because one is then excused from a law, but because the law itself requires nothing further.

4. The VV. add (*loc. cit.*) with the Tournai authors: *The nature of the Sacrament, which is effected after the manner of a judgment, requires that the matter be altogether determined through a distinct accusation of sins.*

Reply. It requires this according to the norm proposed by the Holy Council of Trent, I concede; otherwise, I deny. See what was said in the Note concerning the doctrine of the Council of Trent.

5. The VV. subjoin with the Tournai authors (*loc. cit.*): *This manner of confessing, which otherwise savors of Protestant usage, favors the laxity and negligence both of the penitent and of the Confessor.*

Reply. Objections of this kind, or perhaps better, taunts, savor little of the theological method. Accordingly, as regards Protestant usage, let them consult Bellarmine, Valencia, etc., etc., etc., and learn from them what Protestant usage means. As regards the rest, let it suffice to have replied that those who observe the norm proposed by the Holy Council of Trent cannot be accused either of laxity or of negligence.

6. The VV. insist with the Tournai authors: *Even if the doctrine under discussion were probable, nevertheless it would not be lawful to use it, because Proposition 1 among those condemned by Innocent XI stands in the way: It is not illicit in conferring the Sacraments to follow a probable opinion concerning the validity of the Sacrament, with the safer opinion abandoned.*

Reply. I deny the supposition, namely, that the validity of the Sacrament is at issue here. For when the essentials are observed, no doubt concerning the validity of the Sacrament remains. But, as has often been said, the essentials are observed here. The present question, therefore, concerns not the essence of the Sacrament but the matter of precept; wherefore what St. Alphonsus replies concerning questions of this kind applies here (*Homo apostolicus*, tr. 16, no. 29): *Nor does it stand in the way to say here that in the matter of the Sacraments we cannot follow merely probable opinions, because this holds when the validity of the Sacrament is at issue; otherwise concerning integrity.*

7. Finally, against the opinion of Suarez related in the Note, namely, that the confession of venial sin in species no more declares the conscience nor varies the judgment of the confessor, the VV. object that the judgment of the Confessor can be varied: 1. because he can deny absolution to one relapsing into venial sins; 2. because perhaps that which the penitent judges venial will sometimes be mortal; 3. because venial sins, for example in children, can be insufficiently certain.

Reply. Let all of it pass, and I deny the consequence, since it extends immensely more widely than the premises. For from the fact that sometimes *per accidens* it is useful to know some fault specifically, it is not lawful to conclude that this is always necessary; but it will belong to the prudence of the Confessor, whenever there is need, to inquire into the things pertinent to the matter. Moreover, from what the VV. observe, namely, that the fault which the penitent believes venial could perhaps be mortal, would this tedious method not bring the matter to the point that the confession of all venial sins would always be judged necessary? But what is the principal point, the VV. cannot be ignorant that this question chiefly concerns whether the specific confession of some sin is necessary when a generic confession of the sins of one's past life is added to the specific confession of light faults, with no sin specifically expressed. For as regards customary confessions of venial sins, the question must rather be called merely speculative, since it is altogether contrary to the custom of the faithful to accuse only venial faults generically. But it happens otherwise with that generic confession of the sins of one's past life. Now, it is manifest that, as regards this confession, the preceding observations of the VV. are not even minimally pertinent. And concerning this argument the cited little Work of the Rev. D. Apicella is worthy of being read. For, among other things, he shows by most apt reasons how vainly certain persons require in this general accusation the confession of some sin in species for the reason that the Confessor might exercise a suitable judgment.

Reply 1. As regards validity: 1. Affirmative, certainly in a case of necessity, or when the penitent, for example, a dying person, cannot accuse any sin in species. - Thus very commonly with St. Thomas. - 2. Affirmative, at least much more probably, even outside a case of necessity, if necessary matter, or matter to be declared in species, is lacking. The reason is that the essence of the Sacrament is not changed for varying cases. - Lacroix, no. 620. - Reuter, no. 303. - Lugo, disp. 17, no. 8.

Reply 2. As regards liceity also, affirmative, at least probably. The reason is that where mortal sins are lacking, there is no obligation to declare the other sins in species, since venial sins can be omitted altogether. For the Council of Trent determined absolutely nothing concerning this except that mortal sins alone are necessary matter for confession. Nevertheless, generally in practice it is expedient (as is also commonly done by all) to confess venial sins in species also, by reason of the direction to be given by the Confessor, etc. But as regards the general accusation of the sins of one's past life which pious penitents are accustomed to submit at the end of confession in order to render the matter of the Sacrament more certain, it is certainly sufficient if someone says: *I accuse myself of the sins of my past life*, or *of my whole life*.

422. ○ **QUESTION 6. When a penitent presents only doubtful sufficient matter, is the Confessor bound to seek certain matter from his past life in order that he may absolve?**

Reply 1. Affirmative, if he wishes to absolve, because otherwise the Sacrament would be exposed to danger of nullity. Except when a case occurs in which the penitent can be absolved conditionally, concerning which below.

Reply 2. Negative, if he does not wish to absolve, but to dismiss the penitent with only a blessing, because a penitent who does not bring certainly sufficient matter has no right to absolution. - Likewise, if the penitent appears to have doubtful sorrow concerning venial sins alone, the Confessor is not ordinarily bound to employ great diligence in order to move him to sorrow, although he does much better if he does so. - But it would have to be said otherwise if doubtful mortal sins were at issue, because of the danger to the penitent.

423. ○ **QUESTION 7. Must a penitent who does not bring NECESSARY matter necessarily be absolved?**

Reply. Negative *per se*, if the penitent does not ask for absolution; but even without absolution the reception of Holy Communion can be permitted to him, because, since he is in the state of grace, the Sacrament of Penance is not required to dispose him for it. Nevertheless, ordinarily it is expedient to absolve such a person, so that he may receive both an increase of sanctifying grace and sacramental graces, and an easier remission of venial sins and punishments, etc. - Lacroix, no. 1889, with others.

But if he has not received the Sacrament for a notable time, or if he needs special aids, for example, to overcome temptations, or if the penitent himself desires or requests it, he is to be absolved [7].

[7] Whenever it appears that a penitent has approached, even with merely sufficient matter, in order to receive the Sacrament, and is found disposed, it is scarcely possible to understand to what end certain persons mix together so many disputes about whether he is to be absolved or not, or when he is to be absolved and when not. For certainly it will have been free to the priest to hear the confession or not to hear it. But after he has heard the confession and has the penitent rightly disposed, what laws, I ask, give this power to the confessor, that at his own discretion he absolve or not absolve? And even if you set aside the right acquired by the penitent through confession (which certainly does not wholly depend upon the danger otherwise imminent, or upon the greater or lesser gravity of the matter), what sound reason can persuade the confessor, without any cause and according to his own judgment, to deprive a member of the faithful of the increase of sanctifying grace and of the other heavenly gifts which are the fruits of this Sacrament?

424. Resolutions. - 1. Venial sins, or mortal sins confessed at another time, according to their species, even generically expressed [8], are sufficient and licit matter for confession, apart from number and any circumstances whatsoever. The reason is that thus there is a confession of a determinate sin, at least of one in species; nor is there an obligation to add the number of venial sins or of mortal sins already remitted. For there is nothing in the form of absolution that requires the determination of some particular sin. - Reuter, no. 202.

[8] By generic species some also understand a subalternate genus of sin, as if you confess that you have sinned against justice, or religion, or faith. See Dicastillo, *De Poenit.*, disp. 9, no. 743.

2. If someone does not accuse himself of any sin in particular and says, for example, *I know nothing except that I must often have sinned like other men*, let him be examined as children are usually examined. If nothing can be elicited since the last confession, let him be questioned about his past life: whether he has ever lied in his life; whether he has ever offended his parents, or been angry, or detracted from his neighbor, etc., etc.

3. With women, devout women, and others of this kind, who confess only confusedly and concerning very light matters, care must be taken that they add some fault from their past life, either in species or at least in general. Then you will endeavor to excite them to sorrow and purpose, and, having absolved them, will dismiss them in peace. - Elbel, no. 19.

4. For greater security and for receiving more certain fruit, penitents are to be advised that, besides doubtful sins or even daily light sins, they always append from those already confessed at least generically [9] another certain sin for which they are more vehemently sorry, lest perhaps the Sacrament be exposed to the danger of frustration. - Elbel, no. 19.

[9] It is most prudently intimated that the confessor should be content with generic confession. For it sometimes happens as a grave burden to the penitent that the confessor wishes to extort a confession of graver sins in species; nor is it a new thing that certain penitents, wearied by this most troublesome importunity of confessors, have afterward approached confession very rarely and only when compelled, as it were, by necessity.

5. But penitents who observe the aforesaid practice are to be admonished not to submit a sin of their past life to the keys again merely from a certain custom, especially if that sin is light, because there is a fear that they may not be sufficiently sorry and consequently may not attain the end of providing for the validity and fruit of the Sacrament [10].

[10] Nevertheless, for this reason the confessor ought not to vex himself or his penitents excessively. For if those are at issue who are accustomed with some care to avoid not only grave but also light sins, they are affected, so to speak, by a habitual hatred of sin, and very easily proceed to the act, although it can happen that sensible sorrow is less in them than in others who need a certain greater change of affections in order to detest sin.

6. According to all, confession in general suffices if the Confessor clearly knows the penitent from another source, for example, from a recent confession of his whole life, etc., and knows that he wishes to accuse himself of sins already known to the Confessor; for then it will suffice to say: *I accuse myself of all my sins already known to you*; or simply: *of all the sins of my past life*.

Chapter III. On the Form of the Sacrament of Penance

A twofold form of the Sacrament of Penance can be distinguished: one essential for the validity of the Sacrament, and the other merely preceptive or rubrical.

425. ○ I. The essential form consists in the words: *I absolve thee from thy sins.* This is established from the Council of Trent, sess. 14, ch. 3, where it says:

The Holy Synod teaches that the form of the Sacrament of Penance, in which its force principally consists, is placed in those words of the Minister: I ABSOLVE THEE, etc.; to which, according to the custom of holy Church, certain prayers are laudably added.

426. ○ II. The preceptive or rubrical form consists in those prayers which precede or follow the essential form. Thus it is contained in the Roman Ritual: *May almighty God have mercy on thee and, thy sins having been forgiven, bring thee to everlasting life. Amen.*

May the almighty and merciful Lord grant thee indulgence, absolution, and remission of thy sins. Amen.

May our Lord Jesus Christ absolve thee; and I, by His authority, absolve thee from every bond of excommunication (suspension) and interdict, insofar as I am able and thou hast need; then [1]: I absolve thee from thy sins, in the name of the Father, and of the Son, and of the Holy Spirit. Amen.

[1] This word, *then*, is marked in different type even in the Ritual; and this seems to indicate that it pertains not to those things which the priest must pronounce, but merely to designating their order.

And indeed, that this order be observed is required by the most well-known law which prescribes that penitents be absolved first from censures and afterward from sins.

There have nevertheless been some who thought that the contrary must be held by force of a certain Response of the S. Congregation of Rites. For when the doubt had been proposed, *Whether in the form of absolution, before the words - I absolve thee from thy sins - the word - THEN - is to be said or omitted*; the S. Congregation replied on February 27, 1847: *Let the Decree in the Veronese case of March 11, 1837, be given.* But this Decree is of the following kind: *Nothing is to be changed.* In order for anyone to conclude from this response that this word is to be pronounced by the absolving priest, he must certainly presuppose that the words *Nothing is to be changed* are synonymous with the words *is to be said* in the petition.

May the Passion of our Lord Jesus Christ, the merits of the Blessed Virgin Mary and of all the Saints, and whatever good thou shalt have done and evil thou shalt have endured, be unto thee for the remission of sins, an increase of grace, and the reward of everlasting life. Amen.

The hand is raised from the word *Indulgence* as far as the words *Passion of the Lord*; and the sign of the cross is made over the penitent while saying: *In the name of the Father....* The word *suspension* is omitted for laymen. Moreover, it is a pious custom for the Confessor, before the confession, while blessing the penitent, to say: *May the Lord be in thy heart and upon thy lips, that thou mayest rightly confess all thy sins*, or to recite a similar prayer. - But this does not fall under obligation.

In practice the prayers *May He have mercy* and *Indulgence* can easily be omitted, as is established from the Roman Ritual. Indeed, according to the more common opinion, they can always be omitted without sin. They say the same also concerning the prayers which follow absolution; but since, according to a probable opinion, these elevate the good works of the penitent to the merit of sacramental satisfaction, it is fitting that they be omitted as rarely as possible. - But the words *May our Lord...* do not appear capable of being omitted without venial fault unless necessity presses, since

the Roman Ritual says: *In more frequent confessions it will suffice to say: May our Lord...* as far as *Passion of the Lord...*, exclusively. - S. Congr. of Rites, February 27, 1847.

427. Questions. - **QUESTION 1. Is absolution valid if the Priest says only: I ABSOLVE; or, I ABSOLVE FROM THY SINS; or, I ABSOLVE THEE?**

Reply to the first. Negative. The reason is that the word *I absolve* alone conveys no determinate sense and falls upon no subject; therefore, it cannot be a valid form.

Reply to the second. Affirmative, more probably, as it seems, at least speculatively. The reason is that by these words the subject is sufficiently determined; for the pronoun *thee* is sufficiently expressed in the word *thy*. - Thus Lugo, disp. 13, no. 26. - St. Lig., no. 430, as more probable, etc. Not a few deny it, however, and their opinion, as St. Liguori says (*ibid.*), must be followed as the safer.

Reply to the third. Affirmative, more probably, with the common opinion. The reason is that the whole effect of the Sacrament is expressed in these words, without the addition *from thy sins*. - Furthermore, this also appears to be established from the Catechism of the Council of Trent, *On the Sacrament of Penance*, no. 14, where it says only: *But the form is: I ABSOLVE THEE.* And nothing else is added there. - Roncaglia, Lugo, etc. - Nevertheless, some with Lacroix deny this not improbably, and in practice this opinion must be followed.

QUESTION 2. Is the deprecatory form valid; for example, May God absolve thee?

Reply. Negative, at least more probably, with St. Lig., no. 430; Lacroix, no. 639; and very commonly with others. The reason is that the Sacrament of Penance was instituted after the manner of a judgment; accordingly, Christ willed that the Priest, as judge, should render a sentence and express it. Therefore, sins must be remitted by the Priest himself as the minister of Christ; therefore, it does not suffice that he beseech God to remit them. Therefore, etc. Moreover, from the Council of Florence, the indicative form alone is prescribed as the true form of the Sacrament of Penance.

428. ○ **QUESTION 3. Are the raising of the hand and the formation of the sign of the cross necessary in imparting absolution?**

Reply 1. It is certain that they are not required for the validity of the Sacrament, because they pertain neither to the matter nor to the form. This is established from the Councils of Florence and Trent, and also from the unanimous consent of Theologians, at least after the Council of Trent.

Reply 2. Nor are they required under mortal sin for liceity, according to the common opinion against a few, because it is only a Rubric which does not appear grave. Indeed, several grave authors assert that this can be omitted without sin; thus Busembaum, related and implicitly approved by St. Lig., no. 425, and many others. At least the raising of the hand can be omitted without sin while the prayers which precede formal absolution are being recited.

QUESTION 4. Can a Priest validly absolve several persons with one form, saying: I ABSOLVE YOU FROM YOUR SINS?

Reply. Affirmative, because all things required for validity are found. And this can also be done licitly in a case of necessity, for example, in shipwreck, before battle, or in the battle itself, etc.; and such absolution would be multiple, not formally indeed, but virtually and equivalently, and there would be

as many Sacraments as there were persons who were disposed through some confession and sufficient sorrow. - Lacroix, no. 645, and all others.

429. ○ **QUESTION 5. What presence of the penitent is regarded as moral with respect to absolution?**

Reply. It must be such that the words *I absolve thee*, according to the moral estimation of men, are judged to fall upon the penitent; but that presence is regarded as sufficiently moral within which men can and are accustomed to speak with an ordinary voice, although a louder one. Many extend it to twenty paces, especially if the penitent is not outside the sight of the Confessor. In necessity the penitent can and must be absolved whenever he is perceived by some sense. - Thus commonly with St. Lig., no. 429.

Hence: 1. one is to be absolved who is seen to fall from a roof, to fall into a river, or to be submerged in the sea, at least if he is not far distant from the Confessor. 2. If the Confessor, because of danger of infection or for another cause, cannot enter the room of a sick person, he must absolve him from the doorway. 3. If a penitent should withdraw from the Confessor without yet having been absolved, thinking himself absolved, he would have to be absolved if he were seen at a short distance or were certainly known to be present within a nearby crowd; nevertheless, he would have to be recalled if this could conveniently be done.

430. ○ **QUESTION 6. By the words, I ABSOLVE THEE FROM THY SINS, can the Confessor validly absolve the penitent both from censures and from sins?**

Reply. Affirmative, because these words, *I absolve thee from thy sins*, involve absolution from every bond arising from sins; and nothing prevents the Confessor from directing his intention toward absolution both from sins and from censures. - Thus commonly. - St. Lig., no. 430. - Lacroix, no. 1567, etc.

QUESTION 7. Is absolution valid if the Confessor absolves from sins before absolving from censures?

Reply. Affirmative, because a censure does not impede the validity of the Sacrament, but only its licit reception or administration. He would sin gravely, however, who absolved from sins before absolving from censures, because he would act against a grave prohibition of the Church. Except if excommunications are not at issue, but only suspensions and interdicts, because these censures do not of themselves deprive one of the reception of the Sacrament of Penance. - St. Lig., no. 430. - Lacroix and others commonly.

QUESTION 8. Is a stole required for the Sacrament of Penance?

Reply. Although the Rubric of the Ritual appears to be directive and not preceptive, nevertheless the Sacred Congregation of Rites commands the use of the stole for hearing confessions in a Church (September 11, 1847), in the Paduan case.

Appendix. On the Conditional Form

431. ○ I say I. It is certain that absolution imparted under a condition concerning the present or the past is valid in every case, provided that the other things required for the validity of

the Sacrament are present; for the condition in no way changes the sense of the sacramental form, which it does not affect in any respect, but affects only the will of the Confessor, who does not intend to absolve unless the condition placed is fulfilled. But when this is fulfilled, the form becomes absolute; and consequently nothing is found which can prejudice its validity. - Thus St. Lig., no. 431, where he says that all agree concerning this. - Billuart, diss. 6, art. 10, sec. 7, where he asserts that it is the most common opinion. - Collet, *De integr. conf.*, sec. 5. - Antoine, ch. 2, etc. Pontas, under the word *Absolution*, case 5, is to be numbered among the few adversaries, but he is rightly censured by Collet's annotator, *ibid.* [2].

[1] *On the title above.* Someone will perhaps wonder and ask why the Author, beyond both his own custom and that of others, treats more laboriously this argument which hitherto appeared to require lighter labor. But an obvious response presents itself: namely, where and when some new error begins to arise and creep forward, it certainly must be met at once, and the monster, before it grows up and increases in strength, must be utterly destroyed in its cradle by a thunderbolt-like stroke, as Horace says.

[2] The Author here alleges Writers who, according to the testimony of St. Alphonsus, are commonly regarded as more rigorous, namely, to indicate that this doctrine is so certain and manifest that not even the more rigorous thought they should depart from it. Nevertheless, this kind of argument is sometimes fallacious. For it could be shown by many examples that writers regarded as the most rigorous have not rarely declined into laxities which no one among the most benign ever admitted.

432. The adversaries generally distinguish between a condition of fact, for example, *if thou art alive*, and a condition of law, concerning which the Confessor must judge, for example, *if thou art disposed*. They permit conditional absolution in the former case because the conditions are not subjected to the judgment of the Confessor, but they reject it altogether in the latter. Hence:

They object 1. The form of the Sacrament of Penance must be judicial; but if the form is conditional, it is not judicial, for a judgment by its nature is absolute, so much so that the sentence of a civil judge who should perhaps say, *I adjudge this to thee, if it is thine*, is regarded as nothing. Therefore, etc.

Reply 1. I deny the minor. For the form of a judgment is by no means destroyed by adding a condition, even if the condition concerns the dispositions of the penitent. And indeed the Priest judges: 1. concerning the sins disclosed; 2. concerning the penance to be imposed; 3. concerning the probable dispositions of the penitent; 4. concerning the expediency of imparting absolution, although conditionally, on account of the greatest good of the penitent. Therefore, the matter of judgment is not lacking. Reply 2. There is no strict comparison between civil judgment and sacramental judgment; indeed, they differ in many respects, as is evident from what was said above, no. 416. But attend especially to this: the sentence of a civil judge always obtains its effect and is given to execution; whereas in the forum of Penance, whether the sentence is rendered absolutely or conditionally, its effect nevertheless always depends upon hidden conditions known to God alone. Wherefore, the sentence of the Confessor is conditional by its nature, even if it is rendered in the most absolute manner, since it remains entirely unknown to him whether the effect will follow.

433. ○ They object 2. In controversies concerning the validity of the Sacraments, the safer side must always be followed.

Reply 1. I deny the supposition, namely, that this question is subject to controversy, since the opinion of the adversaries possesses no probability, either intrinsic or extrinsic.

Reply 2. It is false that the safer side must always be followed in favor of the Sacrament; for since the Sacraments are for men, cases are given in which the Sacrament must be exposed to danger of nullity in order to assist men placed in spiritual necessity.

But two hypotheses can be imagined when necessity and a doubtful disposition of the penitent concur at the same time. The first is that absolution is simply to be denied; the second, that absolution is to be conceded in any manner whatsoever. Behold, a dying man of doubtful disposition stands before you. Come now! Declare what you will do. Will you allow this penitent to depart from the living without absolution? Will you thus escape the mark of cruelty? For if perhaps he is sufficiently disposed, although you doubt, do you not condemn one who ought to be saved? But if you absolve this penitent, how, I ask, will you absolve? With an absolute form, you say. Very well; but tell me, if you please, will you thereby render a firmer judgment concerning the dispositions of the penitent? Will you judge certainly disposed one whom you know to be doubtfully disposed? Proceed now, therefore: exclude as much as you wish both an oral and even a mental condition; will your sacramental sentence thereby be more certain? Therefore, whether you will or not, if you then absolve, you necessarily absolve conditionally and not otherwise. Indeed, a sacramental sentence in Penance is of itself and by its nature necessarily conditional, since it supposes in the penitent requisite conditions which can be lacking.

434. ○ I say II. It is likewise certain that conditional absolution is sometimes licit; for if it is valid, it must also be licit when necessity presses. - Thus very commonly do Theologians teach. - St. Lig., *ibid.* - Lacroix, bk. 6, part 1, no. 78. - Elbel, Sporer, the Salmanticenses, etc.

But the doctrine of some who hold that conditional absolution can be imparted for any slight cause and with no necessity pressing, even if the sufficient disposition of a penitent burdened also with mortal sins is doubted in any manner whatsoever, is to be rejected as plainly lax. For no one fails to see how many sacrileges a practice of this kind would induce. For the Confessor would no longer be a prudent dispenser of the Sacraments, but would cast pearls before swine; and by this facility of absolving he would cause penitents to waste away in their sins. - St. Lig., no. 432, etc.

But no more admissible is the doctrine of those who, with Collet and certain others, hold that absolution under condition is not to be imparted except in extreme necessity or in the extreme danger of life; for a doctrine of this kind is exceedingly harmful to penitents who can return to the Confessor only with difficulty and, if dismissed without absolution, incur the danger of eternal damnation.

In what necessity, therefore, absolution under condition can or must be imparted is to be established according to the common doctrine and practice by the following rules.

435. ○ First Rule. Absolution can and must be given under condition whenever, if conceded absolutely, it would expose the Sacrament to danger of nullity, and, if denied absolutely, it would expose the penitent to danger of grave spiritual harm.

Second Rule. Even if a necessity of this kind does not press, absolution can nevertheless be given under condition whenever, if conceded absolutely, it would expose the Sacrament to danger of nullity, and, if denied absolutely, it would deprive the penitent of some notable spiritual good, although not a necessary one.

Hence, with the due conditions observed, when necessity presses or a grave and proportionate cause is present, it is lawful to absolve conditionally in the following cases: 1. in doubt whether the penitent is living or dead; 2. in doubt concerning sufficient matter, for example, when the precept of annual confession presses [3], etc.; 3. in doubt concerning jurisdiction on the part of the Confessor; 4. in doubt whether the penitent was duly absolved; 5. in doubt concerning the use of reason in children, the insane, etc.; 6. in doubt whether the penitent is morally present; 7. in doubt whether a dying person deprived of his senses is capable of the Sacrament [4]; 8. in doubt concerning the disposition of the penitent, when not only extreme but even simply grave spiritual necessity presses. - St. Lig., no. 432. - See the cases to be resolved below, no. 639 [5].

[3] Let no one think from these things that the Author wished to teach in this place that even those who bring not only no necessary matter but not even certainly sufficient matter are bound by the precept of annual confession.

[4] This case refers to a twofold doubt, namely: 1. whether one who is found deprived of his senses is a Christian or not; 2. whether he is capable of absolution by reason of disposition.

[5] ** The VV. object, as though opposed to the doctrine set forth here - namely, that it is lawful to absolve under condition also (no. 3) in doubt concerning jurisdiction on the part of the Confessor, and (no. 8) in doubt concerning the disposition of the penitent - the doctrine of St. Alphonsus, who (bk. 6, no. 432), as regards the first point, writes: *But I would not admit this unless the penitent would have to lack absolution for a long time.* But as regards the second: *But I am unable to acquiesce in this doctrine as thus generally handed down; for I say that a sinner relapsing into mortal faults, who is not proved disposed by extraordinary signs, cannot be absolved under condition..., unless it is prudently feared that the sinner will not return again to confession and will waste away in his sins.*

Reply. Gury does not propose these things absolutely, but, as he premises, *when necessity presses or a grave and proportionate cause is present*. But what the proportionate cause is he explains in the Resolutions (no. 439), to which he refers the reader. Moreover, in these Resolutions the reader will find those prudent limits which the VV. relate from St. Alphonsus as though to correct Gury's doctrine.

436. ○ Against the foregoing they object 1. That practice of absolving conditionally, especially those of doubtful disposition, is full of dangers, an encouragement of iniquities, etc.

Reply. I distinguish. That practice is full of dangers, etc., if it is employed indiscriminately, without discretion, and outside a case of necessity or grave utility, I concede; but if the rules handed down are observed, I deny.

They object 2. A penitent doubtfully absolved will proceed to receive the Eucharist and will communicate sacrilegiously; but this cannot be permitted. Therefore.

Reply 1. The Communion will not be sacrilegious, just as the confession is not sacrilegious; for the penitent is supposed to be acting in good faith. At most the Communion will be null, or will produce no fruits.

Reply 2. That Communion will not be useless; for it will easily excite in the communicant various acts and efforts of the virtues, at least some, toward loving God and fleeing evil. Indeed, according to the common opinion, even if the communicant is in the state of mortal sin, nevertheless, if he approaches Communion with attrition and in good faith, he will be restored to the state of grace. Nor

will attrition be difficult for him; for approach to the sacred Table and the reception of the Body of Christ are accustomed most easily to arouse pious movements of sorrow and love in those communicating in good faith.

437. ○ They object 3. A penitent doubtfully absolved will no longer confess his sin, and if he was not truly disposed, he will die in sin.

Reply. That sin doubtfully absolved can be remitted: 1. through the reception of the Eucharist, as was just said; 2. indirectly with the others in the next confession, even if the penitent never again subjects his sin to the keys. Nor may you say that perhaps he will no longer approach the Sacrament of Penance; for this case, as rare, must be regarded as something *per accidens*. But the penitent would have been exposed to a much greater danger to salvation if he had been dismissed without absolution in that grave necessity which we always require for imparting such absolution.

They object 4. It is not lawful to use a probable opinion in the administration of the Sacraments, as is established from Proposition 1 condemned by Innocent XI. Therefore, it is not lawful to give an absolution that will be doubtfully valid.

Reply. I distinguish. Where both the validity of the Sacrament and the good of the person are endangered, I concede; otherwise, where necessity or another grave cause presses, I deny. - St. Lig., nos. 28, 57, and bk. 1, no. 59, and others commonly. In the condemned proposition, nothing is at issue except the essential parts of the Sacrament, namely, the validity of the matter and form insofar as they depend upon the minister. - Thus commonly with Goritia, table V, *On Conscience*. - But here the matter is supplied by the penitent and is consequently independent of the minister. Otherwise, penitents could for the most part not be absolved, since their dispositions are very often established only probably.

438. ○ They object 5. The practice of absolving conditionally must at least be restricted to the rarest cases of extreme necessity, namely, where a dying person is already deprived of his senses or where he is now on the point of dying; for it is his own fault, and a most grave fault, if he appears doubtfully disposed. - Thus the anonymous Author of the *Letters* against the excellent book of Cardinal Gousset entitled *Justification of the Doctrine of St. Liguori*.

Reply. Several false suppositions are found in the objection. For: 1. It is false that a penitent doubtfully disposed is certainly indisposed, at least *per se*; for there is a contradiction in the very terms. 2. It is false that the penitent is always at fault because he does not appear certainly disposed; for he can be sufficiently disposed without the Confessor knowing this certainly, since whenever he is not certainly indisposed, he can be truly disposed. 3. Grave reasons can be present for the salvation of the penitent on account of which absolution ought to be given rather than omitted, as was said above. Otherwise, there would sometimes be the greatest imprudence in the Confessor if he deferred absolution to extreme necessity, in which the penitent will scarcely, or perhaps hardly at all, be capable of the Sacrament. - See Gousset, *Lettres a M. le Cure ***,* Letter 8.

439. Resolutions. - 1. A penitent in mortal sin is to be absolved under condition whenever it is prudently doubted whether absolution was imparted or duly given, and certainty concerning

this cannot easily be had. - Thus commonly do the Theologians teach.

2. All the dying concerning whose indisposition or incapacity there is no certainty are to be absolved under condition, as will be said more fully below where the integrity of confession and the minister are treated. - Thus also almost all.

3. Likewise, penitents of doubtful disposition who are in grave danger of death, for example, a woman in difficult childbirth, a sailor or anyone else about to undertake a long voyage, a soldier before battle, a sick person before a very laborious surgical operation, and *a fortiori* a criminal who is to suffer capital punishment, etc. - Thus commonly with St. Lig., no. 432.

4. Persons of weak understanding can be absolved under condition when there is doubt concerning their use of reason or sufficient disposition, serious diligence having first been employed to dispose them as far as possible, especially in the following cases: 1. if they are in danger of death; 2. if the precept of annual confession presses; 3. if they have confessed some mortal sin. The reason is that they are exposed to danger of proximate damnation if death presses, or because of the danger of remaining for a long time in mortal sin. On the other hand, there is no way or hope that, if absolution is delayed, they will shortly return disposed and be absolved more securely, as can perhaps be hoped concerning others. Indeed, they will be able to be absolved conditionally several times in the year, even if they bring only light sins, lest they be deprived so long of sacramental grace, or remain in mortal sin, if perhaps they are in it. - Thus St. Lig., no. 432. - Lacroix, no. 1797, and many others against others.

5. Those betrothed who are doubtfully disposed and are shortly to contract marriage can also probably be absolved under condition; because otherwise they will certainly profane that Sacrament, and, dejected in spirit because absolution was denied, they will not return to confess and will waste away in sins.

6. Pious penitents also can probably be absolved conditionally at times, when it is doubtful whether they submit sufficient matter to the keys. But it is much better that they furnish certain matter from their past life, and thus not be deprived of the grace of the Sacrament, according to what was said above, no. 424. - St. Lig., no. 442.

Part II. On the Subject of the Sacrament of Penance

Or on the Acts of the Penitent

Three are numbered, namely: 1. contrition; 2. confession; 3. satisfaction.

Chapter I. On Contrition

440. Contrition is sorrow of soul and detestation [1] for a sin committed, with the purpose of not sinning henceforth. Thus the Council of Trent, sess. 14, ch. 4.

[1] The Doctors dispute, as can be seen in St. Alphonsus (bk. 6, no. 435), whether contrition consists in sorrow or in detestation, and what order obtains between these two. But this matters little; nor is it to be feared that either one will be absent. For they mutually presuppose one another, and one is necessarily joined to the other. For, as St. Alphonsus says, he

who detests his sin, that is, would wish that he had not sinned, necessarily grieves over it; and, in turn, he who grieves over a sin necessarily detests it. Moreover, detestation appears to extend more widely than sorrow. For sorrow properly can be referred to sins committed by oneself, whereas detestation can be referred to one's own sins and those of others, and both to past and to future sins.

The detestation of sin, in which contrition principally consists, regards the past; but the purpose is concerned with the future. This definition abstracts from the new law, under which contrition can have no efficacy without the desire of confession. The same Council of Trent adds a little below: *with the desire of performing the remaining things ... which are required for rightly receiving this Sacrament* (of Penance). Hence the definition of St. Thomas, *Supplement*, q. 1, art. 1, agrees: *Sorrow undertaken for sins, with the purpose of confessing and making satisfaction.*

Hence we must speak: 1. of contrition strictly so called; 2. of the purpose.

Article I. On Contrition

441. Contrition is distinguished as twofold: 1. Perfect contrition, which is the detestation of sin from the special motive of perfect charity, or of the goodness of God supremely loved for His own sake [1].

[1] Some have thought (see St. Alphonsus, bk. 6, no. 436, and Scavini, tr. 1, disp. 1, ch. 2, art. 1, sec. 1, q. 1) that for perfect contrition it is more probably not sufficient that it be elicited from the motive merely of some one divine attribute, but that it is required to proceed from the motive of the offense against the divine goodness, insofar as this goodness embraces all the perfections of God. They attribute this opinion to Cardinal de Lugo, Suarez, Vasquez, etc.

But the authority from which the entire strength of this opinion arises is altogether wanting. For the cited Doctors do not dispute whether the motive of contrition ought to be taken from the aggregate of the divine perfections rather than from some particular perfection of God, but whether the motive of another virtue besides charity suffices for perfect contrition; for example, if the sorrow is (as Suarez says, *De Poenitentia*, disp. 2, sect. 3, no. 4, and disp. 4, sect. 2, no. 15) from the motive of obedience, religion, penance, gratitude, etc.; because, as Lugo says (*De Poenitentia*, disp. 5, no. 3), the sin is against the precept of Him whom we are bound to obey, or against His worship, etc. The formal motive of these virtues, as is plain, is different from the motive of charity.

Moreover, since the formal object of charity is the supreme excellence and infinite perfection of God, on account of which He is to be loved above all things with an appreciative love, and since this infinite perfection and excellence of the supreme good shines forth in each of the attributes, Ripalda (*De Virtutibus Theologicis*, disp. 35, sect. 1) therefore rightly establishes, from the common opinion of the Theologians whom he cites (*ibid.*, no. 4), this thesis: *The formal object of charity is the divine goodness insofar as it is common and proper to the nature of God and to the attributes.* St. Thomas expressed this more briefly (*De Virtutibus*, q. 2, art. 4, ad 5), saying that an object of this kind is *the divine good*.

Nor should it be passed over here that the objects of the other virtues which we have mentioned, namely, obedience, gratitude, religion, etc., if not a motive of perfect contrition, are certainly a most apt motive of imperfect contrition; indeed, by this path penitents can easily be drawn to the motive of perfect charity. For if, together with the motive of obedience, religion, justice, etc., there is added a consideration of the infinite excellence of God, to whom an injury was either inflicted, or obedience denied, or worship withheld, one will very easily arrive at the perfection of charity. These things ought to be ready at hand for the confessor, so that there may readily be available to him a means of advancing penitents to more perfect things at the opportune time.

** The VV. have written twenty-five columns to attack this Note (pp. 399-411). Nevertheless, they have scarcely, if at all, touched the hinge of the question. St. Alphonsus had written (bk. 6, no. 432): *It is asked from what motive the act of perfect contrition ought to be elicited?* And he replies: *The first opinion, which several hold, says that it can be elicited from the motive of any offended divine attribute, of justice, wisdom, mercy, etc. And Suarez and Lugo rightly judge this probable. The reason is that he who loves the divine justice or mercy for God's sake already loves God ...; therefore, he who grieves over sin because of God's offended mercy or justice ... already grieves for God's sake.... But the second opinion, common and more probable, which Suarez, Vasquez (who calls the opposite*

erroneous), and Croix with Arriaga, Dicastillo, and others generally hold, teaches that contrition must altogether proceed from the sole motive of charity, namely, of the divine goodness offended, insofar as this embraces all the perfections of God.

Now, as regards the first opinion, it is false that either Suarez, Lugo, or Vasquez, in the cited places, discusses an act by which either justice or mercy, etc., is loved for God's sake; rather, they treat of sorrow elicited, not from any motive of charity, but from the motive of another virtue, not theological but moral, such as religion, justice, obedience, etc.; and they ask whether this sorrow is that perfect contrition which has the power of justifying.

Thus Vasquez (q. 85, art. 2, no. 45, which is the place cited by St. Alphonsus): *I would judge erroneous the opinion of the more recent authors, who teach that the act of contrition ... is not the love of God, nor necessarily proceeds from the love of God, and NEVERTHELESS JUSTIFIES....* But concerning sorrow which is not the love of God and does not proceed from the love of God, he had premised (*loc. cit.*, no. 35): *Insofar as it is against the justice of God, it is hatred from THE SPECIAL VIRTUE OF PENANCE, and thus the hatred* (of sin) *under this aspect is a compensation for the offense from justice, such as ours can be found before God.* Concerning this matter he adds below (*ibid.*, no. 38): *Nor does there appear to be another manner of justice on our part toward God than toward His precept, which OBEDIENCE supplies, ... or finally RELIGION in rendering, nevertheless, the worship due to God, which also is constituted by the Scholastics as a part of potential justice.* Therefore, no trace is found here of the love of God from the motive of some attribute, of which St. Alphonsus speaks.

The holy Doctor then cites Lugo, *De Poenitentia*, disp. 5, no. 3. But neither does Lugo have a single word about that love of God from the motive of one attribute. Behold his words: *Some Theologians teach that, for contrition, it suffices that the sorrow be either from the motive of charity* (and this Lugo also admits with all the Doctors), *or from the motive of obedience, or religion, or penance: namely, because sin displeases God, whom we love* (and this is the motive of charity), *or because it is against His precept, whom we ought to obey, or against His worship, or finally because it is against the right of God, which we are bound to observe, which they say is the motive of penance.... Father Suarez says that this opinion is probable, and that it once pleased him ..., although Father Suarez speaks only of sorrow arising from the motive of justice....* But to this sorrow from the motive either of obedience, religion, penance, or justice, in which Lugo finds nothing of that love on account of some divine attribute of which St. Alphonsus speaks, and which he indeed presents as moral virtues (no. 6), Lugo himself opposes the motive of charity, without, however, adding anything about a motive from all the perfections of God. Thus he says (no. 3): *Yet other Theologians commonly teach that sorrow from the motive of the love of God is altogether required.* And again (*ibid.*, no. 10): *It must altogether be said, with the common opinion, that contrition sufficient for justification must arise from the particular motive of charity, namely, of God loved above all things.*

Nor do the things which he adduces from Suarez serve the purpose of St. Alphonsus any better. Speaking (*De Poenitentia*, disp. 4, sect. 2, no. 13) of the detestation of sin which is from the proper motive of justice, Suarez writes: *It has seemed probable to some that this act, of itself and without formal love, suffices for the nature of contrition. And this opinion is indeed probable, and at one time simply pleased me. But now, the matter having been better considered, it seems that the contrary opinion is to be chosen.* St. Alphonsus, as is evident from his words cited above, here understands the motive of justice as the divine attribute of justice which is the object of love. But nothing is more foreign to the opinion of Suarez; for he here understands justice as the virtue by which the sinner wishes to compensate God for the injury inflicted. Hence he writes (disp. 2, sect. 3, no. 4): *Since this virtue of penance is a certain justice toward God, its object will be the divine right.*

Dicastillo, whom St. Alphonsus nevertheless adduces for his purpose, presents the state of the question in no different manner. For Dicastillo says (*De Poenitentia*, tr. 8, disp. 2, no. 106): *We now ask whether, in order that penance be perfect and sufficient* (for the remission of sins), *an act of love of God is required; and some deny this, thinking that perfect penance can exist without that love. For they think it sufficient that it be FROM THE MOTIVE OF OTHER VIRTUES; Suarez confesses that he at one time inclined to this opinion.... But he speaks of the motive according to which he thinks an act of the special virtue of penance is constituted. And other more recent authors think the same concerning other motives, especially according to the various opinions for establishing the motive of the special virtue of penance.* Then, against these, he establishes this thesis (*ibid.*, no. 112): *It must altogether be asserted that penance is never contrition sufficient for the remission of sins outside the Sacrament without a formal act of love of God, and that this act belongs to the intrinsic nature of perfect contrition, which is distinguished from attrition.* Therefore, it is not true, as St. Alphonsus supposes, that Dicastillo disputes whether merely some one divine attribute or rather the aggregate of all the perfections is the formal object of charity and therefore of perfect contrition, and that he defends the second opinion against the first.

Moreover, if it is asked by what means St. Alphonsus, with no one preceding him, gave a new face to the question ordinarily treated here, and attributed to the cited Doctors opinions about which they themselves had said nothing, and indeed had not even thought, one perhaps will not wander altogether from the truth who thinks that this happened to the holy Doctor merely because of a less skillful interpretation of the words of Croix, from whom he also borrowed the citations. For Croix

had written (bk. 6, pt. 2, no. 722): *This contrition* (sufficient for justification without the Sacrament) *must proceed from the motive of the goodness of God, and therefore be a hatred of sin because it is evil to God. St. Thomas, Arriaga, Dicastillo, and others most commonly teach this against a few who have said that this contrition can proceed from the motive of religion alone, or justice, or another virtue regarding God, apart from every punishment or reward, and therefore that it suffices to detest sin, for example, because it is against the worship of God, against the right of God, etc.; Suarez calls this opinion probable, and Aversa and Lugo defend it as probable; on the contrary, Arriaga says that it is not intrinsically probable, ... Vasquez calls it erroneous.*

That St. Alphonsus took both the core of the question and the citations from this source is gathered not obscurely, not only from his words copied above, but also from the edition of the year 1748, where he writes (bk. 6, tr. 4, ch. 1, dub. 2, note A):

Question II. From what motive can contrition proceed? *Some think that it can proceed from any offended divine attribute; but most commonly, says Croix, bk. 6, pt. 2, no. 722, with St. Thomas, Dicastillo, and others, contrition must proceed from the motive of the offended Goodness of God.* Accordingly, the contrition which Croix had said, according to the opinion of a few, proceeds from the motive of religion, justice, or another virtue regarding God, the holy Doctor interpreted as contrition which proceeds from any offended divine attribute. He afterwards explained this more fully in the edition of the year 1757, saying that it is contrition which proceeds from the motive of any offended divine attribute, of justice, wisdom, mercy; and he gave the reason, as we saw above, because he who loves divine justice ... for God's sake already loves God; hence, he who grieves over sin on account of offended justice already grieves for God's sake. Everyone sees for himself how foreign these things are to the sense in which Croix, after Suarez, Lugo, Vasquez, Dicastillo, etc., spoke of contrition from the motive of justice or religion.

Lugo (*loc. cit.*, no. 9) certainly indicates more aptly how contrition from the motive of other virtues can in some way be drawn to the motive of love of God, insofar as, he says, to love is said to be to will good to someone; for since through religion we will the worship of God, through penance we will not to offend Him, through obedience we will to fulfill His will, etc., all these things appear to contain love of God. He then rejects these things and establishes the contrary thesis (*ibid.*, no. 10), which we related above. For these acts pertain not to theological but to moral virtues, and they furnish a motive not of perfect contrition but of attrition, no differently from sorrow from the motive of ingratitude toward the most beneficent God.

These things having been premised, the reply to the twenty-five columns of the VV. is easy. For: 1. what they heap together concerning the formal object of charity considered either adequately or inadequately has nothing to do with the argument of the Note which they undertake to attack; 2. from what has been said, it is sufficiently plain whether the citations of Vasquez, Suarez, and Lugo, whom St. Alphonsus cited, are pertinent.

2. Imperfect contrition, or attrition, which is the detestation of sin arising from another motive, for example, from consideration of the turpitude of sin, or from fear of hell, or from love of eternal beatitude. - Council of Trent, sess. 14, ch. 4.

Three things are to be explained here: 1. the necessity; 2. the qualities; 3. the efficacy of contrition.

§ I. On the Necessity of Contrition

442. Things to be established. I. Either perfect contrition with the desire of the Sacrament, or imperfect contrition with the Sacrament itself, is altogether necessary to the sinner by a necessity of means for obtaining justification and salvation.

1. It is established from Sacred Scripture, Matt. 3:2: *Do penance, for the kingdom of heaven has drawn near.* - Luke 13:3: *Unless you shall have penance, you shall all likewise perish.* - And *ibid.* 5: *Unless you shall do penance, you shall all likewise perish.* - Ecclus. 2:22: *If we shall not do penance, we shall fall into the hands of the Lord and not into the hands of men.* - Apoc. 2:5: *Do penance and perform your first works; otherwise I come to you and will move your candlestick out of its place, unless you shall do penance.* - Acts 3:19: *Do penance, therefore, and be converted, that your sins may be blotted out.*

2. It is established from the Councils, especially from the Council of Trent, sess. 14, ch. 4: *At every time this movement of contrition has been necessary for obtaining pardon of sins.* And sess. 6, ch. 6, where hatred and detestation for sin are numbered among the chief dispositions for justification.

443. II. Mortal sin being supposed, contrition is necessary by a necessity of precept, at least at some time in life. For this precept is gathered from the words of Sacred Scripture related above, from the words of St. John the Baptist at the beginning of his preaching, and especially from the words of Christ Himself in the Gospel. That contrition which is required for justification is understood to fall under the precept, namely, perfect contrition outside the Sacrament, or attrition with the Sacrament. - St. Lig., no. 337. - Billuart, diss. 4, art. 3, and all others.

III. The precept of contrition obliges sometimes *per se*, sometimes *per accidens*.

1. It obliges *per se* when a grave necessity of reconciling oneself with God presses, namely, in even probable danger of death, and this on account of the precept of attaining the ultimate end; likewise, when someone is in the state of sin, because of the proximate danger of dying in this wretched state [1], or of falling into graver sins [2].

[1] These things are not to be understood so generally as though a man were obliged to this immediately after sin; for that, as the Author himself teaches a little below, is contrary to the common opinion of Theologians after St. Thomas, and is excluded by the same reasons by which St. Thomas (*In IV Sent.*, dist. 17, q. 3, art. 1, q. 4) rejects the necessity of confessing immediately after sin. Apart from the point of death, however, the more common opinion, as Palaus says (*De Poenitentia*, disp. un., punct. 3, no. 9), admits at least that delay which the precept of the Church concerning annual confession also admits (see Laymann, *De Poenitentia*, ch. 2, no. 6); and St. Alphonsus (bk. 6, no. 473) attributes this doctrine even to St. Thomas.

[2] This obligation also of eliciting an act of contrition for warding off other sins is a mere opinion of certain authors. Therefore, the statement of Cardinal de Lugo (*De Poenitentia*, disp. 15, nos. 55-56) is to be observed: *Because of the variety of opinions, we cannot impose upon him* (namely, the penitent) *a certain obligation.*

On this argument, the things which Suarez has (*De Poenitentia*, disp. 15, sect. 6, nos. 7-8) and Cardinal de Lugo (*loc. cit.* and disp. 7, nos. 240, 242) are to be seen; from these it may be concluded either that no necessity of eliciting contrition for this reason is proved, or that its omission is not a sin distinct from that into which one falls because that means was omitted.

2. It obliges *per accidens* when another precept presses which cannot be fulfilled without contrition, especially in the following cases: namely, when the precept of annual confession presses; when the precept of an act of charity presses; when one guilty of grave sin is about to receive or administer a Sacrament; whenever the Sacrament of Penance is received, even for the sake of devotion. - St. Lig., *ibid.*

444. Questions. **QUESTION 1. Does the precept of contrition oblige immediately after a mortal sin has been committed?**

Reply. Negative, against a few of the ancients [3], because the precept of contrition is affirmative, namely, *Do penance*; but an affirmative precept does not oblige at every moment; therefore, the precept of contrition does not press immediately after a sin has been committed. Moreover, sins would thus be multiplied according to the number of instants of delay, which is contrary to the common sense of the faithful [4]. - St. Lig., no. 437. - Elbel, no. 54. - Billuart, etc.

[3] Nevertheless, this opinion is undeservedly attributed to most of them; for example, Alexander of Hales, Paludanus, and Thomas of Strasbourg indeed affirm that the penitent is bound to be contrite for committed sins always throughout his whole life, but they explain this so that he is bound to it negatively, that is, not again to take complacency in the sin when it occurs to his memory. Cajetan (*Summa*, s.v. *Contritio*) explains this opinion thus: *From the fact that sins occur to the memory, just as one is not bound to confess, so neither is he bound to be contrite. For each is an affirmative precept, obliging at a time of necessity, which memory does not constitute; but he is bound always not to approve, not to take complacency, because these are negative precepts, which oblige always and at every time.*

** It was indeed a remarkable achievement of Cardena that, against the common opinion, he gathered together (pt. 4, diss. 6, no. 47) both the authors just mentioned and several others, among whom scarcely, if at all, one is to be found who really pertains to the matter. He contends that this obligation of applying the means of justification immediately after sin arises from this (which no one either before or after him ever dreamed), because, as he says (no. 53), Christ commanded all men in the Gospel that they always watch and be ready for the hour of death to be expected, because they know neither the day nor the hour.

[4] This reason is to be understood with discretion. For the Doctors are not accustomed to say that one who, for example, culpably delays restitution or annual confession sins anew at every instant, but rather whenever, advertent to the obligation and able to fulfill it, he neglects it. Indeed, even this occurs only when the subsequent acts do not follow by virtue or efficacy of the preceding purpose. See *On Sins*, vol. 1, no. 166.

QUESTION 2. What delay of contrition induces a grave sin?

Reply. The Theologians do not agree. It is indeed commonly admitted that there is a grave delay of contrition independently of the precept of annual confession; but how great this delay must be in order to be judged grave cannot be determined with certainty. Some extend it to a year; others to six months; others, with St. Alphonsus, to a month. Yet no reason or authority favors this last opinion [5]. Indeed, St. Alphonsus himself adds, no. 437, that sinners, especially the uneducated, can for the most part, indeed almost always, be excused from this sin of delayed penance because of inadvertence [6].

[5] ** For this monthly obligation of contrition the VV. produce a threefold argument from St. Alphonsus (p. 394, no. 106). 1. Because we are bound each month to elicit an act of charity, as the holy Doctor has it (bk. 2, no. 8, and *Homo apostolicus*, tr. 16, no. 10). 2. Because otherwise a man could with difficulty observe the divine commandments for a long time (bk. 2, no. 8). 3. To this is added the authority of St. Thomas, who cites St. Gregory the Great and says: *Without justifying grace it is not possible for one to remain long without mortal sin.*

Reply to 1. Elsewhere (vol. 1, no. 218, q. 2, in the Note) it was shown that an obligation of this kind is urged without foundation either of reason or authority, and indeed contrary to principles received by all.

To 2. Reply: If contrition were the only means of avoiding sins, let it pass; otherwise, I deny it. See Suarez, *De Poenitentia*, disp. 15, sect. 6, no. 7, and Lugo, *De Poenitentia*, disp. 15, nos. 51-52.

To 3. I reply by using the words of St. Alphonsus (bk. 6, no. 437), who, after saying that he thinks one who, existing in mortal sin, delays penance for a notable time is in no way excused from mortal sin, then adds: *But what this notable time is, the Doctors disagree greatly.... The Salmanticenses, Palaus with Laymann and Elbel, Lugo, Henno, etc., think that one who satisfies the annual confession is excused; and St. Thomas, in IV Sent., dist. 17, q. 3, art. 1, q. 4, appears to adhere to this opinion.* Therefore, according to St. Alphonsus himself, the cited words of St. Thomas, with St. Thomas himself interpreting both himself and St. Gregory the Great, are to be understood of those who do not satisfy the obligation of annual confession.

Moreover, the things noted in vol. 1, *loc. cit.*, must be recalled here also, namely, that a conscience of a grave obligation or grave guilt must not be introduced where this is not established by a certain reason; for this also is a most firm principle of St. Alphonsus himself.

[6] Cardinal de Lugo (*De Poenitentia*, disp. 15, no. 55) speaks thus on this matter: *It is not necessary to question the penitent concerning this sin of omitting due penance throughout the whole year, whether per se from the precept of the virtue of penance, ... or per accidens for avoiding the danger of a new sin, nor even to admonish him in particular.... And this can be proved by the example of the precept of loving God, concerning which penitents are not questioned in particular whether they have loved God above all things, nor are they admonished concerning that obligation of fulfilling this precept at some time; both because from the very course of the confession it sufficiently*

appears how the penitent is disposed toward God, and because, on account of the variety of opinions, we cannot impose upon him a certain obligation. Indeed, he continues thus concerning the omission of the questioning and admonition: *Such questioning or admonition appears useless, indeed harmful. For either the penitent is invincibly ignorant of that obligation; and then it is better to leave him in good faith than to bring him into bad faith, from which his scandal can prudently be feared. For very few among sinners of this kind will afterward, because of that knowledge, be moved to grieve over their sins before the end of the year; rather, they will add this also to their other sins by omitting the penance which they ought to have. But if the penitent knew such an obligation, he will be admonished about it in vain.* Finally, he proposes an objection, in solving which he also touches upon the uncertainty of the obligation. *You will say: nevertheless, it will be necessary to inquire concerning the omission ...; because if he knew the obligation, or was culpably ignorant of it, the omission was a sin, and consequently must be explained in confession. But to the contrary: neither under this heading is it necessary to inquire distinctly; for EVEN IF IT WERE CONCEDED THAT SUCH AN OBLIGATION EXISTS, nevertheless, the Confessor, having heard the confession of the penitent, from the sins which he committed throughout the whole year sufficiently understands that he did not satisfy the obligation, IF THERE WAS ANY, of grieving frequently over his sins.... Therefore, he would be questioned or admonished more distinctly in vain, especially in such matter CONCERNING WHICH THE CONFESSOR HIMSELF COULD NOT ESTABLISH ANYTHING CERTAIN FOR DETERMINING THE OBLIGATION for the following time* (*ibid.*, no. 56).

445. QUESTION 3. Is one who at the point of death receives the Sacrament of Penance with attrition bound, in addition, to elicit an act of perfect contrition?

Reply 1. He does not appear to be bound to an explicit act of contrition, since he is morally certain that he has been justified by attrition alone with the Sacrament. - Thus Lugo and others commonly, against some.

Reply 2. According to some, however, he is bound, for they say that the precept of perfect charity presses especially at the point of death. Whatever may be the case, it is expedient that the dying be excited, as far as can be done, both to an act of charity and to an act of perfect contrition. - St. Lig., no. 437 [7].

[7] ** The VV. here produce (p. 935, no. 107) the things which St. Alphonsus has (bk. 6, no. 437): *Each opinion*, says the holy Doctor, *is probable; but the first* (the second here in Gury) *is altogether to be counseled.... Indeed, I say that it is altogether to be followed by one who is at the actual point of death. For then everyone is bound to elicit an act of charity ..., which no one can satisfy if, when the memory of sin occurs, he does not detest the sin from the same motive of charity.*

Reply. If each opinion, as the holy Doctor testifies, is probable, therefore the obligation of either one can by no means be imposed. For obligation is so called from binding. But a doubtful law does not bind, as the holy Doctor repeats a hundred times. Therefore, a merely probable law does not bind.

But what is added concerning the obligation of an act of charity at the point of death requires a distinction. For if the discussion concerns a man in the state of sin who has no other means of justification, it is conceded that there is an obligation of obtaining justification through contrition perfected by charity; otherwise, it is denied. See what is said concerning this argument in vol. 1, no. 219, resolution 2, in the Note.

QUESTION 4. For obtaining grace in the Sacrament, are explicit acts of Faith and Hope required in addition to sorrow?

Reply. Negative. The reason is that it cannot be proved by any probable argument that these acts are explicitly required [8]. Moreover, a penitent eliciting an act of sorrow also in some way explicitly and exercitively elicits these acts, although not reflexively; because he then without doubt exercitively believes and hopes that his sins are to be remitted through the Sacrament of Penance by virtue of the merits of Christ. - St. Lig., no. 439, and others commonly, against some.

[8] Some required these acts because they are expressly mentioned by the Council of Trent where the process of justification is described (sess. 6, ch. 6). This reason would also prove the necessity of hearing a preacher of the faith, since it is said there: *conceiving faith from hearing*; and, moreover, the insufficiency of sorrow perfected by charity without imperfect sorrow, because it is added there: *they are struck by fear of divine justice!*

Suarez speaks to the matter (*De Poenitentia*, disp. 4, sect. 2, no. 7): *Finally, in sess. 6, ch. 6, the Council numbers several acts in the disposition of the sinner, all of which need not always concur formally, but it suffices that they concur virtually or implicitly, as an act of hope.*

And yet there are confessors who, led by that prejudice, require penitents before the confession of sins to recite the customary formulas of the acts of the theological virtues, unless perhaps they even dismiss them so that they may first satisfy this supposed necessity. This is all the more remarkable because in the customary formula of the act of faith you will not find the things which the Council said must be believed, namely, that God through Christ will be propitious to him, etc.

446. **QUESTION 5. Does one sin who confesses some venial sin without sorrow?**

Reply. Negative, more probably, provided that sorrow concerning other sins, or at least one, is not lacking, and that the penitent does not knowingly submit the other sins as matter of absolution [9]. The reason is:

[9] Distinguish with Suarez (*De Poenitentia*, disp. 20, sect. 6, no. 7) a twofold manner in which someone can confess a venial sin without true attrition or a purpose of amendment. 1. If he discloses to the confessor this very defect of sorrow and purpose; then neither ought the priest to absolve from such a sin, nor, if the penitent is prudent, ought he to tell it for this end, namely, as matter of the Sacrament, since it cannot truly be such. Nevertheless, it can licitly be told either for the sake of humility, counsel, or incitement to true penance; but this manner has nothing to do with the present matter. 2. If he discloses the venial sin over which he does not grieve, like the others, as matter of absolution. Then, says Suarez, *many think it a mortal sin.... But although it cannot be denied that it is some fault, nevertheless I do not judge it mortal, because the matter of such a fault is light; because the defect of that sorrow or purpose, of itself and by its nature, is not contrary to grace and justification, which is the primary effect of this Sacrament signified by the form ...; nor does it impede the remission of the other venial sins concerning which a true accusation capable of true absolution is made, notwithstanding the obstacle of some venial sin.* See also Lugo, *De Poenitentia*, disp. 14, no. 48.

Moreover, even that light fault of which Suarez speaks will more often be absent, either because the penitent does not advert to this defect of sorrow or to the disorder of that defect, or because all displeasure is rarely absent, although it may not be sufficiently efficacious; in this matter it is often difficult to avoid deception.

1. for the validity of the Sacrament, it suffices that some certain matter be furnished, namely, that there be sorrow for some venial sin; for venial sins are not necessary matter of the Sacrament of Penance, and, moreover, since they do not deprive one of the grace and friendship of God, some can be remitted without the others; 2. because no injury is thereby inflicted upon the Sacrament if they are declared for a good end, all levity being excluded. Indeed, those venial sins for which one does not have at least certain sorrow are also very often usefully disclosed, namely, for a fuller manifestation and direction of conscience, for conceiving some confusion, etc. - See St. Lig., no. 449.

447. **QUESTION 6. Must contrition precede confession?**

Reply 1. It must certainly precede absolution, or at least coexist with it, as is plain. But speaking practically, it is required that sorrow at least precede absolution, because no penitent who feels himself indisposed can ask for or receive absolution.

Reply 2. For the validity of the Sacrament, sorrow need not necessarily precede the accusation. The reason is that all things required for the Sacrament are present, provided that sorrow precedes absolution; nor can a precept of placing sorrow before the confession of sins be proved. - Lugo, Suarez, and others most commonly. Moreover, when Theologians require a sorrowful confession, they appear to require nothing other than that the confession not be a mere narration of sins, but that it be a self-accusation ordered to obtaining absolution. - St. Lig., no. 445 [10].

[10] Thus St. Alphonsus: *Laymann with others* (namely, Coninck and Palaus) *require the confession to be sorrowful, or sorrow to precede confession, only insofar as they demand that the confession not be a mere narration of sins but have the nature of sacramental confession; and for this it suffices that the confession be made with the intention of obtaining absolution, and that sorrow then be manifested at least by the petition or expectation of absolution.* These last words meet Coninck's objection that sorrow must be sensible. Since various authors reply to this difficulty in various ways (see Lugo, disp. 14, nos. 14-18), as the words of St. Alphonsus indicate, perhaps another could also answer that there is no need at present for those subtleties if, according to what was said elsewhere (above, in the Note to no. 414), one prefers the opinion which holds the acts of the penitent merely as the matter *circa quam*, and therefore attributes to absolution alone that it is the efficacious sign of grace.

Moreover, Lugo writes thus concerning Coninck's opinion (*De Poenitentia, loc. cit.*, no. 13): *This opinion is singular and has all the other theologians against it.... It also has against it the practice of the faithful; for if they have perhaps confessed their sins without sorrow and afterward, moved by the exhortation of the confessor, are excited to have sorrow for their sins, they think they satisfy sufficiently if they then grieve before absolution. Indeed, confessors are accustomed especially then to move penitents to sorrow for this end* (which is also the practice prescribed in the Roman Ritual), *that they may dispose themselves to receive valid absolution; nor do they oblige them, after sorrow has then been conceived, to repeat the confession which was made without preceding sorrow.* These things plainly show that the solicitude of certain confessors is to be banished to empty scruples: after they have excited the penitent to sorrow, they wish altogether to extort from him again some confession, at least in a few words, for example: *I accuse myself of the sins narrated.*

** And St. Alphonsus in fact has it thus (bk. 6, no. 445, at the end): *But the Salmanticenses add that, merely for quieting scruples, Confessors are accustomed, if they doubt the internal indisposition of the penitent, to excite him to grieve over the sins explained a little before, which is done if it is said: I grieve over the sins narrated, and I accuse myself.* The holy Doctor placed these words immediately after those read above in this Note, which the holy Doctor had said to show that in this question no discord exists among the Doctors except in words: *Therefore*, he says, *these are not two opinions, but one.*

Nevertheless, behold, the VV. (p. 935, no. 108) oppose the things which St. Alphonsus elsewhere has thus (*Homo apostolicus*, tr. 16, no. 20): ***Must sorrow precede confession?*** *Laymann ... affirms it, both because sorrow must be sensible and cannot become such except by confession, and because confession ... must be sorrowful; otherwise it would be a simple narration of sins. But others more commonly deny it ..., and the Ritual favors them.... And they rightly reply to the first reason by saying that sorrow becomes sensible not only through confession, but also by other signs and words. But to the second reason they bring no convincing reply; hence, on account of it, I say that the first opinion is probable and therefore is to be followed in practice. They commonly agree ..., however, that it suffices if the penitent, after the act of sorrow, says: Again I accuse myself of all the sins confessed.*

Reply. It does not sufficiently appear to what end the VV. produce these things. For in order that anyone may at times use the doctrine of St. Alphonsus, will it also be necessary that he undertake the burden of examining every little work of the holy Doctor? But where the opinions of the different Works of the holy Doctor do not appear to agree very well with one another, as in the present matter, by what means indeed will you avoid the complaints of the VV., who, whichever opinion of the holy Doctor you finally choose, do not hesitate to oppose to you the other, contrary one? And indeed, to the things which the VV. object from the *Homo apostolicus*, someone could reply according to the things which are taken from the Moral Work (bk. 6, no. 445), and therefore with St. Alphonsus as guide: I deny the antecedent, namely, that in either opinion confession cannot be called sorrowful; and consequently I deny the antecedent, namely, that the contrary opinion is probable; and therefore I deny the consequence, namely, that this opinion is to be followed and therefore, except perhaps for quieting an empty scruple, it is necessary to add: *Again I accuse myself*, etc. Why would this man be liable to the censure of the VV.? For even if he had chosen the opinion which is handed down in the *Homo apostolicus*, would it not have been ready at hand for the VV. to object the things read in the Moral Work?

But something more serious to be noticed in the present matter occurs. The opinions of St. Alphonsus which the VV. here object from the *Homo apostolicus* are also found in the Moral Work of the same holy Doctor published in earlier years, namely, both in the edition of the year 1748 (bk. 6, tr. 4, ch. 1, dub. 2, note A, q. III) and in the other of the year 1757 (bk. 6, no. 445); in that same year he published the work written in Italian under the title *Istruzione e pratica per un Confessore*, which work he then published in Latin in the year 1759 under the title *Homo Apostolicus instructus*, etc. But since these same opinions are not found in the later editions of the Moral Work, as is plain from the texts cited above from bk. 6, no. 445, it is manifest that the holy Doctor himself, his opinion having been changed, corrected that place. But if the matter is thus, by what right of equity, by what zeal for truth, or by what zeal for sound doctrine do the VV. now draw forth and oppose against one who proposes the doctrine refined and reformed by the holy Doctor himself those things which the same holy Doctor had rejected?

QUESTION 7. For what space of time does an act of sorrow morally endure for validly receiving the Sacrament?

Reply. This cannot be determined. According to the common opinion, it can endure for one or even several days, provided that it was elicited with the intention of making confession [11], and was not retracted by another sin. Moreover, penitents should be counseled to renew, immediately before confession, the act of contrition previously elicited, especially if afterward they turned their mind to other things for a notable delay. - St. Lig., no. 446 [12].

[11] What the Author indicates, that sorrow must be elicited with the intention of confession, has at most some probability. Indeed, even St. Alphonsus (bk. 6, no. 447) could not deny that the opinion is more probable which teaches that sorrow is valid even if someone elicits it while then thinking nothing of the Sacrament, which he afterwards receives when the occasion is offered.

On this argument, compare Cardinal de Lugo (*De Poenitentia*, disp. 14, nos. 37-40), who not only excludes by most weighty reasons the necessity of that intention, but moreover notes that, according to Suarez and Reginald, who support the contrary opinion, it suffices that the preceding sorrow, even though elicited without an intention of confession, afterward moves one to confession or is in some way expressed in confession; these things, as is plain, fall entirely into the common opinion of Cardinal de Lugo.

But the little reason adduced to the contrary (in St. Alphonsus, *loc. cit.*), that through intention the matter must be ordered to the Sacrament, as ablution to Baptism and the touching of the instruments to Holy Orders, first supposes that sorrow is the matter of the Sacrament in the same sense as ablution in Baptism, namely, matter *ex qua*, which pertains to a mere opinion (see above, Note to no. 414); and then it is refuted by the very example of Holy Orders, for the Ordination of an infant is held valid, although he certainly cannot, through an intention of which he is incapable, order the touching of the instruments to the Sacrament.

Nor does the reason taken from Proposition I proscribed by Innocent XI press any more, both because of what was just said concerning the nature of the matter in this Sacrament, and because of the things which the Author noted above, no. 437, concerning this proposition.

** The VV. contend against this Note in fourteen columns (pp. 411-418). Let us touch briefly upon all these things, as the matter permits.

1. The VV. gather together several Writers (pp. 416-418) who either hold absolutely, or teach as more probable, that sorrow must be elicited with the intention of confession.

Reply. Against these, St. Alphonsus judged the opposite opinion more probable, as was noted. Therefore, let the VV. show the holy Doctor this honor: on account of him and with him, let them hold the reasons of those Authors as less solid.

2. The VV. complain (pp. 414-416) that the argument of St. Alphonsus was called a little reason, namely, that just as the minister, so the recipient must order the matter to the Sacrament. They then say that the contrary example of an infant, who is validly ordained without this intention, is sufficiently refuted by the common doctrine that no intention is required in infants for validly receiving the Sacraments of Baptism, Confirmation, or even Orders, since the intention of Christ or of the Church supplies in them, as St. Alphonsus says (bk. 6, no. 80).

Reply. This refutation falls of itself because there is no parity at all. For the will to receive a Sacrament is one thing, and the will ordering sorrow to the Sacrament is another. The latter, as they themselves contend, belongs to constituting an essential element of the Sacrament; the former, however, is altogether extrinsic to the essential elements of the Sacrament, and sometimes a merely habitual or even merely interpretative intention suffices. But the Church certainly cannot supply that which pertains to the intrinsic essence of the Sacrament. Therefore, if the Ordination of an infant is valid, as it certainly is, although the infant is incapable of ordering the contact with the instruments to the Sacrament, it is manifestly plain that this ordering intention is not necessary. To this might also be referred what is commonly said concerning the fulfillment of sacramental satisfaction. For if all the parts must be ordered to the Sacrament through intention, this will therefore hold also with regard to satisfaction. But where is that coordinating intention present when even St. Alphonsus (bk. 1, no. 165) admits that sacramental penance is truly fulfilled even if someone, forgetful of the precept and therefore having no intention of fulfilling it, nevertheless performs the prescribed work?

3. The VV. insist (pp. 412-416) that in the case the condemnation of the Proposition concerning the use of probable matter when the safer has been abandoned presses, both because the opinion concerning sorrow to be elicited with the intention of confession is probable, and because the matter here concerns matter *ex qua*; and that the interpretation of the condemned Proposition brought forward by Gury must be rejected.

Reply. As regards the first: let them first bring forward other reasons by which some solid probability of the opinion concerning the necessity of that intention may be proved. For if the argument adduced by St. Alphonsus, which must be considered the strongest of all, does not have that force, as we saw, then certainly, until some other reason appears, it is lawful to hold that these reasons are lacking. And since it is very well known that extrinsic probability has force insofar as it is presumed to rest upon intrinsic probability, where intrinsic arguments are lacking, it profits little to multiply citations. Therefore, thus far that condemnation is urged in vain.

As regards the second, first the VV. (p. 415), after asserting that the doctrine which holds the acts of the penitent to be matter *ex qua* is most probable, infer from this that the opinion which establishes that sorrow must necessarily be ordered to confession is sufficiently probable; but there will certainly be one who adds to these words: I deny the consequence, as is plain from what has been said. But, this omitted, the VV. would certainly have acted more usefully if, instead of copying the text of Suarez and citing others who followed Suarez, they had devoted some labor to the things touched upon above (Note to no. 414) concerning this argument. It was indeed said there that it cannot be the purpose of our work to undertake the solution of this question in a brief Compendium. Nevertheless, we indicated certain difficulties which neither Suarez nor anyone else has yet satisfied, just as a suitable reply to the arguments produced by Maldonatus, cited there, is still desired. But what those two lights of Theology, Suarez and Lugo, appear not to have attained, it is very uncertain whether it is to be hoped from others. Moreover, since for the probability of any opinion it is required not only that it be supported by solid reasons, but also that it solidly satisfy the contrary reasons, shall we rightly be angry with those who perhaps still hold that opinion not only not most probable, but not even solidly probable?

As regards the third, finally, it is easily plain that the interpretation of the condemned Proposition which Gury has at no. 437 was mentioned only because it explains what these words of the condemned Proposition mean: *In conferring the Sacraments*. And since St. Alphonsus (bk. 1, no. 51), as the VV. themselves note, sufficiently shows that for this reason it is disputed among the Doctors whether the condemnation affects others besides the minister of the Sacrament, another reason now arises from this by which it is abundantly established that the condemnation of that proposition is objected with less efficacy, even if other reasons for this were not brought forward.

[12] ** In this place also the VV. (p. 935, no. 109) oppose to the Author, who says that sorrow can endure for one or even several days, St. Alphonsus, who (*Homo apostolicus*, tr. 16, no. 20) affirms that whenever confession derives from sorrow for sins, sorrow always virtually endures for one or two days.

But St. Alphonsus (bk. 6, no. 446) admits and approves the opinion of Roncaglia, who (*De Poenitentia*, ch. 3, q. 2, reply 2) teaches that sorrow suffices even if it preceded by several days.

448. QUESTION 8. Is a new act of sorrow required for receiving a new absolution when the penitent, immediately after absolution, confesses a mortal sin omitted through forgetfulness?

Reply. It is controverted. The FIRST OPINION, common and much more probable, denies it; because the prior contrition certainly endures, and, being universal, extended to all sins, even those omitted through forgetfulness; nor, moreover, is it required that contrition be explicitly ordered to the Sacrament. Furthermore, explicit sorrow appears to be sufficiently present in the very act of accusing that same sin. - Lugo. - Roncaglia. - Reuter, etc., with St. Lig., no. 448.

The SECOND OPINION affirms it; because the judgment was completed through absolution; therefore, if a new absolution is to be imparted, new proximate matter is required; and although sorrow endures in itself, nevertheless it does not endure in relation to the second absolution. - Bonacina, etc. Yet this opinion appears to rest upon a slight foundation [13].

[13] Cardinal de Lugo in fact denies (*De Poenitentia*, disp. 14, nos. 28-30) that some partial proximate matter cannot serve the same for two forms. But it was already said above that the ordering of sorrow to confession is not necessary. Moreover, it must be denied that such ordering is lacking here; for one who grieves over sins with the intention of confessing sufficiently orders the sorrow for each to the confession and absolution of the same. Add further that Vasquez, Bonacina, and Filliucci are wrongly cited for this second opinion (in St. Alphonsus, bk. 6, no. 448, from Croix, bk. 6, pt. 2, no. 711). For when these say that sorrow must be repeated, they do not dispute concerning sins omitted through forgetfulness, but concerning a repeated confession of the same sins. Therefore, neither authority nor any solid reason supports this opinion. But, on the contrary, the common practice stands for the first opinion, as Lugo says (*loc. cit.*, no. 27); St. Alphonsus (*loc. cit.*) calls this opinion common, and testifies that it is called morally certain by Roncaglia, most probable by Sporer with Elbel and many others, and finally indubitable among all by others. For although perhaps one or another confessor admonishes the penitent in the aforesaid case to renew sorrow, nevertheless all the others commonly do not do so. Dicastillo also testifies to this common practice of confessors (*De Sacramentis*, tr. 8, disp. 6, dub. 22, no. 160).

Two things must not be omitted here. The first is that, according to the common opinion, the foregoing doctrine holds not only in the case which is ordinarily more frequent, of some sin which one forgets in confession and then confesses immediately after absolution or a little afterward, but also in two other cases: both when a dying person, because of the danger of imminent death, must be absolved after one or another sin has been heard and the confession of the rest must then be continued; and when someone, his confession being divided (which case, however, will occur very rarely, as will be said in its place), is absolved by a Superior only from reserved sins and is then absolved by another from the nonreserved sins.

The second is that, according to several, not even the aforesaid opinion of Vasquez, Bonacina, and Filliucci concerning the necessity of repeating sorrow in a repeated confession of the same sins must necessarily be admitted. Cardinal de Lugo certainly thinks the complete contrary.

First, he indicates that this opinion of his agrees with the Doctors thus (*loc. cit.*, no. 34): *Although the Authors do not treat expressly of this sin, nevertheless, from the manner in which they speak, they appear to indicate this.... Indeed, Father John Salas, in his manuscript On Penance, q. 84, art. 10, after relating the opinion of certain recent authors who said that new sorrow, just as a new confession, is required for the validity of the second Sacrament, himself says that the contrary is truer, and that it suffices that the sensible parts, namely, the confession and in the confession itself the expression of sorrow, be new*, etc. But he had disclosed his own mind thus (*ibid.*, no. 31): *If the things which we have adduced in confirmation of the first part are true, it does not appear why sometimes a confession and new absolution concerning even the same sins cannot be repeated by virtue of the preceding sorrow which still endures morally and virtually* (namely, has not been retracted). And he concludes (next no. 32): *The reason appears the same for either case.*

But both John de la Cruz and Peter de Ledesma (in Diana, vol. 1, tr. 3, res. 88, no. 1) had preceded him; Diana moreover testifies that this doctrine is common. Dicastillo also joined these (in Diana, *loc. cit.*), whose thesis is this: *It must be asserted that, not only when someone confesses a new sin which he had not told through forgetfulness, but when altogether the same sins are submitted to a new confession, old sorrow which still endures either physically or morally suffices.* Indeed, it is due to the reasons adduced by Dicastillo that Diana, who had previously hesitated to adhere to this doctrine (see *loc. cit.*, res. 89, no. 3), afterward embraced it absolutely. For after copying Dicastillo's arguments (*loc. cit.*, res. 88, no. 4), he concludes: *Thus far Dicastillo, to whom I now adhere absolutely.* Then he adds that not only did another Salamancan doctor think the same (see *ibid.*, res. 90, no. 2), but that, with Diana himself as author, Leander also passed to the same opinion; concerning him Diana writes (*ibid.*, res. 95, no. 4): *The same Leander* (*De Sacramentis*, vol. 1, tr. 5, disp. 7, q. 4) *teaches, citing even me and Cardinal Lugo, that when someone confesses the same sins from which he had already been directly absolved, he is not bound to have new sorrow for the same sins; because when the vocal confession is repeated, at least the sorrow of the preceding confession, which still endures morally and virtually, is virtually repeated.* Finally, add to these Thomas Tamburini (*Methodus Confessionis*, bk. 1, ch. 2, sec. 5, no. 7), who praises Joseph de Ianuario for the same doctrine: *Read*, he says, *Ianuarius* (pt. 1, res. 30), *who teaches that one who confesses sins otherwise duly confessed and absolved is not bound again to elicit an act of sorrow if the prior one endures habitually* (that is, has not been retracted) *or virtually.*

Moreover, a doctrine of this kind neither ought nor can serve practice insofar as either confessors or penitents ought to be less solicitous about exciting sorrow even in the confession of sins which have already been duly expiated by the Sacrament. Far be this. Nevertheless, it can sometimes be useful, insofar as by its aid, as Diana says (*loc. cit.*, res. 89, no. 2), confessors will quiet many scruples, especially those of persons who confess ordinary venial sins and with them some mortal sin otherwise confessed and absolved. For although it is not greatly to be feared that sorrow for past grave sins is lacking in one who otherwise brings only venial sins, and therefore manifests a soul averse from grave fault by constantly overcoming temptations, nevertheless scruples concerning a defect of sorrow not rarely hold certain persons anxious, especially if they

happen to hear some preacher who, perhaps with less discreet zeal, declaims vehemently against repeated confessions of old faults without sorrow. The confessor will fittingly be able to restrain these anxieties both with other aids and also with the support of the present opinion.

Fifteen columns which the VV. oppose to this Note (pp. 418-426) must be answered here. First, they do not hesitate to deny that Vasquez, Filliucci, and Bonacina were cited wrongly by St. Alphonsus. For, they say (p. 420), Filliucci (tr. 6, no. 76) speaks in express words of forgotten sins, not of sins previously confessed.

Reply 1. They therefore concede that Vasquez, and likewise Bonacina, were cited wrongly by St. Alphonsus. 2. St. Alphonsus with Croix does not cite no. 76 from Filliucci, but no. 77, where the discussion is not of forgotten sins, but of sins previously confessed, and this most deliberately. For in no. 77, where the discussion concerns sins previously confessed, Filliucci says that new sorrow must be elicited; but not in no. 76, where forgotten sins are treated. Therefore, if they had cited no. 76, the citation would have been not only futile but also false. Hence an argument against the VV.: if Filliucci had thought that new sorrow had to be elicited even where forgotten sins were treated, he would not have been silent about it, just as he was not silent where sins previously confessed were treated. But he was silent. Therefore.

2. The VV. insist, saying that according to Filliucci (no. 76), in the confession of a forgotten sin a new Sacrament is effected. Therefore, Filliucci is not cited wrongly. Reply. The question now is not whether in the case a new Sacrament is effected, but whether, when a new Sacrament is effected, it is necessary to elicit another act of sorrow, or whether the preceding act suffices. Filliucci expressly says the former thing; concerning the latter, Filliucci has not even a word; indeed, as we have said, by his silence he denies it. Therefore, Filliucci also is cited wrongly.

3. Nevertheless, in order to show that the opinion which St. Alphonsus, as the VV. say (p. 419), rightly calls more probable is supported by grave authority, they produce eight authors, namely, Concina, Lacroix, Holzmann, Reiffenstuel, Billuart, Antoine, Reuter, and Voit. Reply. Six among these, indeed, call the contrary opinion, namely, that a renewal of sorrow is not necessary, more probable or certain. Is it thus shown, with authority considered, that St. Alphonsus rightly called his opinion more probable? But neither do the other two call the opinion of St. Alphonsus more probable. For Concina merely says: *Follow the safer things in this highest affair.* But the other, whom the VV. thought was Antoine, is in reality Philip of Carboneano, an unhappy annotator of a most unhappy Work; he writes: *In practice new contrition is required, ... because the opposite is not altogether certain.*

4. The VV. insist that the cited Authors at least implicitly held the opinion of St. Alphonsus as probable when they called their own more probable; but Croix and Holzmann expressly call it probable. Reply. As regards the first part, I deny it. For they produce, and could produce, not even one author who defended that opinion as probable; but since they did not think their own altogether certain, they therefore counseled that the opposite should be followed in practice so that one might proceed more safely. Thus, for example, Voit (vol. 2, no. 508): *The opinion is most probable* (the VV. omitted these words) *that new sorrow need not necessarily be elicited.... Nevertheless, in practice it is better to elicit new sorrow, so that one may proceed more safely*; these words sound rather like counsel. And Reuter (pt. 4, tr. 5, no. 282): *Although this opinion appears morally certain* (these words likewise are omitted by the VV.), *nevertheless, because the opposite appears to some not altogether improbable ..., greater reverence for the Sacrament is to be counseled.* These words likewise present counsel rather than doctrine.

But as regards Holzmann and Croix, Reply. Each of them rests upon citations of Vasquez, Bonacina, Amicus, and Mastrius, who establish the necessity of new sorrow not for our case, but concerning sins previously confessed, as we already said concerning the citations of St. Alphonsus. Therefore, they rest upon citations which do not pertain to the matter.

But as regards the intrinsic reasons, Holzmann says that the arguments which he himself had objected appeared to him to have been solved probably indeed, but not evidently. Yet it is easily replied to this that it is enough and more than enough that there be a solid solution of the objections; but he himself concedes that the solution is solid. But if something appears to him not sufficiently evident, it satisfies us that it has appeared sufficiently evident to other grave Doctors.

In this matter, indeed, this Author's manner of disputing can appear singular. For he asks (pt. 5, no. 511): ***Can one and the same contrition suffice for two or more Sacraments of Penance in number?*** Here he does not distinguish whether the second confession concerns a forgotten sin or a sin previously confessed. He then adds (and the VV. ought not to have omitted these things): *It is replied that it can, if contrition still physically endures at the time of each confession; indeed, even if it endures only morally. The first part is common AND CERTAIN. Cardinal de Lugo, John Bosco, Lacroix, bk. 6, pt. 2, no. 707, and very many others hold the second against others to be cited below.* But the Authors whom he cites below treat only of sins previously confessed; why, then, does he not conclude that this second part of the thesis does not touch the question of forgotten sins, and therefore

that what he establishes concerning the first part holds concerning them, namely, that this doctrine is common and certain? But he himself (no. 512) says that the opinion is not certain even when the penitent returns after receiving absolution to confess a forgotten sin. Reply. Let it pass; but what, then, will you draw from this confusion of things? Yet one thing is sufficiently established. For he calls the doctrine concerning the sufficiency of one contrition for two or more Sacraments certain and common if contrition physically endures. Let us now omit asking what this physical endurance means with him and why it is required. For he himself had written a little before (no. 510): *If yesterday you elicited sorrow with the purpose of confessing today, while you confess today you do not need new sorrow.* For does sorrow then endure physically or morally? As regards the present matter, if according to his CERTAIN opinion one contrition suffices in the case for two or more absolutions, what force, then, will his objection have (no. 511), namely, that *A new composite requires new parts*; or that new contrition entitatively is necessary for a new Sacrament? Does he not expressly contend that it is certain and common that one suffices? How, then, does he attribute so much strength to these objections (no. 512) that because of them he thereafter wishes the doctrine which he himself contends is certain to be uncertain? But let us now dismiss Holzmann with this obscure heap of things which do not cohere with one another, and pass to Croix.

Besides those empty citations of which we have spoken, Croix produces this one argument, as though from reason (no. 711): *There is*, he says, *almost the same reason concerning sins which someone has forgotten and concerning those which he has previously confessed.* That is, since he treated both questions together (no. 707), he contends that the little reasons which he objects to himself where sins already confessed are treated also hold for the case of a forgotten sin; and he thinks that all the more force accrues to these little reasons because certain Authors (he adduces four or five) who deny that sorrow must be renewed where forgotten sins are treated nevertheless require new sorrow with regard to sins previously confessed. Reply. The argument can easily and with greater right be turned back upon Croix himself. And indeed (now omitting those who have nothing concerning forgotten sins, such as Vasquez, Bonacina, and John Sanchez), there are very many, as Holzmann admits, who deny that new sorrow is necessary with regard to a forgotten sin. But among these, those few do not find the reasons which they find valid with regard to a forgotten sin confessed immediately afterward sufficiently valid also with regard to sins previously confessed. Yet from the very fact that those who dissent with regard to sins previously confessed nevertheless agree with the others concerning the confession of a forgotten sin, can it not rather be and ought it not be concluded that the reasons adduced in the case of a forgotten sin are of such strength and such clarity that they have extorted assent even from those who dissent in the other question?

Let us conclude, therefore, that neither Holzmann nor Croix has produced anything either from authority or from intrinsic reason which confers any probability upon that opinion which is adduced against the common opinion.

Moreover, as we have already noted elsewhere, it was altogether to be desired that the VV. devote their labors to some advancement of science, namely, to the investigation of truth rather than to defending some cause in any manner whatsoever. Thus, in the present matter, when they offered the texts of Authors, they would not have concealed that Edmund Voit calls the opinion which they endeavor to attack *most probable*; they would not have concealed that the same appeared *morally certain* to Reuter; they would not have concealed that Holzmann calls the same *certain and common*.

But, moreover, why did they remain silent about the judgments of other Doctors? Indeed:

1. Dominic Viva (*De Poenitentia*, q. 3, art. 3, no. 8) writes: *Forgotten sins which are disclosed immediately after absolution do not need new sorrow in order that absolution be conferred again concerning them, as the practice of the faithful shows.* He then adds (*ibid.*, no. 9): *You will ask whether these opinions concerning sorrow ... after the first thesis was proscribed by Innocent XI are probable in practice? I reply that the opinions hitherto explained ... are probable in practice, ... because it is lawful to follow an opinion which is MORALLY CERTAIN.* And again (on Prop. 1 of Innocent XI, no. 26): *Whatever may be the case as to whether absolution can universally be repeated concerning the same sins when sorrow is not repeated, as many think ..., it nevertheless appears CERTAIN from the practice of the Church and of Confessors that it is not necessary that those who are reconciled immediately after absolution be admonished to repeat new sorrow.*

2. Felix Potestas (*De Poenitentia*, ch. 18, no. 5080): *One who has confessed before and is reconciled by confessing a forgotten sin, although he effects a new Sacrament, is not bound to elicit new sorrow.... This opinion is MORALLY CERTAIN to me.*

3. Elbel (conf. 3, *De Contritione*, no. 75): *If he submits a new sin immediately or shortly after absolution was received, most probably he is not only validly but also licitly absolved without new sorrow.... Therefore, Cardenas and Lacroix appear to condemn the practice of this opinion too scrupulously.*

4. And Sporer (*Theologia Sacramentalis*, pt. 3, ch. 2, no. 298): *When in Confession you have forgotten some mortal sin and, having remembered it a little after absolution was given, you confess it, although it is advisable and safest to renew sorrow, nevertheless it is not*

necessary that you have new sorrow concerning it. Thus ... COMMONLY. And again (no. 300): *This is more certain: if, because of the imminent danger of death, you gave someone absolution before he confessed all his sins, you can absolve him from the others which he will narrate afterward, even though he does not elicit new sorrow concerning the rest.* This resolution directly attacks the little reason customarily objected to the contrary, that new matter is required for a new Sacrament.

5. Marcus Struggl (tr. 11, q. 2, art. 2, no. 25): *Learned and pious Confessors, when the penitent after the first absolution has been conferred proposes a mortal sin which he had previously forgotten, confer absolution upon him without being solicitous about new sorrow on the part of the penitent. And this opinion, although it treats of the validity of the Sacrament, is SAFE IN PRACTICE.*

6. Martin Stoz (bk. 1, q. 1, art. 7, no. 52): *I willingly admit that one who confessed a little before and again confesses sins which had escaped him ... is not bound to elicit new sorrow.*

7. Mazzotta (tr. 6, disp. 1, q. 3, ch. 1, sec. 3, q. 3): *The same sorrow can suffice ... if someone immediately after absolution adds a new forgotten sin and is absolved again either by the same or by another Confessor; and similarly, if someone is absolved when death is imminent before he has confessed integrally, and afterward ... completes his confession, he can again be absolved without new sorrow.*

COMMONLY, and Moya says that it is INDUBITABLE among the Doctors. Nor does the cited proposition condemned by Innocent XI stand in the way, because this opinion is most probable, whatever Croix may have said.

8. Babenstuber (tr. 8, pt. 6, disp. 4, art. 3, no. 57): *When someone has forgotten some sin in confession and then immediately or a little afterward confesses it, the Confessor must again impart absolution.... In this case neither the penitent nor the Confessor is accustomed to be solicitous about new sorrow. Thus the Theologians COMMONLY.*

9. Roncaglia (tr. 19, ch. 3, q. 3), concerning this doctrine: *These foundations appear SO SAFE to me that this opinion by no means appears to me subject to the censure of that condemned opinion according to which it was said that in confecting the Sacraments it is lawful to follow a probable opinion when the safer has been abandoned.*

10. Giribaldi (tr. 7, ch. 5, dub. 8, no. 63): *Although one or another* (confessor) *admonishes the penitent to renew sorrow, nevertheless others more commonly do not do so; and thus it can be observed in practice that when the penitent returns to tell forgotten sins, he is not compelled to elicit a new act of contrition.*

11. Illsung (tr. 6, disp. 6, q. 3, art. 5, no. 43): *When someone has forgotten one sin and, returning to the priest either immediately or a little afterward, confesses it ..., the confessor must impart absolution again; but in such a case commonly neither penitents nor confessors are solicitous about new sorrow. Therefore, new sorrow is not required.*

12. Honoratus Fabri (tr. 9, ch. 2, no. 10): *The same sorrow suffices for several absolutions, as when someone after absolution discloses some sin of which he had not previously remembered.*

13. Tamburini (*Methodus Confessionis*, bk. 1, ch. 2, no. 9): *If, after absolution has duly been conferred, the penitent remembers and brings forward something which he had forgotten to confess, ... it is not necessary that he grieve again.*

14. Gobat (tr. 6, no. 165): *When, having forgotten some sin in confession, you confess it a little after absolution has been given, it is not necessary that you have new sorrow concerning it. COMMONLY.*

15. Escobar (bk. 14, sect. 2, nos. 116-118): *Someone, while making confession, forgets one or another mortal sin and immediately after absolution remembers and discloses it: he ... does not need a new act of sorrow.* But here he cites Vasquez and Bonacina as contrary without relevance, for, as we have said, they do not discuss this question but another, different one.

16. Dicastillo (tr. 8, disp. 6, dub. 12, no. 160): *It must be asserted that, when someone confesses a new sin which he had not told through forgetfulness, ... old sorrow which remains either physically or morally suffices....* Ledesma follows this opinion and testifies that it is MORE COMMON. And again (no. 165): *Our opinion can be confirmed from the practice of the Church and of Confessors, because there are few, if any, who are solicitous about admonishing the penitent to renew sorrow in reconciliations, as Lugo rightly noted.*

17. Aversa (*De Poenitentia*, q. 9, sect. 1): *It can be observed in practice that, when the penitent returns to tell forgotten sins, he is not compelled to elicit a new act of contrition.*

18. Ferraris (s.v. *Poenitentia*, art. 2, no. 37): *One who in confession has forgotten some mortal sin can confess it a little after absolution without having new sorrow.* Gobat with Dicastillo testifies that this is COMMON.

19. And, lest we linger longer over these things, see Diana (vol. 1, tr. 3, res. 88), Mezger (tr. 18, disp. 46, art. 4, no. 7), Gabriel of St. Vincent (*De Poenitentia*, disp. 4, q. 2), the Salmanticenses (*Theologia Scholastica*, tr. 24, disp. 7, nos. 116 and

121), Ledesma, Salas, Henriquez, Arriaga, Platelius (in Mazzotta, *loc. cit.*), John de la Cruz, and Joseph de Ianuario (in Tamburini, *loc. cit.*), Perez and Bosco (in St. Alphonsus, bk. 6, no. 448), cited by the foregoing.

And indeed, take careful note that the above-praised Doctors hand down this doctrine absolutely and as to be observed in practice beyond controversy; and that most of them wrote after the propositions had been condemned by Innocent XI, and even made express mention of this condemnation. And since the authorities customarily opposed have altogether nothing to do with the matter, while the little reasons objected are solved without difficulty and indeed can very often be turned back by an *argumentum ad hominem* against those objecting them, it is manifest that this doctrine can also be held safest in practice.

But as regards the six columns in which the VV. detain the reader (pp. 423-426) concerning the other part of the Note, namely, concerning the renewal of sorrow for a sin previously confessed, it is truly not worth the effort to linger. They say they do not see how that doctrine can contribute to quieting the scruples of certain persons. But others have seen this; and perhaps the VV. themselves do not appear to have fully grasped the sense in which the opinion in the Note is said to be able to contribute to quieting scruples.

QUESTION 9. Can there be a Sacrament of Penance at once valid and unformed, because of a defect of sufficient disposition?

Reply. It is controverted. Some deny it with Billuart, diss. 7, art. 1. - Elbel, no. 81. Their reason is that in the Sacrament of Penance, contrition is the matter of the Sacrament; therefore, if it is insufficient, the Sacrament will be invalid. But if it is sufficient, the Sacrament is valid and at the same time formed, and therefore it immediately remits sins. - Others, however, and indeed grave Theologians, affirm it with Lugo, disp. 14, no. 65. - Lacroix, no. 672; and St. Lig., no. 444 [14], calls this more probable. The reason of those who affirm is that there can be a certain lower degree of disposition which suffices for the matter of the Sacrament but does not suffice for actual justification [15]. - Recall what was said *On the Sacraments in General*, nos. 191 and 232.

[14] *This opinion*, says Lugo (*De Poenitentia*, disp. 14, no. 68), *is taught by St. Thomas ... and by the Thomists commonly, Capreolus, Paludanus, Cajetan, Soto, Cano, Ledesma, Sylvester, Richardus, whom Suarez adduces ..., who follows the same in part; and this is also commonly embraced by the more recent Thomists and Henriquez ... and Cardinal Toletus ..., and others whom Antoninus and Diana relate and follow ...; all of whom consequently teach that such a valid confession is not afterward to be repeated.*

The same de Lugo relates the multiple cases in which one or another Theologian thought this could occur (*ibid.*, no. 69); nevertheless, he appears to admit it in only two circumstances: 1. when someone guilty of two sins, through invincible forgetfulness, grieves over only one and confesses only this; 2. when someone through invincible ignorance believes that it is not a mortal sin to approach the Sacrament without sorrow for all sins, provided that sorrow is present for some one. See *ibid.*, nos. 74 and 89.

[15] Yet this reason favors the cases which Cardinal de Lugo did not approve rather than those which he admitted.

§ II. On the Qualities of Contrition

449. The qualities necessarily required for the validity of contrition, both perfect and imperfect, are numbered as four, namely: 1. that it be internal; 2. supernatural; 3. supreme; 4. universal.

I. Internal or true, that is, truly conceived in the heart and soul, according to Joel 2:13: *Rend your hearts, and not your garments*. For contrition, according to the Council of Trent, is *sorrow of the soul*; and *soul* signifies the rational will.

II. Supernatural, that is, elicited through the help of grace and from a motive which is in some way referred to God [1]. For sorrow elicited from a merely human motive, for example, from fear of infamy, can contribute nothing toward obtaining justification.

[1] By this manner of speaking, the Author wished also to include moral rectitude, to which sin is opposed, according to the doctrine of the Council of Trent, which numbers the turpitude of sin also as an apt motive of sorrow.

It can be noted here that, just as for an action to be meritorious it is not necessary that someone act from a supernatural motive, that is, one known by the aid of faith (see vol. 1, no. 32, qq. 6 and 8), so Ripalda consequently concludes (*De Fide*, disp. 17, no. 209) that attrition disposing toward sacramental justification can be elicited under the direction of infused prudence or under the direction of knowledge which some affection of faith - namely, one seeking justification in the Sacrament - directs. For, as he himself says (no. 187), *a disposition sufficient for sacramental justification can exist without theological faith strictly so called. For sorrow elicited by a moral virtue to which sin is opposed* (namely, from the turpitude of sin according to Trent) *suffices for sacramental justification.* But we premised above that it is consonant with Sacred Scripture, the Councils, the Fathers, theological reasons, and the judgment of grave Theologians that salutary and supernatural acts of the moral virtues can exist without strict faith. We have already seen (*loc. sup. cit.*), in the Treatise *On Human Acts*, that this doctrine is that of St. Thomas. On the same matter, the things which the same Ripalda teaches in *De Ente Supernaturali*, last disp., nos. 458-460, and disp. 22, no. 100, are to be seen.

The suitable motives can be reduced to four: 1. fear of punishment; 2. hope of reward; 3. the turpitude of sin; 4. the goodness of God.

III. Supreme, namely, so that the sinner appreciatively detests his crime more than every other evil, and is prepared in soul rather to lose and suffer all things than to commit sin.

IV. Universal, namely, it must extend to all grave sins, either from one universal motive or from several particular motives which, at least taken together, extend to all mortal sins committed, even those not occurring to the memory. The reason is that no actual sin is remitted without sorrow; but one mortal sin cannot be remitted without another, since remission occurs through the infusion of grace, which cannot stand together with mortal sin.

450. Questions. **QUESTION 1. Must contrition be supremely intense?**

Reply. Negative. The reason is that intensity is something merely accidental. For the degree of sorrow, or the greater or lesser affection or effort, does not pertain to the essence of contrition, which can exist in its entirety without a degree of intensity of this kind. Besides, how would you know that this or that degree of intensity must be attained? Moreover, the intensity of sorrow is not always in our power. Hence, at times with respect to sensation we are moved more vehemently by a temporal evil than by an offense against God, although the will is ready rather to suffer all temporal evils than to offend God. Therefore, it suffices that it be appreciatively supreme, that is, that sin be held in hatred before other things by a serious judgment. - St. Lig., nos. 433-442 [2].

[2] Cardinal de Lugo (*De Poenitentia*, disp. 5, nos. 84-87), after concluding that the opinion which requires contrition to be supremely intense is rightly commonly rejected, and that the opinion which requires contrition to be at least more intense than the acts by which a man is affected toward other objects is likewise to be rejected as exposed to many fallacies and dangers, nevertheless adds: *We do not deny that it is expedient for the sinner to endeavor to grieve with the highest intensity, both so that he may be more certain of his penance and so that he may satisfy more fully not only for the fault but also for the punishment; in this sense the Fathers who require the highest sorrow must be understood.*

QUESTION 2. Is a FORMAL comparison required in the appreciation between various evils and sin, or God?

Reply. Negative. For it suffices that the sinner sincerely and truly detest his sins and be unwilling to sin any more. Indeed, Confessors act very imprudently who, in order to discover whether sorrow is supreme, propose to penitents certain very dangerous comparisons, for example: Would you rather be burned alive, or undergo all the torments of the martyrs, or eat poisonous reptiles, than sin again?

For such comparisons move the imagination more vividly, and when a strong temptation approaches, the true disposition which previously existed is easily lost. - St. Lig., no. 433. - Elbel, no. 79 [3].

[3] St. Alphonsus and Elbel are not alone in admonishing that these comparisons must be avoided; indeed, St. Alphonsus rightly says that this is common to all. *This is common among all*, he says (*loc. cit.*), *with St. Thomas and St. Bonaventure, etc.*, in Croix, bk. 6, pt. 2, no. 731, *namely, that an explicit comparison between sin and other evils is not expedient ..., and still less to choose hell*, etc. Hence it is plain that certain formulas of contrition in which you may see comparisons of this kind - *rather a thousand deaths*, or even *rather hell*, etc. - are less to be approved. And this admonition can indeed be useful also to preachers. For if, after the affections of penance or charity have been excited, they imprudently leap to those comparisons, they will easily accomplish this: that the fervor kindled in the hearers quickly becomes lukewarm, indeed grows cold and perhaps is entirely extinguished. The special help of divine grace for undertaking and overcoming any arduous things can and ought certainly to be hoped for when the hour presses, but not whenever someone rashly commits himself to dangers through empty imaginings.

Navarrus (*Manuale*, ch. 10, no. 4) well calls comparisons of this kind *harmful and superfluous temptations*. And (ch. 1, no. 17) he thus notes their imprudence: *No one ... is bound to compare specifically, judging within himself that he would rather suffer this and that kind of death and punishments than sin or have sinned. Indeed, this would be imprudence; just as the confessor would be imprudent who asks the penitent whether he would rather that his children or he himself had died than sinned; or whether he is prepared rather to die or lose his children than to admit a mortal sin.... For such a temptation is excessive.... Therefore, it suffices for the confessor that the penitent appears to have sufficient repentance for his sins.*

Indeed, St. Thomas charges that custom not only with imprudence but with foolishness (*Quodlibet* 1, art. 9): *One who is contrite is bound IN GENERAL to will to suffer any punishment rather than to sin.... But he is not bound IN PARTICULAR to descend to this punishment or that; indeed, he would act FOOLISHLY if someone should solicit himself or another concerning particular punishments of this kind. For it is manifest that, just as delightful things move more when considered in particular than in common, so terrible things terrify more if they are considered in particular; and there are some who do not fall under a lesser temptation who perhaps would fall under a greater one. Thus, someone hearing adultery is not incited to lust; but if through consideration he descends to each enticement, he is moved more. And similarly, someone would not refuse to suffer death for Christ; but if he should descend to considering each punishment, he would be drawn back more. And therefore, to descend to particulars in such things is to lead a man into temptation and to furnish an occasion of sin.*

QUESTION 3. What duration of time is required for conceiving true and supreme contrition?

Reply. None *per se*, because duration does not pertain to the essence of the act but is merely accidental to it; therefore, it suffices that the act be substantially completed, which can occur even in a very brief moment. Nevertheless, it is safer to elicit a more intense and more prolonged act of contrition, lest perhaps from levity or excessive haste no act be conceived as to its substance. - St. Lig., no. 433, and others commonly.

451. **QUESTION 4. Must contrition for venial sins possess the same four qualities?**

Reply 1. It must necessarily possess the first three: 1. it must be internal, because contrition which is not elicited from the intimate heart is not true; 2. it must be supernatural, because, as was said [4], natural contrition cannot be a means to a supernatural effect; 3. it must also be supreme, or the sinner must detest venial sin more than all natural evils [5].

[4] In what sense this is to be understood, see above at no. 449.

[5] This is said most truly; and if someone grieves over a venial sin in such a way that, when a difficulty occurs, he is prepared to commit it again, for example, to lie in order to avoid discord or rebukes, he certainly does not grieve rightly. But if that temptation of which we spoke above (at q. 2) must be avoided both with regard to oneself and others, it must be avoided much more when only venial sins are treated; and the confessor would act most imprudently who, to explore the force of sorrow for venial sins, should ask whether the penitent would rather suffer all evils than relapse into one or another of his customary venial faults.

Reply 2. It need not necessarily be universal, either in the Sacrament or outside the Sacrament. The reason is that, since venial sin is not incompatible with sanctifying grace, one venial sin can be remitted without the others. - St. Lig., no. 449.

QUESTION 5. Does FEARFUL attrition, or attrition conceived from fear of hell, suffice for justification in the Sacrament of Penance?

Reply. Affirmative, provided that it is truly supernatural, absolutely efficacious, and servile only materially, not formally or servilely. The reason is: 1. because attrition of this kind is a true conversion to God and a true aversion from sin; 2. because this is clearly drawn from the Council of Trent, sess. 14, ch. 4, where it says that attrition conceived from fear of hell and punishments is honorable and disposes the sinner to obtain justification in the Sacrament of Penance [6].

[6] Concerning this doctrine, St. Alphonsus (bk. 6, no. 440) most truly establishes thus against Merbes, Juvenin, Antoine, and any others of this kind: *It is certain and common among the Doctors that perfect contrition is not required, but attrition suffices.*

Nor should it move anyone that certain persons have represented this doctrine as new and first introduced by Melchior Cano (see Benedict XIV, *De Synodo*, bk. 7, ch. 13, no. 6, and Perrone, *De Poenitentia*, no. 90, in the note). For if, Juvenin, Louis Habert, Le Drou, Van Espen, Witasse, and others of this kind having been cast aside, they had approached Suarez with their own eyes, for example (*De Poenitentia*, disp. 20, sect. 1, no. 9), they would certainly have found St. Thomas, Scotus, Paludanus, Capreolus, Durandus, Adrian, St. Antoninus, Sylvester, etc., all older than Cano, cited for that doctrine.

But Joseph Benaglio, in a plainly excellent work entitled *Dell'attrizione quasi materia e parte del Sacramento della Penitenza, ecc.*, Milan, 1846 (ch. 5, art. 11, vol. 2, p. 101), adduces many more Doctors for the same matter. He also makes plain (ch. 4, art. 7, and ch. 5, art. 13) that absolutely all the things gathered from the aforesaid Juvenin, Habert, etc., for the defense of the stated paradox in the cited place of the work *De Dioecesana Synodo* are wholly unstable, and moreover are wrongly attributed to John Morinus. For whatever may be the case concerning other opinions of this writer, as regards attrition he not only professed its sufficiency with the common opinion of the Theologians, but also vindicated the antiquity, and indeed the perpetuity, of the same doctrine.

And it is pleasing to adduce that place where he modestly reproves Dominic Soto, to whom the old doctrine of attrition, which becomes contrition in the Sacrament, had not appeared very satisfactory; for he employs principles which must never fail to be kept before one's eyes in these matters. Thus Morinus (*Commentarius historicus De Poenitentia*, bk. 1, ch. 13, no. 19): *In these words of Dominic Soto two things appear to me hard and difficult to understand. The first is that the opinion which asserts that attrition becomes contrition in the Sacrament is true, but was nevertheless not recognized by the Fathers. If some new and sublime theological problem were treated, it would certainly be* euparedecton *(credible) that something had been discovered by distinguished Theologians and Philosophers which had escaped the ancients. But since the way and manner of recovering eternal salvation through the Sacrament of Penance is treated, can some new and easier manner of attaining salvation be discovered by a scholastic philosophical device than that which the Fathers, having received it from the Apostles, handed down to their successors? If the Fathers recognized contrition alone as necessary for attaining salvation through the Sacrament of Penance, the dullness of my mind does not grasp by what reason, or relying upon what authority, the Scholastics after at least twelve hundred years could prescribe a new and easier way than that which the Fathers handed down to us.... The second thing which appears hard to me is that the Fathers thought contrition alone necessary for Confession. For although the Ancients did not recognize the name Attrition, much less the axiom, Attrition becomes Contrition in the Sacrament, nevertheless they not only taught the thing itself signified by this axiom, but also commended it most highly as a principle and the foundation of all penitential discipline.* Thus far Morinus.

Moreover, because the praised Benaglio allowed himself to depart entirely from the things read concerning this argument in Lambertini's work *De Synodo*, he rightly judged that the faculty to do so had been granted to him from the things which Benedict XIV himself declared at the end of the Preface prefixed to the latest editions in these words: *Where neither our Predecessors the Roman Pontiffs nor We ourselves have defined anything by Apostolic authority either in the Bullarium or elsewhere, and generally in all matters to which no weight has accrued from the public authority of the Church, we do not intend to define anything or present it as though decretory. For this always was, and still is, Our mind: that, in proposing Our opinion, We defend it only insofar as it is recognized that sufficient strength and firmness are present in the reasons and authorities which impelled Us to embrace it; and with willing mind We subscribe to the doctrine ... of Melchior Cano, who ..., treating of books which are written by Supreme Pontiffs and published, says this: When they publish* books concerning any matter, the Roman Pontiffs express their opinion as other learned men, not as judges of

the Church pronouncing upon faith.* And after relating the history of Innocent IV, who wrote Commentaries on the books of the Decretals while he held the Pontificate, he adds: *Nor indeed did Innocent ever arrogate this to himself, that whatever he had written in that Work should be held as a defined matter; rather, he readily allowed his opinions, which he had proposed as a private doctor, to be attacked by other doctors, as is plain from ... his life, and much more from the very ample liberty which later Canonists took for themselves in this matter, when they did not hesitate often to abandon opinions inserted by Innocent in his Commentaries and to pass entirely to others.*

Moreover, attrition is called *servilely servile* when someone indeed grieves over sin and wishes to avoid it on account of the punishments which he knows are to be inflicted by God, but would still be prepared to sin if those punishments did not exist. But it is called *simply servile* when someone, on account of fear of punishments, abstains from sin, yet is not so disposed that he would wish to sin if those punishments did not exist. The former is evil, not insofar as it is fear of punishments, but because of the depraved disposition of the soul. - Scavini.

452. **QUESTION 6. Does attrition from fear of the punishments of Purgatory suffice for venial sins?**

Reply. Affirmative, according to the most common and morally certain opinion; because all the reasons adduced above for the sufficiency of attrition from fear of hell also hold here.

QUESTION 7. Does attrition from fear of the temporal punishments of this life to be undergone for sin, insofar as they are inflicted by God, suffice?

Reply. Affirmative, more probably, provided that it is supernatural [7]. The reason is:

[7] When supernatural attrition is required, the opinion of those who said that natural attrition suffices is excluded; that is (as Suarez indicates, *De Poenitentia*, disp. 20, sect. 2, no. 7), attrition elicited by the powers of nature alone, whether it is conceived from an eternal and honorable motive, such as fleeing the punishments of hell or the turpitude of sin, or from a temporal and indifferent motive, such as avoiding infamy or temporal loss, because these temporal harms also are given by God on account of our sins. Suarez then opposes to this false opinion (*ibid.*, no. 8) the thesis that attrition must be elicited with the help of grace. See the same Suarez, disp. 4, sect. 1, nos. 3-4.

Moreover, although St. Alphonsus (no. 443) does not deny that this opinion is judged most probable by some and even morally certain by others (from Croix, from whom he took it, it could be added that others call the same altogether certain), nevertheless he notes three things to the contrary: 1. that Cardenas doubts whether it is morally certain; 2. that Cano, Pasqualigus, and Hurtadus, in Diana, held the contrary; 3. that the Council of Trent speaks copulatively of *hell and punishments*, and does not distinguish disjunctively between *hell or punishments*. Hence he concludes: *Since the second* (opinion) *does not lack its own probability, at least extrinsic, I think it is better that it be observed in practice.* Hence the Author also calls the opinion which he proposes only more probable.

But in reality these reasons of St. Alphonsus neither detract anything from the firmness of the doctrine which the Author relates from the common opinion of the Doctors, nor can confer any, even slight, probability upon the opposite.

As regards the first, therefore, it was said in the preceding edition, because of an inexact citation, that Cardenas was wrongly cited, inasmuch as, cohering badly with himself, he confused everything indiscriminately. Now, more aptly to the matter, Reply. Cardenas himself gives this reason why he doubted whether the affirmative opinion was morally certain (*Crisis*, pt. 4, on Prop. 1 of Innocent XI, disp. 2, q. 2, no. 69): *because there are not lacking*, he says, *authors who deny that this manner of attrition is sufficient; and the affirmative opinion does not rest upon an infallibly certain foundation, but only upon a probable one.* But: 1. it is false that these authors existed;

2. likewise, that a sufficient foundation of moral certainty is lacking is found false by the common judgment of the gravest Doctors. Therefore, that suffrage of Cardenas profits the cause nothing.

As regards the second, it is very well known that Cano (see Faure, *Dubitationes Theologicae*, dub. IV, sect. IV) and Hurtadus held the contrary opinion to that which St. Alphonsus says, so much so that Diana, to whom he refers, uses the very doctrine of Hurtadus to confirm the common opinion (see vol. 1, tr. 3, res. 108, no. 2). Diana does not even name

Pasqualigus, nor does Pasqualigus, insofar as it was possible to know from inspection of his writings, have any word concerning this controversy. Therefore, the whole foundation upon which that extrinsic probability was built is altogether wanting. Moreover, St. Alphonsus did not produce these false citations from himself, but in good faith took them from Croix (bk. 6, pt. 2, no. 884); whether Croix himself noted them carelessly or unfortunately borrowed them from elsewhere matters little to us now.

As regards the third, finally, it is plain that this reason also is deprived of all efficacy; and, contrary to the common sense of all, it would prove of itself that fear of hell does not suffice for attrition unless fear of temporal evils also accompanied it.

But what St. Alphonsus intimates (*ibid.*), that in the context of the Council of Trent the word *punishments* signifies only the punishments of hell, manifestly contradicts the same context; for there immediately follows the example of the fear by which the Ninevites, struck by Jonah's preaching full of terrors, did penance. But Jonah's preaching full of terrors, according to Sacred Scripture (Jonah 3:4), was this: *Yet forty days, and Nineveh shall be overthrown.*

** The twenty-eight columns which the VV. opposed to this Note (pp. 426-440) must now be answered. First (pp. 427-428), they note that the holy Doctor said the negative opinion must be observed more safely in practice because it does not lack its own probability, at least extrinsic. Therefore, since validity is at issue, Proposition 1 among those condemned by Innocent XI pertains here. Reply. Here again it must be denied that either intrinsic or extrinsic probability, even slight, supports this negative opinion; and this will be more apparent below. Therefore, that condemned Proposition has no place here.

The VV. then undertake (pp. 428-433) to vindicate the Authors whom St. Alphonsus cited for the negative: Pasqualigus, Hurtadus (the VV. add Diana, but neither the holy Doctor nor the Note has anything concerning the opinion of Diana), Cano, Cardenas, and Concina. Reply. It is difficult to know what the VV. mean when they write, *They are vindicated*. For: 1. they concede that Pasqualigus has not even one word concerning this matter, but was cited by St. Alphonsus because of a typographical error which had crept into the book of Croix, from which the holy Doctor took his citations. Does this produce probability for the opinion of St. Alphonsus? 2. The VV. themselves (p. 430) relate these words of Hurtadus, in Diana: *Some teach, AND RIGHTLY, that attrition on account of a temporal evil with reference to God ... suffices for the effect of the Sacrament*; St. Alphonsus, on the contrary, says that Hurtadus in Diana denies that this attrition suffices. Is the citation of St. Alphonsus thus vindicated as correct? 3. From Concina the VV. (p. 433) adduce this judgment: *I consider this opinion* (namely, the affirmative) *not only false and lax, but contained in the Decree of Innocent XI*. Reply. Excellent indeed! But does not St. Alphonsus say that this affirmative opinion appears to him more probable? Nor is this enough. Concina (*Manuale*, bk. 11, ch. 7, sec. 5), concerning the sufficiency of attrition which St. Alphonsus also defends as morally certain, judges thus: *This boasted moral certainty is a falsity of fact clearer than midday light; it is a fiction, an imaginary and manifest chimera, condemned by Alexander VII*. I now ask the VV.: Is this a patron of such a kind that his judgments can add or take away any probability from opinions? Hence let the VV. understand why no account was taken in the Note of the suffrage of Concina.

4. As regards Cano, we said in the Note that it is established from the things which Faure has that he is cited in vain. Thus briefly: Cano (*Relectio De Poenitentia*, pt. 6) has these words: ***If you ask when one who is attrite becomes contrite by virtue of the Sacrament, I reply that this first occurs, by whatever kind of attrition a man is attrite, if he thinks that he has performed what was necessary and is invincibly ignorant that he does not have a sufficient disposition.*** Moreover, *ibid.*, among the species of attrition he also mentions that which proceeds from fear of infamy, or of any temporal evil, as when one detests sin and purposes to confess lest he be cast out of the Church or fined money, etc. Hence it is argued thus: Cano here teaches that attrition from a merely human motive suffices. Therefore, *a fortiori*, he admits that attrition from fear of punishments which elsewhere (pt. 3) he calls spiritual or supernatural suffices, punishments which require the help of God in order to be believed and which are known by the light of faith. The VV. object here that this doctrine is false. Reply. It is not asked here whether this doctrine of Cano is true or false, but what his doctrine is, and whether he was aptly cited by St. Alphonsus for the matter. See Dicastillo, *De Poenitentia*, tr. 8, disp. 6, no. 6, and Candidus, disp. 24, art. 11, no. IV.

5. Finally, what force the opinion of Cardenas has was stated in the Note and will be apparent from what is to be said.

The VV. add (pp. 437-438) an article with the title: *The solid reasons favoring the negative opinion are set forth.* Reply 1. If solid reasons had not been lacking, St. Alphonsus would not have said that at least extrinsic probability inheres in this opinion. For solid reasons also produce intrinsic probability. 2. All those reasons which the VV. gather from Croix come to this: that the force of the argument which the Doctors take against them from the Council of Trent may in some way, if possible, be broken. But this is by no means to adduce solid reasons for the thesis. Therefore, in that entire article no reason in reality is contained, either solid or less solid. Moreover, if Croix had had at hand some solid reason for the negative opinion, he

certainly would not have written concerning the affirmative (bk. 6, pt. 2, no. 884): *IT IS MOST PROBABLE that ... it suffices*, etc.

And let these things suffice so that the truth of what had been said in the Note may be established, namely, that the reasons adduced by St. Alphonsus confer no probability, not even slight, upon the negative opinion. Two things now remain: 1. that the scruple which the doubt of Cardenas concerning the moral certainty of the affirmative opinion cast upon St. Alphonsus be removed; 2. that the weight of the citations which the VV. added (pp. 433-438) be weighed.

Therefore, to the scruples of Cardenas we shall oppose Cardinal Toletus, who (*In S. Thomam*, pt. 3, q. 85, art. 5), disputing concerning fear of punishment, and indeed, as he says, *not only when one fears the punishment of hell, but the turpitude of sin and the loss of temporal goods*, after establishing against Luther that this fear and detestation is good and useful, and that through it grace is given with the Sacrament, concludes: *This doctrine is Catholic, and the contrary is heretical.* To Toletus let Suarez be added, who writes (*De Poenitentia*, disp. 5, sect. 2, no. 15): *This opinion is true.* - Illsung, according to whom (tr. 6, disp. 6, q. 3, nos. 29 and 39): *This conclusion is of faith.* - Jerome Llamas, who (*Methodus Curae*, pt. 2, ch. 2, sec. 6) says that it is certain, and that it is heretical to deny it. - Seraphinus a Conceptione, who (*De Poenitentia*, bk. 1, disp. 3, dub. 2, nos. 461, 462, and 485) affirms that it is a Catholic truth. - Elbel, who (conf. 3, no. 59) calls this opinion most common and morally certain. - George Gobat, who writes (tr. 6, no. 47) that it must by no means be doubted that it is true and supernatural attrition, proportioned to obtaining the effect of the Sacrament. - Arriaga, who (in Croix, *loc. cit.*) defends the same doctrine as certain.

Paul de Palacio, who writes (*In Cap. 16 S. Matthaei*): *The opinion is most certain.* - Michel Augustinus, Canon Regular, who (*Theologia Canonico-moralis*, vol. 4, tr. 4, pt. 2, q. 1, punct. 1, sect. 2, no. 18) aptly refutes Cardenas as though this doctrine were contained within the limits of probability. - Aversa, who (*De Poenitentia*, disp. 2, sect. 14) says that it is most manifest from Sacred Scripture. - Holzmann, who (tr. 4, no. 532) says: *This doctrine is pronounced morally certain by Fathers Gobat and Elbel, to whom I also assent.* - And Martinonus too hands it down as certain (disp. 48, sect. 7, no. 82). - Likewise, James Granadus (*Controversiae* 7, *De Poenitentia*, tr. 2, disp. 8, sect. 1, no. 5) teaches it as certain. - Ithuriaga, whose words are these (*Dissertatio Moralis* XI, no. 19): *This opinion is not merely probable, but true and morally certain, just as certain as the opinion concerning attrition conceived from fear of hell.* - Dominic Viva, who (on Prop. 1 of Innocent XI, no. 26) affirms that we can licitly follow the same opinion as morally certain. - Mazzotta, who (tr. 6, disp. 1, q. 3, ch. 3, sec. 1, no. 2) says: *This opinion is most probable by authority and reason, so that Gobat calls it indubitable and Arriaga altogether certain; wherefore it is not subject to Prop. 1 condemned by Innocent XI, whatever Croix may have said....*

To these are to be added the very many who teach the same doctrine absolutely and without introducing any doubt, but as beyond controversy, and indeed hold it as handed down by the Council of Trent. Concerning this Ithuriaga says (*loc. cit.*, no. 18): *It is more certain than certain to me that the Council of Trent, in describing attrition which is conceived from fear of hell and punishments, used this manner of speaking lest it should appear to wish to restrict the things which it there teaches concerning attrition to attrition from fear of hell; therefore, I think these things must be extended to attrition which is conceived generally from fear of other punishments also.... Thus the example of the Ninevites also fits more suitably*, etc. Thus also Ferraris (s.v. *Poenitentia*, art. 2, no. 13), Moya (disp. 5, q. 4, nos. 2-3), Giribaldi (tr. 6, ch. 3, dub. 7, no. 43, and tr. 7, ch. 4, dub. 5, no. 29), Dominic Soto (*In IV Sent.*, disp. 17, q. 2, art. 5, and *De Natura et Gratia*, bk. 2, ch. 14), in which latter place he expressly teaches that this attrition is informed by grace, contrary to what some have attributed to him; Fagundez (*De Secundo Ecclesiae Praecepto*, bk. 2, ch. 4, no. 9); Navarrus (*Enchiridion*, ch. 1, no. 8, and ch. 2, no. 38); John Medina (q. 4); Villalobos (tr. 9, diff. 22); Stoz (bk. 1, ch. 2, q. 1, art. 5, no. 8); Reiffenstuel (*De Poenitentia*, dist. 6, q. 4, nos. 42-43); Escobar (*Theologia Moralis*, tr. 7, exam. 4, ch. 7, no. 35); Nicholas Muszka (*De Sacramentis*, sec. 2, no. 29); Marin (tr. 22, disp. 7, sect. 4, no. 55); Reginaldus (bk. 5, ch. 3, no. 28); Anthony of the Holy Ghost (*Directorium Confessariorum*, tr. 5, disp. 3, sect. 2, no. 69); Babenstuber (tr. 8, pt. 6, disp. 4, art. 3, no. 13); De Blanchis (disp. 6, pp. 267 and 271); Thomas Hurtadus (*De Poenitentia*, disp. 6, diff. 5); Francis Suarez (*De Poenitentia*, tr. 3, disp. 1, sect. 3, sec. 2, no. 92); Candidus (*Disquisitiones Morales* 24, art. 11, dub. 3, no. 5); Cardinal Brancatus (*In IV Sent.*, *De Poenitentia*, disp. 9, art. 3, sec. 10); Crescentius Krisper (*Theologia Scholastica Scotica*, tr. 12, dist. 3, q. 1, no. 2); Mastrius (*De Poenitentia*, disp. 5, q. 6, no. 138, and *Theologia Moralis*, disp. 21, q. 2, no. 40); Voit (vol. 2, nos. 493 and 495); Honoratus Faber (*De Poenitentia*, ch. 1, no. 17); Clericatus (*De Poenitentia*, decis. 14, no. 5 ff.); Ulloa (disp. 6, ch. 1); Dicastillo (tr. 8, disp. 6, nos. 6-8); Sporer (pt. 3, ch. 2, nos. 227 and 259); Bonacina (*De Sacramentis*, disp. 5, q. 5, sect. 1, punct. 3, no. 1); Peter de Fay (*De Poenitentia*, q. 9, art. 1, disp. 3); Marchant (tr. 4, tit. 2, q. 4); Becanus (pt. 5, tr. 2, ch. 35, q. 1, no. 6); Maurus Berardusius (*Summa Coronae*, ch. 3); Roncaglia (tr. 19, ch. 1, q. 2, rule 1); Potestas (no. 5063); Ochagavia (*De Poenitentia*, tr. 1, no. 18). To these add Nugnus (in Candidus, *loc. cit.*), Madernus (in Giribaldi, *loc. cit.*), and Gaspar Hurtadus (in Escobar, *loc. cit.*, and Diana, vol. 1, tr. 3, res. 108, no. 2).

To these add also those who call the same doctrine most probable, such as Tamburini (*Methodus Confessionis*, bk. 1, ch. 1, no. 11), Reuter (pt. 4, no. 283), Gormaz (*De Poenitentia,* sect. 5, no. 454), Mazzotta (*loc. cit.*), etc.

But now it comes to mind to ask: will all these things lose their force solely for this reason, that, as St. Alphonsus said, Cardenas doubts whether this opinion is morally certain? But from an inspection of that paragraph of the holy Doctor (bk. 6, no. 443), it sufficiently appears that he did not labor very extensively upon this question; but, apart from the fact that he employed the opinion of Concina, he had at hand no other apparatus except what he excerpted from Lacroix. Yet neither that apparatus for the holy Doctor, nor that paragraph of the holy Doctor for others, could have been equal to furnishing a full knowledge of this controversy. But let us come to the things which are objected.

Cardenas (*Crisis*, pt. 4, diss. 2, ch. 6, no. 70) regards it as of great moment that Lessius (*In III Partem S. Thomae*, q. 1, dub. 5, no. 18) said concerning the sufficiency of this attrition, *this is sufficiently probable*. But the VV. (p. 434) say that the same doctrine was called probable also by Diana (vol. 1, tr. 3, res. 108), and by Tanner (*De Poenitentia*, q. 6, dub. 4, no. 21), and indeed also by Lugo, who (disp. 5, no. 137) employs the word *appears*, which is the word of one opining. Therefore, they conclude (pp. 434-435), even the opposite opinion is judged probable by these, and by Tanner as more probable. Reply with Cardenas: I deny the consequence. *Of two contradictory propositions*, says Cardenas (tr. 1, disp. 2, ch. 2, no. 10), *one can be probable without the other being probable; I maintain this conclusion as altogether certain. This conclusion is common among the Authors.* For then each proposition will be probable when some equal authority or intrinsic reason militates on each side. But in the case neither any intrinsic reason nor any authority can be cited for the negative opinion. Therefore. And in fact, neither Lugo, Tanner, nor Diana adduces anything to the contrary. Concerning the Authors, some of whom Cardenas boasts of in vain, a little below. Meanwhile note that, concerning our thesis, Lugo does not say *it appears*, but *I JUDGE*.

The VV. insist and (pp. 437-438) adduce these words from Billuart (*De Poenitentia*, diss. 4, art. 1): *Contrition must be supernatural.... Hence you will infer that one who grieves over sin ... because from it follows loss of reputation or temporal goods, and from similar natural motives, is insufficiently ... contrite; otherwise, if he grieves over sin ... as productive of the punishments of purgatory, hell, the loss of grace, glory, etc.* Although the VV. attach no conclusion here, nevertheless in the Additional Summary (col. 83) they concluded thus: *Billuart therefore does not admit attrition from fear of the temporal punishments of this life, even if they are considered as inflicted by God, ... because attrition of this kind is not supernatural.* Reply 1. It is false, as is plain from the context, that Billuart there discusses loss of reputation, etc., as punishments considered to have been inflicted by God. It is therefore false that these are excluded there by Billuart. Reply 2. Nor ought they to be thought excluded because they are not expressly indicated in the latter part of the text. And here the manner of proceeding of the VV. is somewhat displeasing. Let the *etc.* in the text of Billuart be noted. In the VV. it does not appear whether it belongs to Billuart or to the VV.; but in the Additional Summary it is written in letters different from those of the text of Billuart, and thus you would believe that it does not belong to Billuart, but to the Writers indicating that they omit the rest. Yet in reality it belongs to Billuart. And since it must not be called idle, is the conjecture empty that the Author tacitly indicated there that he also intended temporal punishments as inflicted by God? But there is no need for conjectures; for Billuart himself afterward expressly sets forth his opinion thus (*loc. cit.*, art. 4): *To grieve over sin, ... charity being excluded, either because ... it produces temporal evil, or because it produces hell, or because it excludes glory, or because it is an evil and an offense against God, are so many modes of attrition.* Therefore, Billuart does not confirm, as the VV. say (p. 433), the opinion of St. Alphonsus, but departs from it.

The VV. object (p. 438): Amort (tr. 13, sec. 2, q. 6) does not hold as sufficient sorrow from fear of temporal punishment, even if it is known by faith as sent by God, because this sorrow is not supernatural. Reply. Let all of it pass. Amort holds it as a merely natural motive even if someone grieves from fear of punishments in the other world (which words the VV. would have done better not to omit), and gives as the reason that this motive does not befit a son of God; immediately afterward, moreover (q. 7), he denies that attrition from fear of the punishments of hell suffices, because this fear indicates not the soul of a friend or son, but of a servant, and does not exclude the will to sin. But what weight, I ask, will finally appear to be attributable to the authority of a Writer who declines into these anomalies? Therefore, let the VV. have this man together with Concina for themselves.

The VV. insist (p. 435) that according to Coninck (*De Poenitentia*, disp. 4, dub. 5, no. 39), attrition of this kind can be suspect; these words of Coninck also somewhat disturbed Reuter. Reply. Did Coninck call it suspect as though it did not suffice *per se*? I deny it; for he expressly affirms that it is sufficient. Did he call it suspect because of an extrinsic motive which might be present *per accidens*? Let it pass. The same is said even of fear of hell, which *per accidens* can decline into servilely servile fear; much more can this hold with regard to attrition on account of the turpitude of sins, in which the quality of universality can more easily be lacking. But these things pertain not to the hinge of the question, but to

opportune admonitions for those who explain catechesis to the people, that they may hand down the genuine notion of attrition.

Finally, to confirm, as they say, the opinion of St. Alphonsus, the VV. produce other authors (pp. 433-438), and especially Toletus, Vasquez, and Leonard Jansen. I said especially these, for the many things which they adduce from Suarez, Tamburini, Roncaglia, and Henno have nothing to do with the matter and serve merely to increase the bulk of the book.

As regards Toletus, therefore, we have already explained his opinion above, where he does not hesitate to call the attrition of which we speak sufficient and a Catholic doctrine, and the contrary heretical. But the things which the VV. (p. 433) produce from his *Instructio Sacerdotum* (bk. 3, ch. 4) prove either too much or nothing. For the VV. themselves relate the double reading of the place which they object. The first has it thus: *The first attrition, if it is such that the penitent knows that he does not detest sin as it is an offense against God, BUT ONLY AS IT IS THE CAUSE OF SOME EVIL AND OF THE PUNISHMENT OF HELL, although this act is good, nevertheless does not suffice for the Sacrament.* But these words prove too much, because they exclude even attrition conceived from fear of hell. But the other reading is: *BUT ONLY AS IT IS THE CAUSE OF SOME TEMPORAL EVIL.* These words, however, prove nothing, because they do not exclude temporal punishments which are understood by the light of faith as inflicted by God. And the VV. indeed prefer the first reading because, as they reason, not only the motive of temporal evil but also the motive of eternal evil is opposed to the motive of an offense against God; and thus they do not hesitate to affix to Toletus an error nearly heretical and certainly opposed to the words of Trent. But the canons of interpretation: 1. do not permit that these absurdities be attributed to so great a man (let the VV. see what the distinguished Father Haringer said concerning him in the catalogue of Writers); 2. nor do they permit that a doctrine be attributed to him which he elsewhere, as we saw, calls heretical. But the reason adduced by the VV. for preferring the first reading is not good: 1. because those words, *not as it is an offense against God*, would be required in either reading, since Toletus appends them so that this first species of attrition may be distinguished from the following ones, in which the detestation of sin is on account of the motive of offense against God; 2. Toletus premises that some attrition is sufficient. Therefore, he must aptly be said to have omitted mention of hell in the adduced text, which he had mentioned above, lest otherwise we say that Toletus has now excluded all species of attrition.

As regards the Vasquez who is objected, it must be denied that the temporal punishments which he rejects as insufficient for attrition are those concerning which we dispute here. For he thus writes concerning the fear which he rejects (*In III Partem*, q. 92, art. 1, dub. 3, no. 3): *Just as fear which concerns temporal punishment is called worldly, which of itself is the principle of good as well as of evil, so also sorrow of this nature; hence, the reason which moves toward attrition must be higher.* Hence thus: sorrow for sin which has as its object punishments known by the light of faith as sent by God for sins can neither be called worldly, nor is it the principle of good equally with evil. But Vasquez rejects this fear alone. Therefore. And this is confirmed. For he continues (*ibid.*, no. 4): *Cano teaches this opinion, that attrition, in order to be a disposition for this Sacrament, is not sorrow over sins on account of temporal punishment, Relectio de Poenitentia, pt. 6, sec. Altera quoque attritio.* But this attrition of Cano is that which proceeds from fear of infamy, lest someone be cast out of the Church or fined money, etc., as we related above, and in one word is worldly fear. Therefore.

But the objection that Vasquez requires some eternal motive for attrition is empty; the VV. renew this difficulty with regard to Cano, who himself also admits fear from eternal punishments. Reply. Lugo wrote well (disp. 5, no. 137) that Vasquez did not please him, since he thus appeared to exclude the punishments of Purgatory. But it is not lawful to ascribe this absurd exclusion of the punishments of Purgatory either to Vasquez or to Cano. Hence Dicastillo (tr. 8, disp. 6, no. 8) denies that Vasquez dissents, since *sorrow on account of temporal evil thus regarding God ... involves a formal reason in some manner eternal, and orderable to an eternal end*. And Ithuriaga (*Dissertatio* XI, no. 22), on the same matter: *We assign an eternal motive, namely, the vindicatory justice of God.* And also Cardenas (pt. 3, tr. 4, disp. 71, no. 2): *I premise that sorrow for sins which is elicited from fear of temporal evils insofar as they are inflicted by God as punishment for sin is not elicited from a human motive; for this motive is supernatural.* Hence Diana (vol. 1, tr. 3, res. 108, no. 5) does not hesitate to associate Vasquez with Hurtadus as regards the punishments of Purgatory. And Candidus (*loc. cit.*, no. IV), where he recalls fear of punishments to an eternal motive (under the enumeration of those punishments he includes, as we saw, even temporal punishments), also cites Cano among those who affirm that this attrition is supernatural, just as Thomas Hurtadus also cites him.

Moreover, as regards Cano, the matter can be finished briefly and beyond all doubt. For after he had premised generally (pt. 6): *Not every attrition is sufficient for one approaching the Sacrament of Penance to obtain grace*, he then numbers four kinds of attrition thus: *First, when someone has conditional attrition, that is, one which arises from a velleity by which a man would wish to please God and be reconciled to Him. 2. Another attrition also is ... that which, for example, proceeds from fear of infamy, or ... lest he be cast out of the Church or fined money, etc. 3. Then also efficacious attrition from fear of supernatural punishments.... Finally, 4. Also attrition which*

proceeds from natural love of God above all things. Hence the reasoning is easy: it would be altogether absurd to imagine that Cano, a theologian at the Council of Trent, had no account of attrition which has for its object the punishments of Purgatory or the temporal punishments of this life, apprehended by faith as inflicted by God. Therefore, attrition conceived on account of these punishments must be recalled to some foregoing kind of attrition. But it can be recalled only to efficacious attrition from fear of supernatural punishments, which, as Cano adds, is a suitable disposition for the Sacrament. Therefore.

Finally, as regards Leonard Jansen, whose words the VV. relate (p. 436), he affirms that this attrition suffices speculatively but not practically, because Cano, Hurtadus, and Vasquez probably deny it, etc. The difficulty therefore rests upon three empty citations; it must therefore be answered: I deny the supposition. This Jansen adds: *If someone with such sorrow has confessed in good faith, according to Tamburini, Lugo, Sporer, Lacroix, he is not bound to repeat the confession, because that sorrow is MOST PROBABLY sufficient. But the opposite pleases me more, because a certain law is not satisfied by an uncertain solution.* Therefore, this Jansen does not judge that the law is satisfied even by a most probable solution; namely, this Jansen did not remember the condemned proposition: *It is not lawful to follow an opinion even among probable opinions which is most probable.*

But what is to be noted concerning Jansen is likewise to be noted concerning certain others who feared to call the sufficiency of this attrition certain, having been moved by empty citations. Thus, for example, Leander (*De Poenitentia*, disp. 7, q. 14) relates Suarez, Reginaldus, and Vasquez as contrary. Likewise, Thomas Hurtadus (*De Sacramentis*, disp. 6, sect. 2) cites Suarez and Reginaldus as contrary, while meanwhile he cites Cano and Soto for the common opinion. Thus Escobar (*loc. cit.*) presents Vega, whom Suarez (*loc. cit.*) rightly cites for himself, as contrary. But Mazzotta (*loc. cit.*) cites Cano against himself, and no differently than St. Alphonsus, because of a typographical error in Croix, adds Pasqualigus to Cano. Hence that statement of Cardenas (*loc. cit.*), that authors who deny the sufficiency, etc., are not lacking, which you then see copied by Tamburini and Reuter, who generally name certain authors. Marin (tr. 22, disp. 7, sect. 4, no. 55) aptly notes here that most of those who are adduced for the contrary side are found to dispute not about supernatural attrition, which is presently at issue, but about attrition conceived from merely human motives; this is manifestly apparent, for example, concerning Reginaldus and Suarez, whose places are adduced in which they reject sorrow from merely natural motives; therefore, they are objected here in vain.

1. because it appears established from the words of the Council of Trent, where it says: *Attrition is conceived from fear of hell and punishments*; for it distinguishes between the punishments of hell and other punishments; 2. because in fear of this kind all the conditions of true attrition can be present. - St. Lig., no. 443.

453. **QUESTION 8. For obtaining justification in the Sacrament of Penance, is a beginning of love also required with attrition?** Reply. Negative, if by a beginning of love is understood some degree of perfect charity by which God is loved above all things. The reason is that an act which essentially justifies outside the Sacrament is not necessarily prerequired for rightly receiving the Sacrament. But every act of charity, and therefore sorrow which suffices for the nature of contrition, however small it may be, blots out every fault, as St. Thomas says, *Supplement*, q. 5, art. 3. Therefore, etc. St. Lig., no. 440, says that this is morally certain.

It can, however, be conceded that some beginning of love is required insofar as attrition, in order to dispose toward the Sacrament, must exclude, as the holy Council speaks, the will to sin; but otherwise, as St. Thomas says (II-II, q. 17, art. 8), *someone is introduced to loving God through this, that, fearing to be punished by Him, he ceases from sin, as Augustine says* [8].

[8] In the same sense St. Thomas (*ibid.*) finds some beginning of charity in hope. For the entire cited text reads thus: *In the way of generation hope is prior to charity. For just as someone is introduced to loving God through this, that, fearing to be punished by Him, he ceases from sin, as Augustine says; so also hope introduces one to charity insofar as someone, hoping to be rewarded by God, is kindled to love God and to observe His precepts.* But in the penitent there must at least be hope of pardon, as the Council of Trent expressly declares. Yet, as is plain, charity is treated here, not as included in acts either of fear or attrition or hope, or as necessarily accompanying these acts, but as that which can arise from those affections.

There were others who imagined an inchoate charity of such a kind that it loved God, but not above all things. But this is a charity which prefers the creature to the Creator; because this altogether destroys the essence of the Purpose necessary for true penance, rather than disposing the penitent more aptly to receive the grace of justification, it renders him altogether unfit of itself for obtaining this benefit.

Finally, there are those who require that beginning of love or inchoate charity which is necessary for the true (as they say) conversion of the sinner to God. But unless they explain what this inchoate charity is, they assuredly sell us words empty of meaning. Meanwhile, let this be noted: that ambiguous phrase *true conversion to God* is an artifice which Juvenin employs in his condemned *Institutions* (*loc. cit.*, sec. IV) to infer from it the necessity of love of God above all things, concerning which we spoke in the preceding note. Thus a true conversion to God can and must be admitted, which consists, as St. Thomas says, in the will to observe the precepts of God. But unless this will is supposed to proceed from the motives of mere attrition, we fall back again into that necessity of perfect charity or contrition which, otherwise, the Catholic schools do not admit, not as though the affection of the penitent positively excluded that perfect love, but insofar as he can be sufficiently aroused to the will to observe the law of God by other honorable motives.

Moreover, the reason why St. Alphonsus says that the thesis set forth is morally certain is manifest. For the question ultimately comes down to whether contrition perfected by charity is prerequired in the penitent. But that it is not prerequired is an opinion most commonly received in the schools after the Council of Trent as morally certain. Furthermore, the thesis directly and immediately attacks the opinion of certain men who maintained as necessary a certain charity that was indeed predominant (by which, namely, God is loved above all things), but which nevertheless would not suffice to justify a man, and thus could coexist with the state of mortal sin. Thus, for example, Gaspar Juvenin in his condemned *Theological Institutions* (pt. 8, diss. V, ch. 4, art. 2); who afterward (sec. V) does not hesitate to assert that this contrition conceived from merely inchoate charity of God above all things, in a case of necessity, suffices for the justification of the impious with the desire of the Sacrament alone; but that outside a case of necessity it does not suffice with the desire of the Sacrament alone for someone to receive sanctifying grace. These things, moreover, fall back into those paradoxes of Baius and Francis Sylvius of which we shall speak a little later (in the note to the following no. 454).

§ III. On the Efficacy of Contrition

454. Principles. - I. Perfect contrition of itself justifies a man, even outside the Sacrament of Penance [1]. 1. This is evident from reason; for contrition necessarily includes perfect charity; moreover, to love God perfectly is to be united with God; but union with God necessarily effects separation from sin, since one cannot embrace one extreme without withdrawing totally from the opposite extreme. Therefore.... 2. It is evident from Sacred Scripture. Prov. 8:18: *I love those who love me.* - John 14:21: *He who loves me shall be loved by my Father, and I will love him, and will manifest myself to him.* - 1 Pet. 4:8: *Charity covers a multitude of sins.*

[1] The contrary doctrine was condemned both in Propositions 31, 32, and 70 of Michael Baius, who contended that perfect charity could exist without the remission of sins and with liability to eternal damnation; and more expressly in Proposition 71, which is as follows: *Through contrition, even when joined with perfect charity and with the entire desire of receiving the Sacrament, a crime is not remitted outside a case of necessity or martyrdom without the actual reception of the Sacraments.* Bellarmine refuted this in *De Poenitentia*, bk. 2, ch. 13.

An opinion akin to this condemned doctrine is that of Francis Sylvius, who (*In Supplementum S. Thomae*, q. 5, art. 1) taught that contrition, although joined with perfect love of God above all things, does not always, nor frequently or ordinarily, have the remission of sins joined to it before the Sacrament is received. See Cardinal De Lugo, who (*De Poenitentia*, disp. 5, no. 98 ff.) refutes both this and other discordant opinions of this writer.

II. Perfect contrition does not remit mortal sins, or justify a man, except with the desire of confession; for sins cannot be remitted except through the means instituted by Christ; but the Sacrament of Penance in reality, or at least in desire, is the one means instituted by Christ for remitting sins committed after Baptism. Therefore, etc. [2]. This is evident, moreover, from the Council of Trent, sess. 14, ch. 4.

[2] In what sense these things are to be understood you have from Lugo (*De Sacramento Eucharistiae*, disp. 3, no. 3), where he discusses the desire of Baptism and of Penance thus: *Contrition is called Baptism in desire, not indeed because it has its efficacy in relation to justification from actual Baptism itself, but because it includes in itself an implicit desire of receiving Baptism, if it can be done, just as also of fulfilling all the other precepts. In this sense also contrition is said to justify in relation to the keys, or in relation to the Sacrament of Penance, not because it receives the power of justifying from the Sacrament, but because, when it justifies outside the Sacrament, it has in itself the implicit desire of subjecting mortal sins to the keys, to which a man remains bound even after he has been justified through contrition.*

III. Attrition, as a disposition prerequired, suffices for obtaining the pardon of sins in the Sacrament of Penance. For it is evident from the same Council of Trent, sess. 14, ch. 4, that attrition disposes toward justification in the Sacrament of Penance.

IV. Attrition, however, cannot justify a sinner outside the Sacrament. For justification consists in the perfect union of man with God; but one who is attrite, although he withdraws from creatures and begins the first steps of conversion toward God, is nevertheless not yet perfectly converted to Him and united through love. Nor does attrition justify in the Sacrament by its own power, but it is only a prerequired condition; the Sacrament itself, however, justifies through the infusion of grace: wherefore in the Sacrament the penitent is actually attrite and becomes habitually contrite [3].

[3] Since perfect contrition justifies by its own power and at the same time is a disposition toward the Sacrament, he who approaches the Sacrament perfectly contrite is therefore enriched with a twofold gift of sanctifying grace: first, namely, by the power of contrition, and then again by the power of the Sacrament. But when the Author, following the customary phrase of the schools, says that in the Sacrament the attrite becomes contrite, understand *habitually contrite*, namely through the infusion of sanctifying grace, which is conferred by the power of absolution and renders the man habitually converted to God.

455. Questions. - **QUESTION 1. Must the desire of confession be explicit in contrition?**

Reply. Negative, with the common opinion, which Billuart, diss. 1, art. 4, sec. 2; the Salmanticenses, ch. 2, no. 23, hold. The reason is that, for remission, it suffices that someone be truly united with God with his whole heart through perfect contrition; for God, as is plain from what has been said, cannot reject a sinner approaching Him with his whole heart and from the most perfect motive; but it can sometimes happen that a sinner elicits an act of perfect contrition without thinking of confession, whether from inadvertence or natural forgetfulness, or from invincible ignorance [4]. Therefore, for the remission of sin through contrition, it is not essential that the desire of confession be explicit.

[4] That is, the desire or will of confession is necessary, no differently than the will to fulfill all the precepts of God is required for perfect contrition. But this desire or implicit will can be present even if someone does not actually think of certain precepts, or even invincibly is ignorant of them.

456. **QUESTION 2. Does contrition remit not only guilt, but also the punishment due to guilt?**

Reply 1. It certainly remits eternal punishment, because a man justified through contrition cannot remain liable to eternal damnation.

Reply 2. According to its greater or lesser intensity, it also remits a part of the temporal punishment due to mortal or venial sins which have been blotted out. Hence very intense perfect contrition can abolish even every punishment; but by its nature it does not necessarily have this efficacy. This is gathered from Trent, sess. 6, ch. 14 and canon 30. - Likewise from sess. 14, *De Poenitentia*, ch. 8 and canon 12.

457. **QUESTION 3. Does attrition remit venial sins outside the Sacrament?**

Reply. It is controverted. The affirmative seems more probable. The reason is: 1. because, according to the Council of Trent, venial sins can be remitted in various ways; therefore they are not remitted by perfect contrition alone; 2. because, in the opposite opinion, venial sins would not be remitted more easily than mortal sins; but this is opposed to common sense; 3. because the power of remitting venial sins is commonly attributed to the sacramentals; but it would be attributed to them falsely if contrition were required for blotting out those sins. - Thus Suarez, disp. 11, sect. 3; Lugo, disp. 9, no. 28; and many others.

Nevertheless, not a few deny it, because according to Trent, sess. 14, ch. 5, venial sins are usefully accused in confession; but they would not be usefully accused if they could be remitted by attrition: therefore, etc. But it is rightly replied that venial sins are usefully exposed in confession for other reasons also, namely, for remission of punishment, for the merit of humiliation, for the benefit of direction, etc.

QUESTION 4. Does contrition or attrition remit venial sins without the desire of the Sacrament?

Reply. Affirmative. The reason is that by divine institution the Sacrament is necessary only for mortal sins; therefore venial sins can be blotted out without the Sacrament of Penance; therefore no desire of this Sacrament is necessarily required for their remission. - Thus all.

Article II. On the Purpose

458. Definition. The purpose is the will not to sin hereafter.

Division. It is twofold: 1. explicit, or formal, by which someone, thinking of the future, resolves not to sin any more; 2. implicit, or virtual, which is included in contrition itself, without the future time being held before the eyes.

459. Principles. - I. A purpose at least implicit is altogether necessary for the remission of sin; because the purpose is a necessary consequence of contrition and is included in it at least virtually, as is evident from its nature and definition.

II. A true purpose must possess three conditions; namely, it is required that it be firm, efficacious, and universal.

1. Firm; namely, the penitent must have a sincere will not to relapse into sin, notwithstanding any inconvenience [1] or human fear; otherwise he would not wish to be converted to God totally and sincerely. The Confessor, however, ought not to put the mind of the penitent to the test by employing comparisons suited to disturb his imagination [2].

[1] It is useful to set down here what the gravest Authors judge that the confessor must be admonished concerning this matter.

Suarez (*De Poenitentia*, disp. 32, sect. 2, no. 2): *The Doctors observe that the Confessor ought not to set before the penitent all the difficulties which can occur in avoiding sins; because he will place him in manifest danger not only of not having an efficacious purpose for the*

future, but also of sinning anew. It is sufficient, therefore, that, the foulness of sin, the goodness of God, and the danger of damnation, etc., having been proposed IN GENERAL, the penitent conceive a GENERAL purpose never again to sin mortally.

To this pertain those words of Cardinal Cajetan (*Summa*, V. *Confessio*, on the twelfth quality): *Penitents, however, must not be cast into temptation by an overzealous confessor imprudently investigating whether... he intends to avoid mortal sins above everything avoidable, such as plundering, killing, etc.; for an interrogation of this sort would lead many into temptation.... Let him exhort him to the love of God above all things, and that from love of this kind he ought to grieve over the past and purpose avoidance for the future.... And thus he will kindle the heart of the penitent and will not place him in danger of temptation.*

And Cardinal De Lugo (*De Poenitentia*, disp. 7, no. 199), recalling a certain weakness of spirit which does not have strength to burst forth into a generous act, adds: *This weakness is not a new sin, as is evident in those penitents before whose eyes the Confessor ought not explicitly to place circumstances that are exceedingly difficult, so that concerning them, if they occur, they may explicitly purpose not to sin in them also*. And below (*ibid.*, no. 238), speaking of those who ardently pursue honor or bodily pleasure, who, although they have retracted their sins in confession with some remiss sorrow, afterward, when an occasion of honor or pleasure is given, easily relapse because of the vehemence of the affection which they corrected only confusedly and remissly, he adds: *Indeed, neither do we dare to set distinctly before them in confession the temptations or dangers of sinning which can occur, so that concerning those things they may distinctly purpose; because we prudently fear that now they would not retract their former sins even confusedly.*

Finally, to omit others, Laymann (*De Poenitentia*, ch. 4, no. 8) has these words: *The Confessor does not act rightly if he compels the penitent to a special promise... concerning avoiding this or that sin in the future, except in a rare case, if, for example, the sin is very harmful to the commonwealth, etc.*

[2] Compare what was said above in the note to no. 450, q. 2.

2. Efficacious; that is, the penitent must not only resolve firmly that he does not wish to sin any more, but must also employ the necessary means for avoiding sin and fleeing proximate occasions, etc., etc. - It suffices, however, that the purpose be efficacious affectively; that is, it suffices that the sinner be prepared in mind to employ the necessary means, because future amendment in fact is not of the essence of the purpose [3].

[3] By these things the Author warns that the doctrine of those who think that proof from works must be demanded beforehand is not to be admitted; concerning this he afterward expressly discusses in Question I.

3. Universal; or it must extend to all mortal sins, not only those which have been committed, but also those which could be committed. The reason is that a full and true conversion to God cannot be given without aversion from every mortal sin.

But as regards venial sins, for the validity of the Sacrament it is required and suffices that a firm and efficacious purpose be present of avoiding at least one of the venial sins.

460. Questions. - **QUESTION 1. For the purpose to be firm, must it also be found constant?**

Reply. Negative; at least this is not absolutely necessary. The reason is that the purpose affects the present will, which otherwise is variable by its nature. Hence the weakness of the purpose cannot of itself be inferred from a relapse after confession. - Thus commonly with St. Lig., no. 451; Lugo, disp. 14, no. 166, etc., against some.

I said: *at least this is not absolutely necessary*. For if the penitent relapses immediately and with almost no resistance, it can sometimes provide some indication, or at least a suspicion, that he lacked a truly firm purpose; for he who purposes firmly generally does not so easily forget his purpose, but is accustomed to persevere constantly for at least some time and to employ efforts to resist temptations

or occasions of sin, and consequently ordinarily falls with greater difficulty and more rarely. - Thus St. Lig., no. 459, where he treats of the recidivist; Lugo, disp. 14, no. 160, etc.

461. **QUESTION 2. Can the purpose of one who indeed has the intention not to sin, but nevertheless fears and in some way foresees that he will relapse, be judged firm?** Reply. Affirmative, generally; for fear which arises from past frailty and the inconstancy of the human will does not impede a sincere will. Hence that penitent has a true purpose who, when questioned by the Confessor concerning the will not to sin, replies: *I am frail; I fear a fall; nevertheless I do not now will or choose the fall*; these are the words of Gerson in Croix (bk. 6, pt. 2, no. 1733) [4].

[4] Elsewhere Croix (*loc. cit.*, no. 1822) writes thus: *I showed in no. 1733 that, for a serious purpose even concerning mortal sins, it is not required that one believe a relapse will not follow; but it is sufficient that a serious will now be present, with which, for as long as it stands, a will to relapse cannot stand, although perhaps it is foreseen that it will be changed through frailty. Just as St. Peter was not therefore judged indisposed for Communion because Christ knew he would relapse, so neither is one who is habituated to sin to be judged indisposed for absolution, although it may be MORALLY known that he will relapse.*

Sporer has things identical with these (*De Poenitentia*, no. 310): *A firm purpose*, he says, *of the will merely not to sin hereafter is required, but not likewise necessarily a belief or certain persuasion on the part of the intellect, namely that the penitent certainly believe, or persuade himself in his mind, that he will sin no more, or will no more commit this or that sin, as the Doctors commonly note.... For someone can truly grieve over and detest sin, and truly and absolutely purpose that he will not sin hereafter...; although he greatly fears or even thinks, indeed certainly believes, that on account of the experienced inconstancy of his will and his frailty he will relapse again, that he will not avoid all mortal sins, or even this certain kind of sin.*

Since these things are so, it scarcely appears why St. Alphonsus (bk. 6, no. 451) says that he does not acquiesce in the opinion (which he does not deny is called common) both of other most weighty Doctors and also of Sporer, but that he prefers to think with Croix. For although Croix added these things (*loc. cit.*): *If, however, the habituated sinner himself despairs of his amendment, he will have a true purpose with difficulty; hence before he is absolved, he ought to be disposed so that he hopes, not through his own strength but through the grace of God, with which, if he cooperates, he will be able, as innumerable examples of men similar to himself have taught*; Sporer also had added these things (*loc. cit.*): *Moreover, if the penitent, in view of his frailty and inveterate evil habit, judges it altogether impossible for him hereafter to abstain from some one or more mortal sins, he must efficaciously be led by the Confessor; and, with the efficacy of divine grace considered, he must altogether persuade himself that it is not impossible, and, trusting in divine grace alone and not in himself, conceive a firm purpose of abstaining hereafter, saying with the Apostle: I can do all things in Him who strengthens me.... But if he cannot do this, or rather does not wish to, although he truly can, then, as destitute of true contrition, despairing of the grace of God, and thus indisposed for justification and the Sacrament, he cannot be absolved through his own fault.* See in La Croix (*loc. cit.*, nos. 1823, 1824) the cavils resolved by which Juvenin and Genettus attacked the common doctrine.

As regards practice, the chief difficulty occurs when (as not rarely happens) a penitent, otherwise of good will but frightened by the difficulty of the matter, says that he cannot promise this or that, lest he afterward appear to break his word, or that he cannot trust himself, etc. This indeed occurs especially with those who have a habit of vainly using the names of God and the Saints, of cursing, or of becoming enraged on account of continual and at the same time necessary occasions, etc.

Furthermore, a penitent of this kind must not only be raised up by hope of divine assistance, but taught that this one thing is required of him: that here and now he have the will not to relapse, especially since it is uncertain whether his life will be prolonged any longer, etc.; no differently than the present will to perform the thing vowed suffices for the validity of a vow. And he must be confirmed by his own example: that he should not think that he had purposed less sincerely on other occasions merely because he afterward relapsed. But the principal effort of the Confessor ought to be directed to this: that he appear to require only those things which the penitent will admit without difficulty to be within his power.

He will attain this both by proposing means which the penitent may use, whether when assailed by temptation or when he enjoys peace; and also by inculcating that this alone is ultimately demanded of him: that he guard against faults which are committed knowingly or with full advertence. This indeed is accustomed to refresh and greatly raise the spirits of those

who, when they labor under an evil habit of blaspheming, cursing, etc., think that something impossible is required of them if they are ordered not to break forth any more into words of this kind, etc.

** From this Note the VV. took an argument for filling six columns (pp. 440-443). But to what purpose? For they write (p. 442): *We freely concede that the holy Doctor erred in an accidental matter.* And again (*ibid.*): *We spontaneously admit that certain other writers alleged for the first opinion are cited less correctly.* And again (*ibid.*): *The holy Doctor took those citations from the Salmanticenses, not sufficiently observing*, etc. But why, therefore, do the same VV. fill the whole world with such bitter outcries and complaints against those who noticed and warned that the citations which appear in the holy Doctor sometimes do not correspond to the end for which they are adduced? Nevertheless, they judged that readers must be warned (*ibid.*) that nothing therefore can be objected to St. Alphonsus except that he cited less correctly certain authors whom he thought contrary to himself, but who rather agree with him; and it is manifest otherwise that this error makes no difference to the matter. But again, to what purpose are these things? They are, namely, the things of men in whose minds it is most deeply fixed that whatever at length may be noted concerning the writings of the holy Doctor tends not toward anyone's advancement in learning, but by deliberate design toward undermining the doctrines of St. Alphonsus himself. Hence that method of disputing of theirs, which aims at anything else rather than casting some light upon theological questions. But they ought not to have thought in this way concerning these matters. And after Divine Providence wished to use especially the work of St. Alphonsus so that, the ill-fated writings of Juvenin, Merbes, Collet, Habert, Witasse, Genettus, and others of the same sort, which were worn in the hands of both teachers and students, having been banished, the doctrines of the Catholic schools might be restored, assuredly it seemed that, not anger, but rather encouragement should be given to those who contributed some little work of their own to the common good for polishing more and more, and perfecting, the work of the holy Doctor and rendering it more useful.

The VV. censure (*ibid.*) the statement in the Note that St. Alphonsus does not deny that the first opinion is called common, as though those words insinuate either that it was judged common by St. Alphonsus, or by others besides Navarrus. - Reply. The obvious sense of the Note is that St. Alphonsus opposed nothing to the first opinion's having been called common. But whether it was called common by one or by several matters little. If the VV. desire others speaking thus, let them consult, for example, Potestas (no. 3073); let them consult Gobat (tr. 6, no. 189); here they will find this opinion called common. But in this matter there is no need for more; for St. Alphonsus also shows that it is common, since he found no other whom he could truly oppose except Concina, who (*De Poenitentia*, bk. 1, diss. 3, ch. 2, sec. 4, no. VIII) attacks it with most diffuse declamations. Moreover, since it is manifestly apparent that St. Alphonsus, in this question of such slight moment, merely employed the Salmanticenses and Concina together with Croix, and did not dwell upon it laboriously, we can indeed know from him what he himself judged concerning it; but what the common opinion of the Doctors really was must not be sought from him.

In practice, however, you will inspect the disposition and character of the penitent; for you will not rarely find sinners asserting that they will relapse, and therefore fearing that they do not have a sufficiently firm purpose, although they show nothing other than fear of relapsing and distrust of themselves. It must be inculcated upon penitents of this kind that the matter concerns not those things which perhaps are going to happen, but their present will, and confidence to be placed in divine assistance. - Thus commonly.

462. QUESTION 3. For rightly receiving the Sacrament of Penance, is an explicit purpose required?

Reply. According to St. Lig. (no. 450), there are three opinions. The first, which a certain few [5] hold, affirms absolutely; because, although sorrow necessarily includes a purpose, nevertheless an explicit one seems to be required by Trent, which says: *With the purpose of not sinning hereafter* [6].

[5] The Author rightly attributes this opinion to a few. For you indeed see Peter Lombard, St. Thomas, Alexander of Hales, Bl. Albert, Scotus, and Durandus alleged for it. But even Bellarmine himself (*De Poenitentia*, bk. 2, ch. 6) frankly admits that those older authors indeed asserted the necessity of some purpose, but did not distinguish between a formal and a virtual one. Therefore, they are alleged gratuitously for this opinion rather than for the other. Likewise, in St. Alphonsus (no. 450), Suarez, Cajetan, Bonacina, Henriquez, Valentia, Reginaldus, and Toletus are cited for the same opinion. But Suarez (*De*

Poenitentia, disp. 20, sect. 4, no. 34) establishes the contradictory thesis; likewise Cajetan (*Summa*, V. *Confessio*, no. 12) and Bonacina (disp. 5, q. 5, sect. 1, punct. 3, no. 9) plainly teach the opposite; Henriquez, however (*Summa*, bk. 4, ch. 24, no. 2), expressly hands down the third opinion; and Valentia (disp. VII, q. 8, punct. 6) distinctly affirms that this express purpose is not required by a necessity of means for justification, but that sometimes a sinner can be justified with only an implicit purpose of this kind; and he says *sometimes* because, by a most singular opinion, he judged that an explicit one is necessary when the positive precept of penance urges: as though, namely, for fulfilling the precept of penance, the penance which suffices for justification did not suffice! Finally, Reginaldus and Toletus do not so prefer the first that they reject the other.

[6] Lugo (*De Poenitentia*, disp. 14, no. 53) shows that the argument which is taken for this opinion from the words of the Council of Trent is plainly weak; moreover, there (*ibid.*) he openly shows that the contrary is plainly proved from Tridentine doctrine.

The second opinion, which Cardenas calls morally certain, absolutely denies it. The reason is that sorrow, if elicited from a general motive, includes a plainly efficacious purpose. Otherwise, according to the Council of Trent, when attrition excludes the will to sin, it sufficiently disposes a man for obtaining grace in the Sacrament. Elbel, no. 87; Laymann, ch. 4, no. 6; the Salmanticenses, ch. 5, no. 54; Lugo, disp. 14, no. 51, who says that this opinion is common among the more recent authors.

The third opinion, which St. Liguori testifies is called common, teaches that, if the penitent thinks about his future life, he must formally purpose amendment [7]. It is otherwise if the penitent thinks nothing about the future. For if he thinks about the future, all agree that it can scarcely happen that a sincere penitent does not at the same time elicit an explicit and formal purpose [8].

[7] This obligation seems to be inculcated altogether uselessly. For if a thought of future life arises, the discussion of an obligation is made in vain; since, as Bellarmine says with others (*De Poenitentia*, bk. 2, ch. 6), it cannot happen that sorrow for sins committed be true in the mind without a purpose of avoiding future sins also immediately arising (in one thinking of future life). But if a thought about the future does not occur, the obligation, of which there is no advertence, is inculcated in vain.

[8] Yet this sometimes happens to the contrary in pious persons, especially those who diligently guard against even light but fully deliberate sins, and are accustomed immediately to grieve over some chance fall and soon restore themselves to the right way. For since the purpose of guarding against sins is not in them some new will which then supervenes while they dispose themselves for receiving the Sacrament of Penance, but is continually and habitually firm within them, it is therefore no wonder that perhaps they do not think again about confirming this will in some manner.

St. Liguori, however, interposes his own judgment concerning these things thus (*ibid.*): *These latter two opinions are indeed more probable; but because the first is not without its own probability* [9]*, in practice, before the fact, the safer is to be followed.*

[9] Thus St. Alphonsus judged, moved, namely, by empty citations, concerning which we have just spoken.

Since, however, according to the testimony of St. Alphonsus (*loc. cit.*), most even of those who are alleged for the first opinion agree that if you have confessed in good faith with true sorrow but without a formal purpose, you are not bound to repeat the confession, although he adds that he cannot acquiesce in these [10], it is now clear that, in this conclusion, which alone is of service to practice, all the opinions and the suffrage of all the Doctors finally agree. There is added the authority of the Roman Council under Benedict XIII, celebrated in the Lateran Basilica in the year of the universal Jubilee 1725. The Supreme Pontiff says (*Tit.* XXXII, ch. 3): *We shall give instructions at once brief and clear pertaining to the use and worship of the Sacraments of Penance and the Eucharist, which are first to be received by children, at the end of this Council of Ours.* But the Supreme Pontiff says that clear instructions are to be given, in order to meet the inconveniences of which it is read thus in the

Appendix (no. 1): *Although pastors do not fail substantially to supply the milk of Christian piety by instructing them (the children) in the same Doctrine, nevertheless some do it in so confused and inept a manner that they cause the children either not to understand it well, or at least to take it in an undigested manner and with difficulty.* Therefore, there is no room for doubt that the principal points of Christian doctrine are handed down clearly there.

[10] Thus the holy Doctor: *I say before the fact; for Croix, Viva, Elbel, Gobat, and Bonacina, with Bellarmine, Suarez, Vasquez, Reginaldus, Henriquez, say that if you have confessed in good faith with true sorrow but without a formal purpose, you are not bound to repeat the confession.... Nevertheless, neither can I acquiesce in this opinion; the reason is that, since the first opinion is sufficiently probable, the penitent who has perpetrated a grave and certain fault is bound to complete a confession of it which is not only probably but also certainly valid.* But these things openly conflict with the doctrine which he himself hands down elsewhere (bk. 6, no. 505) in these words: *Here it must diligently be noted that penitents are not to be compelled to repeat confessions UNLESS IT IS MORALLY CERTAIN THAT THEY WERE INVALID, as Croix, Gobat, etc., RIGHTLY SAY WITH THE COMMON OPINION, against Antoine, who holds no low place among the rigorous authors of our time.* But in the case, rather than its being certain that the confession was invalid, on the contrary you will rightly say that it is morally certain that the confession was valid: for, as he himself admits, the Authors of the first, the second, and the third opinion agree in denying the necessity of repeating the confession. Moreover, they would not deny this necessity unless they judged the confession valid. Therefore morally all the Doctors affirm that the confession is valid. But the unanimous consensus of the Doctors, from a canon received by all, produces moral certainty. Therefore, etc.

Moreover, there seem to have been two causes why St. Alphonsus turned aside to that singular conclusion. For first, deceived by Croix, he ascribed that first opinion to several who do not hold it at all, as we have already seen (in the preceding note). Then he did not sufficiently observe that the patrons of that first opinion, however many they may finally be, while at the same time teaching with the others, as he admits, that the confession is not to be repeated, by no means judged that an explicit purpose was necessary by a necessity of means (as Valentia says), and that they therefore pertain rather to the third opinion; so much so that the first opinion, insofar as it is distinguished from the third, in reality scarcely has any patron, and accordingly some probability is attributed to it only from a false supposition.

** It may appear altogether incredible; nevertheless the matter is thus: the VV. filled fifty-four columns (four others, namely, being omitted, which, although they have a different subject, are inserted among them), pp. 443-472, concerning this argument, contending, namely, that St. Alphonsus rightly and deservedly establishes that a confession made without a formal and explicit purpose is not certainly valid and therefore must be repeated. We shall cover the matter in a few words. But let the fruit of this Note be that of which we spoke in the *Monitum*, vol. 1, so that this question also may now pass into the state of an adjudicated matter.

Let the argument therefore be this: Whoever teaches 1. that an explicit purpose is by no means of the essence of that contrition which, as Suarez says (*De Poenitentia*, disp. 4, sect. 3, no. 1), is the ultimate disposition toward grace; and 2. that detestation of sin without a formal purpose, as the same Suarez says (*loc. cit.*, no. 6), is a sufficient disposition toward grace; and 3. that a virtual purpose included in sorrow suffices for the Sacrament to be valid, as the same Suarez says (*ibid.*, disp. 20, sect. 4, no. 34); he assuredly holds that a confession made without a formal or explicit purpose, and only with a virtual or implicit purpose, is valid, and therefore does not necessarily have to be repeated. But this must be called the unanimous opinion of the Catholic school. Therefore.

Proof of the minor.

1. Suarez (disp. 4, sect. 3, no. 7): *It is concluded that a formal purpose of not sinning hereafter is not of the essence and formal nature of contrition.* And again (*ibid.*, no. 6): *The detestation of sin alone without a formal purpose can be a sufficient disposition toward grace.* And again (disp. 20, sect. 4, no. 34): *I judge that the Sacrament is valid, and that a virtual purpose included in sorrow suffices.* Hence it is clear with what fruit the VV. fill seven columns with texts of Suarez (pp. 447-449). You will say: Suarez (disp. 4, sect. 3, no. 3) establishes that a formal purpose, speaking of itself, is necessary. Reply. Distinguish: He establishes that it is necessary for the validity of the Sacrament, I deny; for other extrinsic reasons, speaking of itself, let it pass; but the present question concerns the validity of the Sacrament.

2. Peter Soto, a theologian at the Council of Trent (*De Sacramento Poenitentiae*, lect. 17, final proposition): *It is openly evident that complete sorrow, such as has been described, suffices: in which this purpose is included. It is therefore enough to have these things implicitly.* - The VV. say (p. 447) that Peter Soto is attacked by Suarez (disp. 20, sect. 4, no. 32), because he said (dist. 17, q. 1, art. 2) that a confession is never feigned from a defect of purpose, provided the penitent confesses his defect. - Reply 1.

The man who has a work with distinctions, questions, and articles is not Peter Soto but Dominic. 2. If Suarez attacks Dominic Soto because the latter, as the same Suarez says, requires not even a virtual purpose, how do the VV. object Dominic Soto to us as requiring not only a virtual but even a formal purpose?

3. Vasquez (*In III Partem*, q. 86, art. 2, dub. 4, no. 3): *For sin to be blotted out, a purpose of abstaining in the future suffices if it is virtual.... This opinion, in my judgment, is most true.*

4. St. Alphonsus (bk. 6, tr. 4, ch. 1, dub. II, note A, ed. 1748): *Here we think it worth the labor to note which opinions are morally certain.... They are: II. That a virtual purpose, or one implicit in sorrow conceived from a general motive, suffices.* And again (ed. 1757, bk. 6, no. 540): *Croix, Viva, and others commonly teach very well that if you have confessed in good faith with true sorrow but without a formal purpose, you are not bound to repeat the Confession.* I ask: if the holy Doctor had then been taken up into heaven, would it have been lawful to follow this doctrine of his and of the others in common?

5. Collet (*De Poenitentia*, pt. 2, ch. 4, no. 230): *If the (formal) purpose of a new life pertains to the essence of contrition, then, even when it is omitted without fault, the substance of contrition will be lacking; and thus the salvation of the penitent who, intent upon detesting sin above all things, has not thought about the future will be given up as lost. But this indeed appears absurd to me and ridiculous to other more learned men.* Collet, moreover, as all know, cannot be numbered among lax authors.

6. Francis Sylvius (in Collet, *loc. cit.*, no. 231): *It must be said with Navarrus... that per accidens an implicit purpose suffices.... Hence if someone, occupied either in examining his conscience or in detesting his past life,... does not actually think, I wish to amend my life..., but goes in good faith to the Confessor..., such a confession of his is good.*

7. Even the most rigorous Concina (*Epitome Theologiae Christianae*, bk. 11, ch. 8): *It can nevertheless happen that the penitent is carried away by such vehement sorrow that he does not think about the purpose; but if he adverted to it, he would conceive the firmest resolution of not sinning hereafter. But now the discussion concerns those things which commonly happen.* He has identical things elsewhere (*De Poenitentia*, diss. 3, ch. 1, no. 18). Since therefore a confession without a formal purpose is here asserted to be valid, to what purpose do the VV. number even Concina (p. 455) in the article whose title is: *The authorities alleged by St. Alphonsus are vindicated?*

8. Cardenas (pt. 4, diss. 2, no. 80): *It is altogether certain beyond all probability that this virtual purpose suffices.... Since therefore it is certain that a virtual purpose of this kind suffices, that condemnation has no place here*, namely, of the first proposition among those proscribed by Innocent XI.

9. Bonacina (*De Poenitentia*, disp. 5, q. 5, sect. 1, punct. 3, no. 9): *Observe, however, that a virtual purpose suffices, by which one so detests sins that, if they occurred to his mind, he would elicit a firm purpose of guarding against them.* - The VV. adduce Bonacina (pp. 451-452; *loc. cit.*, punct. 8), where he says that each opinion is probable. - Reply 1. Which opinion he himself absolutely prefers is plain from his words adduced. Let the words which he has in the place alleged by the VV. (no. 2) be noted: *The Sacrament received by one who in good faith detests sin and confesses it without a formal purpose does not seem to be judged invalid.*

10. Laymann (bk. 5, tr. 6, ch. 1, no. 8): *In the act of contrition there is included also the purpose, at least implicit, of observing God's commandments in the future, if life remains. - Nevertheless, for justification, an implicit desire or purpose of these Sacraments suffices.* And more clearly (bk. 5, tr. 6, ch. 4, no. 6): *Assertion VI. For justification outside and within the Sacrament, speaking of itself and necessarily, an express purpose of observing the commandments of God, or of abstaining from sins, is not required, but the implicit purpose which is virtually contained in the very detestation of sins suffices.*

11. Viva (*On Proposition 1 of Innocent XI*, no. 26): *Since it appears morally certain that in the Sacrament of Penance a formal purpose of not sinning hereafter is not required, but a virtual one suffices..., therefore we follow propositions of this kind which are most probable, the safer ones being omitted.*

12. *Resolution of Cases of the Diocese of Bologna*, by command of Benedict XIV (p. 151): *It must be said that the absence of a formal purpose does not render the confession invalid.*

13. Felix Potestas (vol. 1, pt. 4, no. 3072), absolutely: *For the validity of the Sacrament... a purpose of not sinning hereafter is required.... It suffices that the purpose be implicit and virtual.*

14. Trullench (bk. 4, ch. 5, dub. 5, no. 5), absolutely: *A virtual purpose suffices.* Navarrus, Bonacina.

15. Andreucci (*Memoriale Confessariorum*, pt. 1, ch. 1, sec. 3, no. 2), absolutely: *For the validity and effect of the Sacrament, it must be said that... the virtual purpose included in the sorrow and detestation itself suffices, if the sorrow arose from some universal motive.... Nor does this opinion seem in any way affected by the proscription of Proposition 1 condemned by Innocent XI.*

16. Peter Catalani (pt. 3, *De Poenitentia*, q. 6, ch. 4, no. 16): *The authors of the first opinion* (which, namely, requires a formal purpose) *do not deny that the Sacrament is valid if someone approaches it in good faith and detests his sins... with only a virtual purpose.*

17. Reiffenstuel (tr. 14, dist. 6, q. 4, no. 49): *The purpose of not sinning hereafter... regularly indeed must be formal and explicit.... Nevertheless, per accidens a virtual and implicit purpose can also suffice. Thus the common opinion.* Hence argue: if a formal purpose pertained essentially to the validity of the Sacrament, its absence, although per accidens, would remove the validity, because it would remove the essence. But it does not. Therefore.

18. Holzmann (pt. 5, no. 501), absolutely: *That per accidens at least a virtual and implicit purpose can suffice is the common opinion of the Doctors:... in which case he who has a virtual and implicit purpose... is judged sufficiently disposed to receive sacramental absolution; so that this principle holds: The tacit and the express have the same efficacy.*

19. Fagundez (*On the Second Precept of the Church*, bk. 2, ch. 3, no. 14), absolutely: *The common opinion teaches that a formal purpose is not required, but a virtual one suffices..., which is most especially true when, through inculpable inadvertence, the penitent does not remember this formal purpose.*

20. Cuniliati (tr. 14, ch. 4, sec. 3, no. 6), absolutely: *The purpose regularly ought to be explicit and formal.... I said regularly..., because if it is omitted merely from inadvertence, then it is judged implicitly contained in the sorrow.*

21. Anthony of the Holy Ghost, *Compendium Salmanticense*, tr. 27, ch. 2, punct. 7, no. 79, absolutely: *1. Some purpose, at least virtual, is required for the validity of this Sacrament.... 2. A formal and express purpose is not essentially required for a valid Sacrament.*

22. Emmanuel Rodriguez (*Summa*, vol. 1, ch. 48, no. 4), absolutely: *The penance for sins which the sinner has without a formal purpose of avoiding them... is sufficient for that sinner to remain justified.*

23. Dupasquier (*Theologia Scotica*, tr. 15, disp. 3, q. 2, concl. 3): *Contrition ought to be with a formal purpose...; nevertheless, in some case a virtual and implicit one could suffice. It is the common opinion.... Otherwise, if someone detested his sins with his whole heart, not thinking about the future, and died in that state, he would be damned from the absence of such a formal purpose; but this is false, unfitting, and harsh.*

24. Billuart (*De Poenitentia*, disp. 4, art. 1), absolutely: *The purpose seems, speaking of itself, to have to be explicit.... Nevertheless, per accidens... an implicit or virtual one suffices.... The reason is that a formal purpose is not of the essence of contrition, and consequently is not an essential part of the Sacrament.* The VV. also adduce the first part of this text (p. 456); but they ought not to have cut away the second, which decides the question against them.

25. Platelius (*Cursus Theologicus*, pt. 5, ch. 6, sec. 2, no. 646): *The necessity of a formal purpose distinct from an efficacious detestation of sins, virtually containing the efficacious will not to sin hereafter, can be proved from no source; since this virtual purpose amply suffices for explaining the Councils which indefinitely require a purpose of amendment.*

26. Filliuccius (tr. 7, ch. 7, no. 161), absolutely: *If someone in good faith detests the sin which he confesses, and does not advert to a formal purpose for the future..., the confession will be valid, and then a virtual purpose suffices..., as Suarez proves from Medina and more firmly from the Councils of Florence and Trent.*

27. Coninck (*De Poenitentia*, disp. 2, no. 58): *A purpose of avoiding all sins in the future which is distinct from the preceding acts is not always necessarily required. For it can happen that, while someone elicits those prior acts* (namely, of sorrow), *he thinks nothing about avoiding sins in the future; in which case he will not be able to have a formal purpose concerning this, and nevertheless he will be justified.*

28. Peter Marchant (*Tribunal Poenitentiae*, tr. 4, tit. 3, q. 4), to the question, Whether a formal purpose of not sinning hereafter is required for true contrition or attrition, replies: *For true contrition or attrition a virtual purpose of not sinning hereafter and of observing the commandments suffices, nor is a formal one necessary.*

29. Mastrius (*Theologia Moralis*, disp. 21, q. 2, no. 32), absolutely: *In a case of natural forgetfulness... an express purpose of guarding against sins in the future is not necessary for justification, but a virtual and implicit one suffices.*

30. Giribaldi (tr. 7, ch. 5, no. 75), absolutely: *I reply that for the Sacrament of Penance a virtual purpose included in the very detestation, without a formal and express one, suffices. This is gathered from Trent.*

31. John Medina (*Codex de Poenitentia*, tr. 1, q. 3, near the end), absolutely: *It is sufficient if the penitent virtually purposes, according as the purpose is virtually contained in the act of penance.*

32. Illsung (tr. 6, disp. 6, q. 3, art. 3, no. 34): *The Council of Trent... approved imperfect contrition as a sufficient disposition toward justification through the Sacrament of Penance..., if it excludes the will to sin, without distinction whether that exclusion is made through a virtual purpose included in it or through a formal one...; nevertheless it sufficiently intimates that formal detestation is more required than a formal purpose.*

33. The Salmanticenses (tr. 6, ch. 5, no. 54), absolutely: *For the Sacrament of Penance a virtual purpose suffices, by which one so detests sinning that, if future sins occurred to the mind, he would elicit a firm purpose of guarding against them in the future.*

34. Roncaglia (tr. 19, q. 2, ch. 1, q. 2, reply 2): *If someone, with his whole mind occupied in detesting past sins, thought nothing about future amendment, and thus received the Sacrament of Penance without an explicit purpose, I would judge him to be justified by its power. The reason is that... the omission of an explicit purpose would not be from a defect of sorrow, but from a defect of advertence.*

35. Wagemann (*Synopsis Theologiae Moralis*, pt. 3, tr. 2, ch. 4, no. 53): *It is the more common opinion that a virtual purpose suffices.... This opinion can serve so that one who through forgetfulness omits a formal purpose and, after the Sacrament, discovers the defect, can rest satisfied.*

36. Elbel (*De Poenitentia*, conf. 4, no. 86): *For the validity of the Sacrament of Penance, a virtual purpose most probably suffices.... I said most probably for the validity*, etc. *For Stoz, with other most approved and classical authors, judges this opinion truly safe even in practice, and that through it the Sacrament is not exposed to danger*, etc.

37. Marcus Struggl (tr. 11, q. 2, art. 2, no. 27), absolutely: *For the validity of the Sacrament of Penance, speaking of itself, a formal purpose of a better life is not necessarily required as an act distinct from sorrow, but a virtual purpose identified with the universal sorrow suffices.*

38. Honoratus Fabri (*Theologia Moralis*, tr. 9, ch. 2, no. 11): *If attrition is from a universal motive extending to all mortal sins,... in that act of contrition there is included the purpose of not sinning in the future..., nor is anything else required by the Council.* And again (*ibid.*, no. 12): *I reply that the virtual purpose which is included in the very detestation suffices.*

39. Aversa (*De Poenitentia*, q. 2, sect. 12): *It cannot be denied that that act of repentance can be elicited without a distinct act of purpose.... But in that case it must be admitted that the sinner is justified: for through that act he is turned away from sin... and virtually has the intention of not sinning any more.... Therefore, it ought not to be denied that he is justified.* And again (q. 11, sect. 2): *If the penitent confesses in good faith, neither thinking nor having been admonished by the Confessor about eliciting such a purpose, it will be sufficient if he has sufficient sorrow, which virtually includes such a purpose, so that he also receives the effect of grace.*

40. Reuter (pt. 4, tr. 4, no. 290): *Regularly speaking, it is also required that the purpose be formal and explicit.... I said: regularly speaking; for it is far more probable, indeed according to Gormaz, Cardenas, and others morally certain, that a virtual purpose contained in universal sorrow suffices. For the Council of Trent*, etc.

41. Henriquez (bk. 4, ch. 24, no. 2), absolutely: *It can happen that, from inadvertence, or because he remembers nothing about future life, the penitent has true love and contrition, with every virtual affection for sin excluded, and is justified without the aforesaid formal purpose, which is sufficiently included in the contrition of one who does not remember.* Does Henriquez not therefore affirm most clearly that the Sacrament is thus valid? To what purpose, then, do the VV. consume an entire column (p. 455) so that his words may be taken in another sense?

42. Castropalaus (*De Sacramentis, Poenitentia*, punct. 1, no. 8), absolutely: *In penance, a firm and absolute purpose of never sinning need not be made by an act distinct from detestation and sorrow; for he who seriously and perfectly detests and grieves over a sin committed has at least virtually the will never to commit sin again.* Thereupon (punct. 2, no. 15) he adds: *No sin, whether mortal or venial, is remitted without either a formal or a virtual purpose.*

43. Mansi (*Theologia Moralis*, bk. 5, tr. 6, ch. 4, no. 6), absolutely: *An implicit purpose of not sinning hereafter suffices for justification; it is virtually contained in the very detestation of sin.*

44. John Pontas (V. *Contritio*, case IV), absolutely: *It is indeed certain that for true contrition a firm purpose of not sinning hereafter is necessarily required.... But it is not required for the essence of contrition that that purpose be express and explicit.... It is therefore sufficient that that purpose be implicit and virtual.*

45. Babenstuber (tr. 8, pt. 6, disp. 4, art. 1, no. 11), absolutely: *Per accidens or extraordinarily, a virtual purpose suffices.... The reason is that it can happen that the penitent, when he grieves efficaciously over sins committed, thinks nothing about future sins and a life to be amended hereafter. In that event he has a virtual purpose included in the formal sorrow itself.... But such a virtual purpose then suffices, as the Doctors commonly agree, and in this case also the force of the tacit and the express is the same.*

46. The Wurzburg theologians (*De Sacramentis, Poenitentia*, ch. 3, art. 5, no. 173), absolutely: *I say: A formal purpose, speaking of itself, is necessary for contrition.... Nevertheless, per accidens a virtual one suffices. Council of Trent.*

47. Ysambertus (*De Sacramento Poenitentiae*, disp. IX, art. 3): *Let this be the proposition: The purpose of not sinning hereafter, likewise of confessing one's sins sacramentally and of making satisfaction, required in contrition, need not necessarily be formal and explicit, as though, when it is omitted as such, contrition were insufficient; but a virtual and implicit one can suffice.... Our aforesaid proposition is very common among the scholastics.... For in moral matters the virtual and the formal or express are equated.*

48. Reginaldus (bk. 5, ch. 1, nos. 7-8): *Whether it suffices that the purpose be virtual..., Bellarmine and Suarez relate diverse authors for each side.... Although the negative side is not altogether to be rejected,... nevertheless the affirmative seems to be followed in practice and recommended to the penitent.* The VV. (p. 454) fill two solid columns with those things which Reginaldus (*loc. cit.*), following Bellarmine, pursues at length, so that, namely, he may prove that the affirmative opinion is to be recommended in practice. But the present question is not which opinion is to be recommended, but whether a virtual purpose suffices. Moreover, St. Alphonsus (bk. 6, no. 540) numbers Reginaldus among those who deny that a confession made with a virtual purpose must be repeated. Do the VV. also undertake to refute the holy Doctor, and indeed in that article in which they strive to vindicate the authorities alleged by the holy Doctor? And in fact Reginaldus, enumerating the conditions of perfect sorrow, writes (*ibid.*, no. 69): *Fifth, that it exclude the will to sin and be with at least a virtual purpose of avoiding sins hereafter.*

49. Lessius (*In Additiones S. Thomae*, q. 1, dub. 2, no. 6): *I say secondly: This purpose must be formal and express if a man thinks about the manner of life to be led in the future. If, however, this thought does not occur, an implicit and virtual purpose included in serious sorrow for sins suffices.... For if virtual penance sometimes suffices, why does not a virtual purpose of amendment included in sorrow for sin also suffice?*

50. Navarrus (*Manuale*, ch. 1, no. 1): *Following the opinion of the ancients and the more recent authors..., we define that contrition is repentance... with a purpose of not sinning any more, at least virtually....* (no. 11) *I said, at least virtually, because just as the act which suffices for virtual penance, so for the same reason that which is a virtual purpose of not sinning any more seems to suffice....* (no. 6): *When I was asked, however, whether this... was to be held, namely... that a virtual purpose suffices, I replied affirmatively, provided he so repents that, if he adverted to future things, he would purpose never to repeat those things nor to admit future ones.*

51. Mazzotta (tr. 6, disp. 1, q. 3, ch. 4, sec. 1, no. 3): *You ask, Must the purpose be formal and express, or does a virtual and implicit one suffice? I reply that a virtual and implicit purpose in the act of sorrow also suffices, provided this sorrow is elicited from a universal motive.... This opinion is so received by Theologians and fortified by such firm reasons that its truth must not be doubted in practice.*

52. Tamburini (*Methodus Confessionis*, bk. 1, ch. 1, no. 7): *An explicit purpose of not sinning hereafter, although it is laudably added and, in the opinion of many, necessarily...; nevertheless, in the probable opinion of others an implicit one suffices, that is, that which is involved in the very act of detestation.... For no one wishes to commit what displeases him.* Since he says merely that an explicit one is laudably added, it is plain that he by no means held it necessary.

53. Esparza (bk. 10, q. 88, art. 4): *If it could in any way happen that the penitent conceived contrition... without a formal purpose of not sinning hereafter, he would without doubt obtain the true effect of the Sacrament.*

54. Magister Candidus (*De Confessione*, disq. 24, art. 12, no. III): *I say secondly: An implicit and virtual purpose, by which one so detests sins that, if future sins occurred to his mind, he would elicit a firm purpose and an absolute will of guarding against them in the future, is sufficient for the validity of the Sacrament and for obtaining its effect.*

55. Voit (vol. 2, no. 511): *Per accidens a virtual purpose sometimes suffices* (for obtaining grace... in confession), *which is included in serious sorrow, by virtue of which the penitent is so disposed that he does not wish to sin any more.... Thus it seems to be reconciled with our opinion and that of others, that a virtual purpose suffices.*

56. Escobar (bk. 14, sect. 2, no. 157): *A formal purpose does not seem to me so necessary.... Hence, if someone in good faith truly detests the sin which he confesses, and does not advert to a formal purpose, so that he does not sin in omitting it, the Sacrament will be valid, and a virtual purpose included in the sorrow will suffice.*

57. Francis Anthony of Gorizia (*Tabula* 151): *A virtual and implicit purpose included in the sorrow itself suffices, if in some case one were so carried away by bitter sorrow and vehement contrition that he thought nothing about ordering his life in the future.*

58. Reding (*Theologia Scholastica, De Poenitentia*, q. 6, art. 2, controv. 3, no. 5): *Thesis: From the definition of the Council of Trent it is not proved that the purpose of not sinning hereafter, required for the Sacrament of Penance, must be formal and explicit; but, speaking of itself, an implicit and virtual one suffices for the validity of this Sacrament, provided that it is universal.*

59. Moya (tr. 3, *De Poenitentia*, disp. 5, q. 11, no. 4): *The true opinion hands down that, both for the validity and for the effect of the Sacrament, a virtual purpose included in sorrow suffices, provided that the sorrow is such that it extends at least implicitly to all mortal sins.*

60. Ulloa (disp. 5, ch. 3, no. 47): *When you hear that detestation, sorrow, and purpose are required essentially and constitutively for the Sacrament of Penance, do not understand this determinately of those acts as formal, but either of formal or virtual acts.* And again (no. 72): *This purpose can be distinct or indistinct from the two preceding acts, or from either of them.*

61. Paul Mezger (tr. 18, disp. 44, art. 2, sec. 1): *Conclusion. In order that sorrow be efficacious and thus useful for the remission of sins, whether within or outside the Sacrament, the purpose of not sinning hereafter is necessary: ordinarily indeed a formal one; per accidens and extraordinarily, a virtual one.*

62. Lucius Ferraris (V. *Poenitentiae Sacramentum*, art. 2, no. 40): *The purpose of not sinning hereafter, although, speaking of itself, it ought to be formal and explicit,... nevertheless it also suffices that it be implicit and virtual.* Scotus.

63. Sporer (*Theologia Sacramentalis*, pt. 3, ch. 2, no. 316), absolutely: *For contrition even perfect, which justifies outside or within the Sacrament, a formal, express purpose of not sinning mortally hereafter is not per se universally necessary, but a virtual purpose always included in true formal contrition itself can also suffice.*

64. Granadus (*De Sacramentis*, controv. 7, tr. 18, disp. 3, sect. 1, no. 6; in Diana, vol. 1, tr. 3, res. 109): *I judge that for attrition a virtual purpose intrinsically enclosed in sorrow suffices.... Wherefore he who sincerely grieves over sins because of the punishments of hell is sufficiently disposed and approaches*

the Sacrament of Penance without another formal purpose of not sinning hereafter.

65. Villalobos (*Summa*, vol. 2, tr. 9, diff. 19, no. 8): *When the penitent thinks about future sins, he is bound to have an actual purpose of avoiding them; otherwise he will have a virtual one; but this suffices much more if he does not think about future things.*

66. Gobat (tr. 6, no. 205): *That it can happen per accidens that the remission of sins is obtained without an express and formal purpose, either through attrition together with confession or through contrition even outside confession, is so received by the more recent theologians and fortified by such firm reasons that its truth must not be doubted in practice.*

67. Gormaz (*De Sacramentis*, disp. 4, sect. 3, no. 223), absolutely: *I assert secondly: For a true act of Penance and for the validity of the Sacrament of Penance, the purpose which is customarily called virtual suffices....* And again (no. 224): *That act* (of sorrow) *without a formal purpose has the formality of the purpose required by Trent, and therefore is certainly sufficient... for constituting the Sacrament of Penance.*

68. Valentia (vol. 4, disp. 7, q. 8, punct. 6, near the end): *The things which Maior and Medina adduce... prove only that this express purpose is not required even by a necessity of means for justification; but that sometimes a sinner can be justified with only an implicit purpose of this kind, contained, namely, in the very detestation of past sin: that is, outside the time of the precept, or even at the time of the precept if someone is then prevented by a sudden occurrence from being able to think about the future.* - Concerning Valentia the VV. spend three columns (pp. 457-458); and although they suppress the words related here, they do not deny that, according to the opinion of Valentia, the Sacrament is valid without a formal purpose even at the time of the precept. But if the VV. concede this, let them therefore also concede that Valentia is wrongly alleged for the opinion of St. Alphonsus, who contends that the confession in the case must be repeated.

69. Praepositus (*De Poenitentia*, q. 2, dub. 3): *A formal purpose is not required, because true and efficacious sorrow is found even thus.*

70. Meratius (*De Poenitentia*, q. 17, sect. 2): *It is the common opinion of the more recent authors that a virtual and implicit purpose suffices.*

71. Dicastillo (tr. 8, disp. 2, dub. 6, no. 141): *It must be asserted that some purpose of not sinning is indeed necessary for the nature of perfect contrition; nevertheless, a purpose which is an act distinct from the act of penance itself is not necessary.* And again (disp. 6, dub. 14, no. 212): *That a virtual purpose contained in sorrow suffices... is now the common opinion in the School in this and the preceding century after Trent.* And again (disp. 2, no. 144): *Therefore, theologians do not so commonly teach the opposite as Lugo absolutely thinks*, disp. 5, no. 97.

72. Toletus (bk. 3, ch. 4, no. 2): *This purpose must be express; and this is more probable..., although some say that the first act suffices; but what we have said is safer.* Moreover, he who says *it is safer* implicitly admits that the other also suffices of itself. This is confirmed from these words of the same Toletus (*In III Partem S. Thomae*, q. 85, art. 1): *In the fact that a man is displeased with a*

sin committed, there is virtually included a certain purpose of not committing it any more.... Although, therefore, in such detestation there is no formal purpose, which also sometimes happens, nevertheless this purpose is virtually included in it.

Thereupon he attributes the same power for obtaining the effect to an implicit purpose as to an explicit one (*ibid.*, q. 87, art. 1): *Formal penance is not necessary, but an act of love, which nevertheless is virtual penance, suffices for blotting out a venial sin.* Moreover, it ought to seem superfluous to doubt the opinion of Toletus concerning this, when it is established that, concerning a penitent who does not detest sin above everything detestable, and likewise concerning one who desires to have contrition which he does not have, he absolutely established (*Summa*, *loc. cit.*, nos. 6-7) that such contrition, if the defect is not known to the penitent, suffices for receiving grace in the Sacrament.

73. Lugo (disp. 14, no. 52): *Sometimes sorrow is of such a kind that the required purpose is virtually included in it; and then another formal purpose is not required for the validity of the Sacrament.* And a little later (no. 53): *The words of the Councils of Florence and Trent, which require with sorrow a purpose of not sinning..., are understood of a formal purpose or of a virtual one implicit in it. For there can be some sorrow... which does not bring with it such a universal purpose; therefore the Fathers explained that sorrow was not of just any kind, but with a purpose of not sinning, whether formal or virtual.*

Let us break off the series, not as though as many and more witnesses were lacking, but 1. because we dwell in exile, violently torn away from libraries; 2. because those already produced here can suffice for showing the consensus of all the schools. But now let us compare these with those who are objected as though adversaries and whom we have collected by Bellarmine (*De Poenitentia*, bk. 4, ch. 6).

But (as St. Alphonsus himself, bk. 6, no. 450, distinctly testifies after others) Bellarmine judged that *if you have confessed in good faith with true sorrow but without a formal purpose, you are not bound to repeat the confession* (these are the words of St. Alphonsus). And since Bellarmine (*loc. cit.*) writes: *The common path well-worn by the ancients has always seemed safer and more convenient to us*, is it not openly deduced from this that those ancients held the same opinion as Bellarmine concerning the validity of the Sacrament received in this way? Moreover, let it now be omitted by what right Bellarmine contends that those ancients must be interpreted concerning a formal purpose rather than also a virtual one, while, for example, Mastrius, Ferraris, and Dupasquier (*locc. citt.*) relate and prove that Scotus distinctly taught the sufficiency of a virtual purpose; but is not the doctrine of those ancients also most well known concerning virtual penance included in an act of perfect charity, by virtue of which they professed that remission of sins is obtained? And if merely virtual penance, and therefore contrition, suffices, does it not appear *a fortiori* that this must be said of the purpose?

Bellarmine adds that the necessity of a formal purpose is more openly handed down by Adrian VI, Cajetan, Dominic Soto, and Cano. - Reply. I distinguish: For the validity of the Sacrament, I deny; otherwise, let it pass. And as regards Adrian, Suarez (disp. 4, sect. 3, no. 2) has these words: *Adrian, in IV, q. 1, De Poenitentia, says that a purpose at least implicit is necessary*, explaining what he had said absolutely in *Quodlibet* 5, art. 5 (which place Bellarmine alleges), that a purpose is required for contrition. Therefore Adrian must be removed from their number. As regards Soto, it is customary to say (and this is also read among the VV.) that the opinion concerning the sufficiency of a virtual purpose was called by him a pernicious error. Behold the passage of Soto (*De Natura et Gratia*, bk. 2, ch. 14): *Nor indeed would I think it should be passed over in silence that certain of the Nominalists doubt whether, for the nature of contrition, a purpose of guarding against vices in the future is necessary. And they deny it because they find nothing in Sacred Scripture concerning a purpose of this kind. Concerning this, assuredly, if my slight judgment were of any weight, they ought to be condemned: not only because it is an error, but because it is pernicious.* Is this the scholastic doctrine concerning a virtual purpose, such that this censure of Soto aptly agrees with it?

But (lest we dwell upon these things longer without profit) two things are to be noted concerning these three theologians. One is that they also profess the common doctrine concerning the efficacy of virtual penance. Thus, for example, Cajetan (*Commentary on III*, q. 87, art. 1): *Virtual displeasure is called that which is not formally displeasure, but is formally another act, such as love of God, of such force that displeasure with sin is naturally to follow from it, so that, if the memory of sin then occurred, by virtue of that act a formal displeasure with sin would follow; and thus every act of love of God proceeding from charity can be called virtually a displeasure with mortal sin.* Thereupon he adds below: *If, by a special gift of God, virtual displeasure alone had been present, the concurrence of displeasure implicitly and virtually is sufficiently preserved* (in justification). The other is that the doctrine concerning the sufficiency of merely supposed attrition was commonly approved (as is known) by Soto, Cajetan, and Cano; and, as we saw above, Suarez reproaches Soto for having thought that the absence of any purpose did not impede obtaining the grace of the Sacrament. Hence nothing is more alien, not merely from truth but even from probability, than that, according to their opinion, a confession which lacked a formal purpose must be repeated.

From these things, then, what conclusion will it finally be lawful to draw? Let the VV. keep Amort for themselves, who employs this magnificent argument for the necessity of an explicit purpose for justification (*Theologia Moralis*, tr. 13, sec. 8, q. 12): *For justification the love of God is required; but the love of God is an explicit purpose of observing the commandments. Therefore.* To this argument someone will rightly reply: I deny the major, because charity is not prerequired for receiving grace in the Sacrament; I deny the minor, because an act of love of God can be elicited with a merely implicit will to observe the commandments. Finally, I deny the consequent and the consequence, because it has against it the unanimous opinion of the Catholic school, as we have seen. Indeed, this unanimous doctrine of the Catholic school also effects this: that anyone can set aside the scruple by which the holy Doctor Alphonsus was moved to judge that, in the case, the confession must be repeated, without the note of temerity and with due reverence toward the holy Doctor preserved.

In these instructions, both imperfect sorrow or attrition and a merely implicit purpose are plainly equated as sufficient for obtaining the pardon of sins in the Sacrament. Indeed, we find expressed there with even less controversy that which pertains to an implicit purpose than that which pertains to attrition. For as regards the latter, it is intimated in the preceding question that it had not yet been defined by the Apostolic See whether it ought to be joined with some beginning of love; but concerning an implicit purpose you find nothing of this kind said there.

Moreover, in the Instruction for children approaching the Sacrament of Penance, which is seen appended at the end of the same Council, these things are found (pt. III, no. XXIX, p. 303):

Penitent. Does one who confesses without sorrow for sins and without the purpose of sinning no more receive forgiveness?

Confessor. If he does not have at least imperfect sorrow, that is, attrition, with the firm purpose, AT LEAST IMPLICIT, of never sinning again, certainly, if he confesses, the Confession is invalid, and he does not receive forgiveness of sins. Moreover, even now at Rome it is prescribed that these instructions be employed for children to be imbued with catechesis.

463. **QUESTION 4. What purpose is required, or suffices, for venial sins?**

Reply 1. For the validity of the Sacrament, it is required and suffices to have an efficacious purpose of avoiding at least one venial sin; because it suffices to grieve over even one for sufficient matter of the Sacrament [11]; therefore, *a fortiori*, an efficacious purpose of avoiding all the venial sins which are accused suffices.

[11] Compare Cardinal De Lugo (*De Poenitentia*, disp. 14, no. 141), who teaches that the opinion of those who think that sufficient sorrow can be present concerning one venial sin, even if no virtual sorrow, or certainly less sufficient sorrow, is present concerning other venial sins of the same species, is truer.

2. It suffices to purpose amendment concerning some class of venial sins, for example, concerning lies, by saying: *I do not wish to lie any more.*

3. It suffices to wish to avoid all deliberate sins, because these can be avoided; and semi-deliberate sins insofar as it can be done. - St. Lig., bk. 6, no. 449, dub. 2.

4. It suffices to wish firmly and efficaciously to diminish the frequency and multitude of venial sins, because, as was said concerning contrition, the purpose falls upon at least some one of them [12]. In practice, it is safer to elicit a purpose concerning certain determinate sins, especially the graver ones and chiefly those which are committed from habit, and to join to them some sin of one's former life. - Reuter, no. 295.

[12] To this pertain those words of St. Thomas (III, q. 87, art. 1, ad 1): *Penance for mortal sins requires that a man purpose to abstain from each and every mortal sin. But for penance for venial sins it is required that a man purpose to abstain from individual sins, but not from*

all, because the frailty of human nature does not permit this; nevertheless, he must have the purpose of preparing himself to diminish venial sins; otherwise, there would be a danger of his falling away, since he would abandon the desire of advancing, or of removing the impediments to spiritual progress, which are venial sins.

When the faithful, including those who are regarded as pious and confess frequently, are seen to make no or almost no progress after innumerable confessions, it is permissible to conjecture that they conceive purposes which are too general and confused, and therefore sluggish and languid. - Elbel, no. 112.

Not rarely, moreover, penitents are found, women especially, who devote a long time to the examination of conscience, seek out the smallest faults with the greatest anxiety, and prolong their confessions beyond measure, and nevertheless are not very solicitous about sorrow and an efficacious purpose. These are to be seriously exhorted that, omitting the anxious care of declaring all venial sins in species and number, they subject to the keys with serious sorrow and a purpose of amendment only those which weigh more heavily upon the conscience and which especially are to be rooted out. Indeed, it is expedient that from these venial sins they select one principal sin upon which, above the rest, they diligently concentrate in detesting and amending it. - Sporer, no. 339; Elbel, no. 113; etc.

Chapter II. On Confession

Confession is the accusation of sins committed after Baptism, made to an approved Priest, in order to receive absolution.

Three things pertain here, namely: 1. necessity; 2. qualities; 3. repetition of confession.

Article I. On the Necessity of Confession

464. Principles. - I. Sacramental confession is necessary by divine law for all who after Baptism have fallen into mortal sin. This is evident: 1. from Sacred Scripture; for Christ says to the Apostles, John 20:22: *Receive the Holy Ghost; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained.* - And in Matt. 16:19 Christ said to Peter: *Whatever you shall loose upon earth shall be loosed also in heaven.* And at 18:18 He says to all the Apostles: *Whatever you shall loose upon earth shall be loosed in heaven.* Hence thus: Christ instituted the Apostles and Priests as judges and physicians, without whose sentence and cure no one gravely fallen after Baptism can be reconciled and healed; but they cannot discharge this twofold office when the cause is unknown: for how could Priests discern among sins, remitting some and retaining others, unless they could render a judgment concerning each? What reason would there be for pardoning some but denying pardon to others? To what end would that supreme power of the keys handed down by Christ to the Apostles and their successors tend? It would indeed be illusory if sinners were not bound to approach Priests and manifest their sins to them. Therefore, it is necessary that mortal sins committed after Baptism be subjected to the power of the keys or the judgment of Priests. Therefore confession is necessary by divine law.

This is evident: 2. from the Council of Trent, sess. 14, canon 7, in these words: *If anyone says that in the Sacrament of Penance, for the remission of sins, it is not necessary by divine law to confess each and every mortal sin,* etc., *let him be anathema.* - Add innumerable other decisions of Councils and Supreme Pontiffs.

This is evident: 3. from tradition and the argument of prescription. For confession has always been in use from the beginning of the Church, as is evident from innumerable testimonies of the Holy Fathers, which can be seen among authors treating Dogmatic Theology. Therefore, it was instituted as necessary by Christ and transmitted through the Apostles. This is evident according to the well-known Rule of St. Augustine, bk. 4, *De Baptismo contra Donatistas*, ch. 24: *That which the universal Church holds, and which was not instituted by Councils but has always been retained, is most rightly believed to have been handed down by apostolic authority.* Moreover, the confession of sins is a matter so arduous and difficult that it would never have been observed so perseveringly and universally for so many centuries unless it had been instituted as necessary by Christ.

465. II. Confession is also necessary by ecclesiastical law, at least once a year, for all the faithful who have sinned gravely. This is evident from the Councils, but especially from the Fourth Lateran Council under Innocent III, in these words: *Every faithful person of either sex, after he has reached the years of discretion, shall alone faithfully confess all his sins at least once a year to his own Priest and endeavor, according to his own ability, to fulfill the penance enjoined upon him...; otherwise, while living, let him be barred from entrance into the Church, and when dying, let him lack Christian burial.*

466. Questions. - **QUESTION 1. When does the divine precept of confession bind?**

Reply 1. It certainly binds of itself in danger, and all the more at the point of death, and sometimes in life. The reason for the first is that all positive precepts bind at least at the time of necessity; otherwise they would never bind and would be imposed in vain. The reason for the second is that affirmative precepts do not bind only in extreme necessity, but also when their fulfillment is reasonably judged necessary.

Reply 2. It often binds per accidens [1], namely: 1. when the Eucharist is to be received; 2. when the precept of being reconciled with God binds, or the state of grace is required, for example, for administering Sacraments, or for receiving those which are called the Sacraments of the living, and an act of perfect contrition cannot be elicited; 3. when a grave temptation presses which otherwise cannot be overcome.

[1] The discussion, as is plain, concerns only those who are bound by the bond of mortal guilt.

QUESTION 2. Does the divine precept of confession bind immediately when a sin has been committed; or at what time does it bind?

Reply 1. It does not bind immediately after sin. The reason is that such an obligation rests upon no certain foundation. - Thus commonly. - St. Lig., no. 674.

Reply 2. It cannot easily be determined how many times in life and at what precise time the divine precept binds. Whatever the case, there is no doubt that he satisfies who confesses even only once a year; because it is not established that the divine precept binds more frequently; according to many, Christ left the time of the obligation to be determined by the Church. (More concerning the necessity of confession in the Treatise on the Precepts of the Church, vol. 1, no. 476 ff.)

Article II. On the Qualities of Confession

467. Many qualities of confession are assigned by authors, which for the most part do not pertain to its validity; the chief, however, are contained in these little verses:

Let it be integral, simple, humble, discreet, faithful,

Vocal, sorrowful, pure, and prepared to obey.

1. Integral; that is, let it embrace all mortal sins not yet confessed, as will presently be said.

2. Simple; that is, not intermingled with impertinent discourses, nor painted with words, nor adorned with figures; but a naked, clear, and brief declaration of sins.

3. Humble; that is, it ought to be made with true humility of heart and body, namely, on bended knees unless infirmity excuses, and with head uncovered if a man confesses; humility ought also to appear in the tone of voice, so that the penitent relate his sins with shame, and not in the manner of a fable or a bare history.

4. Discreet; that is, it ought to be made in honorable and discreet words, especially in explaining sins against chastity; nor ought the sins or defects of others be manifested without necessity.

5. Faithful; that is, sincere, without a lie, especially in grave matter and matter necessary for the sacramental judgment. But fidelity or sincerity consists not only in sins being rightly declared, which pertains to integrity, but also in their not being exaggerated or supposed sins being added.

6. Vocal; that is, confession itself ought to be made by voice, and not by writing or by other signs, without necessity or a grave cause, for example, because of most vehement shame, because of an impediment of the tongue, etc. - St. Lig., nos. 492, 493.

Moreover, confession by writing is indeed valid of itself; nevertheless, confession and absolution by letters would be invalid. For the form consists in words, as Eugene IV defined in the Decree for the Armenians; moreover, the form must be applied to matter that is present. This is evident, moreover, from a proposition condemned by Clement VIII in the year 1602.

Whatever certain theologians may have said to the contrary, it is certain that confession made in writing is valid. Nor does the aforesaid Decree of Clement VIII stand in the way, because by it only a proposition concerning both a confession made in writing and absolution likewise given and sent in writing or through an intermediary is prohibited. Suarez disputed excellently and solidly concerning this in little works first brought to light by the Bishop of Bruges, D.D. Malou, of pious memory (Brussels, 1859). Lugo, Coninck, Viva, St. Lig., bk. 5, no. 489, and others also agree [1].

[1] The Decree of Clement VIII must be understood not only collectively, namely, when both confession and absolution were made and given in absence, but also divisively, namely, when confession is made in absence but absolution is given by a Priest who is present, and conversely, as Paul V declared on July 14, 1605, in the Congregation of the Holy Office.

7. Sorrowful, or accompanied by sorrow, as was said above concerning contrition, no. 442 ff.

8. Pure; namely, for an honorable end, or for obtaining the pardon of sins and sacramental graces, and not for moving the compassion of the Confessor, or for gaining his benevolence or esteem,

etc. [2].

[2] Nevertheless, some secondary end, if it is not dishonorable, does not impede the primary end; and although it is by no means praiseworthy, it must not therefore immediately be pronounced that confessions of this kind are invalid.

9. Prepared to obey; that is, the penitent ought to be disposed to obey the admonitions of the Confessor as a judge [3] pronouncing sentence, for example, in fleeing occasions, employing remedies, making restitution, accepting penance, etc.

[3] The Confessor as judge does not give admonitions, as the Author teaches below, but takes cognizance of the case and, according to the merits of the case, either imparts absolution, denies it, or even defers it. But the things which the Author adds pertain to the Confessor as a doctor or teacher. Obedience, moreover, is owed to them, not because the Confessor commands, for he has authority to command only as regards enjoining satisfaction, but because those things are indicated to the penitent which some law, whether natural or positive, requires.

Among the aforesaid qualities of confession, the principal ones are integrity and contrition. Enough has now been said concerning the latter; but now the former must be discussed specifically.

On the Integrity of Confession

468. A twofold integrity is distinguished, one material, the other formal.

1. Material integrity consists in the accusation of all mortal sins which occur to the mind [4].

[4] Others say that material integrity is present when in reality all the sins which have been committed are expressed. But if anything falls from memory, they teach that formal integrity is then preserved. Thus, for example, Laymann (*De Poenitentia*, ch. 8, no. 5), whom the Author also seems to have followed below, no. 470, II, where he attributes the defect of material integrity to forgetfulness.

2. Formal integrity consists in the accusation of all mortal sins which someone, here and now, considering the circumstances, morally can or is bound to confess.

Hence whenever material integrity is present, formal integrity also is present; but not conversely. We shall speak: 1. of the necessity of integrity; 2. of causes excusing from it.

§ I. On the Necessity of Integrity

1. In general; 2. concerning doubtful sins; 3. concerning the circumstances of sins; 4. concerning forgotten sins.

Point I. On the Necessity of Integrity in General

469. I. All mortal sins committed after Baptism must be accused by divine law, insofar as it can morally be done.

This is evident: 1. from the very words of the institution of the Sacrament of Penance; for Christ the Lord says thus, John 20:22: *Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained.* Hence thus: By these words Christ conferred judicial power concerning the remission of sins upon both the Apostles and their successors. But He would have conferred this power upon them uselessly unless all sins were to be declared to them individually. For a judge can in

no way exercise such power when the case is unknown, nor discern whether sins are to be remitted or retained. Therefore, from the very institution of confession in the form of a judgment, there follows the strict obligation of declaring all mortal sins as to number and species.

This is evident: 2. from the words of Trent, sess. 14, ch. 5: *The universal Church has always understood that the complete confession of sins was instituted by the Lord and is necessary by divine law for all who have fallen gravely after Baptism; because our Lord Jesus Christ, when about to ascend from earth to heaven, left Priests as His own vicars, as presidents and judges, to whom all the mortal crimes into which the faithful of Christ had fallen were to be brought, so that, by the power of the keys, they might pronounce the sentence of remission or retention of sins. For it is evident that Priests could not have exercised this judgment when the cause was unknown, if penitents had declared their sins only in general and not rather in species and individually.* From these things it is gathered that all mortal sins of which penitents have consciousness after a diligent examination of themselves must be recounted in confession, even if they are most secret. - And canon 7 defined thus: *If anyone says that in the Sacrament of Penance, for the remission of sins, it is not necessary by divine law to confess each and every mortal sin which is remembered after due and diligent consideration, even secret sins and those which are against the last two Precepts of the Decalogue, and the circumstances which change the species of sin, let him be anathema.*

470. II. Material integrity is not always necessary for the validity and fruit of confession; for sometimes it is morally impossible, whether from inculpable forgetfulness or from other causes; but God does not command impossibilities. Therefore, etc. This is evident also from the Council of Trent, *loc. cit.*, in these words: *But the remaining sins which do not occur to one thinking diligently are understood to be included universally in the same confession; for these we faithfully say with the Prophet: FROM MY HIDDEN SINS CLEANSE ME.*

III. For the integrity of confession, a diligent examination, according to the capacity of the penitent, is prerequired concerning sins committed since the last valid confession; for he who is bound to the end is also bound to the necessary means. - See the Appendix on the examination of conscience, below, no. 507.

471. Resolutions. - 1. In the confession of mortal sins, we are bound to accuse not only the generic species of sins but also the lowest species; for these are properly called species, and Trent requires the accusation of all species.

2. He who cannot disclose the lowest species must manifest the higher or generic species; for example, if someone, knowing that he sinned against chastity, does not remember the specific sin, he must say that he sinned gravely against chastity.

3. He who knows that he sinned mortally but is ignorant of, or does not remember, even the generic species of his sin must say in general that he sinned gravely, but does not remember of what sin he is guilty.

4. He who cannot remember the certain number is bound to accuse the more probable number, or that which approaches nearer to the truth, adding the word *about*; because where certainty is lacking, he ought to accuse that which is more likely.

5. He who cannot give even a likely total of the sins is bound to say whether he sinned frequently or rarely; about how many times in a month, in a week, in a day, etc.

6. The Confessor cannot exempt from the obligation of confessing integrally because of a great concourse of penitents, for example, on some more solemn feast day. This is evident from what has been said and also from Proposition 39 condemned by Innocent XI, which is as follows: *It is lawful to absolve sacramentally those who have confessed only by halves because of a great concourse of penitents, such as, for example, can occur on the day of some great feast or indulgence.*

7. A defect of sincerity concerning even one mortal sin which is omitted constitutes a grave sin, because the divine precept of confession is violated in a grave matter.

472. Questions. - **QUESTION 1. What number is judged to be comprehended in the word ABOUT?**

Reply. This cannot be determined by an altogether certain rule; nevertheless, not every excess, nor a notable deficiency, is comprehended, but only a moderate one, greater or less in proportion to the number expressed. Theologians commonly determine it thus: a moderate excess or deficiency relative to about five sins will add or subtract one unit on either side; relative to about ten, two; relative to twenty, three or four; relative to forty, four or five; relative to one hundred [1], five or six.... And it will prudently be judged [2], in the first case, that the penitent sinned four, five, or six times; in the second, eight, nine, ten, eleven, or twelve times; and resolve similarly concerning the others. - See St. Lig., no. 466.

[1] But when it is believed that the number of sins has increased to these limits, the Doctors aptly warn (see St. Alph., bk. 6, no. 466) that the state of the penitent can be known better by inquiring about falls by days, weeks, months, etc., than if the Confessor should wish to form a judgment concerning the number, which will easily be fallacious.

[2] The Confessor would judge thus prudently when it was established that penitents use these calculations accurately. But penitents generally do not know those rules, and in an uncertain matter more often answer rashly. Otherwise, moreover, the Confessor cannot undertake the wearisome labor of always inquiring whether the penitent answers according to those rules. Therefore, the foregoing admonition of St. Alphonsus (bk. 6, no. 466) must be kept before the eyes, namely, lest the Confessor think that some more exact judgment is to be sought or hoped for in these circumstances.

473. **QUESTION 2. Must a notable excess be declared afterward if it is discovered after confession?**

Reply. Affirmative. The reason is plain from what has been said; for since a notable excess is not comprehended in the number declared with the word *about*, the penitent does not satisfy the obligation of confession as regards that excess. Therefore.... - Thus all.

QUESTION 3. If someone has erred notably by exaggerating the number, must he afterward declare this also in confession?

Reply. Negative, if in good faith he expressed that notably larger number. The reason is that he fully and integrally satisfied the obligation of confession; for the true number was comprehended in the larger one, and therefore remitted. - Reuter, no. 313, and others commonly.

474. **QUESTION 4. Is it always a mortal sin to lie in confession?**

Reply. Of itself, a mortal sin is committed only when the lie concerns matter necessary for confession concealed without a just cause, or grave matter falsely supposed, namely, by accusing oneself of a grave sin not committed.

Therefore a lie concerning matters not pertaining to the confession or conscience of the penitent is not of itself mortal; because, as is supposed, it is neither gravely harmful to the penitent nor gravely injurious to the Sacrament, since it is not referred to it. - Thus commonly with St. Lig., *Homo Apostolicus*, no. 28; Billuart, against the few who say that every lie in confession is mortal.

475. **QUESTION 5. Does it injure the integrity of confession if someone accuses himself of venial sins to his ordinary Confessor, but of mortal sins to another?**

Reply 1. Negative, speaking of itself, provided he never receives absolution without having manifested all mortal sins to one Confessor and being absolved by the same. The reason is that the confession which embraces all mortal sins is integral, since venial sins need not necessarily be accused.

Reply 2. In practice, however, attention must be given to the circumstances of penitents and to the motives by which they are led. For those who sometimes confess graver sins to an unknown Confessor but submit lighter ones to their ordinary Confessor are not to be condemned if, from the shame with which they would be suffused before a Confessor known to them familiarly, they would expose themselves to the danger of confessing sacrilegiously [3]. - St. Lig., no. 474.

[3] Therefore, the Confessor should never inquire curiously about this, and much less vex with questions a penitent perhaps attempting to conceal it; nor, if he knows, should he show that it displeases him, but rather that he approves the use of the liberty which the Church most amply permits when she provides the faithful access to several confessors.

476. **QUESTION 8. Does it injure integrity if someone feigns another voice so that he is not recognized by the Confessor?**

Reply. Negative, of itself; for provided that he discloses all mortal sins, he makes an integral confession. Nor is it necessary that he be known by name to the Confessor; for it suffices that the Confessor intend to absolve the sinner who is present: but the intention of the Confessor is of itself always determined toward the penitent who is present. - Lacroix, *De Sacramentis in Genere*, no. 68.

Point II. On Doubtful Sins

Doubt here can chiefly concern: 1. the act of sin, or a sin committed; 2. the gravity of the sin, both on the part of the matter and on the part of consent; 3. the confession of a sin certainly committed.

477. Questions. - **QUESTION 1. Must mortal sins doubtfully committed necessarily be accused?**

Reply. More probably, negative, if the doubt persists after a diligent examination has first been made; and this holds even if the doubt is truly positive, or there is a true probability that the sin was committed. The reason is that a doubtful law is at issue here, which consequently does not bind. And indeed, according to Trent, mortal sins of which one has consciousness must be accused; but one does not have consciousness of doubtful sins; for to have consciousness implies certain knowledge of the sin, since conscience is nothing other than knowledge of the heart and a judgment concerning a

sin committed. Therefore. - St. Lig., no. 473; Sporer, no. 389; Roncaglia, ch. 2, *De Integritate Confessionis*, q. 7; Reuter, no. 305; and many others. - See St. Lig., no. 473.

Others nevertheless contradict this; because, as they say, it is gathered from the words of the Council of Trent that all mortal sins must be accused as they are in the conscience; and consequently, if they are doubtful in the conscience, they are also to be confessed as doubtful. - But it must be replied that the Council of Trent does not say that sins are to be accused *as they are in the conscience*, but those *of which we have consciousness*. In practice, however, an accusation of this kind is to be counseled, says St. Lig., no. 476.

Certain Theologians teach that negatively doubtful sins must be accused; but this is false; for no obligation can be given of confessing negatively doubtful sins, since a doubt of this kind rests upon no solid foundation and arises only from an empty suspicion or fear that a sin was committed, as frequently happens to the scrupulous or to timorous consciences.

478. **QUESTION 2. Must sins of doubtful gravity be accused?**

Reply. More probably, negative of itself, at least speculatively, even given a true probability of the gravity of the sin. The reason is the same as for the preceding question: for it is not established that a grave sin was committed, and consequently the obligation of confession cannot be established. - Thus the same authors against the same authors.

In practice, however, a twofold rule is to be followed: First Rule. In doubt whether the matter of the sin is grave, uneducated penitents ordinarily ought to accuse doubtful sins: 1. because they generally cannot form their conscience by themselves;

2. because they generally do not know how to distinguish venial sins from mortal sins. Nevertheless, except the scrupulous, who are not accustomed to commit mortal sins frequently. But instructed penitents are not bound to accuse sins of doubtful gravity, because they can form their conscience by themselves; nevertheless, they are ordinarily to be gently exhorted to accuse these also [1].

[1] It is useful to have explained these things, so that the Confessor, observing the dangers in which the penitent is placed, may both admonish him and be able to remove them.

Second Rule. In doubt concerning full consent or perfect advertence: 1. if penitents are of a timorous conscience and are not accustomed to sin gravely, they are in no way bound to confess doubtful sins, because the presumption derived from things ordinarily occurring favors them; indeed, they are often to be prevented from making this accusation if they seem prone to scruples [2]; 2. if penitents hold the middle way between a timorous and a lax conscience, they are indeed not to be obliged, but certainly are to be induced to declare the doubtful consent, because this profits the tranquility of conscience, etc.; 3. if penitents are of a lax conscience, they generally ought to declare doubtful sins, because the presumption is against them. - See St. Lig., no. 476.

[2] This observation seems to pertain to the doubt whether any fault was present rather than to the doubt whether the fault which intervened was mortal or only venial. For otherwise the scrupulous are not to be prevented from confessing venial sins when they are certainly established.

479. **QUESTION 3. Must grave sins certainly committed, concerning which you nevertheless doubt whether you confessed them, necessarily be accused?**

Reply 1. Affirmative, if the doubt is negative, namely, when no prudent reason is at hand for thinking that you have already confessed them. The reason is that the law of confessing is certain, nor does any reason suggest that this law has been satisfied, according to what was said concerning Conscience, vol. I, no. 41.

Reply 2. It is controverted, however, if the doubt is positive, that is, if a positive and grave reason suggests that the sin has already been declared. Some say that a sin of this kind must be declared, because the obligation of confession is certain but its fulfillment is doubtful. - Thus St. Lig., no. 477 [3]. - Others, however, very commonly deny it with Suarez, Lugo,

[3] The VV. object this passage of the holy Doctor (p. 936, no. 113), and add that in the Note placed thereunder St. Alphonsus wrote these things in *Quaestiones Recentiores Reformatae*, no. 16: *Whether the penitent is bound to confess a mortal sin certainly committed if he only probably thinks that he has confessed it, Suarez, Lugo, the Salmanticenses, and others deny. But I say with Concina and others that he is bound to subject that sin to the keys, since the confession is doubtful and the obligation of Confession is certain.*

Reply. Let it suffice to have summoned here also those things which Lugo writes (*De Poenitentia*, disp. 16, no. 58): *ALL COMMONLY TEACH that someone is not bound to confess that sin which he probably judges that he... has already confessed.* And again (*ibid.*, no. 59): *Nothing is more frequent among theologians than to excuse from repeating a confession one who has confessed... according to some probable opinion concerning its validity.* Who, therefore, would be angry with him who prefers to follow the common doctrine of the Theologians?

Indeed, since St. Alphonsus also (bk. 6, no. 477), in the Roman edition of the year 1757 dedicated to Benedict XIV, released a penitent of this kind from repeating confession, as Suarez, Sanchez, Navarrus, Bonacina, Filliuccius, Roncaglia, Viva, Tamburini, Croix, Lugo, Escobar, Granadus, Fagundez, the Salmanticenses with Sylvester, Henriquez, etc., also COMMONLY say, who indeed would not adhere to St. Alphonsus when he follows those lights of theology, rather than adhere to St. Alphonsus when he follows Concina? For did Concina bring forward anything new? Indeed, since the matter concerns a certain general principle, shall we set aside the common sense of so many theologians in order to attribute to the judgment of the most rigorous Concina the privilege of a clearer understanding?

Lacroix, Bonacina, etc. - Recall what was said in the Treatise on Conscience, vol. I, no. 80, where the reason for the former opinion is shown to be both weak and also productive of grave inconveniences [4].

[4] Thus indeed as regards the obligation; for as regards practice no one will deny that it contributes very greatly to peace of conscience if the anxiety consequent upon doubts of this kind is laid aside through confession; unless, however, the contrary occurs, so that in this way anxiety is added to anxiety. This indeed sometimes happens to those who, after a general confession diligently made according to their capacity, begin to doubt whether they declared this or that sin. For after the Confessor has patiently heard them twice, three times, or four times, it is fitting that he forbid them to think back in any way upon their past life or add anything unless they are most certain that they never rightly confessed some grave sin. - See St. Alphonsus, bk. 6, no. 477.

480. **QUESTION 4. Must one who has confessed some sin as doubtful repeat it if he afterward knows it as certain?**

Reply. It is controverted. The FIRST OPINION, more probable and common [5], affirms. The reason is: 1. because we must accuse all certain sins of which we have consciousness; 2. because that sin was not accused as to its substance, for a certain accusation is not included in a doubtful one. - St. Lig., no. 478.

[5] This opinion could once have been called common, when, as Lugo writes (*De Poenitentia*, disp. 16, no. 92), *certain learned men judged it probable that the penitent was not bound afterward to confess as certain what he had previously confessed as doubtful.... Among these was the Most Reverend Father Nicholas Ricchardius, Master of the Sacred Palace, with whom I discussed this matter privately; and he himself also replied privately that it seemed very probable to him that such an obligation was not present; which others also judged.*

But it must be said otherwise concerning the following age, so much so that St. Alphonsus (bk. 6, no. 478) alleges more Doctors for the opposite opinion than for his own, which he calls common. And indeed, as Cardenas, a man perhaps more attached than was fair to his own tenets, says sorrowfully and almost indignantly (disp. 51, no. 4): *Scarcely had our Lugo opened this little crevice when the more recent authors, advancing in a body, regarded it as a most ample door through which they might safely enter into that opinion.* And he immediately adds a catalogue of these Doctors, in which seven appear who were omitted by St. Alphonsus, who otherwise names ten others.

Moreover, to solve the arguments of Cardinal De Lugo, Cardenas was compelled, against the opinion of St. Alphonsus and indeed the common opinion, to affirm that even he who, uncertain about the number, had said that he sinned about ten times, more or less, is bound afterward to confess the certain number if it is discovered. Moreover, the reason brought forward by him for his opinion, namely that according to Trent that gravity of guilt must be expressed from which the punishment to be imposed according to equity may be judged, would already overthrow the doctrine which St. Alphonsus (in the same no. 478, at the end) calls most probable and most common, namely, that someone is not bound to confess again a sin which he now knows to be grave when nevertheless neither did the Confessor himself know it as grave when the confession was made.

** The VV. detain the reader for fourteen columns and more concerning this Note (pp. 472-479), and contend for two things: 1. that the affirmative opinion of the holy Doctor Alphonsus must truly be called common (p. 479); 2. that the strongest reasons militate for it (p. 478).

As regards the first, I reply that a twofold question must be distinguished here: one, namely, of law, and the other of fact. And as regards the question of law, it must be diligently noted that the validity of the Sacrament is not at issue here, but only material integrity. Therefore let the words of St. Alphonsus be recalled here (*Homo Apostolicus*, tr. 16, no. 29): *No one is bound to doubtful laws.... Nor does it stand in the way to say here that in the matter of the Sacraments we cannot follow opinions which are only probable; because this proceeds when the validity of the Sacrament is at issue; it is otherwise concerning integrity.* Hence the conclusion: since probability suffices to exempt from the obligation of confession in the case, but even a greater probability than the opposite does not suffice for imposing this obligation (see the opinion of St. Alphonsus in the Note to nos. 71-73, vol. 1), therefore in reality there stand against the affirmative opinion of St. Alphonsus not only all who depart from it, but also all who concede that the opinion which denies the aforesaid obligation is at least probable; and, on the contrary, those who call the affirmative opinion merely more probable do not sufficiently support it; indeed, these also will have to be said to stand for the negative if the argument which the VV. employ elsewhere, as we have seen, has any force, namely, that whoever admits some opinion to be merely more probable thereby concedes that the opposite is probable; which, nevertheless, we have said is not always true.

With these things premised, let us now approach the question of fact. Having counted the Authors both whom the holy Doctor Alphonsus alleges for his affirmative opinion and whom the VV. afterward added (pp. 474-478), we have thirty-seven. Having counted again those who are related for the opposite negative opinion by St. Alphonsus, Cardenas, Mendo, Giribaldi, etc., we have thirty-eight, and indeed with those omitted whom Lugo (disp. 16, no. 92) affirms that he consulted. Moreover, even if no account is taken of those whom the VV. produce for themselves, since nevertheless they judge that opinion only as more probable and thus rather stand against themselves, it may now be asked: Can an opinion be called common which has thirty-seven for itself but thirty-eight against itself? Is it not better to say with Wagemann (pt. 3, tr. 2, ch. 5, no. 58): *It is debated with equal probability on each side?* Nevertheless, an immense distinction (which must never be consigned to oblivion) stands out between the two opinions; namely, according even to the certain suffrage of St. Alphonsus, the probability of the negative opinion suffices for denying absolutely the obligation of Confession in the case; but St. Alphonsus also absolutely denies that the probability of the affirmative suffices for asserting the obligation. Therefore, if we judge this controversy by employing the extrinsic argument of authority, we must conclude, according to the certain principles of the holy Doctor Alphonsus, *A doubtful law does not bind*, etc., that the opinion of the same holy Doctor which says that the obligation of Confession is to be imposed in the case is no otherwise safe than it is safe to oblige the faithful to observe doubtful laws. It will be safe to offer counsel; it will not be safe to impose a precept. But, you will say, how then do so many call the affirmative opinion common, and indeed most common, as, for example, Voit, Scavini, and Frassinetti have it?

Reply. This phenomenon can be explained without difficulty. For although Lugo (disp. 16, no. 52) wrote that few had touched upon this question, Cardenas (disp. 51, no. 3) was nevertheless able to call these few *all theologians*; and from this Illsung, for example (*De Sacramento Poenitentiae*, q. 4, art. 5, no. 116), was able to call that opinion common. Several afterward copied this, paying less attention to what Cardenas (*loc. cit.*, no. 4) had warned, namely that the more recent authors, as though advancing in a body, entered the little crevice opened by Lugo as if it were a most ample door. Nor, again, is it surprising that others, after Cardenas had said that all theologians thought thus, judged the same opinion even most common; which we then see copied by others also.

But let us come to the intrinsic reasons. The VV., as we have already premised, prefix this title to the second article (p. 478): *The strongest reasons militating for the affirmative opinion are weighed.*

Reply. Where are those strongest reasons if you omit that title? You will finally find this single one: Just as Cardenas, Billuart, and Cuniliati urge the obligation of repeating the confession, because by the precept of the Council we are bound to confess all sins of which we have consciousness, so also does St. Alphonsus. In the proposed case, the penitent now has consciousness of the sin which he formerly held as doubtful. Therefore he is bound to confess the same sin as certain. But Lugo had already replied to this reason (*loc. cit.*, no. 87): *We have seen that this argument proves that even a twenty-first sin afterward known as certain must be confessed by the penitent who confessed twenty, more or less, because that sin is now certain in the conscience of the penitent.*

And in fact this is the rock upon which all the reasons customarily adduced for the same matter finally strike. Hence Dicastillo (tr. 8, disp. 9, no. 141), after weighing at great length the arguments on each side, concludes: *Because of the efficacious argument by which it is proved that the same reasoning applies to a doubtful sin and to an uncertain number, I judge it more consonant with reason that such a number also must be explained if it is afterward known with certainty how great it determinately was,* etc. But, says Lugo (*loc. cit.*, no. 78), *when a penitent unable to determine the certain number of sins confesses the likely number, for example, I committed perjury ten times, more or less: if he afterward remembers that he committed perjury twelve times, several and weighty Authors commonly teach that he need not confess it...*; and St. Alphonsus also approves this doctrine (*Homo Apostolicus*, tr. 16, no. 34). And nevertheless, behold, Gobat (tr. 6, no. 443) protests that he could not find a difference between the two cases: *Neither do I*, he says, *although I wearied myself long and greatly in investigating the difference, find any.* Therefore, this reason, as they say, the strongest, proves either too much or nothing.

The VV. assume further (*loc. cit.*) that, according to St. Alphonsus, the reasoning is different because in the one case the error is not concerning the substance (but concerning the number), whereas in the other it is concerning the substance. - Lugo replies that, when you say, *I committed perjury ten times, more or less*, concerning the ninth, tenth, and eleventh perjury the error concerns the substance in precisely the same manner, namely, the fact.

The VV. object, moreover (*loc. cit.*), that the reason adduced by Cardenas is firm, because a greater number of sins increases liability and requires a greater punishment. - Reply. Against the doctrine of St. Alphonsus, this would prove that the number also which someone previously confessed as likely and afterward discovered as certain must be expressed in a repeated confession. But Illsung (tr. 6, disp. 6, q. 4, no. 116) adds against this reason of Cardenas: *This reason seems to me to suppose something false, namely, that for this reason alone a negatively doubtful sin of a different species, or more than one or two of the same species, stated under negative doubt and afterward known, would have to be repeated, because a greater penance would have been enjoined for them. Notwithstanding this reason, many deny, and I*

with them (as also the holy Doctor Alphonsus), that merely aggravating circumstances are to be explained.

Finally, to what some object, that the negative opinion has against it both the doctrine of the ancients and the practice of the faithful, Wagemann replies (*loc. cit.*): The ancients did not examine the opinion expressly; they did not have before them the instruction of Trent; they relied upon the false principle: in doubt the safer part is to be chosen. The practice generally concerns a doubt improperly so called, or what is better, since in this way scruples also are disclosed; and a universal practice can scarcely be discovered.

The SECOND OPINION, sufficiently probable, denies it. The reason is deduced from what was said in no. 472: for just as, once a doubtful number of sins has been set forth with the word *about*, you are no longer bound to declare in confession the certain number which you afterward discovered, provided the excess is not notable; so neither are you bound to repeat in confession a sin which you accused as doubtful and afterward learned to be certain: for there is no difference between the two

cases, since even in a doubtful number certain sins are declared as doubtful; nor must the species be disclosed more than the number of sins. Moreover, the doubtful sin was directly remitted, since it was remitted by virtue of the absolution to which, as it existed in the conscience, it was subjected. Therefore, it is not necessary to subject it again to the keys. - Thus Lugo, disp. 16, no. 78; Sporer, no. 397; Elbel, no. 274; Reuter, no. 332, etc.

481. ○ **QUESTION 5. Can anyone, without confession first being made, approach Holy Communion with a doubtful or probable mortal sin?**

Reply. Affirmative, rigorously speaking. The reason is that the Council of Trent requires confession before Communion only for those who are conscious of mortal sin. Hence a Priest who doubts whether he consented to an evil thought, or who judges probably that he did not consent to it, can celebrate, after first making an act of contrition, but without confession, even though he has access to a Confessor. - St. Lig., no. 475. - In practice, however, confession is to be counseled.

Point III. On the Circumstances of Sins

482. ○ Circumstances of various kinds are distinguished in sins:

1. Some change the species, namely, those which by reason of themselves add to the act a malice specifically distinct from that which the act has by reason of its object; thus the circumstance of a vow or of marriage adds to fornication the malice of sacrilege or adultery.

2. Others are aggravating only, but notably or lightly, according as within the same species they notably or lightly increase the malice of the sinful act by reason of duration, intensity, degree, manner, time, person, place, etc.

3. Others are diminishing, inasmuch as they render the malice of the sin less, for example, a defect of advertence, etc. - Recall what was said on Human Acts, no. 27.

483. Principles. - I. It is certain that circumstances which change the species must be accused [1]. The reason is that they constitute a new sin of themselves; and this is established from the Council of Trent, sess. 14, ch. 5, and canon 7.

[1] Understand this if the malice of a different species which the circumstance introduces is grave. For if it is light, for example, the light irreverence of one who steals another's hat in a Church, it is not necessary, according to what is established concerning venial sins, to express it in confession.

II. It is certain that lightly aggravating or diminishing circumstances need not necessarily be accused, although it is better to disclose them [2]. The reason is that venial sins are not necessary matter of the Sacrament of Penance.

[2] This must be understood with a grain of salt. Otherwise even the confession of persons otherwise pious, who are accustomed to bring forward a few venial sins, will be drawn out for at least half an hour while they endeavor diligently to disclose all the adjuncts by which their faults can be lightly aggravated or diminished.

III. It is also certain that circumstances must be expressed by reason of which a sin venial from its genus becomes mortal. Likewise, circumstances must be disclosed which so diminish a sin that what, apart from them, would have been mortal becomes by reason of them either no sin or only venial.

484. Questions. - **QUESTION 1. Must circumstances NOTABLY AGGRAVATING the malice of mortal sins within the same species necessarily be accused?**

Reply. There is a twofold probable opinion [3].

[3] Carefully note that even the adversaries freely concede the probability of the opinion which denies. Therefore, according to the opinion of all, it is probable that no one is bound to this. This obligation therefore cannot be urged; even the rigorous Cabassutius admits this consequence here.

The FIRST OPINION, more common and more probable, denies it absolutely. The reason is: 1. because the Council of Trent requires nothing other than the confession of the number and species of sins, and therefore seems to exclude the obligation of confessing other circumstances. Add that otherwise both penitents and Confessors would always fluctuate amid perplexities, since it is difficult to distinguish which circumstances are notably aggravating; for no rule, at least generally, can be assigned by which they may be recognized, for example, with respect to duration, intensity, manner, etc. - Thus St. Lig., no. 467.

Some except circumstances which regard the quantity of the thing, as in theft [4]; but others with St. Liguori think that even this exception is not to be admitted of itself, provided the quantity is declared grave; for the reason is the same, because quantity does not change the species of the sin.

[4] The exception can better be stated: unless an extrinsic reason is added, for example, a reservation which concerns some determinate gravity of theft or degree of incest.

The SECOND OPINION affirms it. The reason is: 1. because the same reason holds for accusing aggravating circumstances as for accusing circumstances which change the species [5]; 2. because a sin increased by notably aggravating circumstances is equivalent to several sins [6]; 3. because if they were not accused, the Confessor could not impose a proportionate penance [7]. - Collet, sect. 3; Billuart, diss. 7, art. 2, sec. 3; Concina, ch. 6, and others.

[5] This is plainly false; because the Synod of Trent prescribes confession with regard to circumstances which change the species, but not with regard to others which are merely aggravating. If the reasons proved equally concerning both kinds of circumstances, the Council would have limited that entire doctrine to circumstances which change the species without cause; for it should have spoken of both in general, without limitation and distinction. Thus Lugo (*De Poenit.*, disp. 16, no. 115).

[6] This reason also is too weak, both because in many matters it would require this uselessly, and because no one has ever sought a multiplication of sins in the same act from the possible division of the matter.

[7] To this reason it can be replied that so exact an equality is not always required in imposing penance. Thus Lugo (*De Poenit.*, disp. 16, no. 120).

There are also those who object with these words of the Roman Catechism (*De Poenit.*, no. 47): *Nor indeed must grave sins alone be explained by recounting them, but also those things which surround each sin and greatly increase or diminish its wickedness*.

But it can be answered that these words are explained there in such a way that it is not necessary to understand them of merely aggravating circumstances. And indeed: 1. it immediately adds: *For certain circumstances are so grave that the character of mortal sin arises from them alone; wherefore all these things must always be confessed.* But the character of mortal fault does not arise from a circumstance alone unless it changes either the moral or the theological species. - 2. This is confirmed by the fact that it prescribes the confession of greatly diminishing circumstances. For even the adversaries concede that this has force only when the diminution changes the theological species (see St. Alph., no. 468, at proof 3 from reason). - 3. The Catechism confirms its doctrine from the necessity of expressing the circumstance of a sacred person in homicide and of marriage in intercourse. But these pertain to circumstances which change the moral species. - 4. Finally, if it speaks of the gravity of theft, it cannot be proved that it is not there treating of a circumstance which changes the theological species; and

what it says about one gold coin can fittingly be understood as an example of a circumstance which, regard being had to absolute quantity, makes the fault light and therefore introduces a different theological species.

Moreover, in practice the faithful are accustomed, ordinarily speaking, to declare the more notable circumstances; and this contributes both to greater peace of conscience and also to receiving more abundant fruit, both by reason of the humility in the confession itself and by reason of the more suitable direction which they receive [8].

[8] According to the opinion of all, however, except the case in which there is question of sins against the sixth precept. For beyond that which may perhaps be necessary for declaring the species of the sin, nothing further is to be inquired into or permitted to be narrated by the penitent. I said *which may perhaps be necessary for declaring the species of the sin*, etc.; for the Doctors also commonly warn that the grave danger of handling this filthy matter can sometimes require that even inquiry into the species be spared.

485. ○ **QUESTION 2. Must the circumstance of a custom of sin necessarily be accused?**

Reply. More probably, negative, speaking of itself. The reason is: 1. because nothing other than the number and species of sins must necessarily be declared; 2. because the custom need not necessarily be explained, whether under this name is understood an evil habit or the repetition of the same sin. For a custom taken as a habit induced by repeated evil acts, although it is a vice, is nevertheless not a sin [9]; while a custom taken as the repetition of the same sin already declared on other occasions does not cause the sin committed again, and to be confessed here and now, to be either graver on the part of the object [10] or different in its species. Except if the Confessor asks, as is established from Proposition 58 condemned by Innocent XI, which reads thus: *We are not bound to confess to the Confessor, when he asks, a custom of some sin.*

[9] There can nevertheless be a sin of negligence in employing the means necessary for correcting the vice; this voluntary negligence indeed causes even indeliberate acts, toward which an evil custom is of itself apt to impel, to be voluntary and imputable (see Note at no. 300, vol. I).

[10] This reason seems less pertinent; because even if some greater gravity accrued from this circumstance of custom, nevertheless it has already been said (see above, no. 484) that circumstances which merely aggravate within the same species need not necessarily be disclosed. This reason would nevertheless be pertinent when the circumstance of custom and at the same time of negligence in correcting it caused acts which of themselves were either semi-deliberate or even wholly indeliberate to assume grave guilt in their cause, that is, in the voluntary negligence (see preceding note).

I said *speaking of itself*, because sometimes it must be declared per accidens, so that the Confessor may judge the state of the penitent in relation to granting or denying absolution; this occurs when the penitent can prudently doubt his own disposition of soul, or can rightly fear that perhaps he is mistaken in this [11].

[11] Not only because of the circumstance of custom, but whenever a penitent notices either that he is certainly not rightly disposed to receive the grace of the sacrament, or that there is a prudent reason for a defect of that disposition, he is bound to disclose it to the Confessor, lest, namely, he receive the sacrament unworthily.

Moreover, in practice it is better to exhort penitents to disclose their custom of sinning to a Confessor who is not their ordinary one [12].

[12] The diligence by which penitents seek the aid of a Confessor for more efficaciously procuring the correction of vices is certainly always to be commended.

486. ○ **QUESTION 3. Must the circumstance of the degree of incest committed with blood relatives or relatives by affinity be declared?**

Reply 1. More probably, incest among blood relatives and relatives by affinity does not differ in species; therefore, the circumstance of consanguinity or affinity does not seem necessarily to be expressed. - St. Lig., *Homo Apostolicus*, tract 9, no. 7.

Reply 2. According to the more common opinion of the Doctors, the circumstance of relationship in the first degree of the direct line must be disclosed, namely, between father and daughter, mother and son, father-in-law and daughter-in-law [13]. Say the same concerning the circumstance of the first degree of consanguinity in the collateral line, namely, between brother and sister. Nevertheless, St. Lig., no. 18, calls the contrary opinion probable [14].

[13] For the same reason add also between a mother-in-law and son-in-law, etc.

[14] Suarez (*De Poenit.*, disp. 22, sect. 3, no. 12): *Concerning degrees of consanguinity, insofar as they are circumstances of incest... it is more probable that they do not change the species of the sin*, as Cajetan teaches at length, 2.2, q. 154, art. 9, and tom. I, *Opusc.*, last tract, reply 5; Soto; and Cano.

And Diana (tom. 1, tract 7, resol. 107), after adducing the opinion of those who admit a diversity of species in incest, adds (no. 2): *But according to the opinion of St. Thomas, 2.2, q. 154, art. 9, and Cajetan there, because incest among blood relatives and relatives by affinity does not differ in species in the moral genus, and in the sacramental judgment it suffices that he who sinned with his sister say: I committed incest once or twice, without explaining the person related to him. And although incest with a daughter or mother is graver than with a sister or niece or the female cousin of one's wife, nevertheless, because this gravity increases the malice within the same species, it need not necessarily be confessed. And this opinion of St. Thomas pleases me more, which Filliucius calls probable in Quaest. Moral., tom. 2, tract 30, ch. 5, no. 97. Therefore it must be said with Nugno that diversity of degrees does not make a specific diversity in incest, but is an aggravating circumstance, which I probably think need not necessarily be explained in confession. And Gyptius teaches the same in express terms, as do, among our own, Fr. Megala and others.*

Reply 3. More probably, however, the other degrees of consanguinity or affinity need not necessarily be declared. - Thus more commonly. - St. Lig., no. 469 and following.

QUESTION 4. Must the circumstance of the dignity of the person necessarily be accused, for example, if the sinner is a Superior, Magistrate, Priest, etc.?

Reply. More probably, negative of itself, that is, apart from the consideration of scandal, office, or a particular obligation. The reason is that the circumstance of the dignity of the person sinning does not of itself change the species of the sin, but at most aggravates the sin.

487. ○ **QUESTION 5. Must the circumstance of a sin committed by a Confessor with a penitent necessarily be declared?**

Reply. More probably, negative, provided it has no relation to confession. The reason is that by this sin no injury is done to the Sacrament, since it has no relation to confession [15]. - St. Lig., on the sixth precept, no. 451; Lugo, disp. 16, no. 451; Lacroix, etc.

[15] Some have thought that there is a certain spiritual relationship between Confessor and penitent, on account of which the sin contains some malice of incest. But this is commonly rejected (see Lugo, *De Poenit.*, disp. 16, no. 359 and following). Nevertheless, it is readily evident that both such a penitent must altogether be deterred from confessing further to that priest and such a Confessor from admitting that penitent further to confession.

QUESTION 6. Must the circumstance of a sacred time necessarily be accused?

Reply. Negative. This is evident from the universal practice both of Confessors and of penitents; for it is established that neither are the former solicitous to ask about such a circumstance, nor are the latter accustomed to declare it. Therefore, the circumstance of sacred time does not seem to require

explanation, unless certain things are specially prohibited out of reverence for the time, for example, that one should not present public games, comedies, or theatrical spectacles on Good Friday. - St. Lig., bk. 3, no. 273; Lugo, no. 520; and others commonly.

488. ○ **QUESTION 7. Does he satisfy the integrity of confession who accuses a recent sin as though committed long ago?**

Reply 1. Affirmative of itself, because the circumstance of time pertains in no way to confession. Hence a penitent satisfies the obligation of confession who mingles new sins with old ones, or who, when making a general confession, does not distinguish from the others the mortal sins committed since the last confession, even if he does this deliberately to conceal the time at which he committed the sins. - Thus the Doctors commonly. - See Lugo, disp. 16, no. 53 [16]; Tamburini, *Methodus Confessionis*, bk. 2, ch. 1.

[16] Cardinal De Lugo (disp. 16, no. 47), after adducing the opposite opinion of some, adds: *Others more correctly deny an obligation in the penitent to explain that he had not confessed those sins previously. Thus Bonacina, Homobonus, Diana, Sanchez, Suarez, etc. The reason... is that the sin is the same, whether he confessed it previously or not, unless perhaps the change of time brings with it a circumstance different in species.... But when the sin is the same, there is no reason why the circumstance of time must be explained. Since, therefore, the sin is the same whether he confessed it previously or not, and that circumstance in no way varies the sin, there is no reason why it must necessarily be explained.* But, resolving the arguments of the contrary opinion (no. 54), he adds these things: *Nor does it hinder that the penitent says that he wishes to make a general confession; for by this he does not say that he wishes to confess only old sins, but that he wishes also to comprehend those; for a general confession embraces all sins up to this hour. Nor does it matter that the Confessor understands it to be an old sin, for the penitent did not say this; and therefore the intention of absolving is not regulated by the private estimation of the Confessor, but he intends to absolve from the sins which the penitent brought to judgment, whatever they may be.... Finally, it does not matter that the penitent seems implicitly to indicate that they are old sins; for he truly has the intention of speaking about new sins and wishes to speak about them, although he desires not to be understood in this respect by the Confessor.*

Reply 2. But if the penitent lies about the time, for example, if he denies that he sinned today and declares the sin as though committed at another definite and remote time, the Doctors more commonly think that he does not satisfy his obligation. The reason is that the act which the penitent placed today is not the act placed a year ago. Hence he lies in two ways, namely, by concealing the sin committed today and by accusing a sin committed at another time. - Thus Tamburini in the place cited.

There are nevertheless Theologians who think this lie light. - See Lugo, ibid. [17].

[17] Lugo aptly observes (*loc. cit.*, no. 54) that this case differs from the preceding. *Therefore,* he says, *it is not the same thing to speak obscurely and expressly to deny; because in the first case the words truly signify that which he wishes to confess, and therefore he presents a true sin; but in the second case the words cannot signify the true sin, but a false one. And I said false because, as the patrons of the contrary opinion object, in this way you seem in reality both to accuse a sin which you did not commit and to conceal that which you did commit.*

Nevertheless, insofar as this argument is urged to deny the sufficiency of this confession, Lugo himself (ibid., no. 53) calls it merely probable. And indeed, as Tamburini observes (*Exped. Conf.*, bk. 2, ch. 1, no. 6), a disorder of this kind, by which you seem to accuse a sin never committed and to conceal one truly committed, occurs equally from other circumstances also which are falsely added, as even the adversaries freely admit. Thus, for example, if you say that you killed Paul when you killed Andrew; or that you sinned with a stranger when you sinned with an inhabitant; or that you stole from Lucius when you stole from Caius; or that you detracted from someone at home when you detracted from him on the road or in the theater; or that you read a heretical book by Melanchthon when the book was by Osiander; or that you struck a Capuchin when you struck a Carmelite. That these lies do not hinder sufficient integrity of confession is also evident from the fact that, if they happened to be uttered inadvertently, no one compels the penitent to correct the error in the following confession. And to this pertains what the Author says, that this lie is thought light by certain Theologians.

Moreover, scarcely any use of these opinions bears upon practice, unless perhaps the Confessor, with one who undertakes to confess the sins of his whole life, thinks it superfluous from the adjuncts to inquire whether he had previously confessed this or that sin. For otherwise the faithful, ignorant of theological subtleties, are never accustomed to use these artifices. Indeed, even for those acquainted with these doctrines it would not always be lawful, whether because of a circumstance which changes the species at a different time, or because of the reservation of cases which can be present according as the sin was or was not previously absolved and duly confessed, or because of the adjuncts of a proximate occasion or evil custom which require the particular care of the Confessor.

489. ○ **QUESTION 8. Must the external act of sin necessarily be accused?**

Reply. Affirmative, because in the moral genus it is one and the same thing with the internal act, and these two constitute one whole. Moreover, the external act is directly prohibited by divine law, for example, *You shall not kill*. Besides, without declaration of the external act the Confessor generally could not discharge his office as is fitting with regard to providing admonitions, etc. This is established also from the universal custom of the faithful, which explains the law in this sense.

490. ○ **QUESTION 9. Must the effect of a sin necessarily be expressed in confession?**

Reply. The Doctors disagree; but the opinion which denies it *has always seemed truer to me*, says Lugo, disp. 16, no. 440, who draws the reason from the distinction between the external act of the sin and the effect of the sin thus (ibid., no. 449): *The more common reason for this difference is that the external act, which is denominated free from the actual liberty of the internal act, is truly and properly a sin; but the effect which afterward followed, in sleep for example, is not properly a sin, as we have said, but the effect of a sin. But in confession all and only sins must be explained; therefore, the external act must be explained when it is actually free, but not the effect which afterward followed... because there cannot be an actual sin in him who is not actually sinning; nor can he actually sin who does not actually act; but he who sleeps while his enemy dies from poison does nothing at that time; therefore, he does not sin at that time.* Thus far Lugo [18]; see the rest in him, and you will not regret it.

[18] Here there is question merely of obligation, just as in the question whether sins doubtfully committed or merely aggravating circumstances must be expressed in confession. And since in the present controversy also the obligation must be called entirely doubtful, as the disagreement of the Doctors proves, by the general principle the obligation of expressing the effect of a sin in confession neither ought nor can be imposed upon anyone. To this pertain the things which St. Alphonsus (*Homo Apostolicus*, tract 16, no. 29) has concerning the question of the necessity of expressing merely aggravating circumstances: *Such a law,* he says, *is doubtful; and no one is bound to doubtful laws, as has been shown. Nor does it hinder to say here that in the matter of the Sacraments we cannot follow merely probable opinions; because this applies when there is question of the validity of the sacrament; otherwise with respect to integrity.*

491. ○ **QUESTION 10. Must a penitent declare the different persons with whom he sinned?**

Reply. Negative of itself. - Thus Bonacina, disp. 5, q. 5, sect. 2, point 2, sec. 3, diff. 3, no. 14; Tamburini, *In Decalogum*, bk. 7, ch. 7; Lacroix, no. 1040; and others commonly.

The reason is that it suffices for the number and species of sins to be declared; but sins do not change species merely because they were committed with several persons. Hence he who fornicated with three different persons, or three times with the same person, satisfies by saying that he fornicated three times; nor is he bound of his own accord to say whether his accomplice was one or several, or whether they were prostitutes or others. - Nevertheless, if the Confessor asks about this, the penitent

is bound to answer, because it is expedient that the Confessor know whether perhaps there is a proximate occasion of sinning, as is likely if the sin was committed several times with the same person.

492. ○ **QUESTION 11. Must one bound by a vow of chastity, when sinning with another similarly bound, declare both circumstances?**

Reply. Affirmative. The reason is that there are two entirely distinct sins there, namely, a sin against one's own vow and a sin of cooperating with the other in violating that person's vow. Precisely the same must be said of a married man having relations with another man's wife; for he commits a twofold adultery. - Lacroix, no. 4063; Lugo, disp. 16, no. 258; Salmanticenses, ch. 6, no. 63, etc.

QUESTION 12. Must a Priest or Religious sinning against chastity disclose his condition, or only the circumstance of the vow of chastity?

Reply. It is controverted. It probably suffices that each manifest the circumstance of the vow, because the species of the obligation does not seem to be changed by the special condition either of Priest or Religious [19]. - Lugo, disp. 16, no. 149; Lacroix, etc., against some.

[19] The vow of each is solemn; therefore the sin of each pertains to the same species of personal sacrilege. There can therefore be place for controversy only when one is bound by a solemn vow but the other by a simple vow, the violation of which more probably is not reduced to the species of sacrilege strictly so called. But enough was said elsewhere concerning these things, where the vow was treated (vol. I, no. 286).

493. ○ **QUESTION 13. Must the relationship of persons be declared in sins of hatred?**

Reply 1. Affirmative, if there is question of a closer relationship because of the strict bond of the virtue of piety. Hence grave hatred toward parents, children, grandparents, grandchildren, relatives by affinity in the first degree [20], godfathers, godchildren, one's spouse, and brothers and sisters must be declared. - Lugo, disp. 16, no. 303 and following; and others commonly. Reply 2. More probably, negative, however, if there is question of remote relationship, namely, among other blood relatives [21] or relatives by affinity. - Lugo, ibid., and others, against others who think that the circumstance of relationship even in the fourth degree of consanguinity must be declared.

[20] The virtue of piety properly exercises its office toward blood relatives, but not toward relatives by affinity. See St. Thomas (2.2, q. 101, art. 1) and Cardinal De Lugo (*De Poenit.*, disp. 16, nos. 303-308), who make no mention of relatives by affinity.

[21] In sins against other relatives or more remote blood relations, that is, apart from parents and brothers, although a circumstance of this kind aggravates and increases the malice, it nevertheless does not introduce a different species which must necessarily be explained in confession. Thus Lugo (*De Poenit.*, disp. 16, no. 308). But he says that this circumstance need not necessarily be explained because this malice, although of a different species, is nevertheless not judged grave.

Point IV. On Forgotten Sins

494. ○ Sins omitted through inculpable forgetfulness must be accused if they return to the memory of the penitent [1]. For by divine precept all sins committed after Baptism must be declared in sacramental confession; nor can present forgetfulness excuse from so great an obligation even for the future. This is established from Proposition 11 condemned by Alexander VII, to be reported below at no. 497.

[1] This must be understood, as is evident of itself, with regard to necessary matter of confession, namely, sins certainly grave.

495. Questions. - **QUESTION 1. Must sins omitted through forgetfulness or another just cause be accused AS SOON AS POSSIBLE?**

Reply. More probably, negative. For an obligation of this kind is to be understood morally, especially since these sins have already been blotted out and consequently there is no danger to the soul in delay. - Thus more commonly. - Sporer; Laymann; etc.

Indeed, according to several grave Theologians, the penitent can probably defer the confession of these sins until he is again bound to confess by virtue of another obligation. Thus it could be deferred for several months and even until the time of annual confession. - Thus Bonacina, disp. 5, q. 5, sect. 2, point 4, no. 32. Nevertheless, no other confession can intervene while those sins are omitted. The reason is that it pertains to the integrity of confession to declare in the present accusation all mortal sins not yet accused which occur to the memory, or of which one has consciousness, as Trent says, sess. 14, ch. 5. Moreover, according to Suarez, *De Poenit.*, disp. 22, sect. 1, no. 1: *Those sins are in the present consciousness which, having been committed after Baptism, have not been duly subjected to the keys through another confession* [2].

[2] In fact, it does not appear whether the words of Suarez pertain here. For he gives as the reason (ibid., no. 6), with St. Thomas, that one sin cannot be remitted without another. But here the question concerns sins already remitted.

QUESTION 2. Must sins omitted through forgetfulness be accused before Communion if they first occur to the mind?

Reply. More probably, negative, even if the penitent can confess without inconvenience. - Recall what was said in the Treatise on the Eucharist, no. 326.

QUESTION 3. Is a penitent who remembers a forgotten sin, but cannot (or does not wish to) confess, bound to elicit an act of contrition before Communion?

Reply. Negative, with St. Lig., no. 257; Lugo, *De Eucharistia*, disp. 14, no. 122; and with others commonly against certain others. The reason is that no foundation appears for why this contrition should be required. For it is not required by precept, because this is nowhere found prescribed; nor from a necessity of purification, because the sin has already been indirectly blotted out through the preceding confession and consequently does not need remission.

496. ◦ **QUESTION 4. Must a penitent who accuses a grave sin omitted in the preceding confession through forgetfulness or another legitimate cause, and already indirectly remitted, necessarily be absolved again?**

Reply. Affirmative, with the most common opinion. The reason is that by the institution of Christ all mortal sins must be subjected to the keys so that they may be directly remitted. For although they have already been remitted, they were nevertheless not remitted by virtue of the Sacrament, or by virtue of absolution, but only by virtue of the grace infused through the sacrament, and concomitantly with the other sins. - Sporer, no. 627; *Collat. Andeg.*, 35, q. 3; etc., against the few who are not to be heard.

Although the Confessor can omit absolution with penitents who are accustomed to return to the same Confessor, since they will be directly absolved in another confession, it is nevertheless better to impart absolution to all when this can easily be done, for the consolation and tranquility of soul of the penitent, and also on account of the fruit to be received from the Sacrament. Add the danger that the penitent may no longer be able to approach the same Confessor.

§ II. On Causes Excusing from Integrity in General, and Especially with Regard to the Dying

Point I. On Causes Excusing from Integrity in General

497. Principles. - I. Causes are sometimes given which excuse from the material integrity of confession, because sometimes that integrity is physically or morally impossible.

II. In order that someone may be judged excused from the material integrity of confession by reason of moral inability, although the sins occur to his mind, these conditions must be observed: 1. that only those sins be omitted which cannot be declared, or from the manifestation of which would follow a most grave extrinsic inconvenience, whether spiritual or temporal, to the penitent, the Confessor, or some third person; 2. that another Confessor cannot be found to whom an integral confession may be made without such inconvenience; 3. that confession be necessary here and now [1]. - St. Lig., no. 487.

[1] From the common opinion of the Doctors, this necessity is judged to be present: 1. if the precept of annual confession or Communion must be fulfilled; 2. if reception of the Eucharist or celebration of Mass cannot be omitted without reproach or scandal; 3. if otherwise someone must long be deprived of the benefit of the sacraments; 4. indeed, as Suarez adds (*De Poenit.*, disp. 23, sect. 2, no. 7), if otherwise someone would be deprived of the great utility which the sacrament of itself brings.

III. A difficulty intrinsic to confession itself never excuses, however grave it may be. The reason is that confession by its nature is essentially laborious, and therefore, if a grave difficulty, for example, great repugnance or shame or the loss of one's own reputation before the Confessor, excused from integrity, the faithful would generally be excused from accusing mortal sins, and consequently the institution of the Sacrament of Penance would in great part collapse. Moreover, the Church could not reserve atrocious crimes, because that creates no slight inconvenience for penitents.

IV. When the cause excusing from material integrity ceases, the divine precept of confessing all omitted mortal sins again urges; for when an impediment occurs, the obligation of confession does not cease simply, but is only suspended. Therefore, when the excusing cause ceases, the obligation of the law fully revives; and since the precept of confession is not affixed to a time or circumstance but concerns the whole of life, sins not yet accused must afterward, if it can be done, necessarily be accused. This is established moreover from Proposition 11 condemned by Alexander VII, which is as follows: *We are not bound in the following confession to express sins omitted or forgotten in confession because of an imminent danger of death or because of another cause.*

498. Resolutions. - The following chiefly excuse from the material integrity of confession:

1. Extreme sickness, that is, when a dying person can express only one or another sin, or, already deprived of the use of speech, shows penitence by some sign only and asks for absolution.

2. A defect of speech; thus the mute are exempted from integrity when they cannot confess integrally either in writing [2] or by signs; likewise travelers wholly or almost wholly ignorant of the language of the region in which they confess.

[2] The Author himself (below, no. 503, q. 7), with most of the Doctors, denies that there is ever an obligation of confessing in writing.

3. A lack of time, for example, if soldiers must proceed immediately to battle. The mere multitude of penitents does not excuse, however, as was said above.

4. Danger to the life of the penitent, the Confessor, or a third person; for example, if enemies arrive, or if many are in danger of shipwreck or contagion. Indeed, sometimes, in the extreme danger of many, all can be absolved by one pronouncement of the form, *I absolve you*, etc., after some general sign of contrition and confession has been exhibited.

5. Danger to reputation, for example, if a Priest about to celebrate at once, and needing a general confession, could not confess integrally because those present would suspect the matter.

6. Danger of revelation or violation of the seal; for example, if a Confessor cannot confess integrally without revealing sins heard in confession, etc.; or if a penitent for a grave cause fears that the Confessor may violate the law of the seal. But this latter case, if indeed it should ever be said to occur, is exceedingly rare.

7. Danger of scandal or a fall, both on the part of the penitent and on the part of the Confessor; for example, if a woman knew with certainty the very great frailty of the Confessor, etc. - St. Lig., no. 479 and following.

499. Questions. - **QUESTION 1. Is there an obligation of confessing a mortal sin which cannot be explained without disclosing the accomplice?**

Reply. More probably, affirmative, with the more common opinion. The reason is: 1. because no legitimate excuse is given by which the precept of integrity may be derogated from; for it cannot be said that the positive precept is restricted by the natural precept of not defaming one's neighbor, since the precept of charity [3] prohibits only that the crime of another be manifested without cause; but here there is a cause, and indeed a grave one, namely, procuring the integrity of confession and the direction of conscience; 2. the accomplice, by committing the sin, loses every right to reputation which he could have before the Confessor in relation to the confession of this sin, and he himself implicitly and freely consents to this injury to his reputation when he sins [4]. - St. Lig., no. 489, with many others.

[3] The obligation that the reputation of another not be injured through the revelation of a hidden crime seems to be derived from the virtue of justice rather than charity.

[4] Cardinal De Lugo, after showing (*De Poenit.*, disp. 16, no. 395) that the reason for this opinion, namely, that to be defamed before one Confessor is not a grave harm, is less firm - which, he says, *supposes another false opinion which I attacked in the Treatise on Justice and Right* - judges the same concerning this very thing and the reasons adduced by the Author (ibid., no. 397). *Others,* he says, *prove it because the penitent uses his own right in confessing his own sin, and the accomplice exposed himself to this danger of disclosure, since he knew the obligation which everyone has of confessing his sin integrally. But all these and similar things contain a begging of the question and suppose what is to be proved. For the question concerns this very thing, whether the penitent has a right to defame*

the accomplice, and consequently whether, in doing so, he uses his own right. Hence it is falsely supposed that the accomplice exposed himself to this harm. For if the penitent does not have the right, or if this is not proved from elsewhere, he did not expose himself to any such danger.

Nor does the argument which Lugo, after rejecting the foregoing, endeavored to make sufficient (*loc. cit.*, no. 398) seem any firmer, namely, that since the good of an integral confession is of such a kind and so great that on account of it Christ obliges the penitent to manifest his own crimes and to undergo infamy, it follows that for the sake of that same good He permitted the manifestation of another's crime. For the case of one's own reputation and that of another's reputation is so disparate that, according to the opinion of all and therefore even according to his opinion, I am bound, if I can, to seek another Confessor to whom the accomplice is unknown, but I am by no means bound to seek a Confessor to whom I myself am unknown.

There is added the fact that the weight of extrinsic Authority, considering both the number and the eminent name of the Doctors (see the same Lugo, *loc. cit.*, no. 393), appears no lighter in favor of the opposite opinion, which expressly denies the obligation of an integral confession from which the accomplice would be disclosed. Therefore, a sufficient reason by which someone may be compelled to confess a circumstance of this kind seems wholly lacking.

But although equal probability may seem to favor each of these two opinions, the case of each is nevertheless not equal. For the mere probability of the opinion which exacts integrity even with the disclosure of the accomplice is, by the general canon, unequal to inducing a certain obligation. But no reason other than this very obligation is present which could excuse from preserving the accomplice's reputation. Therefore, other inconveniences being excluded, the integral obligation of keeping that circumstance silent seems to remain whenever infamy to another would follow from its confession.

I said, *other inconveniences being excluded*; for, as the Author also intimates, if the penitent for a special cause needs direction and the counsel of a Confessor, because, for example, he has in the accomplice a proximate occasion of sinning, but no other Confessor is present either to whom the person of the accomplice is unknown or who, because the circumstances of the penitent are unknown to him, is qualified to furnish suitable counsels, he certainly will not be bound to undergo some grave danger to his own soul in order to protect the reputation of another. Nevertheless, it will certainly rarely happen that direction of this kind is so necessary and so urgent that no delay can be interposed while counsel is sought.

Nevertheless, not a few others probably deny it, teaching that another Confessor who does not know the accomplice is to be sought [5]; and if one cannot be had, the circumstance from which the accomplice would be discovered can, indeed must, be omitted until another Confessor is found. - Thus Busembaum, Diana, Navarre, Mazzotta, Medina, Elbel, etc.

[5] The obligation of seeking another Confessor to whom the accomplice is unknown, when this can conveniently be done, is maintained most commonly even by those Doctors whose opinion the Author reports in the first place; and only a few have affirmed that this is merely a counsel, whose opinion is rejected by all, as may be seen in St. Alphonsus (bk. 6, no. 489) and Lugo (*De Poenit.*, disp. 16, no. 392). Therefore, the controversy among the Doctors does not concern whether it is lawful to confess a sin with injury to the reputation of the accomplice when this inconvenience can easily be avoided by employing another Confessor, but rather whether, when another Confessor to whom the accomplice is unknown is lacking, the circumstance which would disclose the accomplice is to be passed over in silence, as is evident from what was said in the preceding note.

500. ○ QUESTION 2. What causes excuse from seeking another Confessor to whom the accomplice is unknown, as the patrons of the second opinion require [6]?

[6] According to the mind of the Doctors, as we said in the preceding notes, the question ought rather to be proposed thus: *What causes excuse from seeking a Confessor to whom the accomplice is unknown, according, namely, to those who deny that the circumstance of the accomplice can ever be kept silent?* For this is the difference between the two opinions: although each obliges the penitent, for preserving the reputation of the accomplice, to seek a Confessor to whom the accomplice is unknown, nevertheless, if such a Confessor is lacking, some say that the circumstance by which the reputation of the neighbor would be injured must be kept silent, while others contend that it must be expressed so that the integrity of confession may be preserved. These latter are the ones who judge that, because of the causes here mentioned by the Author, the reputation of the accomplice can be set aside; for the others admit those same causes as sufficient, not indeed that the crime of the neighbor may lawfully be revealed, but insofar as in those circumstances it is lawful to approach the Sacrament of Penance even without

the integrity of confession being preserved, namely, reserving the circumstance of the accomplice for a confession in which there is no danger of injuring the reputation of another. - See St. Alph., no. 490.

Reply. 1. If danger of death or the precept of annual confession urges; 2. if it would be grave for the penitent to omit confession or Communion; 3. if someone would disclose his conscience to another Confessor only with difficulty; 4. if someone otherwise would have to remain in sin even for one day; 5. if someone otherwise would be deprived of the benefit of some extraordinary indulgence; 6. if by approaching a Confessor to whom the accomplice is known, better direction or notably greater consolation would be obtained.

Hence, by reason of seeking counsel, alleviating sorrow, etc., mothers and wives who manifest to a Confessor the sins of their sons or husbands [7] are often excused, even though he knows them. For it would be too hard that they should be bound to seek another Confessor. Therefore, in general there is not held to be a grave obligation of approaching another Confessor for the sake of concealing the accomplice, unless perhaps there is question of a very grave crime. - St. Lig., no. 490, etc.

[7] The present question is by no means customarily raised concerning causes of this kind, which are judged of the lightest moment. For these things generally occur in families and, besides, are not usually secret. Suppose rather a wife who must confess adultery committed with her husband's brother, and one indeed initiated into holy orders.

501. ○ **QUESTION 3. Is it lawful for the Confessor himself to ask the name of the accomplice, for example, for correction, etc.?**

Reply. Negative, at least generally speaking, because this both induces one to detract from one's neighbor without a just cause [8] and renders the Sacrament of Penance odious. This is established from the Bull *Ubi primum* of Benedict XIV, in which the Pontiff, speaking of Confessors who demand the name of the accomplice under the penalty of denying absolution, declares that they sin gravely and incur suspension from hearing confessions, but only *ferendae sententiae* [9].

[8] If, according to the common opinion of the Doctors, a penitent is bound to seek another Confessor lest he betray the accomplice in the sin, indeed, according to the judgment of several, is excused for this reason from confessing a circumstance otherwise necessarily to be expressed, it is plainly evident that it is much less lawful for Confessors spontaneously to ask the penitent for the name of the accomplice.

[9] Four Constitutions of Benedict XIV exist concerning this matter. The first was given on July 7, 1745, to the Bishops of the Portuguese dominion, in which he designates and condemns the practice of asking the name of the accomplice. It begins: *Suprema omnium Ecclesiarum sollicitudo*. - The second was given on June 2, 1746; in it he confirms the former, establishes penalties against delinquents, and determines the order of proceeding in cases of this kind. It begins: *Ubi primum*. - The third was given on September 28 of the same year, 1746; in this he extends to the whole Church, or rather declares to be extended and in force, those things which he had decreed for the Portuguese dominion. It begins: *Ad eradicandum pravum zizanii semen*. - The fourth, finally, was given on December 9, 1749, in which he adds certain things to the second concerning the manner of proceeding in cases of this kind.

The condemned practice is designated thus in the first Constitution: *It has come... to our ears that certain... confessors, allowing themselves to be seduced by a false appearance of zeal, but straying far from zeal according to knowledge, have begun to maintain and introduce a certain perverse and pernicious practice in hearing... confessions...; namely, that if perhaps they should encounter penitents having a companion in crime, they would indiscriminately ask those penitents for the name of such a companion or accomplice; and they would not merely endeavor by persuasion to induce them to reveal it to them, but, what is more detestable, having also announced the denial of sacramental absolution unless they revealed it, they would utterly force and compel them; indeed, they would also demand that not only the name of that same accomplice, but in addition the place of residence, be designated to them. They did not hesitate both to color this intolerable imprudence with the specious pretext of procuring the correction of the accomplice and gathering other goods, and to defend it by certain borrowed opinions of the Doctors; although in reality, by following false and erroneous opinions of this kind, OR BY APPLYING TRUE AND SOUND ONES BADLY, they were bringing ruin upon their own souls and those of their penitents, and furthermore were rendering*

themselves guilty before God... of several grave harms which they ought to have foreseen would easily follow therefrom. And indeed, it is known by unhappy experience that many harms of this kind have already followed; nor could it happen otherwise than that on this account disparaging talk and scandals, and hatred not only of the Ministers but even of the sacred Ministry itself, and an immense disturbance of minds among the faithful people, should arise.

But the penalties according to the Constitution *Ubi primum* are: 1. the penalty of excommunication incurred by the fact itself and reserved to the Roman Pontiff against anyone who in the future should dare to teach that a practice of this kind, as it is set forth and reproved in the related Brief, is lawful, or should presume to write or speak in defense of the same condemned practice, or rashly to attack or twist into other meanings or interpret those things which are decreed against the same practice in the said Brief. - 2. But against those who, in conformity with the aforesaid reprobated practice, should presume to question penitents who confess to them in the tribunal of penance some sin or crime in which they had a companion or companions, concerning the name of the companion or accomplice, the place of residence, or other adjuncts or circumstances of this kind concerning a more express and more individual disclosure of the same accomplice, denying sacramental absolution to that penitent if he refused to disclose it, it is decreed that, beyond the incurring of mortal sin, they are to be subjected to suspension from the office of hearing confessions and also to other graver penalties; these, as is evident, are *ferendae sententiae*. But these penalties remain in their force even after the Constitution *Apostolicae Sedis*, in which the excommunication imposed by Benedict XIV is confirmed.

Since, however, in the same Constitution this case is committed to the tribunal of the Holy Office, these things are added concerning the obligation of denouncing delinquents: *But whoever shall have known that any other person has transgressed in any of the aforesaid ways shall be bound to denounce him to the same Holy Office within the term of days customarily fixed in the Edicts of the Holy Office for an inquisition of this kind* (in the edict a month is fixed); *otherwise they shall incur the penalties customarily inflicted by the same edicts upon those who do not denounce* (this penalty was a reserved excommunication, now removed by the Constitution *Apostolicae Sedis*).

Nevertheless, the penitent who is involved in the case is exempted from this obligation of denouncing in the following manner: *Nevertheless, for just causes, we will and do exempt from an obligation of this kind to denounce the very person of the penitent alone in his own case, that is, in the case in which, while confessing his own sin, he is compelled by the Confessor to manifest to him the name of the accomplice in the same sin....*

But the case is then said to pertain to the tribunal of the Holy Office only when an evil persuasion concerning the condemned doctrine is added; for otherwise it will pertain to the Ordinary. *But if,* he says, *it should happen that the act of a confessor wrongly asking the name of the accomplice and denying absolution unless it be disclosed to him is of such a kind that, although imprudent and evil, it was nevertheless a simple and bare act, that is, destitute of those circumstances which render him suspect of an evil belief or of an evil adherence to the practice... reproved in the said Brief as lawful, then a delict of this kind... shall not be subject to the cognizance... of the Holy Office; but to take cognizance of it and to punish the delinquent confessor by suspension from hearing confessions or by other canonical and legitimate penalties according to the character of the delict shall pertain wholly to the Ordinaries of the places in their respective Dioceses.*

Finally, since in the second Constitution it was prescribed that a denunciation was to be made to the tribunal of the Holy Office only when there was an underlying suspicion of evil doctrine, in the fourth Constitution it is defined that this is always to be observed, whether the priest is thought to have transgressed because of adherence to the reprobated practice or suspicion of an erroneous opinion, or merely through imprudence without the aforesaid circumstances; namely, that in the tribunal of the Holy Office itself an examination concerning the pertinence of the case should be made and sentence passed, whether the case is to be left to the Holy Office or the accused is to be judged by the Bishop.

Moreover, concerning this fourth Constitution a doubt troubled some, namely, whether it was issued for the dominion of Portugal alone, or also for other places. For: 1. the Synopsis of the Bull has thus: *To the Holy Inquisition in the kingdoms of Portugal and the Algarves is adjudged cognizance of the pertinence of cases against Confessors*, etc. And in fact it treats there only (see secs. 1, 2) of controversies stirred up in Portugal and of the Bishops of that region, so that the Pontiff seems to have wished entirely to provide for them. - 2. In the Constitution itself mention is indeed made of two Constitutions which had been issued for those kingdoms; but no mention is made of the third, by which it was declared that the condemnation both of the evil practice and of the doctrine pertained to the whole Church. - 3. Since in the third there is prescribed that manner of promulgation which is proper to Decrees pertaining to all provinces, namely, that copies be affixed publicly at Rome to the doors of the Basilicas, etc., in this fourth, as also in the first and second, there is no mention of this promulgation. - But on the other side the reason for issuing the Constitution seems to make against this, and it appears to have force also for other

places. For it is of this kind (sec. 6): *Since the same delict was established to be referred in certain circumstances to the tribunal of the Holy Office, but in others to the Ordinary, certain persons zealous for ecclesiastical peace suggested that in the execution of a method of this kind an approach to new disturbances would be opened, because there would be no one who could pronounce judgment in a case of disagreement; whence it came about that, the fear of a denunciation to be made to the same Office of the Inquisition having been removed in some circumstances, that could certainly be said to have been taken away which especially restrained men from so pernicious a... delict.*

502. ○ **QUESTION 4. Is it so forbidden by the aforesaid letters of Benedict XIV to ask the name of the accomplice that in no case is this lawful?**

Reply. Negative. 1. Because Benedict XIV himself supposes cases in which this is lawful according to true, as he says, and sound opinions; 2. because sometimes the penitent must necessarily reveal the accomplice, and yet can accomplish this only through the Confessor. - See Lugo, *De Poenit.*, disp. 17, nos. 427-432 [10].

[10] To the true and sound opinions which Benedict XIV affirms certain men were accustomed to abuse in the Constitution *Suprema* pertains that which Cardinal De Lugo (*De Poenit.*, disp. 16, no. 432) establishes thus: *The Confessor can see that, from concealment of the accomplice, most grave harms are imminent, which the penitent is altogether bound to prevent; again he sees that the penitent cannot accomplish this by himself immediately, nor has another through whom he can do it, other than*

the Confessor himself; in which case it is certain that the penitent is bound to choose that sole means; but if he is unwilling, he is no longer fit to receive absolution. See in the same Lugo (ibid., no. 433) the example of a Regular Prelate who can sometimes for this reason oblige a subject to reveal an accomplice.

St. Alphonsus (bk. 6, no. 491), from the opinion of Fr. Philip de Carboneano (in the note or appendix to Antoine, *De Poenit.*, ch. 1, art. 2, q. 6), adds that Confessors certainly can and are bound, for preserving the integrity of confession, to inquire into necessary circumstances, namely, those which either change the species or must be inquired into so that provision may be made for the penitent's conscience; for example, if the Confessor asks whether the person of the accomplice is in the first or second degree, whether bound by a vow, whether she is a maidservant, whether she lives in the same house, even though he thereby comes to know the accomplice. These things can certainly be admitted insofar as something must necessarily be known so that provision may be made for the salvation of the penitent; although even in this it seems necessary to take care lest inquiry descend further than is necessary into particular adjuncts, for example, whether she is a maidservant. But as regards knowing the species of the sin - to omit for the moment that the degree of relationship in incest more probably does not change the species, while the circumstance of a vow is too unusual to require inquiry, especially since, if present, it is usually disclosed spontaneously - it is useful to remember the obligation by which, according to all, a penitent is bound to seek another Confessor lest he betray his accomplice in sin, and that for the same reason, according to the opinion of the gravest Doctors (see the notes above at nos. 495 and 500), those circumstances can lawfully be kept silent at that time. Therefore, if the questions, as is supposed in the case, would easily lead to betraying the accomplice, it can hardly be admitted that the Confessor must, or even can, employ them.

QUESTION 5. Is there an obligation of confessing a sin which cannot be declared without defaming another who was the occasion of the sin, for example, if someone killed his sister who was pregnant through a crime?

Reply. It is controverted, as in the nearly similar case discussed above in the first question. Lugo with others affirms it. Suarez with several others denies it. Therefore, equal probability stands on each side [11].

[11] If it is probable that a circumstance of this kind can be kept silent, we have already said (above, in the note at no. 500) that the right of another to preserve his reputation prevails.

503. ○ **QUESTION 6. Are those who are both deaf and mute bound to confess, and if so, how?**

Reply. The mute and deaf are bound to confess in some manner, at least by signs, unless they are so ignorant and dull that nothing can be elicited from them. The reason is that the precept of confession regards all the faithful who can manifest their sins in some manner.

Hence: 1. Mute persons sufficiently instructed are bound to confess integrally, at least by signs, if these are understood by the Confessor; but if they are less instructed or can be understood by the Confessor only with difficulty, it will suffice for them to manifest only one or another sin, or to signify in general that they are sinners and wish to avoid sin.

2. Deaf persons who have the use of speech are bound on their part to confess the sins which occur to their memory; but the Confessor is not bound to question them in order to procure the integrity of confession, because of the excessive difficulty of questioning [12]. in doubt greater provision must always be made for the sacramental seal than for integrity; and therefore the Confessor should ask neither about the number nor about circumstances, etc., and in imposing satisfaction should enjoin something light, lest a suspicion of grave fault be introduced. Nor perhaps is it expedient to summon women at untimely hours, when no one else is in the church, both because an accidental danger of revelation is not absent and because it is altogether better to provide for propriety.

[12] Add also the danger of revelation. The same must also be said concerning the hard of hearing; if their confession must be heard in a church, as is generally necessary with women,

QUESTION 7. Are mute persons who know how to write bound to confess in writing in order to procure the integrity of confession?

Reply. The more common opinion denies it, both because of the danger of revelation, because writing is an extraordinary means which has never been regarded in the Church as prescribed, and also because, as Diana says, such a manner of confession is of itself public, since writing is of itself public. - Diana, tom. 4, tract 3, resol. 72, no. 2 [13]. It can nevertheless be permitted; but care must be taken that the writing is immediately destroyed.

[13] ** The VV. lament (p. 936, no. 115, with the Note) that Gury has, *The more common opinion denies it*, etc., when St. Alphonsus (bk. 6, no. 479) wrote to the contrary: *The more common opinion affirms it*.

Reply 1. First it would have to be examined whether certain Authors are rightly alleged for one opinion or the other. Thus, for example, for the affirmative you may see Toletus cited, who nevertheless writes in express words (bk. 3, ch. 6, no. 5): *Fourth, it can be made in writing, so that the penitent writes and the Confessor reads, which could occur in the case of a mute person or another impeded person; and it is a true confession, although the penitent is not bound to this, because it is of itself public. For that which is committed to writing is of itself permanent.* In the same way, certain Authors can be seen cited by some for the affirmative and by others for the negative.

2. Since a sufficiently long series of Authors can easily be brought forward for each opinion, it is not surprising that some have called the affirmative opinion more common, while others called the negative more common, according as these Authors rather than those came before their eyes.

3. But what is most important: since those who hold the affirmative opinion defend it only as more probable, and generally do not deny the probability of the opposite, as regards practice, namely, imposing an obligation of confession through writing, it is scarcely, or not even scarcely, lawful to attribute any weight to the affirmative opinion.

4. This ought to have all the more force if you consider what the Authors who hold the affirmative suggest so that it may be done rightly. Suarez, for example, after saying (*De Poenit*., disp. 36, sect. 6, no. 7) that this opinion seemed more probable to him, adds these ways of carrying it out: *Cajetan employs the method that the penitent can write all the species of sins on one sheet and*

the various numbers on another, and afterward in confession indicate by a sign the sin and the number. Peter Soto employs another, that he not write beforehand, but in the presence of the Priest, and immediately tear it up. For what Dominic Soto says, that the priest could snatch the paper from his hands and publish it, is of no moment; for he could also disclose a confession made by voice, etc. This observation of Suarez perhaps will not be approved by all; for it is one thing that the priest can reveal something in words, and another that by producing the writing of the penitent he can prove the things said. Moreover, who could affirm that obligations of this kind, and merely probable ones indeed, can be imposed?

The VV. add (*loc. cit.*) that a most valid reason stands for the affirmative. - Reply. Others will rightly doubt concerning this most valid reason, which the VV. leave unstated. For it is established by fact that no one until now has perceived such a reason which settles the controversy. The reason commonly brought forward is that he who is bound to the end is bound to the means. But, they say, for many writing remains the sole means of fulfilling the precept. Therefore. But, omitting now the common reply, namely, that no one is bound to extraordinary means of this kind, an answer *ad hominem* may be given. Why, I ask, do they not oblige a man of failing memory to use writing, lest he fulfill the precept of confession only by halves? Why does this not hold here also: he who is bound to the end is bound also to the means?

504. ○ **QUESTION 8. Are those ignorant of the language of the place in which they wish to confess bound to confess, and if so, how?**

Reply. Those ignorant of the language of the place in which they are staying, and lacking a Confessor by whom they can be understood, are bound, when the precept of annual confession urges and at the point of death, to confess in some manner, at least by general signs. The reason is that the divine and ecclesiastical precept urges. For although they cannot confess materially and integrally, they are nevertheless bound to that which they can do. - St. Lig., no. 479, etc.

QUESTION 9. Are those ignorant of the language bound to confess through an interpreter if they can?

Reply. Negative, because to confess through an interpreter is a most grave burden and exposed to many dangers, for example, revelation, mockery, etc. Except if, in danger of death, a penitent ignorant of the language doubts concerning perfect contrition, because in that case confession would be a means altogether necessary for salvation [14]. - St. Lig., ibid.

[14] It was not St. Alphonsus, but Busembaum, who had written that no one is bound to confess through an interpreter, unless perhaps in danger of death, in which it suffices to confess some lesser sins. To this St. Alphonsus adds (no. 479): *But even at the time of death it is probable that he is not bound.* He then adds from Viva: *Unless the sick man is doubtful concerning contrition, as Viva, q. 4, art. 3, no. 10. It nevertheless suffices then to state one venial sin, Salmanticenses... and Viva.* But this exception of Viva pertains to the now antiquated opinion which holds the validity of the sacrament doubtful even at the point of death unless some specific sin is subjected to the keys; especially since the necessity of an interpreter seems altogether excluded by those words of the Lateran Council (ch. *Omnis utriusque*, 12, *De Poenit. et Remiss.*): *Let him alone confess his sins...*, etc.; likewise by the words of the Council of Trent (sess. 14, ch. 5) concerning the manner of confessing secretly to the Priest alone; to which is added the Response of the Sacred Congregation of February 28, 1633 (in Scavini, tract 10, disp. 1, ch. 2, art. 2), declaring that a penitent who does not wish to use an interpreter can and must be absolved. And indeed, immediately afterward the Author establishes from the common opinion that all things required for the sacrament and for formally integral Confession are present even if the penitent asks for absolution only by some sign.

Point II. On the Confession and Absolution of the Dying

505. ○ I. Every dying person who in some manner confesses by voice or sign, or asks for absolution, can and must be absolved, and indeed absolutely. The reason is that all things required for the Sacrament and for formally integral confession are present. - St. Lig., no. 480, and others commonly.

II. Every dying person in whom attrition and confession can in some manner be presumed with however slight a probability can and must be absolved, at least conditionally; because in a case of extreme necessity it is lawful even in the administration of the Sacraments to use an opinion which is only slightly founded. - St. Lig., no. 482, and others more commonly against others.

III. A dying person who altogether refuses the Sacrament of Penance, or who can in no way be presumed to have attrition, can in no manner be absolved [1]. The reason is most clearly evident.

[1] No one will deny that he who can in no way be judged disposed ought not and cannot be absolved. But since a disposition can be presumed even in one who is deprived of his senses in the very act of sinning, as the Author, after others, has in the Resolutions, it is scarcely apparent when it will happen that a dying person can in no manner be presumed to have attrition.

506. Resolutions. - 1. All dying persons not yet deprived of their senses, who consent to absolution and obey the commands of the Confessor, are to be absolved: absolutely, if they ask for confession of their own accord or propose to confess with a willing mind; but conditionally, if they are only with difficulty induced to some confession, or if there is prudent doubt concerning their sufficient disposition. - Thus commonly.

2. At least conditionally, all dying persons deprived of their senses who, before the loss of their senses, expressly showed a desire for confession, for example, by ordering a Priest to be summoned, etc., are to be absolved. The reason is that they are judged truly to confess through the testimony of those present; for a confession as though through an interpreter then seems to be made. This is established from the Councils and from the Roman Ritual. - St. Lig., no. 481.

3. Under condition, all dying persons altogether deprived of their senses who lived as Christians are to be absolved, even if at that time they gave no sign either of sorrow or of a desire for confession. The reason is that sorrow and a desire for absolution can be presumed in them. - St. Lig., no. 482; Lacroix, no. 1162; Elbel, no. 208; Collet, ch. 6, etc.

4. Other dying persons deprived of their senses who lived in a less Christian manner are also to be absolved conditionally, because even in them penitence and a desire for confession can still in some manner be presumed [2]. - Collet, ibid.; Lacroix, ibid.

[2] These things accord with the doctrine which we read in St. Augustine (*De Adulterinis Coniugiis*, bk. 1, ch. 26, no. 33): *To catechumens placed at the end of this life, if they have been so oppressed by sickness or some accident that, although they still live, they cannot ask that Baptism be given to them... let that which is their already known will in the Christian faith profit them, so that they may be baptized in the manner in which infants, whose will has not yet appeared, are baptized.... Even if his will is uncertain, it is much better to give to one unwilling than to deny to one willing, when it does not appear whether he wills or does not will.* These last words sufficiently indicate that there is question also of those concerning whom it is by no means clear whether they are disposed, because they can provide no sign of their will. And that these things have force also concerning the Sacrament of Penance, the same holy Doctor (ibid., ch. 28, no. 35) teaches in these words: *I think that not only other catechumens, but also those themselves who, joined to the marriages of living persons, retain adulterous unions,*

although we do not admit them to Baptism when sound in body, nevertheless, if they lie in a desperate condition and repent within themselves, and cannot answer for themselves, I think they are to be baptized, so that this sin also may be washed away with the others by the laver of regeneration. For who knows whether perhaps they had resolved to be detained by the allurements of adulterous flesh until Baptism?... But the case of Baptism is the same as that of reconciliation, if perhaps the danger of ending life has overtaken the penitent. For Mother Church ought not to wish even them to depart from this life without a pledge of peace. In this text the words *repent within themselves*, which are read

in certain codices and editions, refer to the penitence which is conjectured, not to that which betrays itself by some sign, as the context itself proclaims.

Moreover, there is a twofold reason by which the foregoing opinion of the holy Doctor, insofar as he teaches that either Baptism or reconciliation is to be given to a man who manifests his present will by no indication, can and customarily is reconciled with the common doctrine concerning the Sacrament of Penance. For while the Doctors commonly agree that absolution, at least under condition, is not to be denied to dying persons of this kind, nevertheless Viva with certain others (in St. Alphonsus, bk. 6, no. 482), according to the opinion which holds that the acts of the penitent are the matter *from which* of the sacrament and therefore must in some manner be sensible, contends that the dying person can be absolved insofar as any of his movements, sighs, labored breathing, rolling of the eyes, etc., are to be accepted as signs by which he asks for absolution and which in so great a necessity suffice for granting absolution under condition. But others, according to a different opinion attributed to the Scotistic school, reply (in the same St. Alph., *loc. cit.*) that it does not hinder that the sick person cannot provide a sign of his will; for the acts of the penitent are only the matter *about which*, that is, the disposition for the sacrament, which need not necessarily be sensible. Concerning each of these opinions we have already said some things above (in the note at no. 417). These things, as is evident, contribute nothing to practice, because in practice the patrons of each opinion contend that absolution is to be given. Nevertheless, if it is asked which side is moved by the more solid reason to define that in these circumstances the dying person can and must be absolved, perhaps one will only with difficulty grant the palm to the first opinion. First, in the former opinion this will rightly seem hard, that if the dying person exhibits absolutely no external movement, as sometimes happens, absolution can in no way be imparted according to its principles, since sensible matter is lacking. Then, although each opinion is equal in this, that it must equally employ conjectures in presuming the disposition of the sick person, nevertheless, the probability required concerning the validity of the sacrament shines forth much greater in the latter opinion than in the former. For the probability of the opinion which holds the acts of the penitent as the matter *about which*, and therefore does not require an external sign of disposition from the penitent for the essence of the sacrament, far exceeds the probability by which a movement of the finger, a rolling of the eyes, or the labored breathing of the sick person must be accepted, according to the former opinion, as signs of one asking for absolution; this probability is called slight by these very Authors (in St. Alph., *loc. cit.*), and in reality can be so slight that it easily slips from the hands, indeed even from the eyes.

5. A dying person deprived of his senses in the very act of sin, for example, in a duel, adultery, theft, etc., can probably be absolved under condition, because even he can be sufficiently disposed. This especially has place for one who perhaps was led to the sin by fear, human respect, etc. - St. Lig., no. 483; Elbel, no. 211; and others probably.

Appendix I. On the Examination of Conscience

507. Principles. - I. A penitent, speaking per se, is bound under grave sin to make a diligent examination of mortal sins before confession. This follows from the precept of procuring, insofar as it can be done, even the material integrity of confession. For since he is bound to confess the number and species of sins, by that very fact he is bound to recall them to memory insofar as he can with moral diligence, and therefore to make a diligent examination; because he who is bound to the end is also bound to the means necessary for it. This is established also from the Council of Trent, sess. 14, ch. 5, where it is said that *all mortal sins of which penitents have consciousness AFTER A DILIGENT EXAMINATION OF THEMSELVES must be recounted in confession....*

II. Diligence in the examination must be serious, or as great as is customarily employed in serious matters of great importance [1]. The reason is evident; for there is question of the grave precept of confession. This is established also from the words of the Council of Trent just cited: *after a diligent examination of themselves.*

[1] As regards those who are accustomed to be excessively anxious about the sufficiency of their examination, the things which Lugo has from the common doctrine are pertinent (*De Poenit.*, disp. 16, no. 590): *It is certain,* he says, *that the penitent himself is not bound to a most exact examination of his sins, but to a human one, that is, one of such a kind that this sacrament is not rendered too grave and burdensome.... Hence it is not a good rule if you say...: if this man were to think for another hour about his sins, he would remember some sin which he does not remember, or could calculate the number of sins better; therefore, he is bound to think for another hour still. But the reason is the same, because attention must not be given only to an exact and integral confession of sins, but very great attention must also be given to the human condition, lest on that account the Sacrament be rendered grave and odious, or cause be given to shameless and ignorant heretics to call it the torture chamber of conscience.*

III. Nevertheless, equal diligence is not required of all. For those who confess frequently need a lesser examination than those who confess rarely [2]; but those who are involved in worldly affairs need a greater examination than those who lead a private life. Likewise, country people and the uneducated cannot employ that accurate diligence which the intelligent and learned can. - Billuart, ibid., and others commonly.

[2] Concerning these things, however, note the wise admonition of Cardinal De Lugo (*De Poenit.*, disp. 16, no. 594): *Finally, it must also be noted that he who has more sins is to be questioned more lightly and less exactly concerning each than he who has fewer. The reason is gathered from what has been said; because, since only human diligence and examination is required, and this is that which does not of itself generate disgust and weariness with this Sacrament, it follows that less distinct knowledge is required from one who, because of... the multitude of sins... could with greater difficulty render an exact account. For to one who must confess the sins of his whole life, which he spent in every kind of sin, that examination would be most difficult and of itself apt to render confession odious and excessively grave to him, which would not be difficult but easy for another making a monthly confession. And this is the reason why from a prostitute, a concubinary, and similar persons we seek the number of sins less exactly and distinctly than if, for example, he had persisted in that sin only for a month or a week; because, namely, the diligence which would suffice for distinctly confessing the sins of one week, if the same were employed for examining a long time, would introduce such difficulty and trouble as the precept of integral confession does not oblige one to, because it would render the precept itself and confession excessively troublesome and grave.*

508. Resolutions. - 1. He who, from grave negligence in the examination of conscience, omits some mortal sin, sins mortally per se [3] and is bound to repeat the confession as invalid. Yet in a defect of examination there can be slightness of matter, even if a grave sin is thereby omitted, for example, because of some inadvertence; and then the confession is certainly valid.

[3] Note the words *of itself*; because grave negligence in this matter, considered in itself, truly cannot be excused from grave guilt. But it must also be recalled here that which all teach: advertence to the gravity of the fault is required for a grave sin. It is therefore necessary that someone have known that at that time he was sinning gravely by negligence. Since this is not very frequent, because that would be equivalent to advertently consenting to a sacrilegious confession, it can be gathered therefrom that the necessity of repeating confessions for this reason rarely occurs.

2. He who is morally certain that he has not committed mortal sins since the last confession is not bound to a rigorous examination before confession, except insofar as is required for supplying sufficient matter for the Sacrament. In practice, however, pious penitents are to be counseled to devote themselves to an examination of conscience for at least five minutes, or about half a quarter-hour, namely, for recognizing and uprooting venial defects.

3. Entirely moderate diligence in examination is required in the timorous, because the conscience would not remain silent if anything gravely culpable lay hidden within; indeed, in the scrupulous an inquiry is to be omitted and sometimes altogether forbidden as useless and often harmful; for if they had sinned gravely, they would always have the sin before their eyes. - Thus commonly.

4. Generally, he satisfies who reflects upon where he was on each day, what affairs he transacted, in what he failed amid those circumstances by thought, affection, word and deed, or omission; how he conducted himself at home, in church, and in conversation with his neighbor [4]. Nor is it necessary that, retracing the same footsteps, he search them again and again. - Reuter.

[4] This manner of examining the conscience can rightly seem not merely sufficient but rather exquisite and most diligent.

5. An examination as accurate as for the healthy is not required for the sick; indeed, sometimes none is to be exacted from them because of weakness of the head. Nor should they readily be indulged when they say that they defer confession from day to day as though they had not yet sufficiently examined their conscience; but, insofar as their condition permits, they are to be examined briefly by the Confessor himself through the precepts of the Decalogue and of the Church; for it is better to restore even those who have confessed imperfectly to the state of grace by absolution than, by deferring the Sacraments of the Church, to expose them to the danger of damnation. - Elbel, no. 153.

509. Questions. - **QUESTION 1. Is a penitent who fears that sins may fall from his memory bound to write them down and read what has been written?**

Reply. Negative. The reason is that no one is bound to procure the integrity of confession through extraordinary means and through such exquisite diligence. Moreover, this is foreign to the common practice of the timorous. - St. Lig., no. 471, etc. [5].

[5] Add the danger, by no means infrequent as experience testifies, of losing papers of this kind, and hence also scandals by no means light and contempt of the Sacrament.

QUESTION 2. What order is to be followed in the examination of conscience?

Reply 1. With respect to the matter: if someone has not confessed for a long time, it is expedient that he run through in order the precepts of God and the Church, the capital sins [6], and the special obligations of his state; otherwise, it suffices to attend to evil habits, to the more customary sins, or summarily to sins against God, one's neighbor, and oneself.

[6] Whenever the order of the precepts of God and the Church is observed, an examination according to the order of the capital sins, or better, capital vices, will scarcely furnish any further necessary matter for confession; and unless there is question of penitents diligently instructed, an examination of this kind is accustomed to produce no moderate confusion rather than utility, and to induce useless repetitions; for the capital vices scarcely ever introduce sins which do not bear before them a transgression of divine or human law.

Reply 2. With respect to the manner: 1. divine light is humbly to be sought; 2. an examination of conscience is to be made; 3. then the baseness of sins and the gravity of the divine offense are to be considered especially, and thus one must devote oneself to eliciting sorrow and a purpose of amendment.

510. ◦ **QUESTION 3. What is to be done by the Confessor if penitents approach without having sufficiently examined their conscience?**

Reply 1. If they are instructed, they can kindly be dismissed so that they may examine their conscience more accurately and return, at least if there is question of lengthy and involved confessions. The reason is that it is almost impossible for someone suddenly questioned to

remember everything. - St. Lig., no. 471, and others commonly. Except, however, unless the circumstances counsel otherwise.

Reply 2. If they are uneducated or little instructed in spiritual matters, they are not readily to be dismissed so that they may examine their conscience, at least if they have employed some diligence. The reason is that the Confessor will easily supply for these persons. For by a few questions he himself will obtain more than they, left to themselves, would accomplish by a long examination, although they tried to recall all their sins to memory. Moreover, it is to be feared that perhaps, terrified by the difficulty, they will not return again to confess [7].

[7] Thus the Roman Catechism (*De Poenit.*, no. 60): *There are others who, either because they are accustomed to confess their sins rarely or because they have employed no care and thought*

into searching out their crimes, and when they have come to confession they know neither how to proceed nor sufficiently where the beginning of this duty is to be taken. These certainly must be rebuked more sharply, where the circumstances permit, and first of all taught that, before anyone approaches the priest, every effort must be made that he be moved by contrition for his sins; but that this can in no way be accomplished unless, by remembering them, he endeavors to recognize them individually. Wherefore, if the priest recognizes men of this kind as wholly unprepared, let him dismiss them from himself with most humane words, and exhort them to take some time for thinking about their sins and then to return. But if perhaps they affirm that they have devoted every effort to this matter, since the priest must greatly fear lest, once dismissed, they no longer return, they are to be heard, especially if they display some desire of amending their life and can be induced to accuse their negligence, which they promise to compensate for at another time by accurate meditation. And most worthy of attention are the things which immediately follow: In this, however, great caution must be employed. For if, after hearing the confession, he judges that neither diligence in enumerating sins nor sorrow in detesting them was wholly lacking in the penitent, he can be absolved; but if he notices that both are wanting in him, he shall be his adviser and counselor that he employ greater care, as was said before, in examining his conscience; and having treated the man as kindly as he can, he shall dismiss him.

Article III. On the Repetition of Confession

511. Principles. - I. Every confession of mortal sins which is certainly invalid must necessarily be repeated. For all mortal sins must of themselves be subjected to the keys.

II. But a valid confession, even if it lacks integrity, need not necessarily be repeated; only the defect must be supplied. The reason is that the sins already declared were directly remitted by virtue of absolution. Therefore, there remains only the obligation of subjecting to absolution the omitted sins, which had been remitted only indirectly and concomitantly. - Thus all. - St. Lig., nos. 502, 504.

III. The repetition of an invalid confession must be made in its entirety if the penitent approaches a new Confessor, because otherwise he can perform here the role neither of judge nor of physician; but it is otherwise if he confesses to the same Confessor who still remembers the preceding confession in some manner. For then it suffices if he accuses himself summarily of the sins already accused, for example: *I accuse myself of the sins already declared in such a confession*. For this is sufficient that the sins invalidly declared be accused sacramentally, nor is it necessary for the Confessor, in order to fulfill his office, to hear the confession again. - Thus commonly. - St. Liguori, no. 502; Elbel, no. 253; Lacroix, no. 1216; Lugo, disp. 16, no. 638; Billuart, diss. 7, art. 2; and others against certain authors who require an integral repetition of the confession.

IV. A confession need not necessarily be repeated unless its invalidity is morally certain. The reason is: 1. because when an act has certainly been placed, if a doubt arises whether it was rightly placed, that rule of law obtains: *One must stand for the validity of the act*; 2. because the obligation of the divine

law concerning making confession has already probably been satisfied. - St. Lig., no. 505; Lacroix, no. 1221; Elbel, no. 263; Mazzotta, etc.

512. Questions. - **QUESTION 1. Must an invalid confession be repeated in its entirety before the same Confessor if he remembers the sins accused only IN A CONFUSED MANNER, or has even entirely forgotten them?**

Reply to the first. More probably, negative, even if the confession was invalid on the part of the penitent; a general repetition will suffice. The reason is that, for faults already accused, a general repetition joined with the knowledge previously possessed by the Confessor suffices for sacramental judgment, since the Confessor has already judged concerning each sin. - Thus commonly with St. Lig., no. 502.

Reply to the second. More probably, negative also, even if the Confessor in no way remembers that invalid confession; consequently it will suffice for the penitent to manifest his state so that the Confessor may have at least a confused knowledge of it. The reason follows from what has just been said. For if in the preceding case some confused memory of the state of the penitent suffices for the Confessor, it ought also to suffice in the present case, since the same reason applies in each. - St. Lig., ibid., and the others cited above, against others. Indeed, according to Suarez, it suffices that the Confessor remember that the penitent was disposed and accepted penance [1]. - Suarez, disp. 22, sect. 6; thus also Lugo, *De Poenit.*, disp. 16, sect. 15, no. 636; V. Casus, no. 679.

[1] This last clause seems to pertain, rather than to the penitent who confessed invalidly, to him whose absolution had been deferred.

513. ○ **QUESTION 2. Must a confession made with doubtful contrition be repeated?**

Reply. Negative of itself; the reason is evident from what has been said. Nevertheless, in practice careful attention must be given to the condition of the penitent. For if the penitent is a man sufficiently prudent and grave in his ordinary actions or in his confessions, there is at least a probability, indeed also a legitimate presumption, of the validity of the confession; consequently he is not to be urged to repeat it. But if he is supposed to be a frivolous man and inconsiderate in most of his actions, counsel to repeat the confession must be given to him [2]. - Thus commonly. - Elbel, *De Contritione*, no. 74.

[2] The Author knowingly says *counsel*, from the general rule premised, namely, that there is no certain obligation of repeating the confession unless the invalidity of the preceding confession is morally certain.

** The VV. object here (p. 937, no. 116) those things which St. Alphonsus has in *Homo Apostolicus* (tract 15, no. 34), where the holy Doctor asks whether one who doubts whether or not he is in grace can receive Communion.

Reply. Those things do not pertain to the matter; for neither does the holy Doctor inquire there concerning a doubtful state of grace because of doubtful contrition, nor do those things which the holy Doctor has concerning this argument in bk. 6, nos. 432 and 475 require the confession necessarily to be repeated.

The things which the holy Doctor (bk. 6, no. 505) establishes thus as a general principle certainly pertain to the matter: *Moreover, it must be carefully noted here that penitents are not to be compelled to repeat confessions unless it is morally certain that they were invalid, as Croix, Gobat, Holzmann, Mazzotta, and Elbel with Filliuccius and THE COMMON OPINION against Antoine rightly say.*

And what the VV. (pp. 460-461) endeavor to object, that this common doctrine of St. Alphonsus and the Doctors has place where the doubt concerning the validity of the confession turns upon the ground of integrity, but not upon the ground of sufficient disposition, is exploded by St. Alphonsus himself, who in the same place discusses the use of this rule concerning

recidivists. For the doubt concerning the validity of confession with regard to recidivists is derived not from doubtful integrity, but from doubtful disposition.

QUESTION 3. Are recidivists to be compelled to repeat preceding confessions?

Reply. Negative of itself. The reason is that a new fall is not of itself a certain argument that the recidivist previously lacked disposition. Sometimes, however, from the circumstances it can prudently be judged that some recidivist confessed invalidly [3]. - St. Lig., no. 505.

[3] Do you see the open way to exacting repetitions of confessions against the certain doctrine which had been established above in the fourth principle? From the context it is clearly inferred that the confession must be repeated if it is prudently judged that the recidivist confessed invalidly. But does a prudent judgment of this kind provide that moral certainty which was previously required for this in the fourth principle? The Author, in the first part of the reply, wished to depart from the doctrine which Louis Habert, the obstinate leader of the Jansenist faction (see the Note below at no. 633), inculcated with certain others, namely, that a confession is to be judged invalid when the penitent did not afterward produce worthy fruits of penitence; wherefore he required that these fruits precede absolution. But in the last part he thought that he was showing obedience to St. Alphonsus, in whom (*loc. cit.*) that passage of Habert is read. Yet this manner of tempering that opinion, while it does not avoid the inconveniences of the Jansenist principle, also overturns the principle placed fourth. Therefore, so that all things may cohere, let the mention of that prudent judgment be omitted, and let it be said that sometimes it can be sufficiently established that someone confessed invalidly; and it is manifest that this can occur both with a recidivist and with one who is not a recidivist.

** And in these things let the VV. also have their reply, who (p. 937, no. 117) object here with the same words of Habert related by St. Alphonsus (bk. 6, no. 505).

514. ○ **QUESTION 4. Must all the sins which were previously narrated to the Confessor merely historically, outside confession, be explicitly repeated?**

Reply 1. Negative, if the Confessor still remembers them; for then it suffices if the penitent confesses them generally, saying: *I accuse myself of all those things which I have already narrated to you.* The reason is that through the summary confession those sins are sacramentally subjected to the Confessor as judge in relation to absolution; and the Confessor here and now judges sacramentally concerning all of them, since he remembers them.

Reply 2. Affirmative, if the Confessor does not clearly and distinctly remember all of them, even if he remembers them confusedly or in part. The reason is evident from what has been said [4]. - Thus St. Lig., no. 502, and others commonly [5].

[4] Indeed, from what was said above at no. 511, Principle III, the contrary seems to be proved. For it is there established that sins previously declared non-sacramentally are sufficiently declared sacramentally through a summary confession, even if the Confessor does not retain a distinct memory of those sins.

[5] On the contrary, Cardinal De Lugo (*De Poenit.*, disp. 16, nos. 637-638) presents the opposite opinion as common. And to the reason by which St. Alphonsus (bk. 6, no. 502, doubt 1, at the end) indicates himself to be moved, namely, that since the preceding confession was not made to a judge, it does not seem that account is to be taken of it, but a distinct sacramental confession is to be made anew, since the prior one was not sacramental, he replies: *To the contrary, however, is the common authority and practice. For almost all the Doctors universally say that afterward that confused memory suffices, from whatever source the defect of the prior confession proceeded.... The same usage appears when someone outside confession narrated some sins to a priest who was his friend for the sake of seeking counsel, and afterward confesses to the same priest, accusing himself briefly of all those things which he had said outside confession. In this case also there is not now in the priest so exact and distinct a knowledge as there would be if the penitent now accused himself distinctly; and indeed that prior narration had in no way been sacramental, nor an accusation made to a judge, but a narration made to a friend. It must therefore be admitted that even a prior non-sacramental narration persisting in a memory not altogether distinct can in some manner be made sacramental by a subsequent accusation, so that it can serve for the sacrament. Not that the prior narration truly becomes a sacramental accusation, but insofar as the subsequent accusation, referred to the memory which the Confessor has of*

those sins previously heard distinctly, is sufficient knowledge of the kind desired in the Confessor. Thus Lugo from the common opinion, who then aptly resolves the doubts of those who think otherwise.

** Through ten columns (pp. 480-484) the VV. not only censure this brief Note, but at the same time undertake to attack Cardinal De Lugo, whom they moreover represent almost as a liar, or at least as carried away by empty fantasies. Let us dispatch the matter in a few words.

Therefore, as regards the present question and Lugo's opinion, they write thus (p. 483): *The opinion which Lugo defends must be called common neither before nor afterward. Not before, because he first proposed it; not afterward, because no one, so far as we know, followed it except Aversa; and if perhaps others also did, they are certainly few.* These words are referred to that which is transcribed from Lugo in the Note: *The same usage appears when someone outside confession narrated to a priest who was his friend*, etc.

Reply. Suarez (*De Poenit.*, disp. 22, sect. 6, no. 5) has these things: *If the repetition of Confession is made to the same priest who still retains a sufficient memory of the sins, it will not be necessary to state each individually, but to subject all in one word, supplying the defect. The reason is that, the prior narration being supposed, that one word is equivalent to a distinct confession, because it sufficiently makes all the sins present to the knowledge of the confessor. JUST AS, if the priest knows all the sins outside confession, they can be stated to him in confession by one word, namely, by accusing oneself of all those things which the other knows. AND IN THESE THINGS THE AUTHORS AGREE.* But Suarez preceded Lugo; therefore, Lugo did not first propose this opinion. 2. Suarez adds that the Authors agree in these things; therefore Lugo said not falsely but most truly: *The same usage*, that is, common usage, *holds*, etc.

Likewise Aegidius Coninck (disp. 4, no. 45): *A confession made without sufficient sorrow... avails for this, that the Confessor receives a perfect knowledge of the state of the penitent, so that afterward the latter can sufficiently confess all his sins in a few words by saying that he is sorry for the sins already narrated and desires to be absolved from them; and these words alone then have the true character of confession which is a part of the Sacrament. JUST AS, if someone had narrated all his sins for the sake of seeking counsel and afterward, sorrowing for them, wished to confess, it would suffice for him to say that he is sorry for the sins already stated and asks to be absolved from them.* Moreover, Coninck also is earlier than Lugo.

That this doctrine was common also after Lugo, we have, for example, from Illsung (*De Poenit.*, disp. 6, no. 152), who writes these things: *In the second case, namely, when the Confessor has not so forgotten the sins that he does not retain at least a confused memory, the Doctors COMMONLY deny that anything by way of repetition must be done or exacted, and add that it suffices provided the penitent in general accuses himself of the sins stated before, if the prior confession was not a judicial accusation but, for example, ONLY A REQUEST FOR COUNSEL, or if it was made to one not having due jurisdiction; for then those sins over which jurisdiction was not given would likewise have to be repeated in general. THUS THE DOCTORS COMMONLY, whom Vasquez, Palao, Tanner, and Lugo report and follow; because through a generic repetition and approval of the specific confession, the prior distinct narration of sins is made judicial and sacramental.* Therefore, others besides Aversa, and indeed not a few but most of the Doctors, handed down the same doctrine as Lugo.

We have the same from Dicastillo, who likewise appeals to the common opinion (tract 8, disp. 8, no. 120). Thus he: *COMMON USAGE HAS, AND MOST OF THE DOCTORS ADMIT, that afterward that confused memory suffices, from whatever source the defect of the prior confession proceeded.* And after bringing forward the example of one who had confessed to a priest not having jurisdiction, he adds: *So also, if someone disclosed his sins to a priest who was a friend, not for the sake of confessing but of seeking counsel, and afterward, on that or another day, desires to be absolved from them, it suffices that he accuse himself briefly of those things which he had disclosed, even though knowledge or memory not wholly distinct still persists in the priest. Therefore, in these and similar cases that prior knowledge, as newly approved and referred by the penitent to sacramental confession, is judged in some manner sacramental.*

And let these things, without bringing forward more, suffice to establish that this doctrine is not vainly called common in the Note, and that Cardinal De Lugo is censured gratuitously by the VV. as though he had called common that opinion which, otherwise, as the VV. say, he himself first proposed and scarcely any few followed.

The VV. insist (pp. 482-483) that what Lugo says is excessive, namely, that the Doctors almost universally teach that a confused recollection of sins suffices when the confession was invalid because of a defect of jurisdiction on the part of the Confessor, since not only Suarez but also Coninck and other grave Doctors defended the negative opinion.

I reply that this is not the case in which Suarez and the others deny that a confused recollection of sins suffices. Indeed, the words of Suarez brought forward above refer to such a confused recollection of sins, which he says suffices. But these embrace also the case of a confession made to a priest not having jurisdiction. Therefore.

Proof of the Major. For Suarez (ibid.) premises these things there: *It remains that we explain how the confession of sins is to be repeated IN THESE CASES, namely, whether it is necessary to narrate them again distinctly and expressly, or to state in one word the defect*

of the prior confession and that he subjects again to the keys all those things which someone confessed badly. And we saw the answer above, that a distinct confession is required if it is made to another priest; it is not required if it is made to the same priest.

Proof of the Minor, namely, that among these cases is comprehended a confession made to a priest not having jurisdiction. For, enumerating these cases (ibid., no. 4), he says: *The fifth heading is from a defect of jurisdiction in the minister.* Therefore, this is not the case concerning which Suarez denies that a confused recollection suffices.

The case, therefore, in which Suarez denies that a confused recollection suffices is when, as he says (ibid., no. 6), the priest is the same but the sins HAVE ALREADY FALLEN FROM MEMORY. For after bringing forward three opinions of others, he explains his own thus (ibid., no. 7): *But to me... it occurs that a different distinction is to be made. For either the confession was invalid by reason of itself, namely, because on its own part it had an essential defect either of sorrow or integrity, or of jurisdiction on the part of the Confessor; and then I judge that the confession must be repeated altogether and distinctly IF IT HAS FALLEN FROM MEMORY. The reason is that the prior confession was not matter of confession nor a true sacramental accusation;... but since it cannot be made with one confused word because of the reason given, it must necessarily be made distinctly.* But what is that reason given on account of which the confession cannot be made with one confused word? Because, as he has in the preceding no. 6, *the prior confession can effect nothing, since it remains neither in itself nor in memory; whence no word confusedly stated can then be equivalent to a distinct confession, because it is helped in no way by the preceding confession.* Therefore, Suarez in the former case affirms that one confused word suffices because he supposes that at least some confused recollection of the sins remains in the memory of the Confessor; but he denies that it suffices in the latter case because he supposes that no knowledge or memory of the sins, not even confused, remains in the Confessor. Since, therefore, the hypothesis in Suarez differs from that in Lugo, there is no reason why one should be opposed to the other.

Nevertheless, it does not seem that it must be denied that the words of Suarez brought forward, by which he exacts a distinct confession, were accepted somewhat more broadly by Lugo, as though they have force even when the Confessor retains some memory of the sins; wherefore Lugo (*loc. cit.*, no. 633) opposes the common practice both of the penitent who concealed a sin and soon returns and confesses his defect, and of the Confessor who, lacking jurisdiction over certain reserved sins, suspends absolution until the following day. For in neither case is a distinct confession imposed again.

But the VV. cannot rightly conclude therefrom that the doctrine of Suarez is in reality one thing and that of Lugo another. For in the hypothesis of a Confessor who retains no memory of the sins, Lugo agrees in the same judgment as Suarez. For he says thus (*loc. cit.*, no. 641): *Therefore, it does not suffice that the Confessor once had distinct knowledge of the sins if that past distinct knowledge afterward in no way directs, either mediately or immediately, toward forming the judgment; but distinct knowledge is required which directs the Confessor toward judging at least through a confused memory of itself. Therefore, if that past distinct knowledge in no way directs because the Confessor has now altogether forgotten and is directed only by the confused knowledge which the penitent now gives, it is of no service whatever that distinct knowledge preceded. Whence in that case... if that prior knowledge had not been given to a judge, because either he was not yet a priest or was not a legitimate judge, and nevertheless afterward he absolves with that confused knowledge which he receives anew, that absolution must be judged in the same way as that which is given to a dying person who does not confess his sins distinctly but gives similar confused knowledge, who certainly remains bound afterward to confess his sins distinctly. Thus it will be in that case, because the Confessor truly did not receive distinct knowledge from which he might exercise his office; and therefore, although he absolves validly, a distinct confession must afterward be repeated.*

From these things it is sufficiently evident that the VV. vainly sought in Suarez, with Coninck or others, adversaries whom they might oppose to Lugo's doctrine.

Finally, the VV. censure (p. 483) that in the Note it is said that the reason by which St. Alphonsus indicates himself to have been moved to follow the opposite opinion after Croix is this: that since the preceding confession was not made to a judge, it does not seem that account is to be taken of it..., since that prior confession was not sacramental. And they add: *But you will seek these words in vain in the holy Doctor.*

Reply. In the Note it is said that this is the reason by which the holy Doctor *seems* to have been moved; but it is not said that these are the words of the holy Doctor. The words of the holy Doctor are these (*loc. cit.*): *The reason is that no sacramental confession was then present.* Moreover, since the holy Doctor had indicated a little before that confession is not sacramental from a twofold cause, either because it was sacrilegious or because it was made to one who was not a judge; but now this can be understood only in the second sense, because there is question of one who by a mere narration, for example, for the sake of seeking counsel, told his sins to the Confessor; plainly, in order that the reason of St. Alphonsus might be truly reported in the Note, the matter itself required that the reason also be indicated why that prior knowledge could not of itself be judged sacramental. Is not the genuine mind of the holy Doctor thus expressed? It is, namely, the reason which the

holy Doctor borrowed from that unfortunate paragraph of Lacroix, just as he took from Croix himself that historical falsehood, as is manifest from what has been said, namely, that Lugo's opinion concerning this question is singular, into which Aversa almost alone went after Lugo; which the VV. also repeat.

QUESTION 5. Must a confession be repeated if the Confessor, before absolution, forgot the sins accused?

Reply. Negative, if the Confessor remembers, at least confusedly, the state of the penitent; for he absolves upon certain and sufficiently perceived matter, and moreover he judged sacramentally concerning the individual sins while they were being explained to him. Otherwise an intolerable burden would be imposed upon both the Confessor and the penitent. - St. Lig., no. 502.

515. ○ **QUESTION 6. Is the penitent bound to unfold the whole confession again if he notices that the Confessor, because of sleep, did not perceive certain sins and he does not know which ones?**

Reply. Affirmative, if the confession was brief, because he can prudently doubt concerning each sin whether it was understood by the Confessor or not. But it is otherwise if the confession was lengthy and only a few things seem not to have been perceived, because then he can prudently presume that each was understood; nor does it appear likely that Christ imposed the precept of integrity with so great a burden. Nevertheless, if the doubt concerned only one or another sin, it would have to be repeated. - St. Lig., no. 499.

516. Resolutions. - 1. A Confessor hearing the confession of a countryman who confessed badly in previous years will satisfy his office by questioning him only about the last year, if, because of the uniform manner of life, he can at the same time form a judgment concerning the preceding years. The same must be said if, having heard the confession of one year, the Confessor detects a defect in the preceding confessions and from this last confession has sufficient knowledge of the preceding sins; nevertheless, it is required that the penitent accuse himself in a general manner concerning the other years. - St. Lig., no. 504.

2. If someone confessed to a Priest lacking jurisdiction, he will be bound to repeat the confession if he afterward discovers the defect [6].

[6] Understand this if he confesses to another priest; for if the confession is to be made with the same priest who, for example, had previously been suspended from hearing confessions, the principles established above will have force.

3. If the Confessor did not recognize a grave sin as grave, or judged a mortal sin to be venial, there is not for that reason an obligation of repeating it, provided the penitent explained the fact rightly and faithfully; because for the validity of the Sacrament and the direct remission of the sin it is not necessary that the Confessor judge this to be mortal; indeed, he often cannot discern it. - St. Lig., no. 500, and others commonly.

4. A penitent who fears that he confessed invalidly for a long time is bound to repeat nothing, especially if he is of a timorous conscience [7] and has been accustomed to employ sufficient diligence [8] in confessions. The reason is that the presumption stands for the validity of the confessions. It is otherwise if there stands against the penitent a presumption so grave that it is equivalent to moral certainty.

[7] Whether the penitent is of a timorous or less timorous conscience, the rule of Principle IV must remain fixed, that no one is to be obliged to repeat confessions unless moral certainty concerning their invalidity is present. The foregoing distinction contributes in some manner to a judgment or to conjectures; but conjectures do not produce certainty.

[8] This sufficiency is not excluded by light negligence which does not exceed a venial fault, as was said above (no. 508, resolution 1).

Appendix II. On General Confession

A general confession is a repetition of several confessions. It can be a repetition of the confessions of one's whole life, or of some period, for example, of one year or of several years. Briefly, it must be said: 1. concerning the necessity or suitability of general confession; 2. concerning the method of making it.

I. On the Necessity or Suitability of General Confession

A general confession can be either necessary, or useful only, or useless, or even harmful. Hence the following rules must be established.

517. First Rule. A general confession is to be judged necessary whenever the preceding confessions were morally certain to have been invalid or sacrilegious, either on the part of the penitent because of a defect of contrition or integrity, or on the part of the Confessor lacking jurisdiction; but in other cases it can never be prescribed. The reason for each is evident from what was said above concerning the repetition of confession.

Second Rule. It can be counseled when, although the invalidity of the preceding confessions is not established, nevertheless a grave doubt concerning this can be had [1].

[1] The end of this counsel is not that eternal salvation be provided for, but that anxieties which are enemies of the peace of souls, diminish vigor in the exercise of good works, and especially bring troublesome distress at the point of death, may be removed.

Third Rule. A general confession, although not necessary, is to be permitted, or even prudently counseled, when, after the circumstances have been considered, the penitent will obtain notable spiritual fruit from it, for example, by reason of humility, devotion, fervor, knowledge of himself, manifestation of conscience for more perfect direction, or greater purity of soul, for obtaining divine helps more efficaciously, etc. [2]; because the Confessor ought, from charity, to promote the greater spiritual good of the penitent when he can easily do so.

[2] You have the principal fruits excellently expressed in the third meditation of the first week of the Exercises of St. Ignatius, namely: 1. that we may feel an intimate knowledge and detestation of our crimes; 2. that, recognizing and abhorring the perverse order of our past life, we may apply ourselves to our amendment; 3. that, having inspected the wickedness and frauds of our enemies, we may guard ourselves against them.

Fourth Rule. In other cases it is to be prohibited as useless, and even harmful, when other inconveniences besides a loss of time are prudently to be feared, namely, scruples, anxieties, disturbance of conscience, etc.; for if so great a burden for the Confessor and penitent is not to be undertaken without hope of notable fruit, much less is it to be undertaken with fear of notable harm.

518. Resolutions. - 1. A general confession is readily to be permitted, indeed counseled, at the principal epochs of the Christian life, namely, before first Communion, before the choice or

assumption of a particular state of life, for example, before the Priesthood, religious Profession, or even before matrimony; likewise when someone resolves to lead a more perfect life.

2. Besides the confession made at the time of first Communion, generally speaking, another general confession of one's whole life is readily to be permitted; but a second would be conceded only with the greatest difficulty when the former was made sufficiently accurately, in good faith, and with good will, unless perhaps it was made at a youthful age, for example, before twenty years of age. Hence penitents who ask the Confessor for permission to make a general confession are to be asked for what cause they request it, whether they have already confessed generally at another time, from what time, and how often; and from the replies the Confessor will judge whether this confession is expedient or not.

3. A partial general confession, namely, of one year, or from the time of the last general confession, according to the custom observed among most religious families, is readily to be permitted to devout persons. Likewise, pious penitents can sometimes be permitted to repeat summarily, in a few words, the principal sins of their life; nevertheless, attend to the various circumstances of persons.

4. Above all, however, Confessors ought to beware lest they compel penitents too readily to a general confession; and those are greatly to be rebuked who exact this from all new penitents under the pretext of necessity, or by reason of direction, etc. [3].

[3] Confessors of this kind plainly show themselves destitute of judgment when they indiscriminately enjoin a general confession upon all who, by ill fortune, approach them; nor do they understand that the consciences of penitents are thereby sometimes most gravely disturbed, and that scandal is not rarely given to them, just as though Confessors, abusing the sacred ministry, were to exact without cause, with grave burden and trouble to penitents, a narration of their whole life in order to satisfy their own curiosity.

5. A general confession is not to be permitted even when there is doubt concerning the validity of preceding confessions, where notable inconveniences are to be feared from it by reason of scruples, disturbance of conscience, etc.; because grave and certain inconveniences are not to be undergone on account of a doubtful obligation.

6. A general confession is never to be permitted to the scrupulous or fearful; because if one is permitted, as soon as this is completed, they will wish to make another, and after the second they will also ask with importunate entreaties to undertake a third, with the greatest detriment to the soul, etc. For it is established by experience that a general confession generates many more scruples than it destroys.

II. On the Manner of Making a General Confession

A general confession can be made in many ways; but, generally speaking, it will be more expedient if it is made according to the following rules.

519. ○ First Rule. Before confession: the Confessor ought to endeavor to know explicitly the state of the penitent and the various circumstances from which he can be directed toward questioning prudently and fruitfully. Hence:

1. Let him examine whether there is question of a necessary confession or not; for if it is necessary, the penitent will have to be heard, questioned, and assisted with much greater diligence and care. But if it is not necessary, the penitent must be warned expressly: 1. that diligence of this kind is not required, indeed that he is free to withhold whatever sins he wishes; 2. that he ought not afterward to be anxious because through forgetfulness he omitted more or fewer of them [4].

[4] Unless the penitent has been firmly persuaded of these two things, it is better to omit the general confession, which certainly would produce no fruit and, on the contrary, would be a perpetual fountain of anxieties.

2. Let him inquire prudently concerning the condition of the penitent, his age, occupations or offices, and his family: namely, whether he still has parents, brothers, or sisters; and whether he lives with them or has lived with them for a long time, etc.

3. Let him ask from what time the penitent has confessed; whether he was absolved; whether here and now he is entangled in some evil habit or evil affection of mind; whether he has frequently approached the Sacraments; whether he confessed piously or sacrilegiously; whether he ever concealed sins; at what time; for how long; whether he afterward confessed them, or repeated the sacrilegious confessions.

These preliminary items of knowledge will be of very great service to the Confessor;

he will press these questions more or less according to the character of the one confessing and the nature of the replies. Second Rule. As regards the order of confession: the accusation and questions in the confession itself ought to be made in a definite order, lest all things be mixed together, to the disturbance of the one confessing and with danger of a defect of integrity, etc. But the shorter and easier way is for the declaration of sins to be made according to the order of the commandments of God, of the Church, and of the special obligations of each one's proper state.

Third Rule. As regards the manner of confession: if the penitent is sufficiently instructed, let the Confessor kindly induce him to disclose his sins according to the aforesaid order, promising that he will assist him and, as often as there is need, question him so that all things may be rightly completed.

But if the penitent is uneducated, let the Confessor assume almost the whole burden of the confession himself; let him question him in order concerning all things that penitents of the same condition are accustomed to commit, and after each sin let him inquire from the penitent whether he knows of anything to be added. Before he begins the questions, however, let him carefully admonish the one confessing that he has nothing to fear concerning the difficulty of disclosing his sins: *Be at peace and of good courage,* he shall say, *I shall make your confession; I assuredly know all the sins which you could have committed: I shall disclose all of them to you; your part alone will be to reply clearly and sincerely to my questions and to conceive true sorrow for your sins.* - Thus Salvatori, *Practical Instruction for New Confessors* [5].

[5] There is indicated a wholly excellent little work whose title is: *Practical Instruction for New Confessors... A Most Useful Little Work Also for Catechists of Uneducated People, Written by Father Filippo Maria Salvatori, S.J., etc.* It was published at Rome about the beginning of this century and afterward reprinted several times, and finally again at Rome by the press of Monaldi in the year 1848. In this last edition, however, through the alteration of one little word, perhaps by a typographical error, a corruption crept in, and indeed in a sufficiently grave matter, plainly repugnant to the meaning of the Author. For where he had written concerning a sinner (*Part 2, sec. 1, no. 6*): *If he is truly penitent and gives PRUDENT signs of this repentance of his, he must*

be absolved, etc., this new edition substituted (p. 143): *If he is truly penitent and gives EVIDENT signs of this repentance of his, etc.* This is plainly beside the point. For since evidence adds to certitude that force of light which, as it were, dazzles the eyes of the mind and compels assent, who, I ask, among the Doctors requires it as a prerequisite in order that he may think it lawful for himself to absolve the penitent? Indeed, what certitude, much less evidence, I ask, does the matter itself admit? And the mind of the Author, in this matter assuredly consonant with the most common opinion of all, was manifest from those things which are read a little afterward in the same edition (p. 150): *I suppose here that the penitent has given you all the signs by which you can form a PRUDENT judgment that he speaks sincerely. In this case you fail in a duty of justice by deferring absolution for him, because the penitent, as soon as he gives you PRUDENT arguments of a true conversion of heart, has a strict right to be absolved.* These things indeed suggest that this corruption of the text is in fact to be ascribed to the ignorance of the typesetters.

It is also to be lamented that this Roman edition was printed neither according to the third Roman edition of the year 1803, which had been enlarged by the Author himself with certain additions of grave importance, nor according to the Novarese edition of the year 1836, which reproduced that Roman edition and added a lucid confirmation from the Encyclical of Leo XII, dated January 8, 1826, but according to the Venetian edition of the year 1803, which lacks these additions; indeed, it even presents this Venetian edition mutilated, namely, with the testimonies of most grave men who commended the little work by their authority omitted. Most of all, however, the omission of the paragraphs which hold the fourth and fifth places in the second part is to be lamented, for they confirm the practice proposed by the Author through the doctrines and examples of the Saints, the unanimous consent of the graver Doctors, and the authority of the Roman Catechism. Therefore, it is to be desired that, if some new edition of this precious little work is to be prepared, which indeed the difficulty of finding any copy of it ought to recommend, it be reproduced not from some mutilated copy, but from an integral and perfect one.

Appendix III. Norm for a General Confession

to be conducted by questions

520. ○ First let the penitent state what he knows, unless he prefers to be questioned immediately. Before all else the penitent is to be asked whether he is joined in matrimony or not. Then:

I. Any sacrilegious confession? Did you ever not dare to say something? How often? Did you receive Holy Communion in such a state? At Easter time [1]? How often? Did you culpably fail to fulfill penance?

[1] Experience teaches that the guilt of this circumstance is commonly not noticed by the faithful, but is spontaneously disclosed by the penitent who notices it.

II. Concerning the theological virtues: Did you sometimes elicit an act of Faith, Hope, and Charity [2]? Do you know the principal mysteries necessary to be known, namely, that God exists and is the rewarder of good and evil; the mysteries of the Most Holy Trinity, the Incarnation, and the Death of Jesus Christ? Did you perhaps deny the faith? Did you doubt some truth of Religion, or deny it? Did you speak against Religion? Did you read, sell, or lend prohibited books?

[2] Dominic Viva (*on Proposition 1 among those condemned by Alexander VII, no. 8*) mentions as a most well-known thing that the faithful never accuse themselves of the transgression of precepts obliging to acts of the theological virtues, nor are they accustomed to be questioned about this by Confessors. And those words of John De Lugo (*De Poenit.*, disp. 15, no. 55) pertain here: *Concerning this sin of omission of the penitence due throughout the year, whether of itself from the precept of the virtue of penitence... or accidentally..., it is not necessary to question the penitent, nor even to admonish him in particular.... And this can be proved by the example of the precept of loving God, concerning which penitents are also not questioned in particular..., nor are they admonished concerning the obligation of fulfilling that precept at some time; both because from the very course of the confession it is sufficiently apparent how the penitent stands toward God, and because, on account of the variety of opinions, we cannot impose upon him a certain obligation.*

Did you perhaps despair? Why? Let the Confessor inspire hope: because the good God, if He had wished to condemn you, would not have brought you here today.... Did you presume [3]? Did you neglect the precepts of God and the Church out of human respect [4]?

[3] This sin of presumption will occur very rarely in confessions. For it is not usually noticed if perhaps some presumption is present at some time.

[4] This circumstance of human respect adds nothing that pertains to sacramental confession, and can of itself be reduced to a certain fear.

Did you give scandal, evil counsels, or examples to your neighbor?

Did you seek occasions of sinning?

III. Concerning the commandments of God: First: superstition? divination? vain observance? magic? idolatry? a habit of never or scarcely ever praying [5]?

[5] Elsewhere (Vol. I, no. 260) it was observed that it can be determined with the greatest difficulty what the obligation of praying is and how great it is.

Second: an oath? a vow? blasphemy?

Third: working on Sunday or a feast day? omission of Mass or hearing it badly?

Fourth: disobedience toward parents, masters, or one's Pastor? murmurings? insults? blows? wishing death upon them?

Toward children, servants, or other subjects: education? instruction? care of their salvation, proximate occasions of sin? vigilance concerning duties of religion? scandal? anger?

Fifth: injuries inflicted upon one's neighbor in body or soul? hatred? desires of revenge? cursing? quarrels? blows? homicide? a duel? abortion? abuse of marriage? But questioning here and concerning the following commandment is to be done sparingly, cautiously, chastely.

Sixth and Ninth: thoughts? morose delectation? desires? what kind? with what kinds of persons? Words? Did you utter or willingly listen to immodest words, jokes, songs...? Works? with yourself? by touches? pollutions? by sight? with others? with unmarried persons? with married persons? with relatives? with persons bound by vow [6]? with persons of the same sex? Are you still here and now in a proximate occasion? Wives can be asked whether they were obedient to their husbands in all lawful things.

[6] Since this occurs rarely and, if perhaps it has occurred, the penitent spontaneously discloses it, while otherwise a question of this kind could perhaps produce astonishment and something in the nature of scandal, inquiry concerning this circumstance does not seem to be proposed.

Seventh and Tenth: damage? theft? fraud? wages owed to workers withheld, defrauded, or diminished? restitution? petty thefts?

Eighth: harmful lies? rash judgments [7]? detraction? calumny? reparation of reputation and of further damage perhaps inflicted.

[7] Judgments, or rather suspicions, often arise; but they very rarely reach grave fault, namely, because of inadvertence, because of the imperfection of the judgment, or even because the reasons for suspecting or judging are such that neither the suspicions nor the judgments can be called rash. See Vol. I, no. 465.

IV. Concerning the precepts of the Church: fasting? abstinence from meat on prohibited days? confession? Easter Communion?

V. Concerning the capital sins: drunkenness? pride? sloth? envy? anger? avarice?

VI. Concerning the duties of one's state: husband; wife; master; civil magistrate; advocate; merchant, as to weight and measure.

N.B. At the end let him ask whether anything else still keeps the penitent anxious.

Chapter III. On Satisfaction

We must treat: 1. of the imposition of penance; 2. of the fulfillment of penance.

Article I. On the Imposition of Penance

521. Principles. - I. The Confessor is bound to impose penance upon every penitent who can perform it. The reason is clear: 1. because satisfaction is an integral part of the Sacrament of Penance; but the Confessor, as minister of the Sacrament, is bound, insofar as lies in him, to procure its integrity, even accidental integrity; otherwise he would not be a faithful dispenser; 2. because the nature of judgment [1] and judicial power require some punishment of offenses. It is also established from the Council of Trent, sess. 14, ch. 8. - See St. Lig., no. 506; *Homo Apostolicus*, no. 47.

[1] This reason does not seem sufficiently firm, because a judgment is completed also by a sentence in which the judge decrees that punishment is not to be imposed. Just as in a human judgment the judgment does not remain imperfect from a defect of punishment when the accused is not judged worthy of punishment, so neither does this judgment and sacrament remain imperfect from a defect of punishment and satisfaction when the penitent is not judged worthy of punishment. Thus Lugo, where he weighs the force of the argument *a priori* (*De Poenit.*, disp. 25, no. 52).

II. The Confessor is bound to enjoin both vindicatory and medicinal penances that are fitting and salutary, that is, in some manner proportioned to the number and gravity of the sins, and also to the strength and dispositions of the penitent. The reason is evident from the nature of the matter, since sacramental satisfaction is ordained to the vindication of sins, which are more or less grave and likewise more or fewer, and also to guarding against new faults. It is established from Trent, sess. 14, ch. 8, where it says thus: *Therefore, the priests of the Lord ought, according as the spirit and prudence shall suggest, to enjoin salutary and fitting satisfactions according to the character of the crimes and the ability of the penitents; lest, if perhaps they connive at sins and deal too indulgently with penitents by enjoining certain very light works for very grave offenses, they be made participants in the sins of others. Let them have before their eyes, however, that the satisfaction which they impose be not only for the preservation of a new life and a medicine for infirmity, but also for the vindication and chastisement of past sins.*

522. Questions. - **QUESTION 1. How great is the obligation of imposing penance?**

Reply 1. This obligation is grave of its kind. The reason is that the obligation concerns a grave matter, although one can sin only venially against it from smallness of matter. - Lugo, disp. 25, no. 49. Hence the Confessor can also sin gravely if, without an excusing cause, he were to impose the lightest penances for grave faults [2]. - Thus commonly. - St. Lig., no. 506.

[2] The second part of this reply pertains better to Question 3 below, where the measure of the satisfaction to be imposed is treated; for the present question, as is evident from Reply 2, turns generally upon the gravity of the obligation of enjoining some satisfaction.

From this obligation, says Lugo (*De Poenit.*, disp. 25, no. 47), it is established that certain cases are excepted. The first is when the penitent is incapable, as when he is near death, especially if he already lacks his senses and cannot perceive the penance imposed.... The second case is when the Confessor understands from the confession and other circumstances that the penitent has made full satisfaction for the punishment due; and although it can rarely or never be established that this is so, Peter de Soto nevertheless adds that it suffices that he probably appear to have made satisfaction. The third case, similar to this, which others add, is when, apart from satisfaction, a remedy of perfect remission is imminent, for example, if martyrdom is imminent; others extend this to the gaining of a plenary Indulgence, at least one which is morally certain. The fourth case is when, on account of his frailty, it is believed that the penitent will accept no penance; for sometimes it will be necessary to condescend to his weakness in order to avoid graver evils; nevertheless, it will never happen that he will not accept some penance, at least a light one.

And in this sense, namely, concerning some light satisfaction, that which Scotus has (*In IV Sent.*, dist. 15, q. 1, art. 3) is to be understood: *If he is altogether unwilling to receive any penance imposed by the priest, but nevertheless says that he has displeasure concerning the sin committed and a firm purpose of not relapsing, he is to be absolved and is not to be rejected, lest he fall into despair; and the punishment which ought to be performed for the sins is to be announced to him, and he is to endeavor to fulfill it in himself or in an equivalent manner without its imposition; otherwise he will pay in full in purgatory.*

Concerning this case Cardinal Cajetan says (*Summa*, s.v. Satisfaction): *The third case in which the imposition of satisfaction can be omitted is the indisposition of the penitent, because he wishes to perform no penance here but offers himself to undergo it in purgatory. For such a one seems to be absolved and left to purgatory for making satisfaction, if the case is possible, because no one would refuse at least once to sign himself with the sign of the cross.*

** The VV. (p. 938, note 1) have these things: St. Alphonsus (bk. 6, no. 516) writes that Suarez and Bonacina, after the Council of Trent, call rash the opinion of Navarre and Cajetan, etc., who said that the penitent can refuse penance in order that he may satisfy for it in purgatory. Then they add: *Hence it can seem wonderful that the distinguished Ballerini, in the note at no. 522, revives the same opinion anew.*

Reply. Father Ballerini, as is evident to one reading the Note, revives no opinion; indeed, he contends to the contrary that Scotus and Cajetan are to be understood in that sense in which Cardinal De Lugo proposes the fourth case, namely, concerning him who, on account of his frailty, is believed to be willing to accept no penance, although in practice it never happens that he will not accept some penance, at least a light one.

And indeed, in the text cited, Cajetan says that the case is scarcely possible, because no one would refuse at least once to sign himself with the sign of the cross.

Nor does Navarre hold otherwise, who writes (*Manual*, ch. 26, no. 20): *But I consider it altogether useless to dispute concerning the truth of this limitation, since there is no penitent so stony-hearted who confesses in good faith and is unwilling to accept even the smallest penance.*

The same is read in Sporer, who indicates in addition that the mind of Scotus is no other. *Provided* (he says, part 3, ch. 3, no. 548) *that he is willing to undergo some penance, even the lightest, for example, some Our Fathers and Hail Marys, a striking of the breast, etc. For one refusing a very light penance of this kind, especially for grave sins, would deservedly be judged not rightly disposed, nor seriously sorrowful for the sins committed, and therefore simply to be repelled from the benefit of absolution, as Scotus also notes in IV Sent., dist. 19, at the question proposed.*

Reply 2. As regards venial sins, there is controversy. Some affirm that the obligation is grave, because the injunction of satisfaction pertains to the rite of this sacrament; and since this rite was instituted by Christ, it is to be regarded as a grave matter. But others say that it is light, because a grave obligation of enjoining penance for light faults alone cannot be proved, since no grave disorder appears in this. Each opinion is probable, as St. Lig. says, *Homo Apostolicus*, no. 47 [3].

[3] Since some excepted from this obligation the occasion of a Jubilee, or even of any plenary indulgence, as though this exempted one from the obligation of rendering satisfaction, Benedict XIV (*Const. Inter praeteritas*, sec. 65) judged that these

things should be admonished: *Only one thing remained, that we should speak concerning the imposition of penance which is not to be omitted by the Confessor, since the penitent who had gained an indulgence was said not to be bound to fulfill it. But since a reason of this kind seemed too lax to us, in the Instruction mentioned at no. XXVI we declared our mind, establishing that a salutary penance is to be enjoined by the Confessor upon the penitent, even if the latter is prepared to receive the jubilee, from which assuredly arises the obligation of the penitent to fulfill it.*

523. ○ **QUESTION 2. When is penance to be imposed?**

Reply. Generally speaking, it is to be imposed before absolution. The reason is that the order of judgment is thus preserved, which requires that the accused promise satisfaction before he is absolved. But if the Confessor through forgetfulness did not enjoin penance before absolution, he ought to impose it after absolution. Nevertheless, it is not grave to impose penance after absolution; indeed, it is probably free from every fault if it is presumed that the penitent will accept the work enjoined upon him [4]. - St. Lig., no. 514; the Salmanticenses, etc.

[4] It matters nothing whether it is imposed before or after absolution; the preparation of the penitent for it suffices. Cajetan (*Summa*, s.v. Satisfaction).

QUESTION 3. How much penance is to be imposed upon sinners?

Reply. The quantity of penance cannot be determined universally, but is left to the prudence and judgment of the Confessor. Nevertheless, regularly and of itself, he ought to impose a grave penance for mortal sins. Thus from the Council of Trent, as above, no. 524. - St. Lig., no. 508.

524. ○ **QUESTION 4. What penance is of itself considered grave for one or another mortal sin?**

Reply. A penance is to be considered grave, at least from the present practice of the Church, which corresponds to a work that is enjoined under grave obligation by the Church, or which would of itself oblige under grave obligation if it were commanded.

Hence a grave penance, and one sufficient for an ordinary grave sin, will be to hear Mass, to fast, to recite the Rosary, even of only five decades, the Little Office of the Blessed Virgin, the Litany of the Saints, and other similar things [5]; but a penance would not be considered grave if only the Psalm *Miserere* were imposed. - St. Lig., no. 545.

[5] What the Author asserts, that hearing Mass, reciting the Rosary, etc., suffices for one or another grave sin, is not to be understood such that Rosaries, etc., ought to be multiplied in arithmetical proportion to the number of grave sins.

QUESTION 5. For what cause can a lighter penance be imposed?

Reply 1. If the penitent is very weak and infirm in body; concerning which matter the Roman Ritual says thus: *Let the Priest remember that a grave and laborious penance is not to be enjoined upon the sick, but only that is to be prescribed which they may perform at an opportune time if they recover.* But if the sick person is placed in danger of death, he can then be absolved without any penance, although it is always expedient to impose some penance upon him. *Homo Apostolicus*, no. 49. 2. If there is a prudent fear that he will not fulfill a greater penance, or that because of a graver penance he will be turned away from confession [6]. 3. If probably a greater penance would be more harmful to him than profitable. 4. If the penitent appears very contrite. 5. If there is a time for gaining a plenary indulgence, especially a Jubilee. - St. Lig., no. 508.

[6] The constant experience of all times has plainly brought it about that Doctors of every age and school agree in this opinion with marvelous concord; even Antoine himself, who otherwise is deservedly numbered, as St. Alphonsus says (bk. 6, no. 509), among the more rigorous writers, yielded to it.

To the point, St. Thomas says (*Supplement*, q. 18, art. 4, corpus): *Just as medicines determined in the medical art are not suited to all, but are to be varied according to the judgment of the physician, who follows not his own will but the science of medicine, so satisfactions as punishments... are suited to all, but are to be varied according to the judgment of the priest regulated by divine instinct. Therefore, just as a physician sometimes prudently does not give an efficacious medicine which would suffice for curing the disease, lest a greater danger arise on account of the weakness of nature, so a priest moved by divine instinct does not always enjoin the whole punishment which is due to the sin, lest some weak person despair because of its magnitude and wholly withdraw from penance.* The holy Doctor illustrates these thoughts by another example (*Quodlibet* 3, q. 13, art. 28): *Moreover, it seems sufficiently fitting that the priest not burden the penitent with a grave weight of satisfaction; because just as a small fire is easily extinguished by much wood placed upon it, so it could happen that a small affection of contrition recently aroused in the penitent would be extinguished because of the grave burden of satisfaction, with the sinner falling into utter despair.* The disciple of St. Thomas, Cardinal Cajetan, expressed these things more briefly thus (*Summa*, s.v. Satisfaction): *But to penitents who are weakly disposed, let a small satisfaction be given according to the weakness of their soul, and let the small fire be nourished by straw placed upon it and not suffocated by great pieces of wood placed above it.* But St. John Chrysostom had preceded him (*On 2 Corinthians*, hom. 44): *For just as, if you place upon the shoulders of a youth a bundle which he cannot carry, it is necessary that he either cast away the bundle or be crushed under the weight, so also for a man upon whom you impose a grave weight of penance, it is necessary either that he reject his penance or, undertaking it when he cannot bear it, be scandalized and sin still more.*

You may see many other things in St. Alphonsus (*loc. cit.*), who also reports this notable saying from Gerson: *It is safer, with a small penance which is willingly undertaken and will probably be fulfilled, to lead those who have confessed to purgatory than, by commanding a great one which will not be fulfilled, to cast them headlong into hell.* St. Alphonsus adduces two parallel sayings from St. Antoninus (*ibid.*): *If the priest cannot rejoice in his complete purification, let him at least rejoice that he sends him, freed from hell, to purgatory. Therefore,* as Hostiensis says, *the Confessor ought in no way to permit a despairing sinner to depart from him, but rather let him impose upon him one Our Father and another light thing,* although he speaks of one who has committed great sins, *and let the other good things which he shall have done, and the evils which he shall have endured, be for him as penance.... Yet understand this sanely, namely, that if he is otherwise penitent and says that he is prepared to do what he ought, but says that he cannot bear the burden of penance, then, on account of this, however much he has sinned, he ought not to be dismissed without absolution, lest he despair.*

St. Thomas suggests another expedient (*Quodlibet* 3, art. 18), namely, that the strength and spirit of the penitent be explored: *Just as the priest can enjoin satisfaction upon the penitent according to the judgment of another, so also according to the judgment of the penitent himself; as if you say: do this if you can, and if you cannot, do this. And it seems similar when the priest says: Whatever good you shall have done, let it be for you unto the remission of sins.* And here pertains the admonition of St. Charles Borromeo in his *Instruction to Confessors*, cited by St. Alphonsus (*loc. cit.*): *Let him impose such a penance as he judges can be performed by the penitent. Therefore, sometimes, if he shall see that it is expedient, let him ask him whether he can perform, or doubts that he can perform, the penance enjoined upon him; otherwise he shall change or lessen it.* And in this manner, as St. Alphonsus (*ibid.*) observes, what is suggested in the Roman Ritual will be observed, namely, that in these matters account also be taken of the dispositions of penitents: *Let the Confessor,* says the Ritual, *enjoin a salutary and fitting satisfaction, according as the spirit and prudence shall suggest, account being taken of the state, condition, sex, and dispositions of the penitents.* What satisfaction is understood here as salutary and fitting is explained thus by Lugo (*De Poenit.*, disp. 25, no. 60): *It ought to be salutary and fitting; that is, in the first place attention must be given to the spiritual utility of the penitent, lest snares be cast before him so that he commit new sins. From this heading especially the present practice, in which light penances are imposed for the gravest sins, can be excused; for this is often done on account of the spiritual infirmity of penitents, who would be scandalized by graver penances and either flee confession or certainly approach unskilled confessors who do not know how to cure them.*

525. ○ QUESTION 6. Can a penance be imposed under the condition of relapse?

Reply. Affirmative; but it is expedient that, in addition, some other satisfaction be imposed for the sins committed [7]. - St. Lig., no. 524.

[7] A penance imposed under the condition of relapse, if it alone is enjoined, becomes a disjunctive penance; namely, it is enjoined that the penitent either, in place of penance, employ an effort by which he resists the temptation, or otherwise pay a certain punishment. On this argument see Diana (vol. 1, tract 6, resol. 19), who adduces Sanchez denying that penitents

are bound to accept it, Suarez affirming the contrary, and finally others saying that the Confessor cannot oblige him to it, but that the penitent is bound to fulfill it if he accepts it.

QUESTION 7. Can a public penance be imposed?

Reply. Negative, if there is question of hidden sins. - Thus the Roman Ritual. But it is otherwise for public sins. Nevertheless, if public penance is not so necessary, the Confessor ought not to impose it upon one refusing it, since his salvation can otherwise be obtained and the scandal repaired [8]. - St. Lig., no. 512.

[8] Certainly there is no discussion here of the satisfaction which the ancient discipline of the Church exacted from the faithful on account of certain crimes; for that custom has become obsolete in the Church, nor did its imposition pertain to the minister of sacramental confession. Therefore, there remains the case of some enormous scandal which ought to be repaired; and some adduce the example of a man who ought publicly to restore the honor which he publicly injured. Nevertheless, this example seems less pertinent to the matter, because if perhaps the penitent is bound to this by the natural law itself, it will not be free for the Confessor to enjoin or not enjoin it upon him. But the same must be said whenever a scandal given requires public reparation; for the penitent will be bound to this even if it is not enjoined by the Confessor as sacramental satisfaction. Besides, public scandals of this kind can generally be repaired otherwise, for example, if someone publicly approaches the Sacraments, devoutly visits churches, hears Mass, enrolls in a pious confraternity, etc. And if public reparation of this kind is not necessary, the Doctors, according to the testimony of St. Alphonsus (bk. 6, no. 512), commonly agree that it is not to be imposed upon one who resists.

QUESTION 8. Can a work otherwise owed be imposed as penance?

Reply. Affirmative. The reason is that, since that work is satisfactory, it can well be elevated through the keys to the merit of sacramental satisfaction. - St. Lig., no. 513, and others commonly [9].

[9] The common doctrine holds that, through the imposition of a work otherwise commanded, that part can be supplied which cannot be hoped for from other works because of the frailty of the penitent. But it is readily evident that, by parity of reason, this holds for those whose condition and circumstances scarcely permit fitting satisfaction to be rendered either through fasting, alms, or prayers, however much they may be of good will; for charity can counsel the Confessor to furnish them this means suited to paying punishments in this life. Moreover, even if a sufficiently fitting satisfaction has been imposed upon the penitent, nothing prevents the Confessor, especially where the penitent signifies that he desires it, from adding this aid for making more abundant satisfaction.

526. Resolutions. - 1. Perpetual penances are never to be imposed, both because they are accustomed to induce danger of forgetfulness or excessive anxiety and because, if such penances are imposed upon the same penitent by various Confessors, he will be bound by innumerable bonds at once and for his whole life. Indeed, ordinarily not even penances for a long time, for example, for a year or for five months, are to be imposed. - St. Lig., *Homo Apostolicus*, no. 52; Lacroix, etc.

2. Those satisfactions which can expose the penitent to the mockery of others are never to be imposed, for example, that he recite five Our Fathers in the middle of the church with arms extended, etc. Much less are penances to be imposed which cannot be fulfilled without a revelation of the confession easily following.

3. Nor are fasts to be imposed upon children, countrymen, or workmen wearied by continual labor; nor upon sons and daughters of a household who, by fasting, would cause astonishment to their parents or even offend them. Nor are pilgrimages, prolonged prayers, or generally alms to be enjoined upon women placed under the authority of a husband, just as neither upon the poor who procure their livelihood by continual labor.

4. Penances involving many diverse works are not to be imposed, because they could not be retained in memory; nor, at least ordinarily, are penances too repugnant to nature, for example, to make the sign of the cross with the tongue upon the ground, to visit enemies, etc. It is also generally imposed imprudently [10] upon children that they ask pardon of parents, or of others, for disobedience, irreverence, or petty thefts; because these penances often render confession odious and are very often omitted, etc.

[10] The fruit of this imprudence will not rarely be found to have been this: that children, not daring either to ask a change of penance from the Confessor or to ask pardon from parents or others, and much less afterward daring to confess the sin of omitted penance, began a series of sacrilegious confessions and prolonged it for many years with sacrilegious Communion added.

Article II. On the Fulfillment of Penance

527. Principles. - I. The penitent is bound to accept and fulfill a reasonable penance sacramentally enjoined; because, from what has been said, the Confessor is bound to impose a penance, and indeed one proportioned in some manner to the sins. But if a penance ought to be imposed and accepted, by that very fact it must also be fulfilled by reason of the obedience owed to the Confessor. It is established from the Council of Trent, sess. 14, ch. 8. - St. Lig., no. 516; *Homo Apostolicus*, no. 55.

II. The penitent is bound under grave obligation to fulfill a grave penance imposed for grave sins, because grave matter of itself obliges under grave obligation. - Thus all. More probably, however, he is bound only under light obligation to a light penance imposed for light faults, because light matter is not capable of a grave obligation. - Thus more commonly with St. Lig., no. 517, against certain authors.

III. The penitent ought to fulfill the penance at the time designated by the Confessor, or as soon as he conveniently can; and if the penance obliges under grave obligation, he will sin gravely if through grave negligence he defers it for a long time [1]. The reason is that it is of itself grave to defer a notable debt for a long time. Whenever the penance was not fulfilled at the appointed time, the burden of performing it always remains, because the time is intended only accessorily. - St. Lig., no. 525.

[1] See what is to be said below, no. 530, Question 6.

528. Questions. - **QUESTION 1. Does a penance which is indeed grave in itself, but imposed for venial sins alone, oblige under grave obligation?**

Reply. More probably, negative. The reason is that then satisfaction, insofar as it is grave, is not necessary. Hence, just as the Confessor was not bound, indeed was not able, to command it under grave obligation, so neither is the penitent bound to fulfill it under grave obligation. - St. Lig., no. 517 [2].

[2] ** The VV. (p. 397, no. 118), as though by way of supplement to this reply of Gury, adduce those things which St. Alphonsus (bk. 6, no. 517) reports and approves from Roncaglia, namely, that if those venial sins should accidentally dispose the penitent greatly toward mortal sin, the Confessor could then impose a grave penance upon him in order to remove him from the danger of sinning mortally; and then the penitent, if he wishes to be absolved, will be bound to accept and fulfill it.

But Suarez had written much better and more accurately concerning a case of this kind thus (*De Poenit.*, disp. 38, sect. 7, no. 7): *If, for the sake of cure and medicine, the Confessor judges this expedient, he will be able to do it, and the penitent will be bound to obey; because then there is question rather of a fitting disposition for the remission of sins than of satisfaction for temporal punishment. Hence that precept laid down by the Confessor is not so much a new imposition as a declaration of some obligation which the penitent has of himself, so that there can be moral certainty concerning his disposition and purpose of avoiding sins; and at most the priest then seems to determine the manner or means. In this, if there are several sufficient means, he can accommodate himself to the will of the penitent, so that he may choose the medicine; because this suffices FOR HIS CURE, FOR WHICH ALONE the priest has right and power in that act, as was declared.* Wherefore, that which St. Alphonsus adds to Roncaglia's opinion, namely, that the penitent, if he wishes to be absolved, will be bound to accept and fulfill that grave satisfaction, must indeed be maintained if this is the sole means of cure; otherwise, if several sufficient means are at hand, because, as Suarez says, the priest has right and power for the cure alone. This observation occurs all the more opportunely because St. Alphonsus also rejects the doctrine of Roncaglia, who (*On the Sacrament of Penance*, q. 4, ch. 2, reply 2) deduces the power of imposing a grave penance for venial sins generally from another false principle.

QUESTION 2. Can the Confessor impose for grave faults a penance which is indeed GRAVE, but obliges LIGHTLY?

Reply. Affirmative, because any legislator can command grave matter under a light obligation; nevertheless, this is generally not expedient. - Suarez with the common opinion, cited by St. Lig., no. 518 [3].

[3] St. Alphonsus would prefer that at least something be enjoined under grave obligation, with which something else, even graver, could then be imposed under light obligation. But he himself does not deny that the opposite opinion is the more common; and from this very fact it is argued that the argument which he attempts to elicit from the Council of Trent for his opinion is less firm.

QUESTION 3. Is the penitent bound UNDER GRAVE OBLIGATION to fulfill the CIRCUMSTANCES added to the penance, for example, to pray ON BENDED KNEES, etc.?

Reply. The solution depends upon the greater or lesser affliction of the flesh which the circumstance brings, either of itself or in relation to the penitent. - St. Lig., no. 517. This can also depend upon the intention of the Confessor, which either he himself has expressly manifested or the penitent can presume [4].

[4] A rule of this kind, which reserves to the penitent the office of presuming, etc., is perhaps too difficult, because most are incapable of judging concerning these things.

529. ○ **QUESTION 4. Does one satisfy who fulfills penance while in mortal sin?**

Reply. Affirmative, with the common opinion. The reason is that, for satisfying the precept, it suffices to place the work of satisfaction enjoined, even though the end of the precept is not obtained. - St. Lig., no. 522.

QUESTION 5. Does one sin who fulfills penance while in mortal sin?

Reply 1. It is certain that he does not sin gravely. - Thus commonly the Theologians.

Reply 2. According to some, he sins venially. The reason is that one who voluntarily places an obstacle to an effect, even a partial effect, of the Sacrament does not seem capable of being excused from some fault. Nevertheless, several grave Theologians probably hold with Lugo that he is exempt from every fault, because there is no fault in placing an obstacle solely to the remission of punishments [5]. - St. Lig., no. 523.

[5] This ought to hold especially when the penance must be prolonged over several days. For who would say that the penitent is bound to recover grace in order that he may fulfill the penance? Otherwise, as the Salmanticenses note (*De Poenit.*, ch. 10, no. 70), the penitent would sin both by fulfilling the penance and by not fulfilling it: by fulfilling it, indeed, because he fulfills it in the state of sin; by not fulfilling it, because he would omit it. And this second opinion is indeed all the more probable in the opinion of those who say that the effect of satisfaction is obtained in the case when the obstacle is afterward removed.

** Here also, as often elsewhere, the VV. (p. 938, note 2) observe that in earlier editions of Father Gury it read: *more probably he sins venially.*

Reply. Gury seems previously to have followed St. Alphonsus, who says (bk. 6, no. 523): *Others more probably hold that he sins venially.* Afterward, however, he altered the opinion somewhat, perhaps moved by the reasons of the Salmanticenses, who add to the reason adduced here in the Note: *Indeed, it would have to be said that one existing in mortal sin who has not yet fulfilled penance is bound first to justify himself and afterward to fulfill the penance; all of which things do not seem to have been received into common usage.* But did not St. Alphonsus also alter his opinion somewhat here? For in the edition of the year 1748 (bk. 6, tract 4, doubt IV, art. 1, note E) he has merely these things: *Indeed, the Salmanticenses, Lugo, and Dicastillo probably teach that it is not even venial to fulfill penance in mortal sin.*

Besides, since the VV. consider it worthwhile to mention wherever Father Gury in preceding Editions preferred another opinion, as being one which pleases the VV. more, let them not therefore take it badly that others do the very same with St. Alphonsus and prefer the earlier, unchanged opinion of the same Doctor to his opinion afterward changed, as being one which they judge more plausible.

530. ○ QUESTION 6. What delay of penance is a grave fault?

Reply 1. If the penance was light, a delay, however great it may be, will never be grave, since from what has been said the omission of the penance itself more probably does not exceed a light fault.

Reply 2. If the penance is grave and imposed for grave sins, a delay of two or three months is more probably to be regarded as grave when it is medicinal or there is danger of forgetfulness. Besides, no general rule concerning this can be established [6]. - St. Lig., no. 524.

[6] No one doubts that penitents are to be counseled to fulfill satisfaction as soon as they conveniently can. But if it is asked when delay incurs guilt, especially grave guilt, it can scarcely be believed how much the Doctors disagree among themselves, so that you have as many diverse opinions as you have intermediate periods of time between eight days and a year, and indeed in such a manner that, while eight days are established by some as a limit beyond which delay can already be condemned as grave guilt (see St. Alphonsus, bk. 6, no. 521), others judge a delay of a whole year free from fault (see Diana, vol. 1, tract 6, resols. 44 and 45, coordinated ed.). Nor does the distinction of a medicinal penance press greatly. For if you suppose that the infirmity is cured by other remedies, the obligation which the medicinal character would infer ceases.

Whence, then, so great a variety of opinions? Assuredly from the fact that some solid reason for concluding anything more certain is altogether lacking. But this is most certain according to the opinion of all: nothing is to be condemned as mortal unless a manifest and evident reason advises it. Therefore, whatever may be said concerning eight days, fifteen days, a month, two months, etc., pertains to private opinions which wholly lack the force of impressing upon the conscience that there is grave sin.

** And let the VV. also bear this with an equitable mind, who (p. 938, no. 121) oppose the opinions of St. Alphonsus also to this passage of the Author. For whatever probability they may finally please to attribute to these opinions, this obedience above all must be rendered religiously to the holy Doctor: that we also most religiously preserve, both in words and deeds, the rules which he establishes with all the Doctors, and which we have more than once recalled elsewhere, concerning the assertion of the gravity of a sin.

And as regards delay, even when the Confessor has prescribed a time, behold the Salmanticenses, cited by St. Alphonsus (*loc. cit.*), condemning of mortal sin one who defers an enjoined Communion for four days; against whom St. Alphonsus places the more common opinion, which considers a delay of six or eight days light. But others will perhaps reply that it is

not to be presumed that the Confessor wished to entangle the penitent in these snares, so that for any delay whatever he might become guilty of mortal fault; nor would the Confessor act otherwise than imprudently if, recognizing from the character of the penitent that negligence of this kind would probably occur, he imposed these bonds under grave obligation. For, from those things which were said above in the note at nos. 522 and 523, injunctions of this kind would have to be called not salutary, but deadly. For otherwise, what sort of disposition, I ask, would there be in men who know not how to prescribe medicines unless they destine to eternal despair in hell the miserable sick man who perhaps does not observe the commands to the letter?

QUESTION 7. If the penitent has forgotten the penance enjoined, is he bound to repeat the confession in order to receive another penance?

Reply. More probably, negative. The reason is that fulfillment of the penance once enjoined has been rendered impossible through forgetfulness, even culpable forgetfulness. But no one is bound to the impossible. - Thus St. Lig., no. 520, and others commonly.

If, however, the penitent prudently presumes that the Confessor still remembers the penance enjoined, he ought, if he conveniently can, to approach him so that he may learn again from him what that penance is.

531. ○ **QUESTION 8. Who can commute a penance?**

Reply 1. It can never be commuted by the penitent himself, not even into something better, although a vow can be changed by the one vowing it into a manifestly better work. The reason is that a penance cannot be elevated to the merit of sacramental satisfaction unless it was imposed by the Minister himself of the Sacrament of Penance.

Reply 2. It can be commuted: 1. by the Confessor who imposed it, because a legislator can change his own law; 2. by any other Confessor, because any other Confessor can be judge of the same cause if the penitent submits himself to his tribunal; for a successor in the same authority can do whatever his predecessor could.

Nevertheless, it seems that an exception must be made if the penance was imposed by the Superior himself for reserved cases, because an inferior cannot change the sentence of a Superior, unless, however, a grave cause is present or the consent of the Superior can readily be presumed. - St. Lig., nos. 528 and 529.

For a commutation to be made licitly, however, a just cause is required, such as: 1. if the penance seems difficult; 2. if it is foreseen that the penitent will not fulfill it because of repugnance, frailty, forgetfulness, etc. - St. Lig., no. 528.

532. ○ **QUESTION 9. Is the penitent bound to repeat the confession in order to obtain a commutation of penance?**

Reply 1. If he approaches the same Confessor, it will not be necessary to repeat it when the Confessor remembers, even in some confused manner, the state of conscience of the penitent [7].

[7] In the present case this recollection is required altogether without cause. For even if no memory of the state of the penitent is retained, it is nevertheless apparent what can fittingly be substituted for the burden which had otherwise been judged fitting for the state of the penitent. Therefore, a fitting satisfaction can be enjoined even without that recollection.

Reply 2. If he approaches another Confessor, or even the same one who no longer remembers the sins, it suffices that he confess summarily, so that the Confessor may acquire a confused knowledge of his state [8]. - Thus St. Lig., no. 529, and others commonly against certain authors.

[8] No one doubts that a summary Confession suffices; but it is not necessary if the same Confessor is approached. But if another is approached, you have from Reply 3 below what is to be established.

Reply 3. More probably, this summary confession is required if the Confessor does not know, at least in a confused manner, the state of the penitent. The reason is that the Confessor cannot commute the penance except in sacramental judgment; but he cannot exercise this judgment unless the penitent discloses to him the state of his conscience. - Lacroix, Elbel, etc.

Nevertheless, St. Lig. with others probably denies this, because there is not question of rendering judgment concerning faults remitted in the preceding confession, where judgment concerning them has already been formed, but only of commuting the penance. For this, however, knowledge of the former penance and awareness of the frailty or difficulty in fulfilling it suffices, so that a new penance in some manner equivalent may be imposed [9].

[9] If the commutation ought to be made because of the infirmity or frailty of the penitent, you will not easily attain it through the substitution of an equivalent.

533. ○ **QUESTION 10. Can the Confessor commute a penance outside confession?**

Reply 1. Negative, if the Confessor is a different one. The reason is that the Confessor has no power except in sacramental judgment.

Reply 2. If the Confessor is the one who imposed the penance, he can change it immediately after absolution, before the penitent departs; but not afterward, at least more probably. The reason is that for this it is required and suffices that the preceding judgment of the Confessor morally persevere, which does not seem to have place if the penitent approaches the Confessor outside the tribunal of Penance. Therefore, etc. - Thus St. Lig., no. 529, where he says that this is the truer and more common opinion with Suarez, the Salmanticenses, etc. But others say that the commutation of penance can be made by the same Confessor outside confession within the space of one day [10], because it then still seems to be morally united with the preceding sacramental judgment. For just as a longer interval does not prevent either sorrow, confession, or even the fulfillment of satisfaction from being morally united with absolution, so also can judgment be made concerning the change of penance. - Lugo, disp., no. 112; Voit, no. 632.

[10] Cardinal De Lugo, whose opinion is explained here, nowhere restricted the matter to the space of one day. And if this commutation can indeed be as distant from confession as sorrow from confession, confession from absolution, or finally satisfaction from absolution, it readily appears that this measure of one day is inserted here beside the point.

534. Resolutions. - 1. The penitent is not bound to fulfill the penance when the confession was invalid, because the sacramental sentence of the judge was null, and consequently there is no Sacrament whose integrity must be completed; otherwise satisfaction would have to be made twice for the same sins. For the same reason, the same is to be said of a penance imposed without absolution. - Collet, Reuter, and others commonly. Except: 1. if the penance is medicinal, and therefore necessary by reason of medicine [11]; 2. if the penitent approaches several times to complete the same confession, and meanwhile the Confessor, as is often

customary, imposes some penance on each occasion, so that a lesser penance may remain to be imposed at the end.

[11] In this hypothesis the work enjoined will be necessary, not because it was enjoined by the Confessor, but because it was imposed by the natural law. For this, however, it is further required that the work be the sole means by which someone can avoid sin.

2. Not only does one who omits the penance sin gravely, but also one who omits a part of it notable in relation to the entire penance, or even a part which would be grave considered in itself.

3. Universally, in judging the gravity of an omission, attention must be given to whether the matter or circumstance omitted contributes much or little to the end of the precept, whether the substance of the precept has been fulfilled, etc. Thus one fulfills the substance of the precept and sins only venially if, standing or in his room, he recites the Rosary which, by command of the Confessor, ought to have been recited on bended knees or before an image of the Blessed Virgin. But it is otherwise if the penitent was commanded, for example, to pray with arms extended; for this is a notable mortification, the omission of which can be regarded as grave.

4. Prayers imposed as penance can be recited even while someone is meanwhile hearing a Mass of precept, unless, however, something else was established by the Confessor. - St. Lig., no. 525, against a few. They could also be recited alternately with companions when, from the usage of the Church or the practice of the faithful, the prayers are customarily recited as in choir, for example, the Rosary, etc.

5. The penitent cannot make satisfaction through another, unless, however, this is done with the consent of the Confessor; because satisfaction is, as it were, the matter of this sacrament and an integral part [12]. Therefore, satisfaction must necessarily be placed by the penitent himself. This is also established from proposition 15 condemned by Alexander VII, which is of this kind: *A penitent can by his own authority substitute another for himself who may fulfill the penance in his place*.

[12] If this is done with the consent of the Confessor, you have the work enjoined, or satisfaction, and therefore the integral part of the sacrament, in the care by which the penitent moves another to perform something. But the condemned proposition which is appended in the text strikes him who by his own authority, and not him who with the Confessor as author, substitutes another for himself.

6. If the Confessor has imposed as penance that two Masses be heard on the same day, they seem to have to be heard successively and not at the same time; for we reasonably presume that the Confessor intended this. - St. Lig., *Homo Apostolicus*, no. 57; Lacroix and others commonly.

7. A penitent upon whom a more difficult penance is enjoined ought to warn the Confessor concerning the impossibility or excessive difficulty of fulfilling it; and if the Confessor does not acquiesce, he can approach another. But if the penance does not appear so grave, the penitent is bound to accept it and cannot withdraw without some fault [13].

[13] There will namely be present at least the vice of sloth.

8. If a penitent, having accepted a penance from one Confessor, repeats the confession before another in order that he may obtain a milder penance, or even for another cause, he is by no means freed from the former penance unless he makes mention of the preceding confession and the penance accepted. The reason is that, on the part of the Confessor, a positive act of the will by which the prior obligation is revoked is required for commuting a penance. - Thus commonly Lugo, Lacroix, etc.

Appendix. On Penances More Usefully Imposed

I. Works of Piety

535. ○ 1. Vocal prayers: the Our Father, Hail Mary, Creed, Litany of the Blessed Virgin, the Rosary or its third part; morning and evening prayers.

2. Mental prayers, discreetly and according to the capacity of the penitent; for the uneducated, some thought concerning hell, death, or the Passion of Christ, in the morning or evening, for example, for the length of one Hail Mary.

3. Acts of Faith, Hope, Charity, contrition, confidence in God, conformity to the divine will, and a purpose of not sinning..., so many times [1]..., for example, morning and evening, especially in temptations or dejection of mind.

[1] These and other things of this kind seem to be matter for counsel rather than for any obligation, because they are easily delivered to forgetfulness and consequently give place to anxieties. The same is also to be said of the things which the Author proposes in the following number.

4. An offering of oneself to God first thing in the morning; the sign of the cross; various aspirations or ejaculatory prayers to Christ, to the Heart of Jesus, to the Blessed Virgin, or to the Guardian Angel. Ordinarily these are not to be multiplied.

5. The exercise of the Way of the Cross, especially when it is made in common; novena prayers in honor of the Blessed Virgin or some Saint.

6. Hearing sermons or catechism; attendance at the Offices of the Church, for example, solemn Mass, Vespers, etc.; or at spiritual exercises, the pious exercise of the Marian Month, or other things of this kind, at least several times.

7. A general examination of conscience in the evening, at least for a short time; likewise a particular examination concerning some defect or some evil habit, with a firm purpose of amendment [2].

[2] These things are generally too difficult and exacting, unless perhaps there is question of persons already accustomed to this or that exercise.

8. A visit to any Church or Altar, or to some particular one, in order to pray for something there or to ask for the grace of sinning no more.

9. Pious reading, for example, for a quarter of an hour on Sunday, or one or another chapter, for example, of the *Imitation of Christ*, the *Lives of the Saints*, or another pious book, etc.

10. Frequenting the Sacraments on such a day, or at such a time, or so many times. Here the Confessor should act cautiously and should not impose upon those who confess rarely the obligation of approaching the tribunal of penance once or twice a month for a year; but he should not enjoin this except for one, and perhaps another, occasion, and only upon penitents who willingly accept it [3].

[3] Add: and who offer a prudent hope concerning the future execution of the purpose.

II. Works of Mortification

1. Fasting, either complete according to the laws of the Church or partial according to the physical and moral strength of the penitent. Nevertheless, a penance of this kind is not to be imposed except rarely and only upon those who will willingly accept it.

2. Some subtraction of food which can in no way harm the health of the body or the duties or labors of the penitent, for example, half of the customary breakfast on Friday, Saturday, or the vigil of some feast, etc.

3. Abstinence from wine or intoxicating liquor on such a day or at such a time, or not exceeding a certain quantity.

4. Some subtraction of ordinary sleep, especially by rising earlier in the morning, or at a determined hour as a remedy for sloth, or even for guarding against impure temptations.

5. Praying on bended knees or with arms extended in the form of a cross [4]; kissing the ground for the sake of humility; making brief pilgrimages.

[4] But a prayer of this kind ought to be brief, namely, lest it harm health.

6. Sometimes offering to God illnesses, diseases, or other miseries of life that occur, by bearing them patiently [5].

[5] These things also are matter rather for counsel and exhortation. The last particular, however, is enjoined altogether less prudently, because it furnishes an occasion of sinning in many ways; moreover, even setting this aside, it will remain too obscure and uncertain how far this obligation extends and what certain matter of it exists.

7. Sometimes depriving oneself even of an honorable recreation, for example, a walk [6]; repressing excessive curiosity in hearing or seeing; not lingering so long at the door or windows of the house. This is especially fitting for girls excessively devoted to vanity.

[6] Say rather, the solace of the theater or another spectacle. For a walk is not only honorable but useful for health.

8. Chastising the body moderately by a discreet mortification, some scourging, or an uncomfortable posture. But these things are to be enjoined most rarely [7]; indeed, they are to be permitted with great discretion.

[7] Among those things which ought to be enjoined most rarely, Cardinal De Lugo also numbers abstinence from receiving the Most Holy Eucharist, adding further that this is fitting only when, on account of a defect of reverence and disposition, it is better that someone be kept from it. Thus he: *We have shown that the frequent use of Communion is not a thing so determinately good that it cannot sometimes and in some circumstances be better to abstain than to approach, even if there is no consciousness of mortal sin.... Since, therefore, the Confessor can command honorable works and works of virtue as penance, there does not seem to be doubt, speaking in general and of possibility, that he can sometimes command the penitent to abstain from Communion on such a day; namely, when it is established that it is then better to abstain than to approach, which can prudently be gathered from the state of the penitent and a defect of reverence and disposition. Provided, however, that this omission of Communion is not an occasion for others to judge that it was imposed as a penance by the Confessor, lest perhaps in this way the penitent be compelled to manifest his confession. Regularly, however, it is not expedient to impose such a penance, although in a most rare case it cannot be denied that it can be usefully imposed.*

III. Medicinal Penances

536. Since, generally speaking, contraries are cured by contraries, the following penances can be enjoined, or only counseled, yet with discretion, attention being given especially to the character and greater good of the penitents.

1. Upon penitents who pray rarely and badly, let brief prayers be imposed, to be performed morning or evening for about a week. Upon the tepid, pious readings or ejaculatory prayers to be made several times a day, yet few in number and for only a few days, lest they be omitted through forgetfulness or distress the penitent. Upon those tempted against Faith and Hope, acts of Faith, Hope, or confidence, or the recitation of the Apostles' Creed, etc.

2. Upon blasphemers, external reverence toward God and the Cross; for example, reverently kissing the Crucifix or sacred images, or saying devoutly: *Blessed be the name of the Lord. Praised be Jesus Christ*.

3. Upon lovers of the world and its pomps, some meditation concerning the vanity of worldly things, for example, when they rise in the morning or go to bed, or a renewal of the promises made in Baptism.

4. Upon those who often omit Mass, some supererogatory Mass to be heard, for example, two on Sunday, or one on a weekday; or some visit to the Most Holy Sacrament to be made several times, etc.

5. Upon those who preserve hatred, some work of charity toward their neighbor, for example, greeting or speaking to an enemy, yet prudently; prayer and an act of charity for one's neighbor in general, and also especially for enemies; recitation of the Lord's Prayer for them, especially of these words: *Forgive us our debts, as we also forgive our debtors.*

6. Upon the lustful, some mortification or subtraction of conveniences, especially flight from occasions [8], prayer, frequenting the Sacraments, frequent renewal of a firm purpose, remembrance of the last things, etc.

[8] Understand this concerning occasions at least somewhat remote, for the natural law commands that proximate occasions be avoided.

7. Upon thieves and the avaricious, some alms according to their means, even if at times a single *as* were to be spent upon the poor or upon the Church. Grave alms, however, are never to be

imposed unless they are willingly accepted.

8. Upon the proud, certain offices of humility, for example, kissing the ground, visiting the poor or kindly assisting them, treating them humanely, or eliciting various acts of humility, for example, saying with the publican: *Lord, be merciful to me a sinner.*

9. Upon gluttons and drunkards, some subtraction of foods; abstinence from food and drink outside the customary meals; abstinence from wine on such a day; or a prohibition against exceeding such a quantity of wine at meals, etc.

Add also the works of mortification which were indicated in the preceding section.

Part III. On the Minister of Penance

We must treat: 1. of the power of the Minister; 2. of his office.

Chapter I. On the Power of the Minister

How wondrous is the power of the Priest, not only sacrificing at the altar, but also sitting in the tribunal of Penance! Surely there is no more excellent dignity on earth, no more sublime ministry, no degree more eminent than that to which the faculty of forgiving sins is granted. *Who is this, who even forgives sins?* the unbelieving Jews cried, Luke 7:49. And again: *Who can forgive sins but God alone?* Luke 5:12. And now man also forgives sins, and indeed by a power proper to him, although divinely received! For the priest does not exercise a bare ministry, as the Council of Trent defined; but he bears the person of Christ Himself when he erects a tribunal and pronounces the sentence of absolution: *He has given us the ministry of reconciliation!* 2 Cor. 5:18.

537. Three things are required for the adequate power of the Minister of Penance, namely: 1. the power of Order; 2. the power of jurisdiction; 3. approval.

I. The power of Order is required, that is, that which belongs to the Minister by force of ordination and is intrinsically annexed to the priestly character. The reason is that to Priests alone it was said by Christ: *Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them.* John 20:22. - It is established elsewhere by manifold definition of the Church.

II. The power of jurisdiction is required, that is, the power by which the Priest as judge can render sentence upon certain persons as his subjects. It is established from the Council of Trent, sess. 14, ch. 7.

III. Approval is required for hearing confessions both licitly and validly, or a public judgment concerning the fitness of the Priest for hearing confessions. - Trent, sess. 23, ch. 15, *On Reformation*.

We must treat: 1. of approval; 2. of jurisdiction; 3. of the reservation of cases.

Article I. On Approval

Approval can be defined: A juridical judgment of a Prelate concerning the fitness of a Priest for hearing confessions.

Hence, for granting approval, an examination is not required essentially; for a prudent judgment concerning fitness can be had even without an examination when this is established from another source. But this judgment ought to be adequate, namely, both on the part of the intellect as regards knowledge and prudence, and on the part of the will as regards holiness of morals fitting for a vicar of Christ in this ministry [1].

[1] Nevertheless, these things do not pertain to the essence. Wherefore the Ordinary would indeed approve illicitly, but validly, one who perhaps lacks these qualities.

538. I say I. Approval is required for hearing confessions both licitly and validly [2]. It is established from Trent, sess. 23, ch. 15, *On Reformation*, where it is established thus: *No Priest, even a regular, can hear the confessions of secular persons, even Priests, nor be regarded as fit for it, unless he either has a parochial benefice, or is judged fit by the Bishops through an examination, if this shall seem necessary to them, or otherwise, and obtains approval, which is to be given gratuitously.*

[2] This holds with regard to churches using the Latin rite, but not likewise with regard to Eastern churches. Indeed, Verricelli (*De Apost. Mission.*, tit. XV, q. 223) observes that not even missionaries of the Latin rite need the permission of a Greek Catholic Bishop for hearing confessions. *It is sufficient,* he says, *if before the Greek Bishop they reverently exhibit the letters of their Mission or priestly Order; for this suffices so that, once permission to celebrate has been granted, they may also hear confessions. It is proved because Latin Priests ought not to be of a worse condition among Greek Bishops than Greek Priests. But an itinerant Greek Priest arriving from elsewhere, after showing the letters of his Priesthood and obtaining from the Greek Bishop permission to celebrate, can at once both celebrate and hear confessions, because among the Greeks there is no priest who cannot hear confessions, but in ordination itself he receives the faculty and jurisdiction of absolving. Therefore, the same is likewise to be said of a Latin Priest, to whom, by the very fact that the Greek Bishop gives the faculty to celebrate, he is considered also to give the faculty of hearing confessions. Indeed, if the Greek Bishop does not take care to see the dimissorial letters of itinerant Greek Priests and permits them, without any express permission having been given, both to minister the Sacrament of Penance and to celebrate, the same seems to be said of a Latin missionary Priest. Nevertheless, the missionary must ask permission from the Vicar of the Latin Catholic Bishop, if one is present there.*

539. I say II. The Bishop alone, or one who has quasi-episcopal jurisdiction, can approve. The reason is that it pertains to the Prelates of the Church alone to judge concerning the fitness of Ministers to be deputed for hearing confessions. This is also established from the Council of Trent cited above. But the Bishop can approve either by himself or through another delegated by him, because approval is an act of jurisdiction, and ordinary jurisdiction can be delegated. - St. Lig., nos. 550, 558.

It must further be observed that, according to the present discipline of the Church, jurisdiction also is accustomed to be conferred upon Priests by the Prelate together with approval, exempt Regulars being excepted [3]; and therefore, in common usage, jurisdiction is also comprehended under the name of approval. Formerly, however, namely, before the Council of Trent, when the approval of the Bishop was not necessary, jurisdiction was commonly granted by Pastors; this faculty now scarcely has exercise among pastors, since a priest can now scarcely be found who has not already received jurisdiction from the Bishop together with approval.

[3] Do not understand these words as though a Bishop cannot grant jurisdiction to Regulars. It is only indicated that Regulars do not need the delegation of the Bishop, since they have jurisdiction, as will be said below, delegated by the Apostolic See through their own prelates.

540. Questions. - **QUESTION 1. From which Bishop is approval to be obtained?**

Reply. Approval ought to be granted by the Bishop of the diocese in which confessions are to be heard; hence the approval either of the Bishop of the penitents or of the Bishop of the Priests does not suffice. It is established from the Bull of Innocent XII of the year 1700, where it was decreed: *Confessors, both secular and regular, whoever they may be, can in no way hear penitents without the approval of the Bishop of the place in which the penitents themselves dwell; nor for this does approval obtained once or several times from other Ordinaries of other dioceses avail, even if the penitents are subjects of those Ordinaries who had approved such Confessors.* Then the Pontiff declares that otherwise the confessions will be null and the Confessors suspended. Benedict XIV confirmed this Constitution by the Bull which begins *Apostolica*. - See St. Lig., no. 548 [4].

[4] Since the Council of Trent had not expressly explained by which Ordinary Confessors were to be approved, the Doctors departed into three diverse opinions, as can also be seen in St. Alphonsus (bk. 6, no. 548). For some said that approval was to be sought from the Ordinary of the priest, since he alone would have jurisdiction over him; others, however, from the Ordinary of the penitent, because he had the right of inspecting to whom he committed his sheep; and finally others from the Ordinary of the diocese where the confession is made.

And indeed, to the first of these opinions, which otherwise most grave Doctors had embraced as the more probable, is owed that opinion which was the author of so many dissensions: that Regulars, once they had obtained approval from some Ordinary, could thereafter hear confessions in any other diocese without the approval of the Ordinaries, since they thought neither another approval from them nor a delegation of jurisdiction, which they had from the Apostolic See, to be necessary for themselves. Against them came the Constitution *Cum sicut* of Urban VIII, September 12, 1628, in which the privilege formerly granted also to certain Religious, that they could hear sacramental confessions even if they had not been examined and approved for this by the diocesan Bishops, is abolished. And with regard to all Religious there also followed the Constitution *Superna* of Clement X, which in section 4 decrees that Religious approved by a Bishop to hear the confessions of secular persons in his diocese cannot hear them in another diocese without the approval of the diocesan Bishop, although the penitents are subjects of that Bishop by whom the Religious themselves had already been approved.

And since by this Constitution of Clement X the question did not seem to be removed (see Lacroix, bk. 6, part II, no. 1516), because both it and the preceding one of Urban VIII established this concerning Regulars alone, hence there was the new Constitution of Innocent XII, from which the Author reports certain things, which also comprehends secular confessors and decrees that the Bull of the Holy Crusade introduced no new law and contained no privilege with regard to the approval of Confessors against the form of the Council of Trent..., so that *Confessors, both secular and Regular, whoever they may be*, etc., as in the passage transcribed by the Author. And since certain authors, such as, for example, the Salmanticenses (*On Privileges*, ch. 4, no. 11) contended that the Constitution of Innocent XII, which treated of the Bull of the Crusade, was not necessarily extended to other privileges of choosing a Confessor for oneself, for example, those which are granted through a Jubilee. Therefore Benedict XIV (*Const. Apostolica indulta*, August 5, 1744) established and declared that those things which his Predecessors, the Roman Pontiffs Innocent XII, Innocent XIII, and Benedict XIII, had decreed concerning the understanding and use of the indult of the Bull of the Crusade, ought equally to have force and obtain also in the remaining indults of the same kind. From all these things it is manifestly evident that the first and second of the opinions recounted above are now to be regarded as obsolete.

541. ○ **QUESTION 2. Can someone absolve his own subject in another diocese without the approval of the Ordinary?**

Reply 1. Affirmative, if he has truly personal or ordinary jurisdiction over him. The reason is that whoever, by reason of his office, has ordinary jurisdiction is considered approved by the law itself to hear his own subjects everywhere; nor is ordinary jurisdiction, provided it is exercised without judicial solemnity, confined to a place, but unless it is specially restricted, it can be exercised everywhere. - Thus commonly with St. Lig., no. 548; Reuter, no. 348; Lacroix, no. 1516; and others against a few. Hence a Bishop and a Pastor can absolve their subjects outside the parish and diocese without the approval of the Bishop of the place.

Reply 2. Negative, if only delegated jurisdiction over the penitent is possessed, because this is of itself considered merely territorial, not personal, and therefore does not follow the delegate outside the territory. - Thus the same authors.

QUESTION 3. Does presumed approval suffice?

Reply. Negative. The reason is that, from the Council of Trent, approval actually and absolutely existing and already obtained is required. But for approval of this kind, actual consent declared by some sign is required. Indeed, it is not lawful to begin hearing confessions before that consent, requested by letter, has been received, even though it appears certain that it will be obtained. - Thus commonly. - St. Lig., no. 570.

Much less is a ratification of approval valid even when prudently presumed, because ratification has place only in acts whose validity can be suspended into the future; but the validity of a present absolution cannot be suspended, for the validity of the Sacraments cannot depend upon a future action [5]. - St. Lig., ibid.

[5] Compare, however, those things which were said above (no. 232) concerning sacraments which are valid but unformed.

542. ○ **QUESTION 4. Can a Bishop validly and licitly limit approval with regard to a certain time, place, and persons?**

Reply 1. Affirmative as regards validity, even without cause. The reason is that it is an act wholly dependent upon the will of the Bishop as Superior. Hence, just as he can validly refuse approval, so he can grant it only with a restriction. This is also established from proposition 13 condemned by Alexander VII: *He satisfies the precept of annual confession who confesses to a regular presented to the Bishop, but unjustly rejected.* Therefore a denial of approval, even an unjust one, is valid; therefore much more a restriction. It is also established from the Council of Trent, sess. 23, ch. 15, where it is said: *Unless he obtains approval.* But one who obtains it with a restriction simply does not obtain it for the excluded cases.... Therefore, etc. - St. Lig., no. 542; Lugo, disp. 21, no. 51.

Reply 2. As regards liceity, distinguish. The Bishop can indeed restrict or even altogether deny approval for a just cause, as is evident, because the necessity of approval was introduced for this end, that the fit be separated from the unfit. It is otherwise, however, if he does this without a just cause.

QUESTION 5. What are just causes for limiting approval as to time, etc.?

Reply. They are for the most part the following: 1. if there is now a necessity of having several Confessors which will afterward cease; 2. if the one to be approved indeed has sufficient knowledge, but greater knowledge is rightly desired for perpetual approval; 3. if it is prudently feared that, after once obtaining perpetual approval, he will neglect study; 4. for testing how he conducts himself in hearing confessions, namely, whether he applies general principles well, etc.

543. ○ **QUESTION 6. Can a Bishop validly and licitly revoke approval once granted?**

Reply 1. Affirmative by reason of validity, even without a just cause. The reason is: 1. because such a revocation is made in a matter so subject to the Bishop that it can proceed only from him; 2. because approval, even unjustly revoked, no longer exists, or cannot be said simply to be possessed or obtained. - Thus commonly with St. Lig., no. 551; Billuart, diss. 6, art. 5.

Reply 2. By reason of liceity, distinguish. 1. The Bishop can indeed revoke approval, even when granted without limitation, for just causes; for this follows from the necessity of approval, which demands that whoever ceases to be fit be removed from office. 2. He cannot, however, revoke approval without a just cause. For, from what has been said, the Bishop cannot deny approval without cause; therefore, much less can he revoke without cause one already granted, since according to the saying: *More shamefully is a guest cast out than not admitted.* - St. Lig., etc.

544. ◦ **QUESTION 7. Can a Bishop approve an extern Priest?**

Reply. A Bishop can approve any fit person actually existing in his diocese, even if only passing through. It is established from universal practice and the common opinion of the Theologians against a few who require for this a quasi-domicile, or at least a domicile of habitation in the diocese of the approving Bishop [6]. The reason is that a delegation or mandate can be committed to anyone, provided he is capable. It is established further from the practice which is universally observed in the Church. - Recall the Decree of Innocent XII related above, no. 540.

[6] This, namely, was a consequence of the opinion which established that approval for hearing confessions was to be required from the proper Ordinary of the priest. And since by law no one becomes a subject of any Ordinary except by reason of domicile or quasi-domicile, the Doctors therefore required one or the other of these in order that someone could be approved by a Bishop. But since that opinion has now become obsolete, its consequence also remains obsolete. That certain writers repeat this now obsolete doctrine and think that approval can be granted only to subjects who are such by the law of domicile, quasi-domicile, or at least habitation seems to be attributed merely to the not infrequent custom by which some are readily borne toward transcribing the opinions of the ancients without in any way examining their reason.

Meanwhile observe that certain Doctors indeed require for the validity of approval that the priest can be called a subject of the approving Ordinary. But they consider him a subject as soon as he sets foot in the diocese, even if no will of remaining there is present. Thus Lugo: *I infer eighthly that a Religious approved by some Bishop while he is staying in his episcopate, whether as a guest or with domicile, although after changing domicile, or returning to his own domicile if he was a guest, he no longer remains a subject of that Bishop...; nevertheless, if he afterward returns to the same episcopate, he recovers the approval... and by virtue of it can hear confessions without a new approval, because he again becomes a subject of the same Bishop by whom, or by whose predecessor, he was approved* (*De Poenit.*, disp. 21, no. 44). Moreover, *subject* in this place means a priest in a restricted sense, that is, merely in relation to hearing confessions. Thus the same Lugo (*ibid.*, no. 35): *His Ordinary in relation to hearing the confessions of this diocese is that one alone to whom he is subjected in relation to this office and by whom, if he sins in this matter, he can be punished as by his own judge and Ordinary in this class of causes.* And from this that which he himself had premised (*ibid.*, no. 33) is well reconciled with these things: *When Bishops give permission to hear confessions even to foreign and visiting priests, they do not attend to or ask whether they were previously approved or whether they came with the intention of remaining, but only whether they are or are not sufficient*. Thus Lugo; and if the first of the three opinions presented above, in the note at no. 440, is understood with him in such a way that anyone who becomes subject to the Ordinary in relation to hearing confessions is called a subject, and only for as long as he remains in the same diocese, it is manifest that this opinion is very well reconciled with the third, which is to be maintained from the apostolic Constitutions.

Article II. On Jurisdiction

Jurisdiction, taken generally, is a certain moral power of governing subjects. Ecclesiastical jurisdiction is twofold: one kind is in the external forum, and is the power of making laws, inflicting punishments, etc.; the other is in the internal forum, and is the power of absolving or binding in the tribunal of Penance.

We shall treat chiefly of the latter. It is also twofold, namely: 1. ordinary, which belongs to someone by reason of an office having the care of souls annexed to it; 2. delegated, which is given to another by one having ordinary jurisdiction.

545. Principles. - I. The power of jurisdiction is necessary for hearing confessions, nor does the power of Order suffice. The reason is that absolution is a judicial sentence which cannot be rendered except upon subjects. Subjects must therefore be assigned to the Confessor; but this pertains to him who has authority over those subjects. Moreover, this is altogether required for the right governance of the Church. For there would be the greatest inconvenience if the faculty of absolving were independent of those to whom it was said by Christ: *Whatever you shall bind shall be bound...; whatever you shall loose shall be loosed.* But it is established especially from the Council of Trent, sess. 14, ch. 7: *Since, therefore, the nature and character of a judgment demand that sentence be rendered upon subjects alone, it has always been held as certain in the Church of God, and this Synod confirms as most true, that the absolution which a Priest pronounces upon one over whom he has neither ordinary nor subdelegated jurisdiction ought to be of no moment.*

546. ○ II. Ordinary jurisdiction belongs: 1. to the Pope for the whole Church in each forum, for to him it was said by Christ in the person of Peter, Matt. 16:19: *I will give you the keys of the kingdom of heaven. And whatever you shall bind upon earth shall be bound also in heaven; and whatever you shall loose upon earth shall be loosed also in heaven*; 2. to the Bishop for his diocese, likewise in each forum, since it is committed to him so that he may rule and direct it; 3. to Pastors for their subjects in the internal forum; 4. to Abbots and Prelates of Regulars for their subjects.

III. Ordinary jurisdiction can be delegated, or exercised through another. The reason is that delegation is an act proper to ordinary power. Jurisdiction for hearing confessions, however, cannot be delegated except to a Priest approved by the Bishop, as is established from the things said above concerning approval. With regard to Pastors, the faculty of delegating has become almost useless, since Bishops, to whom it pertains to approve confessors, are accustomed to confer jurisdiction together with approval upon secular Priests, as was said in the note at no. 529.

IV. Delegated jurisdiction is granted by the Church to every Priest in a case of extreme necessity, or at the point of death [1]. It is established from the Council of Trent, sess. 14, ch. 7.

[1] This rule is somewhat stricter if the Author wishes to indicate when jurisdiction is delegated by the Church. See Question 2 below, where mention occurs of jurisdiction delegated apart from extreme necessity or the point of death.

V. Delegated jurisdiction for hearing confessions expires through revocation made by the Superior or through the lapse of the time fixed; likewise by the death of the one delegating or his cessation from office, if it was given for some particular person and judgment has not yet begun, or even if it was given generally but with the clause *at the discretion of the grantor*, *at our pleasure*, or another similar clause. - St. Liguori, nos. 558, 559; Scavini.

547. Questions. - **QUESTION 1. Can delegated jurisdiction be subdelegated?**

Reply. Generally speaking, negative, namely, unless there is added a special grant of the one delegating; and then it is considered to be subdelegated in the name of the one delegating. The reason is that the delegate has only that power which is granted to him; but only the power of exercising jurisdiction is granted to him, not of committing it to another, unless something else is expressed. Therefore, etc. Except if someone is substituted in the place of an ordinary Pastor with

universal delegation, for example, in place of a deceased Pastor; or if someone is delegated for the whole class of causes. - St. Lig., no. 566, and others commonly.

548. ○ **QUESTION 2. Does the Church supply jurisdiction when penitents invincibly do not know of its defect?**

Reply. It must first be observed that a defect of jurisdiction can occur in diverse circumstances. For an error can be either common among the faithful or private to some person alone. Again, a Priest lacking jurisdiction can have a colored title, or only a presumed title. A colored title is a title indeed false in itself, but truly conferred by a Superior, and therefore bearing the appearance of a true title, although from some cause it labors under a hidden defect of nullity. Thus a Priest who is simoniacally appointed Pastor obtains an invalid title from Canon law; and if he was constituted in the parish by a legitimate Bishop [2], he has a colored title. A merely presumed title, however, is one which is believed by the faithful to be present, although it does not exist. These things being established:

[2] It could happen that a merely colored title was possessed in the Bishop who institutes the pastor, for example, if he had occupied the see with a hidden vice of simony. To this pertains the third case in *Statuimus* 107, cause 1, q. 1, namely, that of one who is ordained non-simoniacally by a simoniac.

I say 1. The Church certainly supplies if the error is common among the faithful and is at the same time joined with a colored title. The reason is drawn from the common interpretation of the Theologians, resting upon diverse passages of law. For, as they say, the Church, as a pious mother, is deservedly considered to supply jurisdiction for the good of souls when she can do so [3]. - St. Lig., no. 572.

[3] This holds equally whether someone has ordinary or delegated jurisdiction. It holds, moreover, even if the Confessor knows that he does not have jurisdiction, for example, one who knows that the time of his approval has elapsed, or that by force of a sentence secretly intimated to him he has been suspended from hearing confessions.

I say 2. More probably, the Church also supplies if there is common error without a colored title, but with only a presumed or factual title. For the same reason presses as in the preceding case, since in this hypothesis also innumerable souls could perish. - Thus Suarez, Lugo, Lessius, Billuart, Bonacina, Diana, Henriquez, Pontius, etc.; and St. Lig., Viva, Elbel, Sporer, Roncaglia, Gobat, Holzmann, Herinx, Cardenas, Gousset, etc., consider this probable. Certain others contradict it, however, for example, Busembaum, Navarre, Sylvester, Cajetan, Ugolino, Covarruvias, etc.

I say 3. The Church is not considered to supply jurisdiction if the error is private, for example, if it is that of one or a few. The reason is that the Church is not considered to supply except by reason of the common good, namely, after the manner of a general provider or governor who attends only to the general good of society and leaves the good of private persons to the care of particular providers. - Thus the Theologians most commonly against a few.

549. ○ **QUESTION 3. Is it lawful to absolve with doubtful jurisdiction?**

Reply. Negative, unless some necessity urges. St. Alphonsus, no. 571, thinks that a necessity of this kind is present: 1. if the precept of annual confession urges; 2. if the penitent must celebrate Mass or receive Communion and otherwise would incur a mark of infamy; 3. if the priest is bound to celebrate from obligation.

QUESTION 4. Is it lawful to absolve with probable jurisdiction?

Reply. With St. Alphonsus, bk. 6, no. 573: The common opinion [4] teaches that it is lawful to absolve with probable jurisdiction, provided the opinion is truly probable, supported by grave reason and authority. Thus Sanchez, Lugo, who considers it most safe, etc.; and Sanchez, Tamburini, Cardenas, Dicastillo, Illsung, Gormaz, Stoz, etc., cited by Croix, bk. 6, part 1, no. 117, call it morally certain.

[4] Of the three opinions which St. Alphonsus (*loc. cit.*) reviews concerning this matter, he places this one second. The first, which he attributes to Concina, Antoine, and Elizalde, denies that it is lawful, because from proposition 1 condemned by Innocent XI it is not lawful in the administration of the Sacraments to use a probable opinion, lest the sacrament be exposed to the danger of frustration. He wholly rejects this opinion (*ibid.*), however, and observes with Viva, Wigandt, and Gonet that the Proposition speaks of opinions concerning those things in which the Church can do nothing..., but not concerning jurisdiction, which can well be supplied by the Church; and it is presumed with moral certitude to be supplied in this case for the good of souls. To this pertain those words of Croix (bk. 6, part 1, no. 117): *Whenever there is a probable opinion for jurisdiction..., it is the most common opinion with Suarez, Koninck, Filliuccius, Reginald, Lessius, Bonacina, Diana, and Aversa that even then the Church supplies..., if perhaps jurisdiction is absent. And Sanchez, Verricelli, Dicastillo, Tamburini, Cardenas, Arsdekin, Sporer, Gormaz, Stoz, and Laurentius say that this is safe in practice or morally certain.*

** The VV., who devote no fewer than thirty-two columns (pp. 485-501) to attacking those things which are said here concerning this question, object first (p. 487) against this Note: 1. Concina vigorously maintains that it can by no means be presumed that the Church supplies; 2. the older authors cited by John Sanchez thought that the Church does not supply; 3. certain authors cited by the Salmanticenses deny that it is lawful to absolve if another endowed with certain jurisdiction is present; 4. not a few authors cited by Tamburini deny that the absolution is valid.

Reply. These things attack not the Note but directly the opinion of the holy Doctor Alphonsus; wherefore someone will not easily understand to what, finally, Vindications of the holy Doctor of this kind tend. But to the individual points:

To 1. Reply. Let it pass. If it thus pleases the VV., let them prefer vigorous Concina even to St. Alphonsus; we shall never fail to prefer the holy Doctor to Concina.

To 2. I deny the whole. The question which John Sanchez (disp. 44, no. 10), Garcia cited by Sanchez (*De Benef.*, vol. 1, part 5, ch. 8, nos. 87 and 132), and Guttierez, Zerola, Sorbo, Rodriguez, Veia, Aegidius, and Vasquez cited by Garcia (*In III Part.*, q. 93, art. 3, dub. 4) treat is this: *Whether one approved by one Bishop is considered approved for any diocese whatever.* Therefore, these things do not pertain to the matter. But further: the VV. themselves (*loc. cit.*) add that Garcia brought forward declarations of the Cardinals in aid of himself, which is most true, namely, concerning that question. For otherwise, how do the VV. not hesitate to reproach the holy Doctor Alphonsus also for handing down as certain this doctrine also, which the Sacred Congregations of Cardinals rejected? And here it must be added that John Sanchez (disp. 44, no. 4) handed down most expressly and without any limitation the doctrine which we propose here.

To 3. These things also are against St. Alphonsus, who, for example, adduces John de Salas for himself, and indeed deservedly, contrary to how the Salmanticenses cite him.

To 4. Do not the VV. see Lugo and Suarez numbered among those not few Authors? And do the things which we have before our eyes agree that we should believe that, according to the opinion of Lugo and Suarez, absolution in the case is to be considered invalid? Let us conclude: this method of plundering citations here and there, without adding whether they are brought forward well or badly, or to what end and in what sense by the Authors, contributes to nothing other than casting darkness over questions; and this certainly is not the office of those who wish to benefit science by their labors.

See the reasons in the same St. Alphonsus, who concludes from them thus: *This custom therefore being established as certain, it is certain that it is lawful to administer the sacrament with probable jurisdiction*; although he rightly observes that the Confessor, in absolving, would not absolve with only a probable opinion, but with one morally certain, not by direct certitude, but by reflex certitude.

St. Alphonsus proposes thus another opinion which he says that he follows, which, namely, teaches, as he says, *that it is indeed lawful to administer this sacrament of penance with probable jurisdiction, but only when there is a cause of grave necessity or great utility*, as Elbel [5] and Wigandt say, *or a reasonable cause*, as

Suarez [6] and Sporer say. The reason for this limitation is that, although the Church in that case can well be considered to supply jurisdiction for the good of souls, nevertheless, when no just cause is present, she is not presumed to will to connive at the mere liberty of priests [7].

[5] Elbel (*Conf.*, XII, no. 311) does not require a cause of grave necessity, but a just and grave cause. He followed, namely, his own Marchant, whom he cites.

[6] Suarez has nothing of this kind.

*** Here the VV., after filling two columns with texts of Suarez (p. 489), conclude: *Since Suarez calls more certain, or at least more probable, the opinion that it is not lawful to administer the sacrament with probable jurisdiction and to expose it to the danger of frustration unless some grave or reasonable cause urges, etc.*

Reply. I deny the whole. For Suarez (disp. 26, sect. 6, no. 9) has nothing of this kind, and concludes the disputation concerning this matter thus: *Finally, if all these things are joined together, they produce sufficient moral certitude, so that it is therefore lawful to use a probable opinion in the use of this jurisdiction.* But he introduces mention of a grave or reasonable cause only when he adds counsel, for he continues: *Nevertheless, I would always admonish both ministers and penitents to use the more certain or at least the more probable way, unless some grave or reasonable cause urges.* Where, then, is that assertion that the more probable opinion is that it is not lawful unless, etc.?

[7] St. Alphonsus was the first, as it seems, who distinctly proposed this limitation of the preceding or second opinion, as he himself calls it, as a certain third opinion diverse from the second.

But if the matter is considered theoretically, this opinion, by the very fact that it is regarded as opposed to the second, ought perhaps to appear weaker. For if the preceding opinion, by his own admission, is common, indeed most common, and is held and called most safe and morally certain by Theologians of the first rank, what weight indeed can be given to the opposite opinion, which Marchant, with no one preceding him, introduced (vol. 1, tract 2, tit. 3, q. 4), and which Sporer (*De Poenit.*, no. 718) finally fortified only by the aid of three false citations, namely, those of Francis Bardi, John Sanchez, and George Gobat, with a fourth likewise false citation of Suarez added in St. Alphonsus, who taught nothing of this kind?

And indeed, the weakness of this cause arises and is revealed from that same principle which is the foundation of the former most common opinion, namely, from the custom, in the words of St. Alphonsus, of almost all confessors of absolving with probable jurisdiction. Suarez testifies to this custom thus (*De Poenit.*, disp. 26, sect. 6, no. 6): *Nevertheless, it is arduous, and it seems to be CONTRARY EVEN TO THE CUSTOM OF GOD-FEARING MEN, to oblige all men to this, namely, that, if it can be had, a minister having certain and undoubted jurisdiction be chosen.*

Cardinal De Lugo also testifies to the same custom thus (*De Poenit.*, disp. 19, no. 34): *THE PRACTICE OF PLAINLY ALL CONFESSORS has this, that they embrace probable opinions concerning absolution from censures by virtue of the Bull of the Crusade, a Jubilee, or another faculty; and thus they absolve, not imposing that before death they cause themselves to be absolved again by another who has certain power.... Since, therefore, from this common practice of all there follows a manifest danger for all penitents who, thinking themselves already absolved, no longer take care concerning absolution from that censure and would remain incapable of sacramental absolution, it must be admitted that the Church, on account of this common error, confers jurisdiction for preventing those harms, or certainly that those opinions upon which that danger is founded are not true.*

But St. Alphonsus himself (cited no. 573) also has these things concerning a universal custom of this kind: *In the Church there is a universal custom of almost all confessors of absolving with probable jurisdiction, as Suarez, Lugo, Cardenas, Arriaga, Diana, Croix, and all the other authors cited for this opinion commonly testify. But the common opinion of the Doctors establishes moral certitude concerning the aforesaid custom.*

Moreover, behold the argument which St. Alphonsus himself draws from this (*ibid.*): *This custom therefore being established as certain, it is certain that it is lawful to administer the sacrament with probable jurisdiction, since the custom itself furnishes jurisdiction, as Suarez, Navarre, Barbosa, Cardenas, Quaranta, and Pellizzarius teach; and they prove it from Canon law, etc.* Suarez employs the same argument more briefly thus (*loc. cit.*, no. 7): *And it is confirmed from the universal custom of the Church, which is a sufficient sign of jurisdiction, as was said above. But it is the universal practice of the Church that priests safely use jurisdiction of this kind, namely, probable jurisdiction, in the administration of this sacrament.*

This common and certain doctrine having therefore been established beforehand, whatever Sporer and Elbel, after their Marchant, constructed readily collapses of itself, as though, namely, the Church does not will to grant jurisdiction unless

some cause of necessity or utility devised by them compels the use of probable jurisdiction, etc. For from the premises, jurisdiction follows the universal custom. But the universal custom, such as is presented to us by the most common opinion and such as already existed even before Marchant was born (as is evident from the testimony of Lessius, Suarez, Sanchez, etc.), never required that grave cause of necessity or great utility for the licit use of probable jurisdiction. Therefore Sporer and Elbel groundlessly introduced the fear that, if causes of this kind should perhaps be lacking, the sacrament would be exposed to the danger of frustration through defect of jurisdiction, and that consequently the use of probable jurisdiction would for this reason become illicit. But Marchant seems to have been driven astray by confusion between doubtful and probable jurisdiction; nor does he seem sufficiently to have observed that probable jurisdiction requires that a person, not rashly, but prudently, relying upon solid reason, judge that jurisdiction is not lacking to him.

There is added the reason which Suarez (*loc. cit.*) supplies. *It pertains* (he says) *to the fitting and prudent governance of the Church that she not permit so necessary a Sacrament frequently to be uncertain and doubtful, however much it may exist under a probable opinion.* To the same point likewise pertains what Croix has (bk. 6, part 1, no. 119), saying: *It is certain that Christ instituted the Sacraments in such a way that He did not will their administration or reception to be morally impossible and odious to the faithful who would administer or receive them. Therefore it is certain that an administration or reception subject to excessive scruples or difficulties is not according to the institution of Christ; therefore, if there is no other way of avoiding such an administration or reception except that someone act according to an opinion that is merely probable, it is lawful to act according to it.* And from this there is a twofold argument against that theory of Marchant. For who denies that the most common opinion, which does not require the condition introduced by Marchant, is more than probable? Therefore it pertains to the prudent and fitting governance of the Church (as Suarez says), and the institution of Christ requires (as Croix has it), that it be lawful to act according to it. Again: who does not see that the administration of the sacraments becomes subject to innumerable scruples and difficulties when, lest it be exposed to the danger of frustration, the degree either of necessity or of utility which is required for the use of probable jurisdiction according to this theory must also be weighed? But it pertains to the fitting and prudent governance of the Church that so necessary a sacrament not frequently be uncertain and doubtful; nor does the institution of Christ permit the administration of the sacrament in this way to become odious and subject to scruples and difficulties both for those administering and for those receiving it. Therefore.

And these things indeed, as I have said, if the matter is considered theoretically. For as regards practice, although with St. Alphonsus one might prefer that probable jurisdiction not be used unless some reasonable cause requires it, what George Gobat observes (*Theol. Experim.*, bk. 7, no. 120) is most true, namely, that a cause of this kind is never absent. For probable opinions concerning jurisdiction generally turn upon faculties to absolve granted either by force of privileges, or by the indult of the Bull of the Crusade, or on the occasion of some Jubilee, etc. Hence this case generally occurs when (as the same Gobat says), after you have begun in good faith to hear a penitent, a doubt arises for you concerning one or another sin; and consequently when, unless you use this doctrine, the penitent would be compelled to repeat the confession before another. But, as is known, the burden of confessing the same sins twice has always seemed most grave to the Doctors, so much so that for this reason they excuse one from confession before Holy Communion, or at least from the integrity of confession. Therefore, even if you wish to follow the opinion of these few, a grave cause, indeed one graver than those which St. Alphonsus after Sporer considers reasonable and sufficient, will never be lacking to you.

** Finally, the VV. took it most ill that this third opinion of St. Alphonsus should therefore be called less firm, as though Marchant first introduced it, and indeed contrary to a doctrine which otherwise the holy Doctor himself acknowledges to have been held in the Schools as common, indeed as most common and most safe, and even as morally certain.

Accordingly, 1. they deny (pp. 490-492) that this opinion was first introduced by Marchant. 2. They deny that the citations by which Sporer fortified it are to be regarded as false. 3. They deny that the second opinion is to be regarded as most common, indeed even as common, when Marchant's limitation, and consequently St. Alphonsus's, is excluded. 4. Finally (pp. 494-496), they endeavor to strengthen St. Alphonsus's opinion by the opinions of certain Authors.

Reply to 1. In order to prove that St. Alphonsus's opinion did not first proceed from Marchant, the VV. cite Suarez, Reginald, and Coninck. But these citations conclude nothing. For 1. Suarez merely suggests counsel; he does not assert any necessity. See the preceding Note. 2. The same must be said of Reginald, who (bk. 1, no. 103), citing Suarez, merely intimates with him that it is fitting that one having certain jurisdiction be preferred to one having doubtful or less probable jurisdiction. 3. Coninck, however (*De Poenit.*, disp. 8, nos. 41-44), disputes about jurisdiction that is strictly doubtful; but he does not touch in the least the question concerning jurisdiction which the Church supplies when a Confessor uses probable jurisdiction. And these things are manifest from the fact that at the end (no. 47, note 2) he warns that in the case the sins

are to be repeated with a Confessor having certain jurisdiction. Therefore the credit for that new opinion introduced by Marchant must be reserved entirely to Marchant.

Reply to 2. The VV. produce two authors (p. 491) as though rightly cited by Sporer, namely, John Sanchez and Gobat. But 1. what they bring forward from John Sanchez has nothing to do with the matter, as was already shown in the preceding note. 2. Gobat (bk. 7, no. 114) acknowledges that he was led to regard the contrary opinion as probable by the number and weight of the Authors. But most of those authors are, of course, those whom we have already said were produced by John Sanchez (see the preceding Note) for an entirely different question, and therefore irrelevantly here. Therefore. Moreover, Gobat finally concludes (no. 117): *Whence it follows that he does not sin in particular who absolves from a case which some, contrary to others, probably judge not to be reserved.* Therefore Gobat too is wrongly produced as an adherent of Marchant.

Reply to 3. Cardenas, a contemporary of Marchant, wrote (disp. 2, no. 160): *The most common opinion among the Doctors is that the Church supplies a defect of jurisdiction if perhaps that defect occurs while the Confessor uses a truly probable opinion.* Therefore that doctrine was already most common before Marchant wrote. Therefore Marchant's opinion departed from a doctrine already most common.

Nor is this enough. Cardenas continues in the same place (no. 165), saying: *It is the practice and custom IN THE WHOLE CHURCH that Confessors absolve on the basis of a... probable opinion concerning jurisdiction.* To prove this he adduces (no. 166) these words from Suarez: *It is THE UNIVERSAL PRACTICE OF THE CHURCH that priests safely use jurisdiction of this kind (probable jurisdiction) in the administration of this Sacrament*; then (no. 167) these words from Lugo: *This is the practice of all the faithful, and OF THE WHOLE CHURCH*; then (no. 168) these words from Arriaga: *Since, therefore, it is the custom of THE UNIVERSAL CHURCH safely to use jurisdiction probably presumed, the Church is considered tacitly to approve it*; then (no. 169) these words from Diana: *It is evident from the common opinion of the Doctors, and Confessors everywhere absolve with a probable opinion*; and after he adds the testimony of Bonacina, he finally concludes (no. 171): *And in this same manner ALMOST ALL THE THEOLOGIANS commonly speak.* Whence thus: the most common doctrine and universal practice of the Church existed before Marchant introduced that opinion of his. Therefore, even apart from Marchant's limitation, that opinion is to be regarded and called altogether most common.

Therefore the more recent opinion of Marchant, and of St. Alphonsus after Marchant, has against it the most common opinion of almost all theologians and the practice of the universal Church.

Reply to 4. That pitiable band of Authors who later followed the footsteps of Marchant and Sporer detracts so much the less from the unanimous consent of the Schools, the more evidently it contradicts itself in giving the reason for that new limitation. Their reason, which St. Alphonsus also adduces (*loc. cit.*), is this: that *the Church is not presumed, when no just cause is present, to will to connive at the mere liberty of priests.* These words, according to Holzmann, Marchant, Sporer, Henno, etc., whom St. Alphonsus cites, signify that the Church then does not supply jurisdiction if the Confessor's opinion is false, and consequently that in the case the sacrament is exposed to the danger of frustration. But that general principle, namely, that the Church does not supply jurisdiction lest she connive at the Confessor's liberty, is considered utterly false by those same Authors when (as was observed in the Note with Suarez and Croix) harm to souls would follow from it. Hence Henno (*De Poenit.*, disp. 8, q. 5, concl. 3), to the objection that the Church does not approve what she prohibits, therefore she does not give jurisdiction to him whom she prohibits from absolving, replies: *She does not approve it as lawful, I concede; as valid, in favor of one invincibly deceived, I deny.* And again: *We will that the Church indeed sometimes supply the defect in favor of penitents, but never for the benefit of a putative or probable confessor.* And again: *Although the confessor knowingly doing this would sin, nevertheless the confession of the penitents would be valid.* Hence St. Alphonsus also (bk. 6, no. 272): *This reason by no means proves the point; for, granted that the Church denied jurisdiction of this kind to impious priests, it would not thereby be prevented that they... disseminate their errors; and conversely the faithful, on account of the invalidity of their confessions, would be exposed to an evident danger of perdition.* Therefore, by the admission of these Authors themselves, it is false that the sacrament is exposed to the danger of frustration through defect of jurisdiction. Otherwise, surely no one would say that a priest sins who in the case follows an opinion which, as is manifest from the foregoing, is most probable, most common, most safe, and morally certain.

And let these things suffice for resolving the doubts of the VV. concerning the central point of the controversy; for to pursue every lesser matter with which the VV. fill those thirty-two columns must be regarded as useless labor and as bringing mere weariness to readers. They object, for example, that Marchant, contrary to what is said in the Note, properly distinguishes probable jurisdiction from doubtful jurisdiction. Reply: I deny the whole. For Marchant (*loc. cit.*, q. 6), under the title of jurisdiction DOUBTFUL IN PRACTICE, treats of a priest who is perplexed in a practical doubt concerning jurisdiction. Hence he gives the example of a scrupulous priest who finds a man situated in danger of death and meanwhile remains

doubtful in practice whether he has jurisdiction and can absolve him, and cannot resolve himself toward either side with respect to acting. These things, as is evident, do not pertain to the matter.

What pertains more to the matter is to observe that Marchant and his followers consider the use of probable jurisdiction lawful in nearly the same cases in which they consider lawful the use of jurisdiction that is strictly doubtful. Since among these cases they also mention danger of death, they truly seem then to have forgotten the doctrine of the Council of Trent, according to which any priest can absolve any penitents from any sins and censures. Moreover, the fact that these Authors require nearly the same causes for the licit use of probable and doubtful jurisdiction perhaps indicates that the conditions of this controversy had not been sufficiently perceived by them in every respect.

550. ○ **QUESTION 5. Does a Vicar General have ordinary jurisdiction, so that he can delegate others to hear confessions?**

Reply. The more common and true opinion affirms against a few. The reason is that the Vicar General, although appointed by the Bishop, does not have jurisdiction from the Bishop himself, but from the canon by which he is declared to constitute as it were one person with the Bishop. - St. Lig., no. 558.

QUESTION 6. Can heretics and excommunicated persons who are to be avoided [8] validly absolve in danger of death when another Priest is lacking?

[8] It is proper here to understand also suspended, interdicted, and irregular priests, those degraded, schismatics, notorious heretics, and even apostates from the faith to Mohammedanism, for example, etc.

Reply. Affirmative. The reason is that all Priests can absolve at the point of death, as is established from Trent, sess. 14, ch. 7 [9], according to the things said in Principle IV. - See St. Lig., no. 560.

[9] Thus the Tridentine Synod: *It has always been observed in the same Church of God that there is no reservation at the point of death; and therefore all priests can absolve any penitents from any sins and censures*.

With regard specifically to excommunicated persons, Cardinal Albitius (*De Inconst. in fid.*, etc., ch. 18, no. 39) relates that a great controversy arose at Rome, some objecting for the negative opinion a Declaration of the Sacred Congregation of the Council which Fagnanus relates (*In C. Quoniam, De Constit.*, no. 28). But although (Albitius says) the books and registers of the decrees of the Congregation of the Holy Council of Trent were sought with the greatest diligence, the said declaration could not be found. *It must therefore be said that the aforesaid declaration was not made, or, if it was made, that it was expunged from the aforesaid books as contrary to the common opinion of the Theologians who wrote after the Council. And I know also that in the year 1682, during the Pontificate of our Lord Innocent XI, this opinion was debated in the Sacred Congregation of the Holy Office; and since some of the Cardinals followed the opinion of St. Thomas, it was brought back to the balance. The matter having been reported to the Most Holy Father, His Holiness in his prudence ordered that there be no debate over the said opinion and that it no longer be called into doubt*.

St. Alphonsus, in the earlier editions of his Work (see the Bassano edition with the fictitious date Rome, 1757), since he had not yet learned what Albitius related, wrote concerning this matter (bk. 6, no. 560): *The second opinion TO BE FOLLOWED denies it, and St. Thomas holds this*, etc.; where he also presses the aforesaid Declaration mentioned by Fagnanus. He afterward learned from Collet the things which we have related from Albitius, and added them to the same paragraph together with the decree of Innocent XI; moreover, in the later list of retractations (no. 19) he retracted that former opinion. Nevertheless, he did not delete the word *to be followed* (through forgetfulness, as is evident). It has been useful to warn of this, lest anyone, reading only the beginning of that paragraph 560, as is the custom of those concerned merely with knowing the Author's opinion, wrongly embrace that opinion as though it were St. Alphonsus's.

The decree of Innocent XI is confirmed by the Constitution *Apostolici muneris* of Benedict XIV, where, declaring valid the absolution imparted by a Priest to an accomplice in a shameful sin, he draws the reason from the cited decree of the Tridentine Synod; this matter will recur later.

551. ○ **QUESTION 7. Can a simple Priest absolve not only at the point of death, but also in danger of death?**

Reply. Affirmative. The reason is that the necessity of the penitent is almost the same in danger as at the point of death. Moreover, it is established from Canon law that the point and danger of death are taken as the same. - St. Lig.

Danger of this kind is considered present: 1. in a dangerous illness; 2. in time of plague; 3. in a difficult childbirth; 4. in a grave surgical operation; 5. before a very dangerous voyage; 6. in battle, or in other similar circumstances. - St. Lig., no. 561.

QUESTION 8. Can a simple priest absolve a dying person even when an approved Confessor is present? Reply. The Doctors disagree among themselves; and St. Alphonsus (bk. 6, no. 562), after weighing the reasons for each opinion, finally gives his judgment in these words: *Nevertheless, notwithstanding these things* (namely, the arguments adduced by him for the affirmative opinion), *I think that the first opinion (namely, the negative) should not be departed from, on account of the authority of the Roman Ritual* (*De Sacr. Poenit.*, near the beginning), *where it is thus said: But if danger of death threatens, and an approved* (note this) *Confessor is lacking, any Priest can absolve from any censures and sins. Simple Priests can therefore absolve if an approved Confessor is lacking; therefore they cannot if an approved Confessor is present.* Thus St. Liguori, who otherwise, although he called his own opinion most common, nevertheless expressly cites sixteen Doctors, and others tacitly, for the opposite affirmative opinion; to them nine others can easily be added from Lugo (*De Poenit.*, disp. 18, no. 23), Diana (vol. 5, tract 8, res. 26, no. 3), Barbosa (*De Off. et Potest. Ep.*, part 2, alleg. 25, no. 79), and the Salmanticenses (*De Poenit.*, ch. 11, no. 29) [10]. Moreover, those who follow the affirmative opinion do not deny the probability of the negative; and likewise those who prefer the negative freely concede the probability of the affirmative, either implicitly, when they call their own opinion merely more probable, or even explicitly, as do Lezana and Stephen of St. Paul cited by the Salmanticenses (*loc. cit.*), and Viva, Sporer, Elbel, and Cardinal De Lugo cited by St. Alphonsus (*loc. cit.*). Of these the last, that is, Lugo, surely a most weighty author, thus gives his judgment concerning it (*De Poenit.*, disp. 18, no. 23) against Aloysius Turrianus, who had called this opinion improbable: *Whence it is established that Luis Turrianus went too far in censuring this opinion by saying that this opinion is improbable.... Certainly it cannot be denied that an opinion held by so many and such weighty Doctors is probable, especially since it is founded upon the words of Trent, which cannot easily be explained by the adversaries* [11].

[10] Thus at least twenty-five Doctors can be produced who follow the opposite opinion. This agreement of Doctors proves that the argument sought from the Roman Ritual in this matter is not of invincible strength. For it cannot be supposed that this text was unknown to so many Doctors; yet those who adhered rather to the negative opinion considered the affirmative no less probable on that account. And indeed, although there are several things also in the Roman Ritual which pertain to defined doctrines, nevertheless some things are found concerning which freedom of disputing in the Schools is granted by the Church to the Doctors. Indeed, although Cardinal De Lugo gathered arguments sought from every side by which he might fortify that same negative opinion which he had adopted, he does not mention this reason at all.

** Against these few lines the VV. oppose no fewer than twelve columns (pp. 501-506). But to what end? They contend for two points, namely: 1. that St. Alphonsus rightly and deservedly called most common the opinion which he follows, although at least twenty-five Authors can be cited for the opposite; 2. that the principal argument for the same opinion is very rightly sought by the holy Doctor from the Roman Ritual.

Reply. As regards the first, let it suffice to observe two things briefly. And 1. indeed I truly fear that this manner of disputing by the VV. may perhaps recall to the minds of readers that saying (Deut. 25:13): *You shall not have diverse weights in your bag.*

And indeed let the reply be recalled here which the VV. made to those objecting that St. Alphonsus had against him the most common opinion of the Doctors when, namely (see above, no. 549, Question 4, with the Notes), he condemns with

Marchant the use of probable jurisdiction unless some necessity or grave cause urges. The VV. replied in these words (p. 490): *But in truth the opinion that this is lawful* (namely, to absolve with probable jurisdiction) *indiscriminately, without any necessity or reasonable cause, is by no means common, and much less most common, as will be evident from the following Article.* But what, finally, do they bring forward in that Article of such great weight that the opposite opinion cannot be called most common, or even common? Besides Marchant, Sporer, and Elbel cited by St. Alphonsus, they themselves add the names Collet, Gonet, Henno, Holzmann, Billuart, Amort, Cuniliati, and Croix; for it has already been shown (*loc. cit.*) that Suarez, Reginald, Gobat, Coninck, and John Sanchez are vainly drawn by them to that side. But if that small band of authors could sufficiently enable the VV. to deny that an opinion should be called most common, or even common, which otherwise most weighty Doctors (as we saw *loc. cit.*) testified to be most common and vigorous in the universal practice of confessors, what reason is there for their now contending that an opinion should be called most common against which not a few, but at least twenty-five Authors stand, and which one author, as it seems, St. Alphonsus, called most common? Would anyone by an altogether less equitable right invoke here the saying: *You shall not have diverse weights?*

The VV. insist (p. 503) that it must be observed before all else that Doctors are not to be counted arithmetically, but weighed, and that the negative opinion (that of St. Alphonsus) is held and defended by almost all the more illustrious Doctors.

Reply. To say nothing now concerning this very recent canon according to which an opinion is or is not to be regarded as common or most common, will not that saying again recur to the minds of readers: *Weight and weight, measure and measure?* For did that very small band of Authors, which they themselves opposed to the most common opinion of the Doctors, consist of the more illustrious Doctors, or did they not rather oppose it to an immense company of the more illustrious?

Moreover, to add the second point here, as we said, it was not without cause written in the Note that AT LEAST twenty-five stand for the opposite opinion; for these were collected only from St. Alphonsus, Lugo, etc., and others could easily be added. But to settle the matter more briefly, it will be useful to learn from the testimonies of the Authors what, finally, is the true state of this controversy. Behold Reiffenstuel writing thus (tract 4, dist. 4, no. 33): *MANY deny it... nevertheless MANY other Doctors consider the opposite probable.* And Stoz (bk. 2, q. 2, no. 52): *But MANY of the ancients and VERY MANY of the more recent teach the contrary opinion* (from which, namely, St. Alphonsus departs). And Clericatus (*De Poenit.*, decis. 37, no. 28): *There are on each side probable opinions because of the reason and the MULTITUDE OF DOCTORS CONTENDING FOR EACH.* Do these things leave room for either of those opinions to be called most common?

But now to the second head, namely, the force of the argument which St. Alphonsus takes from the Roman Ritual for his opinion. The VV. indeed (pp. 504-505) are wholly occupied in seeking the reason why no one used this argument, although so many Authors of every age touch upon this question; and they give as the reason that some wrote before the publication of that Ritual by command of Paul V, while others did not see that the same argument had been proposed by anyone.

Reply. It ought indeed to seem grievous to dwell upon these absurdities. First, does not St. Alphonsus urge that the things said in the Ritual concerning the absolution of a dying person had been established according to the approved usage of antiquity? Why, then, do the VV. present those things as unknown to Theologians before the edition published under Paul V? Moreover, does not St. Alphonsus add in the same place another argument taken from the Catechism of the Council of Trent? Will the VV. also grant that this catechism was a monument hidden from the eyes of all theologians? Rather than portray all theologians as though blind, or as strangers in a matter most familiar, let us both judge and acknowledge what the thing itself proclaims: neither did those who preferred the opinion afterward adopted by St. Alphonsus find anything in these monuments which they thought could bring any support to the cause defended by them; nor, again, did those who stood for the opposite opinion perceive in the same monuments any difficulty from which they judged that their own opinion had to be extricated.

Moreover, a fitting reason is not lacking why both the Ritual and the Catechism said that in those circumstances a simple priest can hear a confession and impart absolution if the proper priest or another approved priest is lacking. They indicate, namely, when a simple priest may exercise that ministry not only validly but also without any notoriety or astonishment among the faithful. For who does not know that it is altogether foreign to the custom of the faithful, who are generally ignorant of these matters, that they should employ as confessor one whom they know has not yet been deputed to that ministry? Does not Benedict XIV also excuse from the crime of an accomplice the priest who hears the confession of an accomplice for this reason, that another not yet approved cannot be summoned without astonishment? There was therefore a reason why that circumstance should be indicated, namely, when a simple priest could not be called by others to hear a confession, or present himself, without notoriety and astonishment. This astonishment, indeed, has already begun to cease,

after the scarcity of priests has caused pastors who somewhere have no other assistant except one not yet approved not rarely to be accustomed to employ him to assist the sick and consequently to absolve them sacramentally at the opportune time.

To what was said in the Note, that those who hold the negative opinion do not deny the probability of the affirmative, the VV. object (p. 505) that very few among the older authors are found to do so, while the more recent assert it only insofar as a grave cause is present.

Reply. St. Alphonsus also mentions Viva, Sporer, Elbel, and Lugo, whose most lucid words Gury also related in the text: *Certainly it cannot be denied that an opinion held by so many and such weighty Authors is probable, especially since it is founded upon the words of Trent, which cannot easily be explained by the adversaries*. And in these words indeed you have solid foundations of probability, namely, the grave weight of authority (*so many and such weighty Authors*) and a firm reason (*the words of Trent, which cannot easily be explained by the adversaries*). Moreover, are not two others cited by the Salmanticenses, Lezana and Stephen of St. Paul, added to those four? Do not the VV. themselves add (*loc. cit.*) Palaus and Trullench? Furthermore, Reiffenstuel, Clericatus, and Stoz have been cited above on this same matter. To these can also be added Caspensis (in Mastrius, disp. 21, q. 9, art. 1, no. 204), Babenstuber, who (part 6, disp. 6, art. 1, no. 8) calls it very probable, Giraldi, who (tract 7, ch. 13, no. 18) writes: *It cannot be denied to be very probable*, Marchant, who (tract 2, tit. 1, q. 3, concl. 5) says: *I would not wish to derogate from this opinion so as to deny that it is probable*, Catalani, who (part 3, q. 6, ch. 13, no. 8) writes: *I do not deny the probability of the affirmative opinion*, and Mendo, who (*Epit.*, word *Confessio*, no. 12) consents to the same. To these add also those who (as the VV. themselves say) call the negative opinion merely more probable. Therefore, lest we inquire further in vain, do not these things suffice so that it can truly be said that even those who prefer the negative opinion do not deny the probability of the opposite?

[11] The same Lugo, with regard to the negative opinion which he himself otherwise prefers, observes (*loc. cit.*, no. 25) that the principal foundation for it is taken by some (in fact most of them) from the end of the concession, which was to come to the aid of the necessity of the faithful; this certainly seems to cease when an approved Confessor is present. *This reason, however* (he continues), *in my judgment would not suffice to separate the universality of the words* (namely, of the Council of Trent) *and the absolute concession which the first opinion* (namely, the affirmative) *brings forward for itself. For the necessity of the faithful could have moved it to grant the faculty with that whole breadth.*

He himself, however, seemed to find a firmer foundation in this, that the Synod had said that this had always been observed in the Church: as though, namely, it had not always been the custom in the Church that, when a Prelate was present, an inferior priest could absolve a dying person from reserved sins. But, with due respect to so great a man, these things seem directly to conflict with the words of the Synod itself, which expressly testifies (sess. 14, ch. 7) that *it has always been observed in the same Church of God that THERE IS NO RESERVATION AT THE POINT OF DEATH*. But where there is no reservation, the question who has the faculty over reserved sins is plainly superfluous.

It must be observed, moreover, that before the Tridentine Synod the approval of the Ordinary was by no means necessary for hearing confessions. This alone, therefore, was required: that jurisdiction be conferred by the Bishop or Pastor, either directly, when some priest was designated to hear confessions, or indirectly, when the faithful were given the faculty of choosing some priest as Confessor. Hence, since according to the testimony of the Tridentine Synod it had always been observed in the Church of God that at the point of death any priest could absolve any penitents from any sins and censures, the matter comes to this: jurisdiction was considered to be granted to any priest in that case, and consequently the penitent could choose any priest. But, as we have said, no approval of the Ordinary was then necessary, and consequently there could be no distinction between approved and unapproved priests. Therefore the hypothesis is empty by which it is imagined that, from the custom of those times, an approved priest was to have been preferred to an unapproved one at the point of death.

552. ○ QUESTION 9. Can a Pastor summon a Pastor of the same or of a different diocese to hear confessions in his parish?

Reply 1. As regards a Pastor of the same diocese, although by force of his office he has special jurisdiction only for his own parish, nevertheless, by an almost universal custom, he can hear confessions throughout the whole diocese also, unless the Bishop decrees otherwise. The proper customs of places, however, must be consulted.

Reply 2. As regards a Pastor of a different diocese, diverse opinions are given, as Benedict XIV says (*Instit.* 86, no. 7). Those who affirm argue from Trent that a parochial benefice serves for universal approval. Others deny it; their opinion, St. Lig. says (no. 544), receives strength from a Reply of the Sacred Congregation of the Council dated December 31, 1707. - Benedict XIV admits the first opinion in those places where such a custom exists.

553. ○ **QUESTION 10. Can a Priest approved by the Bishop hear the confessions of the faithful without the permission of the Pastor?**

Reply 1. As regards liceity, negative, if confessions are heard in a Church subject to the Pastor. The reason is that due order altogether requires that, since the Pastor is the immediate Superior in his Church, permission to exercise sacred ministries there be sought from him. The Pastor's permission is not required, however, for hearing confessions in a chapel of regulars or nuns; the permission of the local Superior or Superioress suffices. Reply 2. As regards validity, it is certain according to all that the permission of the Pastor is not required outside the case of annual confession. Indeed, it is not required even for annual confession, at least of itself, or by common law. This is established from the common doctrine of the Theologians against certain persons, and also from the present custom and universal practice of the Church, as Benedict XIV testifies, *Instit.* 18. But if somewhere this custom does not prevail, the confessions are nevertheless to be regarded as valid unless the Bishop expressly contradicts it; for if he is silent, he seems to consent to the universal custom of the Church [12]. - Gousset, no. 478.

[12] John XXII (*C. Vas electionis, Extrav. De haereticis*) condemned also this article of John of Pouilly, Doctor of Paris: *The decree Omnis utriusque sexus remaining in force in a General Council, the Roman Pontiff cannot bring it about that parishioners are not bound to confess all their sins once a year to their proper priest.*

Launoy revived the condemned error; and when this opinion, hostile to peace, had begun to infect pastors in France, Clement VIII in the year 1592 issued this decree (in Benedict XIV, *Inst.* 18, no. 7): *We decree that both the said Friars... and the other aforesaid privileged persons to whom this has been granted by the Apostolic See, provided they are fit and approved by the Ordinary, may lawfully confess their sins, even at the Lenten and Paschal seasons and at any other time....*

And Clement X (*Const. Superna*, sect. 4, no. 5) decrees and declares that Regulars once approved can, in the diocese of the approving Bishop, at any time of the year, even the Paschal season, hear the confessions even of any sick persons without any permission of the pastors or the Bishop...; and that those who have confessed to the said simply approved Religious at the Paschal season have satisfied the Constitution which begins *Omnis utriusque sexus*, with regard to confession alone.

As regards the hypothesis mentioned by the Author, however, of a Bishop contradicting it, there exists in Pignatelli and Pitonius (*De Confess.*, no. 36) a Declaration of the Sacred Congregation dated April 5, 1584, expressed in these words: *The decree of a Bishop in which it is stated that no Confessor, even one approved by the Ordinary, may hear the confessions of anyone during the Paschal season without the permission of the proper pastor is in no way to be observed.*

554. ○ **QUESTION 11. Does a delegate validly and licitly absolve after the expiration of the term of a delegation to be renewed annually, for example, if a crowd of penitents should come together for some great solemnity?**

Reply 1. Of itself he absolves invalidly, that is, by reason of jurisdiction, because in fact he has none. Nevertheless, more probably he absolves validly by reason of common error, on account of which the Church is considered to supply for the good of souls.

Reply 2. Of itself the Priest sins gravely if he knowingly does this. The reason is that he exercises the office of Confessor without legitimate authority; and although the Church then supplies, he is nevertheless guilty because he improperly compels her to supply.

QUESTION 12. Can a Priest approved in some place hear the confessions of travelers arriving there? Reply 1. Affirmative absolutely as regards Regular Confessors, who have this special privilege from the Holy Apostolic See. - See the Constitution *Superna* of Clement X [13].

[13] And in the Constitution *Inter cunctas* of Paul III to the Fathers of the Society of Jesus: *Those of you who are priests may hear the confessions of any of Christ's faithful of either sex coming to you from anywhere*, etc.; this privilege is established to be common also to the other Mendicant Regulars.

Reply 2. Affirmative also as regards secular Priests. The reason is that such is the custom, having force from the tacit consent of the Ordinaries, which is equivalent to present ratification. - Thus more commonly the Theologians and Canonists. - See St. Lig., no. 569.

555. ○ **QUESTION 13. Can a Bishop under pain of invalidity prohibit his diocesans from going outside the diocese to confess?**

Reply 1. Negative, if they go outside the diocese to confess to Regular Confessors, who have the privilege of hearing the confessions of all the faithful coming from anywhere. - Suarez, *De Relig.*, tract 10, bk. 9, ch. 2, no. 8; Reiffenstuel, tract 14, dist. 8, q. 1, no. 11; Laymann, bk. 5, tract 6, ch. 10.

It is confirmed by a Declaration of the Sacred Congregation in Fagnanus, on the chapter *Omnis utriusque sexus*, no. 79, where it has this: *The Sacred Congregation declared that Regulars within the diocese of the approving Bishop can also absolve penitents of another diocese, since they have jurisdiction from the Pope..., whose jurisdiction is not restricted to the limits of any territory, but the whole world is his diocese.*

Reply 2. Affirmative, if they confess in another diocese to secular Priests. The reason is that, as Fagnanus says, by common law no Priest can absolve a penitent not subject to him, even in that diocese in which he is approved; nor can the tacit consent of the Bishop of the penitents be supposed in the case, since by hypothesis he is unwilling [14].

[14] In this sense Palaus, Lugo, the Salmanticenses, Bonacina, Suarez, Vasquez, etc., are to be understood, whom St. Alphonsus (bk. 6, no. 569) cites as limiting the faculty granted to travelers of confessing to any approved priest of the place in which they are found by this condition: *provided that they do not deliberately depart from their own domicile in order to confess elsewhere.* And since those Doctors speak in this sense, what St. Alphonsus with Tamburini and Mazzotta urges against them cannot be admitted, that it is a general rule of law that no one is considered to act fraudulently who uses his own right. For there is no right of confessing outside the diocese against the will of one's proper Ordinary; nor can a contrary custom be introduced, because of that Constitution (*C. Si Episcopus* 2, *De Poenit. et Remiss. in VI*): *Nor can it be introduced by any custom that someone, apart from the permission of his Superior, may choose for himself a confessor who can loose or bind him.*

The Doctors give this most lucid reason for that Constitution: a custom of this kind is repugnant to divine law, which establishes that no one can be loosed or bound except by his proper judge. Thus Suarez (*De Poenit.*, disp. 27, sect. 3, no. 5): *It is replied that to choose a confessor without the permission of one's proper Bishop is repugnant to divine law; and therefore the Pontiff* (Boniface VIII) *signified in that text* (*C. Si Episcopus*) *that custom cannot prescribe against this law; in which this custom differs greatly from any other human law.* You have the same from Dominic Soto (*In IV*, dist. 18, q. 4, art. 2, concl. 1), Vasquez (*In III Part.*, q. 93, art. 2, dub. 2, nos. 5-6), and, omitting others, from Melchior Cano, who (*Relect. De Poenit.*, part 6) completes the matter briefly thus: *It must be held as established that the precept of confessing to one's proper priest is divine.... Therefore without a commission of this kind* (delegation of the Ordinary) *an alien priest is not the minister of this sacrament; and consequently by divine law we are bound to confess to our proper priest. For a confession which is made to another by the faculty of the proper priest is considered to be made to the proper priest.* And hence he repeats that it cannot be introduced by any custom that someone may choose for himself a confessor

apart from the permission of his Superior, etc., as the cited chapter *Si Episcopus* has it. For, as Cano adds, *If it were only of positive law, some custom could prevail.* And (note well) he concludes: *All the scholastic Authors agree in this opinion, and therefore Blessed Thomas*, etc.

** The interpretation of St. Alphonsus's mind which is appended at the end of this Note ought surely not to have seemed gratuitous. For the text of the holy Doctor (bk. 6, no. 569) has thus: *The Doctors commonly teach that travelers, in view of custom and the tacit consent of the Bishops, can confess to any approved priest in the place where they are found. Thus Palaus, Lugo, Concina, the Salmanticenses, Bonacina, with Suarez, Vasquez, etc. The aforesaid Authors nevertheless limit this: provided that the travelers themselves do not deliberately depart from their own domicile in order to confess elsewhere. But Tamburini, Renzi, and Mazzotta, with Pontius, Filliucius, and others, say more truly that the aforesaid limitation need not necessarily be observed, from that general rule of law that no one is considered to act fraudulently who uses his own right; nor, moreover, is it established from elsewhere that the Ordinaries have ever given any sign of their dissent in the aforesaid case.* As though he said: The common opinion is that travelers, in view of the consent of the Bishops and custom, can confess, etc. But it in no way appears that this consent is lacking even if travelers deliberately depart in order to confess elsewhere. Therefore the aforesaid limitation of the Doctors need not necessarily be observed, etc. Therefore a sense foreign to St. Alphonsus's words was not gratuitously attributed to him in the Note.

This one thing perhaps remained: that in the Note itself it should have been indicated more expressly that the holy Doctor does not altogether seem to have grasped the sense of the aforesaid limitation among the Authors cited, as though, namely, they considered invalid the confession of a traveler confessing outside the diocese even when no indication of dissent by the Ordinaries appears. For an abnormal opinion of this kind is entirely foreign to their mind; and therefore it was said in the Note that they are to be understood as speaking of those confessing outside the diocese against the will of their proper Ordinary. That point was omitted because it was already sufficiently clear from the entire context of the Note.

But behold, the VV. protest (p. 508) that these are not the sentiments of the holy Doctor; for (they say) those words, *the Ordinaries have never given any sign of their dissent*, are not those of St. Alphonsus, but of Tamburini, whose opinion the holy Doctor adduces.

Reply. I, however, would never consider it lawful for me to write these things concerning St. Alphonsus. For if we believe the VV. here, the quoted words are so far from being attributed to St. Alphonsus that the holy Doctor rather rejects them, as expressing an opinion rejected by him. But who, I ask, could so deny trust to his own eyes as to admit these things? Is there even the slightest indication in the cited text of the holy Doctor that he does not admit, but rather rejects, that final part of the opinion? Indeed, does he not adopt the entire opinion of those Authors as his own (*they say more truly*, he says), and oppose it to the preceding opinion, which imposed the limitation rejected by him? All the more because he does not there report the words or text of Tamburini, as the VV. suppose to the contrary, but expresses in his own words the sentiments which are common both to Tamburini and Mazzotta and Filliucius, and even to Pontius (in Tamburini, bk. 5, ch. 4, sect. 3, nos. 11 and 12), all of whom expressly suppose that the consent of the Ordinaries is not lacking.

But the reason which moved the VV. here to distort the opinion of the holy Doctor in this way is not obscure. For elsewhere, as we shall see, the holy Doctor has certain things which in the case exclude the consent of the Ordinaries, and therefore directly contradict the obvious sense of the text cited above, which supposes the consent of the Ordinaries to be necessary.

Nor, however, do the VV. thus sufficiently consult the honor of the holy Doctor. For either they contend that even in the cited text the holy Doctor wished, against the common opinion of the Doctors, to exclude the necessity of the consent of the Ordinaries; and besides the fact that they openly do violence to the words of the holy Doctor, they furthermore represent St. Alphonsus as a man who, in order to exclude the necessity of consent of this kind, irrelevantly and altogether incongruously objects against the adversaries that doctrine of the Authors which professes that consent to be altogether necessary. Or they concede, as the context requires, that the holy Doctor, with the Authors whose doctrine he adopts, supposes the consent of the Ordinaries to be necessary; and thus the charge of contradiction cannot be avoided in any way.

1. But now let us approach the principal point of the controversy. Although the VV. could produce no text of St. Alphonsus in which the holy Doctor affirms that absolution is valid if someone, against the will of his proper Ordinary, seeks it from a Confessor outside the Diocese, they nevertheless bring forward another passage of the holy Doctor (p. 511) from which they might deduce this, namely, where St. Alphonsus denies that absolution is imparted to visitors from the consent of their Ordinaries. For the holy Doctor has thus (bk. 6, no. 588): *Travelers, according to the present custom..., namely, because they are absolved everywhere by any approved confessor, are today no longer absolved by the will of their Bishops, but by the will of the Church, which, by approving such a custom, has granted the faculty that they be regarded as inhabitants of the place where they confess.* And indeed

from this principle laid down that consequence follows of itself. For the confession made to an alien priest would therefore be considered invalid because, if the proper Ordinary absolutely resists, he assuredly does not communicate jurisdiction to the alien priest. But that principle of St. Alphonsus supposes that jurisdiction is possessed from elsewhere, and not from the proper Ordinary of the penitent. Therefore the reason why that confession should be considered invalid ceases.

To defend this new opinion of St. Alphonsus, the VV. attempt to establish three things: 1. that St. Alphonsus rightly relies upon custom; 2. that the Constitution of Boniface VIII cited above in the Note presents no obstacle; 3. that it is falsely affirmed that jurisdiction must be given by the Superior of the person who is to be absolved.

Since this concerns the supreme principles by which the whole economy of interior jurisdiction, or jurisdiction of the internal forum, is governed, it is fitting to dwell somewhat more laboriously upon these matters, and at least in part to supply those things which were otherwise omitted for the sake of brevity. See the Note at no. 573 in the edition of 1869.

2. And to begin with the last point, upon which all the others in reality depend, the VV. (p. 526) do not hesitate to place this title over their article (art. 1, q. 13): *The distinguished Professor improperly asserts as an axiom the doctrine held among all, that jurisdiction must be given by the Superior of the person who is to be absolved.*

Reply. If, in order to defend this new theory of St. Alphonsus, it is necessary to deny the doctrine that jurisdiction must be given by the Superior of the person who is to be absolved, this indeed ought to be sufficient for judging in what place this new theory can and ought to be held.

And indeed jurisdiction is defined as power over subjects; but he is called a Superior who has this power ordinarily, that is, by reason of Office, and can give or delegate it to others. I ask: since no one gives or can give what he does not have, who besides the Superior can give that power or jurisdiction?

3. Nor indeed is there question here of mere tenets of the School. It is a decree of the Council of Florence: *The minister of this sacrament is a priest having authority to absolve, either ordinary or by commission of a Superior.* How, then, will an authority to absolve now be thrust upon us which is neither ordinary nor committed by a Superior?

4. It is a decree of the Council of Trent (sess. 14, ch. 7): *Since the nature and character of a judgment demand that sentence be rendered upon subjects alone, it has always been held as certain in the Church of God that the absolution which a priest pronounces upon one over whom he has neither ordinary nor subdelegated jurisdiction ought to be of no moment.* Whence thus: it is essential that sentence be rendered upon subjects alone; otherwise absolution is of no moment. But he has no subjects who has no jurisdiction, either ordinary or subdelegated, that is, committed by a Superior. How, therefore, will anyone infer a jurisdiction for absolving which is neither ordinary nor handed down by a Superior?

5. Since, moreover, this (as the Tridentine Synod has it) *has always been held as certain in the Church of God*, hence that saying of Innocent III in the Lateran Council (chapter *Utriusque sexus* 12, *De Poenit. et Remiss.*): *If anyone, however, for a just cause wishes to confess his sins to an alien priest, let him first seek and obtain permission from his proper priest, since otherwise the latter cannot absolve or bind him.* And since by the name *proper priest* here can be meant only one who has ordinary power, because only one who possesses ordinary jurisdiction can give permission, that is, delegate jurisdiction (with respect to each of the faithful, however, three persons subordinated to one another possess this ordinary power, namely, the proper Pastor, the proper Bishop, and the Roman Pontiff), therefore it is necessary that whoever does not have ordinary jurisdiction, who is here called an alien priest, obtain it from one having ordinary jurisdiction, that is, from a Superior. How, then, can anyone produce a jurisdiction which some priest has not received from the Superior to whom the subject belongs?

6. Nor is there reason for anyone to remain uncertain concerning the sense of those words, *let him first seek permission*, etc. For permission to confess to an alien priest, just as also the faculty of choosing a confessor, or the faculty of subjecting oneself to an alien priest, or to commit one's subject to another, and other modes of speaking of this kind, signify, as is most well known, the delegation of jurisdiction. St. Bonaventure (*In IV*, dist. 17, part 3, art. 1, q. 2) expressed it in these words: *To commit to another one's own right and the power of absolving.* St. Thomas, however: *To commit those things which belong to jurisdiction*, as he has (*Suppl.*, q. 8, art. 6, ad 1): *Someone can use the jurisdiction of another by the latter's will, because those things which belong to jurisdiction can be committed.*

7. The aforesaid forms of speaking refer to a twofold manner of granting jurisdiction, namely, directly and indirectly. For, as Suarez says (*De Poenit.*, disp. 28, beginning), *jurisdiction can be granted or delegated in two ways: first, directly, by granting jurisdiction to a priest...; secondly, on the part of the penitent, when someone is granted the faculty of choosing a confessor, not as though jurisdiction were given to the penitent to whom permission is granted, but,* as the same author has it (sect. 1, no. 2), *it is only a power to choose or*

designate such a person; and when he has been designated, the Pontiff or ecclesiastical Prelate who gave such a faculty confers jurisdiction upon him. It must therefore be held as settled and certain that the formulas *to give permission to confess to an alien priest*, or *to choose an alien priest*, and other similar formulas, signify delegation or the conferral of jurisdiction upon that priest to whom the subject will confess.

8. From this it follows that there is no need that the priest who is chosen in the case already have jurisdiction from elsewhere. For the jurisdiction required for absolving this penitent is conferred upon him by the very fact that he is chosen. Francis de Vitoria expressed this clearly thus (*Sum.*, no. 150): *It is asked whether one who has authority to choose a confessor... can choose a simple priest not yet appointed to hear confessions. I reply absolutely... that without any scruple he can choose any priest, as Cajetan also says.... The reason is that in this alone does a priest having jurisdiction differ from one not having it: the former has matter, while the latter does not; and nothing else is lacking to the latter for being able to absolve except matter upon which he may exercise the power which he received when he was ordained. Since, therefore, one receiving* (the faculty of choosing) *is given the power of subjecting himself to whomever he wills, the priest thus chosen now has matter and jurisdiction concerning him; hence nothing is lacking to him.* This doctrine is afterward called common among the Doctors by the same Author.

Concerning this matter, among others, Suarez also says (*De Poenit.*, disp. 28, sect. 3, no. 5): *I say first: before the Council of Trent, a Pastor by force of common law could validly and licitly commit his jurisdiction to any priest who according to natural or divine law was fit to minister this sacrament, even if he did not have any other jurisdiction or the approval of the Bishop.* And again (*ibid.*, no. 6): *I say secondly: according to the ancient law, by a general faculty given for choosing a confessor, any priest fit by divine law could be chosen, without any other condition or approval required by human law.* From where, however, did jurisdiction come in the case to the priest chosen, unless from the Superior who gave permission to choose?

Nor indeed is the condition of things different after Trent. For the difference consists only in this, that now the priest who is chosen needs the approval of the Ordinary in whose territory he hears the confession. Nevertheless he needs jurisdiction, which in the case is from the choice of the penitent. Hence Melchior Cano (*Relect. de Poenit.*, part 6): *An approved priest can be chosen even if otherwise he has no subjects and no jurisdiction whatever.*

Let the conclusion therefore finally be this: It is a doctrine defined in the Ecumenical Councils of Florence, Trent, and Lateran that an absolution conferred by another besides the proper Superior is invalid apart from a commission or permission obtained from that same Superior. But a commission or permission of this kind signifies the direct or indirect communication of jurisdiction. Therefore every absolution imparted without jurisdiction conferred by the penitent's Superior is invalid.

9. Hence, when treating of confession to be made outside the diocese, both Theologians and Canonists, all alike, both older and more recent, always mention, and indeed inculcate, the necessity of permission, commission, or consent of the Superiors or proper Ordinaries.

Of the older authors Cardinal Turrecremata will suffice, who writes thus (*In Cap. Omnis De Poenit.*, no. 6): *A penitent desiring to confess to an alien priest... must seek permission from his own proper priest or from a Superior. It is evident, because the alien priest, without a commission made to him by one of them, has no power. This is evident from the chapter Omnis utriusque*, etc.

As regards the more recent, Azor (part 2, bk. 3, ch. 12, q. 10), to the question whether the rector of one parish can hear the confessions of a parishioner of another, replies: *By no means, unless with the express or tacit consent of that Rector to whom that parishioner is subject; for jurisdiction is required for hearing the sacred confession of penance.* Do you see how consent here signifies the conferral of jurisdiction?

Valentia (vol. 4, disp. 7, q. 10, punct. 2): *It is noted here by the Doctors that one must ALWAYS seek permission from that confessor to whose care a person is otherwise committed, so that he may confess to another.* And after citing the chapter *Omnis utriusque*, he adds: *Where it is prescribed that if anyone for a just cause wishes to confess to an alien priest, he is not to do so except with the permission of his proper priest.*

Becanus (*De Sacram.*, ch. 38, q. 7, no. 2): *It is prescribed that each person confess to his proper priest, or to an alien priest with the consent of his proper priest.... In this sense Trent defined... that the absolution which a priest pronounces upon one over whom he has neither ordinary nor subdelegated jurisdiction is of no moment.* Do you see how consent is equivalent to delegation of jurisdiction?

Laymann (*De Poenit.*, ch. 10, nos. 9-10) teaches concerning travelers that they can be absolved by the tacit will of the Ordinaries.

And Roncaglia (*De Poenit.*, q. 7, ch. 2, q. 2): *The power of absolving... subjects of another Bishop is founded upon the tacit consent of the Prelates..., so that their proper subjects may be absolved even outside the diocese.*

And the Salmanticenses (*De Poenit.*, ch. 11, no. 53) likewise establish that travelers can be absolved in view of custom and the tacit consent of their Pastors.

And Filliucius (tract 7, ch. 9) not only establishes (no. 195) that travelers can confess by the tacit permission of the pastors, but clearly explains (nos. 227-228) that, when someone is given the faculty of choosing a confessor, once the choice has been made, Christ THROUGH THE PASTORS gives jurisdiction to that confessor.

And Palaus (tract 3, disp. 6, part 7, sect. 2, no. 6): *Although the Ordinary of the place can minister the sacrament of penance to outsiders and travelers..., he has this from the concession of their proper Ordinary.* He repeats this (tract 23, part 13, no. 12).

And Esparza (bk. 10, q. 93, art. 3): *The order of Hierarchy in the Church of God demands that each Ordinary have jurisdiction of the forum, even the interior forum, contained within the limits of his diocese, in such a way that no one can validly involve himself with regard to juridical acts concerning the sheep of another, or concerning subjects belonging to another in spiritual matters, EXCEPT BY HIS CONSENT AND DELEGATION.*

And lest we gather more here with useless labor, see those things which appear below in the Note at no. 573, where the words of Amort testify concerning the unanimous and constant doctrine of the Church, and where also the texts of the Canonists Pichler and Fagnanus are brought forward. To these can be added Schmalzgrueber (bk. 5, tit. 38, no. 38), and Wiestner, who (bk. 5, tit. 38, no. 57) gives as the reason that *sacramental absolution is a judicial act or sentence.... But the nature and character of a judgment demand that sentence be rendered upon subjects alone, since no one can be bound or absolved by one who is not his judge*; and Pirhing, who (bk. 1, tit. 31, no. 147) therefore denies that the confessions of visitors can be heard without the express or tacit consent of their proper pastor, since absolution is a judicial act which can be exercised neither licitly nor validly upon one over whom the priest has neither ordinary nor delegated jurisdiction.

10. And worthy of attention are the words by which the same Pirhing expresses the same doctrine thus (bk. 5, tit. 38, no. 35): *Nor can a diocesan without the consent of his Ordinary subject himself to the jurisdiction of a pastor who is not his own.* There are, of course, some who think that the question can be resolved in the contrary sense by asserting that a visitor becomes the subject of another by the very fact that through confession he subjects himself to that priest, although a stranger. These persons scarcely observe that, according to the meaning of the Doctors, to confer jurisdiction is the same as to assign subjects to someone. What, however, is more absurd than that jurisdiction should be conferred by the penitent merely because he presents himself as subject to the priest? The Theologians do not so speak. Hence Melchior Cano (*Relect. de Poenit.*, part 6) aptly observes that only one who has the faculty from his proper priest presents himself as subject to the confessor whom he chooses. We saw the same noted by Francis de Vitoria above, no. 8: only to one receiving the faculty of choosing is given the power of subjecting himself to whomever he wills. Hence Engel also (*Man. Paroch.*, part 3, ch. 2, no. 6) warned that someone can subject himself to an alien priest only insofar as his proper Ordinary can give that subject permission to submit himself to the jurisdiction of another.

11. Moreover, nothing shows more clearly how far the necessity of the consent of the Ordinary extends, so that by reason of jurisdiction a confession with an alien priest may be valid, than the doctrine of the Authors whom we cited in the Note, who deny validity if the consent of the Superior is lacking.

Thus Lugo briefly (disp. 19, no. 7): *Those who travel and make a journey can now, by the tacit will of their Pastors, confess even to that Pastor whom they find in the place where they are, provided nevertheless that they did not deliberately depart from their domicile in order, on the occasion of the journey, to confess to another.*

And Suarez (disp. 25, sect. 2, no. 9): *It must be observed that good faith is necessary here; for if someone undertook the journey solely for this, that he might have an occasion of confessing to another and not to his proper priest, that would no longer be necessity, but will, and would not be according to the intention of the pastors or according to the custom of the Church; and therefore the confession would not be valid.*

And Palaus (tract 23, punct. 13, no. 12): *If you were to undertake the journey solely for this, that you might confess to another and avoid confession to be made to your proper pastor, you could not use the aforesaid privilege and faculty; since... they are not possessed from the tacit consent of the proper pastor, and you do not conform yourself to the intention of the Church.*

And Bonacina (*De Poenit.*, disp. 5, q. 7, punct. 2, no. 6): *Therefore he who undertakes a journey solely for this end, that he may avoid his proper pastor and confess to another, cannot validly confess before the pastor or priest of the place to which he comes, as Coninck, Vasquez,*

Suarez, Reginald, and other more recent authors well observe.

Moreover, it has already been observed above that these Authors suppose the consent of the proper pastor to be lacking in the case, which Palaus expressly intimates; and therefore, as we saw, Tamburini, Mazzotta, Filliucius, etc., who are customarily cited against them, suppose on the contrary that consent is not lacking.

12. But nothing shows the state of this controversy better than an examination of the reasons by which the new theory is defended. And indeed St. Alphonsus proposed thus (bk. 6, no. 588) that thesis which the VV. also endeavor to defend: *Travelers today are no longer absolved by the will of their Bishops.*

Let us ask: Did the holy Doctor produce even one author, or could he produce one, for that thesis? Did he confirm it by any argument?

But the VV. also established this thesis, as we have seen: *The doctrine that jurisdiction must be given by the Superior of the person who is to be absolved is improperly asserted as an axiom held among all.* Again let us ask here: Did they produce even one author, or could they produce one, for a thesis of this kind?

But, you will say, the VV. confirm the thesis by reason. Reply. They indeed bring forward a reason (p. 525), but such a reason as openly makes clear that every solid reason is entirely lacking to them. For they argue thus: From the Constitution of Innocent XII, confirmed by Benedict XIV, *Confessors, both secular and regular, whoever they may be..., can in no way hear confessions without the approval of the Bishop of the place in which the penitents themselves reside and choose confessors.... Nor for this does approval once or several times obtained from other Ordinaries of other dioceses avail, even if the penitents were subjects of those Ordinaries who had approved the confessors.* But, as Gury says, *Bishops now confer jurisdiction together with approval..., and hence by common usage jurisdiction also is called approval.* Therefore no Bishop can delegate confessors in another diocese to absolve his own diocesans from sins....

Reply. There will be someone, it seems, who judges that the connection between the premises and the conclusion of this argument is wanting. Accordingly, he will think the reply should be: I concede the Major; I concede the Minor, or let it pass; I deny the Consequent and the Consequence. Another, however, after conceding the Major, will distinguish the Minor thus: Bishops now confer jurisdiction together with approval. Distinguish: they confer it upon those who need it, let it pass; upon those also who do not need it, such as Regulars, subdistinguish: as though it were necessary to them for the ministry of absolving, I deny, because Regulars have jurisdiction not from the Bishop who approves them, but from the Apostolic See; by way of superabundance, let it pass. But another will distinguish the Minor in yet another way thus: Bishops now confer jurisdiction together with approval. Distinguish: jurisdiction over their own subjects, I concede, or let it pass; jurisdiction over those who are not their subjects, such as visitors from another diocese, I deny. For Bishops have no jurisdiction over those who are not their subjects; therefore they cannot give it to others, because no one gives what he does not have.

Accordingly Reiffenstuel (tract 14, dist. 1, q. 1, no. 15), in order to prove that exempt Regulars receive jurisdiction not from the Bishop who otherwise approves them, but from the Apostolic See, argues thus: *There is added the reason that the Bishop of the place cannot give so extensive a jurisdiction of hearing the confessions of all the faithful coming from anywhere and of absolving them....* And Laymann, in order to prove that Regulars also need the consent or commission of their own Prelates, writes thus (bk. 5, tract 6, ch. 10, no. 19): *Ludovicus Miranda well warns that Priests of Mendicant Orders, in order to obtain the said faculty, need, in addition to the approval of the Bishop, the consent of the Prelate or Chapter according to the custom of each Order; since the Bishop cannot give so extensive a jurisdiction of hearing the confessions of all the faithful coming from anywhere and of absolving them...; but Confessors of the Mendicant Orders receive it from the Supreme Pontiff with dependence upon the consent and will of their Prelates.*

13. Therefore, to remove the confusion introduced here by the VV., let those things which pertain to approval and those which pertain to jurisdiction be properly distinguished. The approval of the Bishop in whose territory the confession is made is in a certain manner a condition by which a priest becomes capable of receiving and exercising jurisdiction, from whomever having ordinary jurisdiction it may finally be delegated to him. For it is not necessary that the same priest be approved by all those who may wish to delegate jurisdiction to him. Thus a Regular Prelate, granting to a religious subject the faculty of confessing to secular priests approved by the Ordinary of the place, himself, and not the Bishop, delegates jurisdiction to them; but the Bishop, and not he himself, approves them. Thus a priest deputed by a Regular Prelate to hear the confessions of Nuns exempt from the jurisdiction of the Bishop has jurisdiction not from the Bishop, but from the Regular Prelate; nevertheless he must have approval not from the Regular Prelate, but from the Bishop. And the same thing, in a word, occurs when there is question of those exempt from the Bishop's jurisdiction who nevertheless must choose one approved by the Bishop of the place. And since there is a twofold class of exempt persons, or non-subjects -

some are such by reason of Privilege, although they have domicile in the Bishop's territory, as, for example, Regulars; others, however, are such by their nature, or by separation of territory, such as subjects of another diocese - the same rule applies to all of them. Hence that statement of Suarez (*De Relig.*, tract 10, bk. 9, ch. 2, no. 9): *Whence it is established that a confessor* (from the Mendicants) *residing here and approved by the Prelate of this diocese alone can hear the confessions of all who come here to him, even from other episcopates, although such a confessor does not have approval from their Bishops....*

Let us conclude, therefore, that the thesis proposed in the Note and opposed by the VV. - namely, that it is to be held as an axiom that jurisdiction must be given by the Superior of the person who is to be absolved - has in its favor the manifest doctrine of the Church defined in Ecumenical Councils, and at the same time the unanimous opinion of the Catholic School; but that the opposite thesis is supported by no aid of authority or reason, not even in appearance.

13. Now to that which the VV. add in defense of that new doctrine. As we saw above, no. 1, they establish two things, namely: 1. that St. Alphonsus rightly relies upon custom; 2. that the Constitution of Boniface VIII cited in the Note presents no obstacle. Yet while the VV. unfold these things, they sufficiently show that they have perceived themselves to be in difficulty.

14. They set forth the first point thus (p. 511): *St. Alphonsus rightly teaches that, from a universal custom approved by the Church, Travelers can confess to any confessor approved in the place, even a secular one, provided they do not go into another diocese in fraud of reservation.* But someone will reply: Let the whole pass; for these things do not attack the contrary thesis, which denies absolution to be valid only when someone confesses outside the diocese against the resistance and will of his proper Ordinary. But the VV. say nothing there concerning this.

The VV. proceed, bringing forward the words of Filliucius and Tamburini, concerning whom we spoke at the beginning of this Note. But another will reply that these things also do not strike the contrary thesis. For Filliucius and Tamburini suppose that the Ordinary of the penitent does not dissent; Gury, on the contrary, supposes that the Ordinary resists. Therefore these things do not pertain to the matter; indeed, they suggest the opposite.

But behold, after these things the VV. add as a consequence that St. Alphonsus deservedly asserted that travelers today are no longer absolved by the will of their Bishops, nor is it now any longer asked whether some Bishop has given a sign of dissent. But another will reply: From which of the premises does a consequence of this kind flow?

To confirm these things, the VV. add (pp. 510 and 512) that Bonacina denies that one is validly absolved who confesses elsewhere in order to avoid his proper pastor, while Mazzotta adds that he is validly absolved from the tacit consent of the Ordinaries, or rather of the Pope. But another will reply: Do these things prove that absolution is valid if someone goes to confess to an alien priest against the resistance of his proper Pastor? Do they not rather establish the opposite? Moreover, as regards Mazzotta and Bonacina altogether irrelevantly introducing mention of the Pope here, it must be replied briefly: 1. nothing is extracted from this by which it is proved that absolution imparted by an alien priest is valid when the proper Ordinary resists; 2. this anomaly of recurring to the Pope is to be numbered among those confusions of which there is discussion below in the Note at no. 573, question 5.

15. The VV. themselves describe thus the custom upon which they say St. Alphonsus relied when he denies that travelers today are absolved by the will of their Bishops: *In his time, and indeed long before, confessors not only in some places, provinces, or kingdoms, but throughout the whole world, indiscriminately received any penitents who came to them and treated them in the same manner as inhabitants, not inquiring whether they were travelers, or, if they learned this accidentally, whether their Bishop consented and did not object, nor investigating with what intention they had undertaken the journey.... And the Church approved this universal custom; for the Supreme Pontiffs never reproved in the least the same practice prevailing even at Rome under their eyes. But no one denies that a universal custom approved by the Church has the force of law, and indeed the same force as a written law. And therefore it is no longer asked whether any Bishop has given a sign of dissent, for no Bishop has power to contradict a universal law, whether written or unwritten.* This, moreover, is the custom to which the VV. afterward say (p. 512) that the Constitution of Boniface VIII presents no obstacle.

16. Let it now be passed over whether all the things pertaining to the practice just described by the VV. can be proved. For someone could ask, for example, whether satisfaction is made to the law which forbids the absolution of those who go into another diocese in fraud of reservation when confessors, as the VV. say, *indiscriminately receive any penitents who come to them and treat them in the same manner as inhabitants, not inquiring whether they are travelers, or, if they learn this accidentally, whether their Bishop consents and does not object, nor investigating with what intention they have undertaken the journey.* These matters will be treated more suitably elsewhere.

As regards the present matter, it is of the greatest importance accurately to know the nature both of the custom which the VV. describe and contend to have been approved, and of the custom which Boniface VIII, in chapter *Si Episcopus* 2, *De Poenit. et Remiss. in VI*, defines cannot be introduced. For from this comparison it will be evident whether the definition of Boniface VIII is rightly or wrongly objected against a new theory of this kind.

17. And indeed it can be said to be by no means obscure what is meant by the custom of which Boniface VIII speaks. *Nor can it be introduced by any custom* (he says) *that someone, apart from the permission of his Superior, may choose for himself a confessor who can loose or bind him.* These words clearly refer to the Definition of the Lateran Council (in chapter *Omnis utriusque*) which establishes these things: *If anyone, however, for a just cause wishes to confess his sins to an alien priest, let him first seek and obtain permission from his proper priest, since otherwise the latter cannot absolve or bind him.* By that canon, therefore, Boniface defines that no custom can be introduced contrary to the practice concerning which the Lateran Council issued a definition. But, as we saw above, nos. 4-8, the definition of the Lateran Council has this purpose: that no one can validly confess to another besides his Superior unless that other receives delegated jurisdiction from the same Superior; for this is signified when permission is said to be given. Therefore the definition of Boniface signifies that no custom can be introduced by virtue of which someone can validly confess to another besides his Superior unless that Superior, by giving permission, has delegated his jurisdiction to him.

Concerning the permission which the Lateran Synod defines to be necessary, Cajetan says, for example (*Sum.*, word *Absolutio*, 2): *Permission is given in two ways. Either explicitly: when the Pastor says to the people in common, Let each person go to confess to whom he wills; or he says specially to someone, Confess to whom you will; AND THIS IS NOTHING OTHER THAN TO GIVE PERMISSION TO CHOOSE A CONFESSOR FOR HIMSELF. Or implicitly. And this happens first by permitting subjects to travel; for in this permission to travel, permission to confess is believed to be implicitly enclosed, because confession ought to be a companion of travelers.... Secondly, by knowing and remaining silent; as when the Bishop knows that it is customary for his Canons or Pastors to absolve one another, and remains silent. For although it cannot be introduced by any custom that someone may choose a confessor for himself, as is said in chapter Si Episcopus, De Poenit. et Remiss. in VI, nevertheless, from the fact that the Bishop knows and remains silent, he is bound to provide them with a Confessor; and TACIT EPISCOPAL PERMISSION GIVES FORCE TO ABSOLUTIONS, and custom concurs only as a witness of implicit permission. And because of implicit permission of this kind, travelers without the permission of the Pastor can confess at Easter... wherever they find themselves, as those who have permission,* etc.

Likewise St. Antoninus (part 3, tit. 17, ch. 4): *The Doctors agree in this, that travelers and merchants and other wayfarers, if they do not have permission* (at least tacit and implicit) *from their Pastors or Bishops..., cannot be absolved by others. But if they set out with their permission, by that very fact they have interpretative permission to confess, since they cannot worthily travel without confession.* And lest more be brought forward here, let it suffice to observe that the unanimous opinion of the Doctors (see above, no. 9) which requires at least the tacit consent of the Ordinary pertains to this point.

18. But now let it be examined what kind of custom the VV. defend as legitimate and approved. And 1. this custom signifies (above, no. 14) that travelers are not absolved by the will of their Bishops; therefore, by no consent or permission of the Bishops, neither express nor tacit, neither explicit nor implicit. 2. This custom signifies (above, no. 15) that it makes no difference whether the Bishop of the traveler consents or objects. Therefore the permission of the proper Ordinary is altogether irrelevant in this matter. 3. Therefore, according to this custom, it is not asked whether the Bishop has given a sign of dissent, because the Bishop has no power to contradict this custom by virtue of which subjects can, apart from any permission of his, confess outside the diocese to whomever they please (above, no. 15).

Since these things are so, would you suppose that they agree with the definition of the Lateran Council, confirmed by the Councils of Florence and Trent, namely, that no one should confess to an alien priest unless he obtains permission from his proper priest, with the reason added that otherwise the alien priest cannot absolve him? And since the Apostolic See in chapter *Si Episcopus* through Boniface VIII defined that it cannot be introduced by any custom that someone, apart from the permission of his Superior, may choose for himself a confessor who can absolve him; and, on the contrary, the VV. contend that a custom is legitimate by which someone, apart from the permission of his Superior, and indeed even against his resisting will, can choose a confessor who can absolve him; how can anyone affirm that this definition of the Church is vainly objected against their theory? Indeed, since a new theory of this kind manifestly conflicts with the definition of Boniface, the matter seems now to have been brought to this: either this new theory, namely, that travelers are absolved by virtue of the custom which they describe, is to be regarded as false, or the definition of Boniface VIII, namely, that a custom of this kind cannot be introduced, is to be judged false.

19. But, as had already been observed in the Note, the definition of Boniface VIII which denies that a custom of this kind can be introduced is by no means a decree of some merely ecclesiastical law against which a contrary custom could be introduced in the course of time. Why? Because the practice against which he denies that any custom can prevail - namely, the decree of the Ecumenical Councils of Lateran, Florence, and Trent - is not some decree of ecclesiastical law, but an institution of divine law.

And it is surely remarkable that the VV. thought no account should be taken of the words of Suarez which were read thus in the Note: *It is replied that to choose a confessor without the permission of one's proper Bishop is repugnant to DIVINE LAW; and therefore the Pontiff* (Boniface VIII) *signified in that text* (chapter *Si Episcopus*) *that custom cannot prescribe against this law.* And, moreover, was it not added in the Note itself that, according to the testimony of Melchior Cano, all the scholastic Authors, and therefore St. Thomas, etc., agree in this very point?

20. Nor is the reason obscure why this institution and practice must be said to be of divine law, not human law. For who does not know that it is a divine institution of Christ the Lord that the sacrament of penance be administered after the manner of a judgment? Hence the Tridentine Synod argued thus (sess. 14, ch. 7): *Since the nature and character of a judgment demand that sentence be rendered upon subjects alone, it has always been held as certain in the Church of God that the absolution which a priest pronounces upon one over whom he has neither ordinary nor subdelegated jurisdiction ought to be of no moment.* And since the Church testifies that she can do nothing concerning those things which were established by Christ the Author of the Church, while any custom can have force only from the authority of the Church through legal consent, it is manifest that a custom which exceeds the power of the Church can never be introduced; and such plainly is that custom introduced by the VV.

Dominic Soto, a Tridentine Theologian, speaks aptly and exactly to the matter (*In IV*, dist. 18, q. 4, art. 2, concl. 1): *It is necessary for Confession, and required for its essence, that it be made to one's proper priest, or to one to whom he has committed it.* Hence concerning the Canon of the Lateran Council he adds: *It would never have restricted confession to one's proper priest unless it understood this to be of divine law and therefore always observed in the Church.... Hence Boniface* (chapter *Si Episcopus*) *says: It cannot be introduced by any custom that someone, apart from the permission of his Superior, may choose for himself a confessor who can loose or bind him. But that which is abrogated by no custom is divine or natural law.* And hence the same reasoning: for the Church can do nothing concerning the essence of a sacrament; therefore she cannot approve a custom which destroys the essence of the sacrament.

To this point pertain also those words of Vasquez (*In III Part.*, q. 93, art. 2, dub. 2, nos. 5-6): *Since it was said above that it cannot be introduced by custom that someone may confess to an alien priest without the permission or consent of his proper priest, as is stated in chapter Si Episcopus, we prove from this that it is of divine law, since the contrary cannot be introduced by custom.... Whence it is gathered that to confess to one's proper priest is not of human law* (let the reason be carefully observed), *because a contrary custom could be introduced not only with the consent of the Pontiff who had enacted the law, but also with the tacit consent of an inferior.... Since it is of divine law to confess* (to an alien priest) *with the consent of him* (namely, the Ordinary) *or of the Superior, prescription cannot be made against it; otherwise, if it were not of divine law.*

21. It is useful, however, to have examined carefully what parts custom has in this matter. From this it will be openly evident how those two things are amicably reconciled: namely, both that the Doctors, when treating of the confessions of visitors, commonly appeal to custom, and that it is nevertheless preserved that it cannot be introduced by any custom that someone, apart from the permission of his Superior, may choose a Confessor by whom he can be absolved.

Cajetan proposed the matter briefly and at the same time most clearly (see above, no. 17), where, treating of the implicit permission to confess which the Ordinary grants even to travelers by tacit consent, he concludes: *Tacit episcopal permission gives force to absolutions; and custom concurs only as a witness of implicit permission.* Therefore custom does not grant jurisdiction, but is an indication of the tacit consent, or implicit permission, of the Ordinary, from which there follows the delegation of jurisdiction to the chosen confessor.

22. Suarez explains these things more fully thus (disp. 27, sect. 3, no. 4): *It is always necessary that some sufficient indication of the consent of the Superior intervene, and custom can assist in signifying it. This is rightly declared by the example* (and this is the example which, cited above, no. 17, we already saw also in Cajetan) *of priests who by custom are accustomed to choose a confessor; for because they are accustomed to confess frequently, it was burdensome for the pastors to hear them all, and therefore they readily consented that they confess among themselves to one another. This consent, not revoked, is as it were continued by custom, and the custom itself is an indication of that consent.* Yet because permission always depends upon the will of the Superior, and exemption from at least this tacit consent of the Superior would be contrary to divine law, Suarez therefore adds (*loc. cit.*, no. 6): *From which I infer*

that this faculty (namely, of choosing a confessor) *obtained by custom is such that it always depends upon the will of the proper priest, so that, notwithstanding the custom, it is always in his power to revoke it if he wishes; because such a custom formally and directly would be contrary to divine law, since by force of it a subject could choose a confessor while the proper priest objected.*

Let the reader, I ask, compare these words of Suarez with those which were transcribed from the VV. above, no. 17, and judge with an equitable mind what is to be thought of the same VV. when they fill five columns (pp. 512-514) with texts of Suarez in order to prove that the cited definition of Boniface VIII presents no obstacle to them.

23. In the same manner as Cajetan and Suarez, Valentia proposes the doctrine of the Church thus (vol. 4, disp. 7, q. 10, punct. 2): *It must be noted here* (he says) *that custom... has force so that someone acquires jurisdiction to hear confessions for this reason alone: because when he obtains it with the Superior knowing and remaining silent, by that very fact the tacit consent of the Superior is also considered to intervene. From which... it is understood that chapter Si Episcopus, De Poenit. et Remiss. in VI, where it is said that it cannot be introduced by any custom that someone may choose a confessor without the permission of his Superior, does not conflict with those things which we have said concerning custom. For the things which we have thus far said must be understood of a custom with which at least the tacit faculty of a Superior who knows and does not prohibit concurs.... But that chapter speaks of bare custom to which at least the tacit consent of the Superior is not added; as if perhaps it were established that the custom itself displeased the Superior. For then jurisdiction can by no means be acquired through it. And thus John Medina and Soto rightly reply to this chapter.* And again let the reader compare these things with those which we related from the VV. above, no. 17.

Nor otherwise John Marini (*Theol. Spec. et Moral.*, tract 22, disp. 10, sect. 1, no. 17): *Prelates are considered to confer jurisdiction upon those chosen* (as confessors) *when they see and remain silent; and therefore this jurisdiction does not flow from custom, but from the legitimate concession of the Prelate, and is continued by force of such a concession not revoked by successors. Whence custom, properly speaking, does not give the faculty of choosing a confessor, but is a sign of the concession made by force of the persevering tacit consent of the Superior. From these things it is deduced that the Prelate by whose tacit consent the custom is continued can, at his pleasure, by expressing a contrary will, abrogate and entirely abolish it, and that the preceding custom cannot prevail in any way.*

And Filliucius (tract 7, ch. 9, no. 233): *I ask to whom the faculty of choosing a Confessor has been granted from custom alone. I reply and say first that custom taken by itself cannot grant the faculty of choosing a confessor without the permission of one's proper priest. The reason is that this would be contrary to divine law.... It can, however, be a sufficient sign of a faculty granted by the pastors and never revoked, but persevering through tacit consent.*

24. Augustine Michel, Canon Regular, also lucidly proposes this doctrine of the Church in his Theology published at Augsburg in 1712 and dedicated to Cardinal Sacripante. There (tract 4, part 2, q. 2, sect. 2, nos. 26-29), treating of diverse modes of delegating jurisdiction, he discusses among these also indirect delegation by force of the custom of hearing the confessions of travelers thus: *Although according to common law* (travelers) *ought to seek permission from the Pastor, by general custom demonstrating the universal faculty of the Ordinaries they have the right to confess even without it not only to privileged Regulars* (who, namely, have jurisdiction from the Supreme Pontiff for all Christ's faithful), *but to any other priest appointed in the place of the journey, provided that they travel in good faith and not in fraud of avoiding the Ordinary.* He then objects to himself (*ibid.*, no. 29): *But you will say: in chapter Si Episcopus 2, De Poenit. et Remiss. in VI, Boniface VIII expressly defines that it cannot be introduced by any custom that someone, apart from the permission of his Superior, may choose for himself a confessor who can loose or bind him.* And he replies (*ibid.*): *I reply that we met this objection by the words "demonstrating the universal faculty of the Ordinaries," by which we attribute this permission not so much to custom as to the will of the Ordinaries, yet in such a way that general custom is the witness of this will.*

25. Reginald, so greatly praised by St. Francis de Sales, must also be heard. He (bk. 1, no. 77) sets forth the common doctrine of the Church concerning travelers thus: *The fourth proposition is that travelers who determine previously to retain their domicile, if they are absent from their domiciles with the permission of their Pastors or Bishops, are to be considered to have tacit permission to confess to an alien priest, as was said above, no. 68, concerning travelers.... Because their Superiors also... are deservedly considered to give them tacit permission to confess, as providing through others for their subjects, whom they cannot provide for by themselves in their absence, concerning those things necessary for the sustenance of the spiritual life.*

But as regards the custom of confessing elsewhere to an alien priest, the same Reginald says thus (*loc. cit.*, no. 74): *As regards custom, it, as Cajetan rightly observes, word Absolutio, 3, does not give jurisdiction. For this is sufficiently established from the fact that in chapter Si Episcopus, De Poenit. et Remiss. in VI, it is said that it cannot be introduced by any custom that someone, apart from the permission of his Superior, may choose for himself a confessor who can loose or bind him. Therefore custom is only a witness of tacit permission sufficiently granted by the proper priest and not revoked, but, as the continuation of the custom shows, continued with his tacit consent. There is added the fact that to delegate jurisdiction belongs to the Superior having ordinary jurisdiction, not to his subjects whose custom it is.*

Treating this more fully, Suarez infers from it that jurisdiction obtained by custom always depends upon the will of the priest, so that, notwithstanding the custom, it is always in his power to revoke it if he wishes.

26. Space does not permit more things to be brought forward. But those things are not to be omitted which Coninck has, where (disp. 8, dub. 5, no. 32) he asks whether jurisdiction can be obtained by custom. *For it seems* (he says) *that this can be done from chapter Cum contingat 13, De foro compet.; but what is said in chapter 2, De Poenit. in VI, stands to the contrary: Nor can it be introduced by any custom,* etc.

He then adds the following Conclusions. Conclusion I (no. 33): *He who does not have jurisdiction cannot acquire it unless either ordinary jurisdiction is given to him, or another jurisdiction is delegated to him by one who can do so.*

Conclusion II. *In order that someone validly delegate jurisdiction to another, he must know what he is doing and will to do it at least implicitly..., and express this will sufficiently by some external sign, so that it can become known to the other.*

Conclusion III (no. 37): *Custom never gives jurisdiction when it is employed without the knowledge of those who can give it.*

Conclusion IV (no. 38): *A custom which is exercised with the Superior openly knowing and not contradicting when he easily can gives jurisdiction not by reason of itself, but by reason of the tacit consent and approval of that Superior.*

From this he deduces these two corollaries (no. 39): *From which it is evident, 1. that it can happen that this custom begins at first through invalid confessions because of a defect of jurisdiction, before the failure of the Superiors to prohibit is a sufficient sign that they consent; and afterward brings it about that subsequent confessions are valid, after that failure to prohibit is a sufficient sign of consent.*

It is evident, 2. that jurisdiction acquired by custom always depends upon the will of the Superiors by whose authority or tacit consent it was introduced. Therefore both they themselves and their successors can always revoke it.

27. Therefore, to conclude at last, what must be held in this matter, and indeed not as some opinion of the School but as certain doctrine of the Church, resting upon the nature and essence of this sacrament as the Ecumenical Councils and the Apostolic See have proposed and solemnly defined it, is reduced to these heads: 1. It is necessary that jurisdiction for absolving a visitor be delegated by one who has ordinary jurisdiction, and indeed ordinary jurisdiction over that visitor. 2. The custom by which visitors are accustomed to confess outside their own diocese does not confer, nor can confer, this jurisdiction. 3. Jurisdiction is acquired from the approval or consent, whether express or tacit, or from the permission, whether explicit or implicit, of the Ordinary or proper priest of the visitors. 4. This approval or consent signifies a delegation of jurisdiction made to the confessor whom the visitor chooses. 5. A sufficient indication of this consent is the custom which is observed with the proper priest knowing and remaining silent. 6. The delegation of jurisdiction so depends upon this consent that it is within the power and will of the proper pastor to revoke that consent, and therefore both to abrogate the custom and entirely to remove jurisdiction for absolving his subject. All these things ought to be beyond controversy. Do the things which the VV. assert above, nos. 15 and 18, agree with them?

28. Nor indeed is it to be thought that the not infrequent assertion of Theologians or Canonists that jurisdiction can be acquired by custom is opposed to these things. Cajetan explains thus the different sense in which this is customarily affirmed (word *Absolutio*, 2, at the end): *A prescriptive custom not of choosing a confessor, but of having the care of souls, brings it about that Cardinals have care of their household, and that with their permission members of their household can confess to whomever they will; in like manner anyone else having a care of this kind can by himself or through another impart the benefit of absolution, for jurisdiction of this kind no less than others can be possessed through prescriptive custom.*

On the same matter Henry Pirhing speaks thus (bk. 5, tit. 38, no. 36): *A subject or parishioner cannot by force of custom acquire the power of choosing a confessor for himself without the permission of his Superior, not even through a custom of the longest time or even immemorial custom* (chapter 2, *De Poenit. et Remiss. in VI*), *nor prescribe such a right.... A Prelate, however, or another constituted in dignity, for example, an Archdeacon, can prescribe, or by legitimately prescribed custom acquire the care of souls over the parishioners of another, and thus become their proper priest and hear their confessions. Hence, when in the cited chapter Si Episcopus 2, De Poenit. et Remiss. in VI, it is said that it cannot be introduced by any custom that someone without the permission of his proper pastor may choose another confessor for himself, it is to be understood unless a priest through long-standing custom acquires jurisdiction to absolve the subjects or parishioners of another.* Therefore what the Doctors are accustomed to dispute concerning jurisdiction acquired by custom has nothing to do with our matter.

28. Finally, we shall add this one thing here, so that it may be established what is to be thought concerning the antiquity which someone might perhaps vaunt of the custom by virtue of which, long before the times of St. Alphonsus, confessors *not only in some places, provinces, or kingdoms, but throughout the whole world, indiscriminately received any penitents who came to them*

and treated them in the same manner as inhabitants, not inquiring whether they were travelers, or, if they learned this accidentally, whether their Bishop consented and did not object, nor investigating with what intention they had undertaken the journey.... And therefore it is no longer asked whether any Bishop has given a sign of dissent, because no Bishop has power to contradict a universal law, whether written or unwritten. Would it not by these words be sufficiently declared that, in administering the sacrament of Penance, it is altogether irrelevant, and therefore nothing is to be inquired or cared about, whether sacramental judgment is exercised concerning persons in some way subject, or in no way subject?

But in the dogmatic Constitution of Pius VI which begins *Auctorem fidei*, these words are read (no. 37): *Concerning the power of absolving. The doctrine of the* (Pistoian) *Synod which, concerning the authority to absolve received through Ordination, declares that after the institution of dioceses and parishes it is fitting that each person exercise this judgment over PERSONS SUBJECT TO HIM, either by reason of territory or by a certain personal right, because otherwise confusion and disturbance would be introduced; insofar as after the institution of Dioceses and Parishes it declares that it is merely 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 an absolution pronounced by a priest is of no moment; FALSE, RASH, PERNICIOUS, CONTRARY AND INJURIOUS TO TRENT, ERRONEOUS.*

QUESTION 14. Do SUCCURSAL PRIESTS in France enjoy ordinary jurisdiction? Reply. Affirmative; for they are Pastors properly so called, and the care of souls is committed to them to be exercised not as vicars of another, but in their own name. The Succursal Priest, or *Deservitor*, is in fact bound, just as the Rector of the principal parish, by virtue of his office to administer the Sacraments to his subjects; and the subjects in turn must have recourse to him in the same cases in which parishioners must by law approach their proper Pastor and not another, for example, for contracting marriage, for receiving Paschal Communion, etc. - Gousset, no. 479; Vernier, no. 92; D. Bouix, *Tract. de Parocho*, p. 337, etc.

QUESTION 15. Can a simple Priest absolve those sailing upon the Ocean, or from whom must approval be obtained?

Reply 1. Of himself he cannot absolve except in probable danger of death, as was said above, because outside that case a Priest of this kind lacks every jurisdiction.

Reply 2. By universal custom, the approval of the Bishop of the place from which the voyage is undertaken is required and suffices; for by custom such a Bishop has the faculty of approving the Priest about to sail and of delegating him for the whole time of the voyage. - Thus commonly with Bouvier, sect. 5 at the end.

556. ○ **QUESTION 16. Can military Chaplains absolve soldiers everywhere without the approval of the Bishop of the place?**

Reply 1. Affirmative, if they are specially delegated by the Supreme Pontiff to the spiritual care of the soldiers, or by a Chaplain Major approved by the Pope.

Reply 2. But if they lack this special delegation, they can indeed hear confessions in the diocese of the approving Bishop, and also outside it while traveling and in camps by the tacit consent of the Bishops, as is evident from universal custom; they cannot, however, validly absolve in stations or garrisons without the permission of the Bishop of the place, because they have no jurisdiction. This is established from various Declarations of the Sacred Congregation which Father Zacharia relates in Lacroix, no. 1518. - See also St. Liguori, no. 577; Bouvier, *De Approbatione*; Bouix, *De Parocho*, p. 66, etc.

Appendix I. On the Jurisdiction and Approval of Regulars

Regulars, by reason of privileges and immediate dependence upon the Supreme Pontiff, differ in several matters of jurisdiction from secular Priests. Hence:

557. ○ I say I. Regulars properly so called, or those who emit solemn vows and are endowed with the privilege of exemption [1], and are therefore exempt from the jurisdiction of Bishops, receive jurisdiction immediately from the Pope for hearing the Confessions both of their own members and of secular persons. Hence is understood the jurisdiction granted to individual religious Priests, with the consent of their Superior being added [2]. This is established from Canon law, especially from the Decretal *Super cathedram*, from the Clementine *Dudum de sepulturis*, and likewise from other Constitutions which, although they were afterward modified, especially through the Council of Trent with regard to privileges, nevertheless remained unrevoked with regard to the substance of jurisdiction. - Thus commonly with Lugo, disp. 21, no. 4; Lacroix, no. 1552; Billuart, diss. 6, art. 6.

[1] The privilege of exemption does not of itself imply a delegation of jurisdiction immediately from the Supreme Pontiff; for the one can subsist without the other. In fact, however, all mendicant Religious, and those who by an indult of the Apostolic See have communication of privileges with them, are accustomed to receive jurisdiction from the Roman Pontiff through the prelates of their proper Order. Concerning this matter, a Religious of each Order should consult his own Constitutions and the privileges granted to his Order.

[2] Rather than *consent*, you would say a communication or delegation of jurisdiction.

I say II. Regulars receive from the Superiors of their monastery or Order approval together with jurisdiction for hearing the confessions of their own members; but for hearing the confessions of secular persons they receive approval from the Bishop of the place where the confessions are to be heard. The reason for the first is that the Council of Trent required the approval of the Bishop only for the confession of secular persons, and changed nothing in the ancient discipline with regard to the confessions of Regulars. The reason for the second is evident from the Decree of Innocent XII in the year 1700, by which it was decreed that Confessors, whoever they may be, both secular and regular, can in no way hear secular penitents without the approval of the Bishop of the place.... - See the things said at no. 538.

I say III. Regulars cannot confess, at least ordinarily, outside their own Order without the consent of their Superiors; indeed, even in the Monastery they cannot confess to anyone other than the one designated by the Superior himself. Those who dwell outside the Monastery, however, or are traveling, cannot confess except to a companion, if they have one who is fit; but if they do not have one, they can confess to any Priest, whether regular or secular. - These things are established from the privileges known to have been granted to all Religious Orders by Innocent IV and by other Supreme Pontiffs. - See St. Lig., no. 575; Lacroix, no. 1524; Laymann, etc. Recall also the things said above concerning the religious state, no. 174.

558. Resolutions. - 1. Although Regulars have jurisdiction from the Pope, nevertheless they have it bound with regard to hearing the confessions of secular persons, since for the validity of absolution the approval of the Bishop is required as a condition *sine qua non*.

2. A Bishop can grant approval to Regulars at pleasure without restriction, or with some restriction as to time, places, persons, etc.

3. If the Bishop expressly granted approval only for some transitory act, for example, for conducting some mission, the faculty received is considered to be valid only for that act and for every judgment then begun.

4. If the Bishop, or your Superior by his delegation, grants you approval for a determined class of penitents, the faculty cannot be extended to others, as is evident. But if the request for a faculty from the Bishop or from the Superior is general, and the concession was not restricted, the faculty obtained is not limited to the work which was the occasion of the request. Thus, for example, if you seek a faculty on the occasion of giving spiritual exercises to Nuns in a certain convent, by the same faculty received you can hear also the confessions of other faithful. The reason is that *whatever is not excepted is contained in the concession.* Except, however, reserved cases, which by law itself are never understood to be comprehended in a general faculty of hearing confessions [3].

[3] Thus expressly Boniface VIII (chapter *Si Episcopus* 2, *De Poenit. et Remiss. in VI*): *If a Bishop grants to his subject that he may choose for himself a fit confessor, the one whom he chooses has no power at all in cases which are specially reserved to that Bishop, since those things which someone would not probably grant specifically are not included in a general concession.*

5. A religious missionary summoned by a Bishop to conduct a mission in his diocese by that very fact receives tacit approval for hearing confessions during the time of the mission for which he is summoned. The same must be said if he was requested by a Pastor or another Superior with the permission of the Bishop. Nevertheless, he is considered approved only for ordinary cases. Hence in practice recourse must always be had to the Bishop to determine the extension or measure of the approval [4].

[4] This passage of the Author seems somewhat obscure; nor is it sufficiently evident whether he speaks of the mere extension of approval beyond the time or occasion of the mission, or indeed of the extension of the faculty also to reserved cases. Whatever the case, the counsel of approaching the Bishop is useful in either hypothesis.

6. When a religious Superior, by delegation of the Bishop, employs a subject for the general works of the sacred ministry, apart from the hypothesis of some special restriction, he is considered to grant him an unrestricted faculty for any penitents whatever and also for all the reserved cases contained in the episcopal concession. The reason is that he is considered to grant all that he can and is accustomed to grant, according to the aforesaid rule: *Whatever is not excepted is contained in the concession.*

559. Questions. - **QUESTION 1. Can Regulars outside the house, when a fit companion is lacking, confess to a Priest not approved?**

Reply. Affirmative, from the common opinion. But the Reply of the Sacred Congregation of the Council to the Bishop of Hildesheim, dated November 18, 1769, which could be opposed, is by no means contrary, since there is question there of Religious who had companions of their Order at hand, as is evident from the acts of the same Congregation [5].

[5] Compare the things said above in the note at no. 174.

QUESTION 2. Can a Bishop without cause deny approval to Regulars?

Reply. Negative. For, Pignatelli says, Regular Confessors receive jurisdiction not from the Bishop, but from the Supreme Pontiff, and approval is required only as a condition so that jurisdiction can be exercised. Therefore Bishops cannot prohibit Regulars from absolving at some time.... (*Consultationes canonicae*, vol. 4, consult. 163).

560. ○ **QUESTION 3. Can a Bishop approve Regulars with a limitation of time, persons, or places?**

Reply. Affirmative. This is established from various Decrees of the Holy See. - See St. Lig., *Hom. apost.*, tract 20, no. 103 at the end. Nevertheless, in approving Regulars the Bishop cannot prohibit them from hearing confessions at the Paschal season. This is established by a Decree of the Sacred Congregation dated September 22, 1668.

QUESTION 4. Can a Bishop revoke approval granted to Regulars?

Reply 1. He cannot revoke the approval of all Regulars of the same community without consulting the Sacred Congregation of Bishops. Thus from the Bull *Superna*.

Reply 2. The Bishop can, however, revoke the approval of individual Regulars considered individually, but only for a just cause concerning confession; and this holds even if the Religious was approved after a prior examination. Thus St. Lig., *Hom. apost.*, tract 20, no. 103, clearly teaches from the same Bull.

561. ○ **QUESTION 5. After approval SIMPLY granted, but without a prior examination, can a Bishop recall a Regular to an examination?**

Reply. Affirmative, as it seems. For the Bull does not prohibit recalling to an examination without cause except Regulars approved after a prior examination.

QUESTION 6. Does a Regular once approved in some diocese need a new approval if, after changing his residence, he returns to the same diocese?

Reply. Negative. The reason is that one approved indefinitely and without limitation remains approved at least until an implicit revocation of the approval; but in the present case no revocation intervenes, not even an implicit one. Therefore, etc. - Thus Lacroix, no. 1541; Lugo, disp. 21, no. 44, with the common opinion.

QUESTION 7. Does a Regular approved in some diocese need a new approval in order validly to absolve if, after changing place, he passes through the same diocese?

Reply. Negative, because approval granted indefinitely and without limitation endures until revocation [6]. - Lacroix, no. 1541.

[6] Lugo aptly observes (*De Poenit.*, disp. 21, no. 43) that by the very fact that a priest enters the territory of another Bishop, he begins to be a subject of that Bishop and to have him as his Ordinary in relation to hearing the confessions of that flock. But by the very fact that, by setting foot in that territory, he becomes a subject, he recovers the approval which he received before and has not yet lost through revocation. Compare the things said above in the note at no. 544.

562. ○ **QUESTION 8. Does a Religious validly absolve secular persons by delegation of the Bishop, but without the knowledge of his Superior?**

Reply. Affirmative. The reason is that the Religious already has jurisdiction from the Pope through his Superior; but once this has been received, it endures until it is expressly revoked. Moreover, the approval of the Bishop is possessed. Therefore nothing is lacking for that Religious validly and licitly to absolve. - Billuart and others.

563. ○ **QUESTION 9. Does a Religious validly absolve when his Superior is unwilling, but by express delegation of the Bishop?**

Reply 1. Negative, if the Bishop intended only to give approval and, moreover, the Superior is so unwilling [7] that he is considered to remove jurisdiction from his subject. The reason is evident. For then the Religious has jurisdiction from no one.

[7] These things are not to be understood of just any Superior, but of the one who has power to constitute confessors according to the proper Constitutions of each Institute. Hence, if the Constitutions reserve this office to the Provincial Superior, it is manifest that the dissent of the local Superior, for example, of the Rector, Prior, Guardian, etc., cannot bring it about that jurisdiction conferred upon subjects by the Provincial ceases or is suspended.

Reply 2. Affirmative, however, if the Bishop intended also to confer jurisdiction, as is customarily done in present practice. The reason is that a Bishop can indeed confer jurisdiction upon a Religious, no less than upon a secular Priest, over his own sheep. For whoever enjoys ordinary jurisdiction can delegate it to any Priest. - Billuart, etc.

But that Religious would sin gravely against obedience, because in a grave matter he would transgress the precept of his Superior; nor in a case of this kind could he use the privileges which Regulars enjoy, for example, for absolving from certain censures. For a Religious receives a privilege of this kind only through the Superior himself, who by hypothesis grants no faculty to the subject [8].

[8] These things are confirmed by a Declaration very recently issued by the Congregation of Bishops and Regulars (*Acta ex iis decerpta, quae apud S. Sedem geruntur*, vol. 1, p. 683). For the following doubts were proposed:

I. Whether a Religious not approved by his Superior according to the laws of his own Order, or when that Superior is unwilling, validly hears the confessions of secular persons with the faculty of the Ordinary alone.

II. Whether Regular Superiors having jurisdiction can suspend their subjects from hearing the confessions of secular persons even *ex informata conscientia*.

And, if affirmative, III. Whether a suspension pronounced orally and without writing is valid.

IV. Whether absolution imparted by one who is bound by such a suspension is valid.

To II. Affirmative; yet in such a way that the suspended Religious hears confessions illicitly, but not invalidly.

To III. Affirmative, since it is imposed after the manner of a particular precept.

To IV. Affirmative.

To V. Provided for in the preceding replies.

It is provided for in the preceding replies because, as the Reply to III has it, the suspension in the case is imposed not after the manner of a censure, but after the manner of a precept by which the subject is prohibited from hearing confessions. Hence the Editor rightly observes (*loc. cit.*, p. 684) that the subject is disobedient, but not a violator of a censure, and consequently does not incur irregularity.

Moreover, the Declaration of the Sacred Congregation supposes that not only approval but also jurisdiction was conferred by the Ordinary of the place upon the Regular in question. Hence in the first question the careful expression *with the FACULTY*, not *with the approval of the Ordinary*, was employed. Therefore this Declaration detracts nothing from the COMMON opinion of the Theologians (see Struggl, *Theol. mor.*, tract 11, q. 3, no. 30) that Regulars have jurisdiction from the Supreme Pontiff; this opinion we already saw above, no. 555, expressly confirmed by the Sacred Congregation of the Council. And hence it must be repeated that Benedict XIV (*De Synod.*, bk. 9, ch. 16, nos. 7-8), although he disputes at length concerning the faculty of Regulars for administering the Sacrament of Penance, proves by many things the necessity of approval which Regulars must obtain from the Ordinaries of the places where they exercise the ministry; but he has not a single word concerning the conferral of the faculty or jurisdiction. And hence it must be repeated that the Doctors commonly teach that a Religious suspended by his proper Superior from hearing confessions imparts absolution neither licitly nor validly. See Laymann, *De Poenit.*, ch. 10, no. 19. How this is reconciled with the Declaration just cited, you have in these words of Marcus Struggl (*loc. cit.*, no. 32): *It is inferred that the absolution of an exempt Regular Priest who, having been merely approved by the Bishop..., should hear confessions without any actual permission, either express or tacit, of his legitimate Superior, is invalid; because he would not yet have jurisdiction from the Supreme Pontiff, which requires the consent of the legitimate Superior as a condition sine qua non. If, however, the Bishop were at the same time to give his own episcopal jurisdiction to such a Religious, the absolution would be valid even if conferred against the positive will of the Superior. Meanwhile, however, the Regular by absolving in this way would sin lightly or gravely according to the measure of the disobedience and prohibition, as Sporer, no. 682, teaches with Tamburini.*

Moreover, the faculties of this Religious in the case would not extend further than the Bishop can grant them by delegation. Therefore, even if the Religious belongs to an Order to which some special faculty has been granted by the Apostolic See, for example, to some mendicant Order which enjoys the privilege of absolving from Papal Cases (concerning which the Regulars themselves must now be consulted), nevertheless he would absolve invalidly from these. The reason is that he would possess a faculty of this kind only insofar as it were perhaps communicated to him by his Superiors. But in the case the Superiors grant him no faculty. Therefore.

V. And, if negative, whether one who attempts an absolution of this kind incurs irregularity.

The Sacred Congregation of Bishops and Regulars, after discussing the matter, replied on March 2, 1866:

To I. Affirmative.

QUESTION 10. Can Regulars without the approval of the Bishop absolve their servants or other members of the household dwelling in the monastery?

Reply. Affirmative, if these servants or other secular persons are as members of the household, that is, if they remain in the house day and night and are nourished there, so that they are continual table companions and live under the obedience of the Religious.

It is otherwise, however, if they are not so regarded, for example, if they remain only during the day and dwell elsewhere at night, as laborers, daily hirelings, farm workers, etc. Thus from the frequently cited Constitution *Superna* of Clement X, sect. 4: *In monasteries, and also in colleges where life is lived according to regular institutes, both Regular Prelates and the Confessors of the Regulars of those monasteries or colleges can hear the confessions of those secular persons who are members of the household and continual table companions, but not of those who merely serve them.* - See Lacroix, no. 1505.

564. ○ **QUESTION 11. Can Regulars absolve resident students without the approval of the Bishop, as being members of the household?**

Reply. A twofold opinion is given.

THE FIRST OPINION denies absolutely, because resident students are not members of the household as servants are. For servants are of the house and are therefore called domestics, because

by service they are as it were incorporated into the household; but students pay money so that they may receive food, instruction, and education from teachers. - Thus Lugo (*Respons. moral.*). This seems to be established also from a Decision of the Sacred Congregation of Bishops and Regulars dated June 21, 1848, which was issued on this occasion. For the Bishop of Parma had issued a Decree that the Barnabites, or Clerks Regular of St. Paul, could administer the Sacraments of the Eucharist, Penance, and Extreme Unction to their resident students without any permission of the Pastor of the parish of the Holy Sepulcher, in whose territory the convent of the aforesaid Regulars was situated. But when the Pastor objected, the dispute was brought before the Sacred Congregation, which declared that the Decree of the Bishop was to be reformed.

THE SECOND OPINION very probably affirms. The reason is: 1. because where students or residents actually have complete dependence upon Regulars, they are already members of their household. Nor is it likely that the Fathers of the Council of Trent esteemed less the dependence which binds students to Regulars in respect of education than that which binds servants to them in respect of material service and wages, and consequently wished to bestow the benefit of household membership upon students no less than upon servants. Thus Pichler, Pellizzarius, and Schmalzgrueber. 2. Because several Regular Orders, such as the Benedictines, Theatines, the Congregation of Somasca, the Clerks Ministers of the Sick, etc., and even certain secular Congregations, such as those of St. Sulpice, the Holy Spirit, etc., possess the privilege of household membership for their resident students. But from the communication of privileges the other Regular Orders also obtain such a privilege. Therefore, etc.

This opinion has several Roman Theologians, and indeed most weighty ones, as patrons. Nor does the cited Decision of the Sacred Congregation in the case of Parma present an obstacle. For it is replied that it was given for a most special case and therefore is by no means to be extended to other cases [9].

[9] This declaration of the Sacred Congregation has nothing to do with the present cause. For the dispute there was not concerning hearing the confessions of students without the approval of the Bishop (which cause, moreover, would have had nothing to do with the pastor), but concerning the rights of the pastor in the case of death. Add that the pastor relied upon custom in his own cause; hence this Declaration of the Sacred Congregation cannot be transferred to other cases lacking these circumstances, not even in that question concerning parochial rights in the case of death.

In practice this latter opinion is safe, at least if the Superior of the college or residence declares it. This is evident from the doctrine of St. Liguori concerning the communication of privileges, and also the interpretation of the privileges of Regulars. - *Hom. apost.*, tract 20, *De Privilegiis*.

Appendix II. On Jurisdiction with Respect to Nuns

565. ○ I say I. Nuns cannot confess except to a Priest specially approved for them by the Bishop, although they are exempt from the jurisdiction of that same Bishop and subject to Regulars of their proper Order. Thus from the Bull *Inscrutabili* of Gregory XV and from other Constitutions of the Supreme Pontiffs. Indeed, a Confessor approved for one monastery cannot validly hear the confessions of Nuns of another monastery unless he was approved in general for Nuns. Clement X confirmed this in the year 1670 by the Bull *Superna*. - See St. Lig., no. 576.

From a Decree of the Sacred Congregation of Bishops dated September 20, 1642, the ordinary Confessor of Nuns cannot be approved except for a three-year term; after it has elapsed, he can no longer hear confessions in the same monastery without the permission of the Sacred Congregation. - See St. Lig., no. 577. But a restriction of this kind, as Bouvier observes, is not observed everywhere; and then the approval is valid until it is revoked by word or deed.

Moreover, the Confessor is bound to come to hear the confessions of the Nuns as often as he is summoned. Sacred Congregation of Bishops, 1705. But let him take care not to conduct himself as the Superior of the monastery, since no such authority belongs to him. - Thus the Sacred Congregation of Bishops, September 7, 1797. See *Analecta Iuris Pontificii*, 1859, pp. 1322, 1524.

566. ○ I say II. Bishops and other Superiors of Nuns [1] are bound two or three times a year, even for the Novices themselves, to furnish an extraordinary Confessor. Thus the Council of Trent, session 25, *On Regulars and Nuns*, chapter 10, establishes, where it is said: *Besides the ordinary Confessor, however, another extraordinary one is to be offered by the Bishop and the other Superiors two or three times a year, who ought to hear the confessions of all.* - Other Supreme Pontiffs confirmed these statutes, especially Benedict XIV in the Bull *Pastoralis*, issued August 5, 1748. A particular Confessor must, in addition, be granted to Nuns at the point of death [2], if they ask for one, and indeed also sometimes during life, if some Nun requests this or refuses to confess to the ordinary Confessor; but then an extraordinary Confessor is to be deputed only for certain occasions. These things are established from the Bull *Pastoralis* of Benedict XIV just cited.

[1] To offer an extraordinary confessor to Nuns belongs respectively to those to whom it belongs to assign the ordinary confessor also. And since some Nuns are subject to Prelates of Regulars, while others are subject to the Bishop, the Regular Prelate assigns a confessor to the former, one nevertheless specially approved for Nuns by the Ordinary of the place; the Bishop assigns a confessor to the latter. This is established from the Constitution *Pastoralis* of Benedict XIV, where it is said that *the deputation of one of this kind* (namely, an extraordinary confessor) *regularly belongs to him to whom the election and deputation of the confessor pertain.*

It is said, however, *regularly*; for if perhaps the Regular Prelate neglects the law of the Council of Trent concerning offering an extraordinary confessor, then, according to a Reply of the Sacred Congregation of the Council dated August 13, 1631, which Benedict XIV confirms by his authority in the cited Constitution, the Bishop can and must remedy the negligence or unjust obstinacy of the Regular Prelate and himself furnish the extraordinary confessor.

If, however, the Bishop neglects this, whether for monasteries which depend upon him or for those subject to a Regular Prelate who fails in his office, Benedict XIV in the aforesaid Constitution establishes that the deputation of an extraordinary confessor is to be made by the Cardinal Major Penitentiary when he has been asked for this by the nuns themselves.

[2] Concerning this case the cited Constitution of Benedict XIV establishes thus: At the point of death a particular confessor must be granted by the Bishop to any nun who asks for one, or by the Regular Prelate if the monastery is exempt; and, if the Regular Prelate is lacking or refuses, the Bishop can and must supply; but if the Bishop refuses, one is to be given by the Major Penitentiary, if time permits. In these provisions it is omitted what is to be done if time does not permit provision for the necessity of the nun in any of the aforesaid ways. But the Tridentine Synod sufficiently provided also for this case when it decreed that at the point of death there is no reservation, and that any priest can absolve any penitents whatever from any sins and censures whatever, according to the things said above (no. 550, q. 6).

QUESTION 2. What is understood here by the name Nuns?

Nor indeed does the Council of Trent prohibit several extraordinary Confessors from being appointed, or their being offered more than two or three times. The sense of the Decree, therefore, is

that they are to be granted at least two or three times. - Ferraris, word *Nuns*, art. 5, no. 33; Bouvier, ibid.

567. Questions. - **QUESTION 1. Are all Nuns bound to present themselves to the extraordinary Confessor and to confess to him?**

Reply 1. All and each are bound to present themselves at least to hear salutary admonitions. This is established from the same Bull of Benedict XIV, and also from an express Declaration of the Sacred Congregation of Bishops dated October 19, 1621 (in Bouvier, ibid.). The reason for this provision is that the liberty of those Nuns who may perhaps need the ministry of the extraordinary Confessor may be safeguarded; otherwise the fear either of displeasing the ordinary Confessor or of falling under suspicion among the other Nuns would easily restrain them. - See St. Lig., no. 576.

Reply 2. They are not bound to confess to the extraordinary Confessor, but it suffices that they place themselves before him, for example, to ask his blessing or to receive salutary admonitions from him. This is established from the cited Bull of Benedict XIV. See St. Lig., no. 576.

Reply. Only women living under a rule in a cloister are understood; not, however, those who are not bound to observe enclosure [3], for example, such as those who are called Sisters of Charity (*Soeurs de la Charite*). - Bouvier, *On Jurisdiction*; Gousset, no. 480, etc.

[3] Although the Apostolic Constitutions concerning the furnishing of an extraordinary confessor seem to regard only nuns who observe enclosure, nevertheless an equal reason applies also to others when a Confessor is so assigned to them, whether at home or in churches, that they do not have free faculty to approach another.

Yet where nuns of this kind are accustomed to confess in Churches, there is scarcely, or hardly even, need to consider providing an extraordinary confessor. For a nearly universal custom prevails that each has free faculty to approach any of the priests who are accustomed to hear confessions in that church; indeed, if these priests are Regulars, it is all the same if they approach any one of the same Regulars even in another of their churches. Nor is it an obstacle that, for the observance of a certain order, some are assigned as quasi-ordinary confessors either by the Superior of the monastery or even by the Bishop. For an arrangement of this kind is regarded as merely administrative, and therefore it has nothing to do with the question of jurisdiction. And indeed, when either the church or the confessors have been designated by the Superior, it is manifest that a nun who chooses any confessor whatever and wherever she may choose him confesses, certainly contrary to the rule, but validly. Indeed, according to the general principle that odious things are to be restricted, the same is to be held if the designation is made by the Ordinary, unless he expressly adds that no one besides those designated can be regarded as approved for those nuns.

568. ○ **QUESTION 3. What is to be held concerning Nuns now existing in France?**

Reply 1. As regards the approval of the Confessor, since, in view of present circumstances, they are not considered to emit solemn vows, all things depend upon the will of the Bishops. Bishops, however, commonly intend to reserve to themselves special approval for Nuns, as is established from ordinary letters of approval, in which it is said: *Nuns excepted*, or *Nuns not excepted*.

Reply 2. As regards the extraordinary Confessor, the same obligation as before seems to rest upon the Bishop and the other Superiors to procure someone for cloistered Nuns. The reason is that the end of the law is the same, namely, to provide for liberty of conscience. For if they are bound to rigorous enclosure, it is equitable that they also enjoy the privilege of cloistered Nuns.

QUESTION 4. Is a Bishop bound to grant an extraordinary Confessor also to pious congregations of women which are not true Nuns?

Reply. Benedict XIV earnestly exhorts Bishops to extend to all communities of women the laws of the Council of Trent concerning extraordinary Confessors of Nuns. - Constitution *Pastoralis curae*, August 5, 1748, with which several Decrees of the Sacred Congregation of Bishops and Regulars agree.

569. ○ **QUESTION 5. Can cloistered Nuns be absolved by any confessor while by chance they are outside the monastery?**

Reply. Affirmative, with Lacroix, no. 1527, and others. The reason is that the Constitutions of Gregory XV, *Inscrutabili*, and of other Supreme Pontiffs, which prohibit Nuns from confessing to any Priest other than one specially approved by the Bishop for Nuns, do not seem to be understood except of Nuns dwelling in Monasteries; for they suppose that Nuns always remain within the cloister. Therefore any Confessors, although not approved for Nuns, can absolve Nuns who come to them *per accidens*. Moreover, there would commonly be excessive inconvenience if traveling Nuns were obliged to confess only to specially approved Confessors; for they would often be obliged to go without the Sacraments of Penance and the Eucharist.

Article III. On Reserved Cases

Reservation of cases is a restriction or limitation of jurisdiction, or the denial of the power of absolving from certain sins while the power of absolving from the others remains. We must treat: 1. of reservation; 2. of absolution from reserved cases.

§ I. On the Reservation of Cases, or on the Principle and Nature of Reservation

570. Principles. - I. There exists in the Church a power of reserving certain cases or causes of graver crimes from which inferior Confessors cannot absolve without a special faculty. For, as was said (preceding article), the power of conferring and limiting jurisdiction belongs to the Church; therefore the power of reserving cases also belongs to her. This is established, moreover, from the definition of the Council of Trent, session 14, chapter 7, etc.

II. The power of reserving sins belongs only to Prelates of the Church who have jurisdiction in both the internal and the external forum [1]. The reason is that it belongs to those alone who can confer jurisdiction in the society of the faithful to limit the same.

[1] You would say more accurately that whoever has ordinary jurisdiction, even for the forum of conscience alone, and can delegate it to another with greater or lesser restriction, can reserve sins to himself. For, as Lugo says (*On Penance*, disp. 20, no. 1), *since in this sacrament there is required... jurisdiction, which must be communicated to inferiors by Superiors, it follows that a Superior can limit this jurisdiction more or less, giving it for more or fewer causes as seems good to him: this is to reserve to himself the absolution of those causes which he does not grant to the inferior.*

From this the same author concludes (ibid., no. 2): *Hence it is established that the Supreme Pontiff, by reason of his supreme and universal power, can reserve certain sins to himself for the whole Church; Bishops likewise, speaking in itself, can do so for their episcopate; and finally a pastor* (who otherwise does not have jurisdiction in the external forum) *for his parish.* He observes nevertheless (ibid.) that this power of a pastor is almost useless, and therefore pastors are not accustomed to use this power. For this difference exists among the Pope, a Bishop, and a Pastor: when the Pontiff reserves, no one can absolve except with the permission of the Pontiff himself; when a Bishop reserves, others can absolve with the permission of the Supreme Pontiff; and finally, if a pastor were to reserve, others could absolve with the permission of the Pope or the Bishop. Therefore, unless the Bishop, while granting jurisdiction, at the same time provides that those sins which the pastor has reserved to himself are not to be absolved, just as the Supreme Pontiff prohibits Regulars to whom he grants jurisdiction from

absolving from sins which Bishops reserve to themselves, pastors would reserve sins to themselves in vain. *And therefore*, says Lugo (ibid.), *pastors are not accustomed to reserve, because that reservation would be almost useless*, just as the faculty of granting jurisdiction has become almost useless, according to the things said above (no. 546, Principle III). I said *almost*; for, as the same Lugo observes (disp. 21, no. 4), a Bishop could approve someone to hear confessions and nevertheless confer no jurisdiction upon him, but only render him capable of receiving jurisdiction; wherefore, if he had from elsewhere a general privilege of his Order, or a special privilege of hearing confessions, once the Bishop's approval was in place he could... receive from the pastor jurisdiction to hear the confessions of his subjects. See also the Salmanticenses (*On Penance*, chapter 13, no. 2).

Hence: 1. the Pope can reserve cases throughout the whole Church; 2. Bishops can reserve them in their own diocese; 3. others having episcopal jurisdiction can reserve them with regard to their own subjects.

III. By the custom of the Church, three things are required for a sin to be considered reserved, namely, that it be: 1. mortal [2]; 2. external [3]; 3. consummated in act, and not merely attempted, unless something else is established from an express declaration of the one reserving [4]. - Thus commonly; St. Lig., no. 582.

[2] *Mortal* is understood not only by reason of the object, but also by reason of the malice in the act of the will.

[3] It is called *external* insofar as, in addition to the grave malice of the internal will, the external action must also have gravity in itself.

[4] When a work ought to be considered consummated, and therefore as falling under the reserving law, must be determined from the words of the law itself. Hence it can happen that, with reservation taken into account, a work must be considered consummated which otherwise does not seem consummated in its own genus. Thus, for example, if any external lapse of the flesh is reserved, even acts imperfect in the genus of lust will fall under the reservation, provided that the external action of itself bears the character of grave sin.

IV. Reservation immediately affects the Confessor [5], and mediately the penitent, because it immediately touches and restricts the power of the Confessor. - St. Lig., nos. 580, 581, and others commonly, against some.

[5] The contrary manner of speaking could therefore seem probable, because in fact it sometimes happens, according to the different condition of penitents, that one and the same confessor can at one time absolve from one and the same sin, and at another time cannot. Thus, for example, a Regular who is accustomed to hear the confessions both of domestic Religious and of secular persons will be able to absolve a secular person from the crime of perjury, but not a Religious, since this crime will be reserved for a Religious but not for a secular person. Likewise, a secular confessor will be able, even among secular persons themselves, to absolve Andrew from the same crime of writing a defamatory libel, because, as a perpetual member of the household of Religious, he is not subject to episcopal reservation (see the note above at no. 173), but he will not be able to absolve Andrew's brother Christopher, who is subject to the reservation. In fact, however, these things detract nothing from the general principle that reservation, as a mere limitation of jurisdiction, immediately affects the confessor. For in the foregoing and other similar cases the reason for the difference between penitent and penitent is that one is subject to one Ordinary and the other to another. Therefore, insofar as two different Prelates, the Regular Prelate for his own subjects and likewise the Bishop for his own, confer upon one

Now most episcopal cases are simply reserved without a censure, while almost all papal cases have a censure and are reserved principally because of the censure, so that in them the censure is immediately reserved and the sin itself mediately or accessorily. Hence, in papal cases, when the censure is reserved, the sin also remains reserved; but, on the contrary, when the censure is removed, for example because it was unknown, neither is the sin reserved, because, when the object of the reservation, that is, the censure, has been removed, the sin no longer remains reserved. - St. Lig., no. 580. But there are two cases which the Pope reserves without a censure: the first, namely, that of one

who receives gifts from Regulars of either sex [6] (from the Constitutions of Clement VIII and Urban VIII); the second, if a woman calumniously accuses or denounces an innocent Confessor of solicitation (from a Constitution of Benedict XIV).

[6] The reservation of this case consists only in this: that whoever has received gifts from Regulars (understand this in grave matter) cannot be absolved unless the things received are restored to the monastery or Order. Therefore, if someone has already restored them, or at least has the intention of restoring them, the reservation ceases. Where, and to what extent, the Constitutions of Clement VIII and Urban VIII have been received in practice, see Diana (vol. 7, tract 3, resolutions 1, 2, 29, and 33), and the Salmanticenses (*On Restitution*, chapter 6, no. 10).

Concerning reservation to be made by Bishops, those matters are opportunely to be noted which we have in Benedict XIV, *On the Diocesan Synod*, book 5, chapter 5.

Although indeed (he says at no. IV) *a certain rule to be observed everywhere cannot be prescribed concerning this matter...; nevertheless certain general admonitions and Decrees which have issued from the Sacred Congregations of the City concerning this matter can serve as a rule.*

The Sacred Congregation appointed over the affairs of Bishops and Regulars, on January 9, 1601, decreed that the local Ordinaries were to be admonished thus: *Lest the local Ordinaries, to whom this right of reserving cases belongs, be burdensome by more reservations than are necessary to their subjects or to Confessors cooperating in procuring the salvation of souls, let all be admonished to reserve few cases, and only those which, according to the state and quality of each diocese, they judge must necessarily be reserved for maintaining Christian discipline and the salvation of the souls entrusted to them.* - And it decreed that the same admonition be repeated on November 26, 1602: *But lest the local Ordinaries, to whom the reservation of cases belongs, exceed the measure in this matter, the same Sacred Congregation judges that they must again be earnestly admonished to reserve, not indiscriminately, but when it appears expedient for the common good, the absolution only of more atrocious and graver crimes,*

and they confer upon the same Confessor jurisdiction more or less circumscribed, he will be able to absolve the subject of the one from the same sin but will not be able to absolve the subject of the other. *the reservation of which contributes to maintaining Christian discipline and tends to edification, not destruction, lest otherwise, with the power of the Ministers of the Sacrament of Penance restricted, an effect contrary to the pious intention of holy mother Church should follow. It also prohibits them from superfluously reserving to themselves cases contained in the Bull customarily read on the day of the Lord's Supper, or other cases specially reserved to the Apostolic See.*

Encyclical letters from the same Sacred Congregation, given to the Bishops on the same day, November 26, 1602, also read in this manner: *The Sacred Congregation judges that these things especially must be admonished: that the Ordinaries themselves see that they do not indiscriminately reserve those cases to which is annexed a major excommunication imposed by law, absolution from which is reserved to no one, unless perhaps because of frequent scandal or another necessary cause some cases of this kind appear to require reservation by name; nor those cases in which absolution is not conferred except with restitution or the execution of those things to which penitents are bound; nor those which, although they induce mortal sin, nevertheless concern matters of small moment and frequently occur among the unlearned, such as damage inflicted and similar things. In reserving carnal sins also, let them employ much circumspection because of the danger of scandals, especially in those persons upon whom some suspicion can fall because of access to extraordinary Confessors or frequent return to the Ordinaries. Finally, let them especially enter upon and follow that course which, after the morals, nature, and inclination of each province and people have been diligently considered, will appear more expedient in the Lord.*

The Decisions of the Sacred Congregation of the Council agree with the Decrees of the Sacred Congregation of Bishops and Regulars. For when it was reported to the former that the Bishop of Bellicastro had increased the catalogue of reserved cases beyond measure, on January 29, 1661, it ordered all the others to be removed from the catalogue except ten, or at most twelve, of the graver cases, to be designated at the Bishop's judgment.

Thus far Benedict XIV. To the replies of the Sacred Congregation brought forward by him may opportunely be added the one given to the Bishop of Mirepoix on July 3, 1677. For when he had consulted the Holy See concerning certain Ordinances established by himself, and among them this also was proposed: *Because many of the Clergy were more inclined to lust, we reserved this case to ourselves, and that severity greatly benefited the amendment of morals*, the Sacred Congregation replied: *It is not approved.*

571. Questions. - **QUESTION 1. Does ignorance of a reservation or censure excuse one from incurring it?**

Reply 1. Affirmative as regards a censure, concerning which matter there will be fuller discussion where Censures are treated.

Reply 2. As regards reservation, it is disputed. St. Lig., with not a few others, denies it; the reason is that, they say, reservation restricts the power of the Confessor [7]. But the Salmanticenses, tract 18, chapter 6, no. 12; Lugo, *On Penance*, disp. 20, no. 11; Sanchez, *On Matrimony*, book 9, disp. 32, nos. 17 and 18; Beati [8], *Moral Questions*, q. 18, no. 25; Jacobus Graffius [9], *Pract. quinq. cas.*, book 2, chapter 40, no. 29; Sporer, *On Penance*, no. 755; Roncaglia, *On Penance*, q. 7, chapter 2, q. 4; Viva, *On Penance*, q. IX, art. 3, no. 3; Burghaber, cent. 3, case 31; Quarti, *On Reserved Cases*, sect. 2, chapter 3, q. 6; and Quintanadvenas, *Singular Theology*, tract 3, singular IX, no. 1, judge the affirmative opinion probable. - Joseph de Januario, *Selected Resolutions*, res. 1; John Marin, *Speculative and Moral Theology*, disp. XI, sect. 2, nos. 90-120. - Add Diana, and Nicholas Mazzotta, who (tract 6, disp. 2, q. 3, chapter 2, q. 2) alleges for the same opinion also Navarrus, Coriolanus, Chapeauville, Malderus, Reginaldus, and Bassacus. Besides others, to these can be added Fagundez (*On the Precepts of the Church*, book 8, chapter 1, no. 28), Thomas Hurtado (*Various Resolutions*, vol. II, tract 12, chapter 1, no. 1123), Peter Hurtado (*On II-II*, vol. I, disp. 84, sect. 1), Merolla (*Disputations on Universal Moral Theology*, vol. 1, disp. 1, chapter 2, doubt 2, nos. 50-52), Mendoza (in Illsung, tract 6, disp. 6, no. 223), Palaus (tract 2, disp. 1, point 17, no. 8), etc., etc.

[7] This reason, which is usually brought forward as either the sole or at least the principal reason for that opinion, proves nothing. For we all say that reservation is a restriction of jurisdiction; but whether a reservation or reserving law comprehends even a sin committed in ignorance of the reservation, just as one committed from grave fear, or committed outside the territory, etc., these questions are not resolved from the fact that reservation is a limitation of jurisdiction. In brief: that reservation is a restriction of jurisdiction (which is the definition of reservation) contributes nothing toward deciding to what cases that restriction extends, or what sins are reserved, as Viva well observes (*On Penance*, q. IX, art. 3, no. 3), just as, namely, from the fact that a law has the force of obliging it would be wrongly concluded that this or that case is comprehended by the law itself.

Some others were moved by fear that in this way both Christian and religious discipline would be relaxed. But this difficulty also is very slight. For when the penitent first confesses that fault, he will be admonished by the confessor concerning the reservation, and thus the way to relaxation of discipline will be closed for the future; but as regards the past, under neither opinion can it be brought about that an unknown reservation imposes a restraint.

[8] Gabriel Beati taught moral Theology in the Roman College and published these *Moral Questions*, dedicated to Cardinal Chigi, at Rome in the year 1663, with the approval of John Paul Oliva, Superior General of the Society of Jesus, and

Raymond Capisucchi, then Master of the Sacred Apostolic Palace and afterward enrolled among the Cardinal Fathers. He speaks thus concerning this question: *It is inferred, thirdly, that one invincibly ignorant of some new Constitution in which the absolution of some sin was reserved does not incur it.... For although he knows that he sins, he nevertheless does not know that he sins against the Constitution, since he is ignorant of it. Therefore he cannot incur the reservation, which is a penalty imposed by that Constitution.* - Sanchez, *On Matrimony*, book 9, disp. 32, no. 18.

[9] This Author, most renowned for his knowledge of Theology and the Sacred Canons, has these things concerning the present matter: *Those who are ignorant are not bound by the Constitutions or Statutes of Bishops, although they may be bound by other penalties..., and consequently not by this reservation of a case, since it is a penalty.... The things which Navarrus said in chapter 27, no. 80, support this. And the reason is that ignorance occurring in the one for whose sake the reservation was made entirely excuses him from that reservation.*

But that some, distinguishing between penal and medicinal reservations, would excuse the ignorant from incurring the former but not the latter, seems difficult to others. For, as the Acts of the Synod of Tusculum of the year 1763 observe according to the common opinion (part 3, chapter 10, art. 9, no. 2), all reservations, whether Pontifical or Episcopal, seem to be mixed, that is, at once penal and medicinal.

Hence the Salmanticenses (*loc. cit.* in the text): *The second opinion says that every reservation is penal, and thus that ignorance excuses... from every reservation. We adhere to this opinion.* And they say that they are moved by this reason: in the case a reservation cannot even be called medicinal, because, they say, with respect to one who did not know that the sin was reserved, reservation would in no way restrain him from committing it, and the end intended by the Superior in such a reservation would entirely cease. Therefore, just as with respect to the ignorant person the end of the reservation ceases and it is not a medicine restraining him from sin, so with respect to him the reservation ceases. Indeed, for this reason John Marin (*loc. cit.* in the text, no. 113) judged that the argument could be turned back upon the adversaries.

Therefore ignorance (he says) *does not excuse according to the adversaries because reservation is medicinal.... But that reservation is medicinal proves that it is not incurred by one invincibly ignorant*; and he concludes with the words of Sanchez (*loc. cit.* in the text, no. 13) concerning censures: *It would not be medicine, but would rather do harm, if it were incurred while unknown.*

** The VV. expend twenty columns (pp. 515-525) against this Note, yet in such a way that you could almost say that everything contained in them serves merely to increase the bulk of the volume, so entirely do they lack anything having even the appearance of some moment. We shall dispose of the matter briefly.

Against the first Note added to this question the VV. object (p. 519) that the whole question must be resolved entirely from the definition of reservation, which is a restriction of the jurisdiction of Confessors; they add only this one thing, that it remains merely to inquire whether legitimate titles exist by reason of which Confessors can sometimes validly absolve from reserved cases, and that these titles are reduced either to an express or tacit concession of the Superior, or to the probability that in certain circumstances the Superior cannot or does not wish to comprehend something under the reservation. - Reply. The question whether there is a Declaration of the Church, or tacit consent of the Church or of the Bishops, that Confessors sometimes absolve from reserved cases; likewise whether it is probable that in certain circumstances a Superior cannot or does not wish to comprehend some sin under his reservation: this question, I say, is not resolved from the reason that reservation is a restriction of jurisdiction. Therefore it is most true, and the VV. themselves admit what they seem to wish to attack, namely, that in resolving the question whether a sin committed in ignorance of the reservation is comprehended by the reserving law, the definition of reservation, namely that it is essentially a restriction of jurisdiction, is objected in vain, as was indicated in the Note.

The VV. insist (*loc. cit.*) that it cannot be proved by any reason, not even a slight one, that Bishops cannot or do not wish to comprehend those who are ignorant of the reservation. And on p. 517 they bring forward the words of Amort saying: *In all ancient rituals in which reserved cases are treated, absolution from a reserved case is declared invalid without any exception for ignorance.* - Reply. The will of the Legislator is gathered from the words of the law, with the common principles and rules for the interpretation of laws being employed, which are not presumed to be unknown to Legislators. Therefore, when something is established from common principles concerning the force of laws in circumstances either of ignorance or of grave fear, full satisfaction is assuredly given to the mind and will of the legislator. But someone would rightly call the observation added from Amort almost puerile. For surely, because when absolution from some censure is reserved to the Apostolic See no exception for ignorance is made, may it therefore be concluded that one who, while offending, was ignorant of the censure annexed to the offense cannot be absolved by others?

The VV. renew (pp. 521-522) the objection already touched upon in the Note, namely, that certain authors distinguish between a penal and a merely medicinal reservation, but that sins committed in ignorance of the reservation are touched by the latter. - Reply 1. These authors, therefore, consider a sin of this kind immune from reservation when the reservation is penal. Therefore even they regarded as false the argument sought against it from the nature and definition of reservation, namely, that it is a restriction of jurisdiction, which nevertheless is the principal, not to say the sole, argument usually brought forward against this opinion.

Reply 2. Do not the VV. themselves finally agree (p. 518) that every reservation from its nature must in some manner be called penal?

Aversa speaks well (q. 17, sect. 1): *Generally every reservation is made to deter men from perpetrating such sins, and in this way in hatred of the offense and for the correction and a certain just vexation of the delinquent.* And in fact the distinction by which some reservations are said to pertain to the good administration of the Church, others to be medicinal, and others penal, indicates not so much diverse species of reservation as the multiple end of every reservation: namely, insofar as this contributes to the good government of the Church, that reservation, through fear of punishment and of a more difficult absolution, restrains and withdraws from a fall. Therefore, just as ignorance excuses from incurring censures, which do not cease to be penalties although they are medicinal and are imposed for the good government of the Church, so also reservation, however much it is referred to the good administration of the Church, nevertheless, because it has the character of a penalty, is not incurred by one ignorant of it, from the more general principle; and all the more because, when knowledge of the reservation is absent, it then also ceases to be a medicine restraining from sin. For the rest, it can seem remarkable that certain Authors here do not excuse one ignorant of a reservation when the reservation is also medicinal and not merely penal; but, when treating the penalty of irregularity from a delict, they contend that ignorance of the penalty does not excuse from incurring it because it is a mere penalty and not also medicinal! What consistency worthy of a theologian is there here in establishing principles?

Here, however, the VV. (p. 518) turn their strength also to attacking the general principle concerning ignorance which excuses from penalties. They therefore allege: 1. John Corradus, who denies that ignorance excuses from incurring suspension, interdict, and irregularity, but that it excuses from incurring excommunication only when all fault is absent in the forum of God; 2. they then allege Suarez, who denies that ignorance of the penalty alone excuses from irregularity arising from a delict. Reply. Let the whole pass. St. Alphonsus (book 7, no. 351) teaches that this opinion of Suarez can be set aside; indeed, the holy Doctor (ibid.) observes that even the opposite opinion is judged probable by Suarez. But as regards those anomalous opinions of John Corradus, the VV. ought plainly to know that they are not approved by the holy Doctor Alphonsus.

The VV. object (p. 517) that Jacobus de Graffiis undeservedly alleged Navarrus for himself, and therefore in this matter in no way proved himself to be what he is represented as in the Note above, namely, an author most renowned for his knowledge of Theology and the Sacred Canons. Reply. Let the Antecedent pass; and I deny the Consequent. I said, first, let the Antecedent pass. For in the allegation of Navarrus a mere error either of the printer or certainly of memory is found; since Navarrus in fact clearly proposes in that chapter 27, no. 16, and again at no. 274, to which he refers in the former place, those principles from which the conclusion of Graffius flows spontaneously. I said, secondly, I deny the Consequent; and the VV. cannot disprove this. For if even one less exact allegation suffices so that in that question all weight of authority is entirely lacking to a Writer, what indeed would have to be concluded concerning the authority of the holy Doctor Alphonsus in so many controversies?

The VV. object (p. 523) that, according to Cardinal de Lugo (*On Penance*, disp. 20, no. 9), it is the practice of all Religious Orders that ignorance of the reservation does not give the faculty of absolving a penitent who was ignorant of the reservation. Reply. Let the Antecedent pass; I deny the Consequent. For it is not equitable to derive and measure the norm of common law from those things which in Religious Orders may at some time have been customarily observed for the special end of religious perfection and for the more diligent observance of regular discipline. For the rest, what the VV. (p. 523) relate on this matter from Gobat, whose words they transcribe (*Ex Tract.*, 7, no. 561), is almost amusing: *Nor do I judge that a Regular Confessor would render the fidelity which he owes his Prelate if, having encountered a penitent involved in such a case and ignorant of the reservation, while absolving him according to the opinion of Quintanadvenas he did not expressly say: I shall indeed absolve you this time; but know that in the future you cannot be absolved by me without the express faculty of the Superior.* For after he has indicated to the penitent that that sin is reserved, does not the reason by which the confessor was able to absolve him from the reserved sin cease by that very fact?

The VV. object (p. 523) with Leonard Jansen: *The ignorance of the penitent does not bring it about that the Confessor receives jurisdiction over a sin over which he otherwise did not have it; and certainly, if this opinion held, only the sins of Theologians would be reserved, since they alone know the cases reserved in species.* - Reply. Either this Leonard Jansen could have known how much force arguments of this kind, or rather ineptitudes, possessed, or he did not possess so great a power of judgment. If the first, then knowingly and deliberately he wished to deceive; if the second, why did he thrust himself into writing about theological matters with Minerva entirely unwilling? Whichever of these is said, he is not the kind of writer whom it was fitting to call upon the stage. No one ever said that ignorance of reservation brings it about that a faculty which was lacking is added. What is rightly said is that a circumstance of this kind brings it about that the case does not fall under the law of reservation, or, in other words, that the reserving law does not comprehend a sin committed in ignorance of this penalty. - To the second, however, it can be replied that, if one must indeed be a theologian in order to know the reservation of some sin, all the faithful will easily become theologians in this manner; for when they confess a fault of this kind for the first time, they will then return home adorned with this theological knowledge.

Finally, that we may omit more useless things, the VV. object (p. 524): 1. that their own negative opinion can with the best right be called the most common; 2. that the defenders of the contrary opinion are few, and that most of them are not numbered among the more distinguished and better known, and those possessing greater authority. Reply. The VV. enumerate fifteen who held the negative opinion absolutely; we shall grant that certain others can be added. Nevertheless, since at least as many adversaries can easily be enumerated, as is clear from those cited in the text, to whom several others also can be joined, according to what canons, I ask, can that opinion with the best right be called the most common? Moreover, the VV. finally produce these names for the same opinion (pp. 523-524): Illsung, Mendo, Potestas, Herincx, Concina, Holzmann, Engel, Antoine, Ferraris, Voit, Reuter, Croix, Leonard Jansen, and Cuniliati. With this supply of Authors, then, does there any longer remain to them a place for reproaching the contrary opinion because it has patrons most of whom are not numbered among the more distinguished and better known and those possessing greater authority?

But enough now concerning these things. This one thing must not be passed over: that while the VV. boast of so many and such great patrons for themselves, they found in no one any intrinsic reason which they could here produce for their own opinion. Why is this, unless because the arguments which can be considered the strongest are entirely of that weight which we saw above to be present in the arguments of Leonard Jansen?

QUESTION 2. Does ignorance at least excuse from reservation when it is joined with a censure?

Reply 1. Affirmative for papal cases, because papal cases, with the exception of a false accusation of the crime of solicitation, are reserved because of a censure, from which ignorance excuses, as was just said. Therefore, when the censure has been removed, no reservation remains. - St. Lig., no. 580, and others commonly.

Reply 2. For episcopal cases the opinion of the Doctors is not one. For the affirmative, among others, Aversa asserts that the Doctors commonly agree in this doctrine [10]. Suarez, however, concludes better, *On Penance*, disp. 29, sect. 2, no. 7, that the words of the reservation, custom, and the power of the one reserving are to be considered [11].

[10] *A censure could indeed simply be removed while the reservation of the sin remained. In reality, however, and concomitantly, the matter stands thus: when the censure has been removed, by that very fact the reservation of the sin also ceases...; and if someone is excused from incurring the censure, although not from the fault, as can happen through ignorance, he is likewise excused from the reservation of the fault itself.... And in this doctrine the Doctors commonly agree.* Thus Aversa (*On Penance*, q. 17, sect. II, section six).

For the contrary opinion this reason is usually brought forward (see St. Alph., book 6, no. 582): that papal cases differ from episcopal cases in this, that in papal cases the censure is reserved principally and indivisibly; but in episcopal cases the case is reserved principally and in itself, and the censure is annexed to it, etc. Yet these things, as is evident, do not present an argument by which the opinion is established, but repeat the opinion itself in other words.

[11] *I say that even in excommunications reserved to Bishops through their Statutes or sentences, it is not immediately established that the sins themselves remain reserved in themselves; because, as I said, those two things are distinct; indeed, sometimes the censure and not the fault can be reserved. Therefore the words of the reservation, custom, and the power of the one reserving are to be considered.* Thus Suarez.

For the rest, whoever thinks the doctrine related above (preceding question), which generally excuses the ignorant from reservation, to be sufficiently probable, will think that there is not much moment in this second question.

572. ○ **QUESTION 3. Is a sin to be considered reserved when there is doubt about the reservation?**

Reply 1. Entirely negative if the doubt is one of fact, that is, if the sin was doubtfully committed or is doubtfully grave. The reason is that reservation is of strict interpretation, and therefore is to be understood of certainly grave sins. For the Church does not intend to reserve sins unless they are certainly committed and certainly mortal, since she is accustomed to reserve only more atrocious sins. - Thus most commonly with St. Lig., no. 600.

Reply 2. Negative also if the doubt is one of law, that is, if it concerns the existence of the reserving law or its extension. The reason is the same, namely, because reservation is of strict interpretation, and therefore in doubt it is to be regarded as null. - Thus commonly; St. Liguori, no. 600; Lugo, ibid.; Elbel, no. 343, etc. - Against Antoine, etc.

573. ○ **QUESTION 4. Can the subject of another diocese be absolved if the case is reserved only in the place of confession?**

Reply. More commonly the recent authors deny it. Their reason is that the Confessor has jurisdiction restricted by his own Bishop.

Others, however, affirm it [12], with the most common opinion of the ancients. The reason of these authors is [13] that the Confessor absolves this penitent by jurisdiction indirectly communicated by the latter's Ordinary; and since this Ordinary did not reserve that sin to himself, by that very fact he did not restrict jurisdiction with regard to it. Thus Armilla, Cajetan, Navarrus, Bartholomew Ugolinus (*On the Office and Power of a Bishop*, chapter 39, section 6), Bartholomew Medina (*Instruction for Confessors*, translated by the Spagnuolo, book 1, chapter 10, section 3), Dicastillus (*On Penance*, disp. XI, no. 242), Alphonsus Vega (in Leander, *On the Sacraments*, vol. 1, tract 5, disp. 12, q. 27), Fagundez (*On the Second Precept of the Church*, book 8, chapter 8, no. 21), Mendo (*On the Bull of the Crusade*, disp. 23, chapter 2, no. 23), Matthew Stoz (*Tribunal of Penance*, book 2, q. 2, no. 64), Pellizarius (in Mazzotta, tract 6, disp. 2, q. 3, chapter 2, q. 4), Peter de Ledesma (*On the Sacrament of Penance*, chapter 12), Jacobus Graffius (in Leander, *loc. cit.*), Naldi (*On Reserved Cases*, sect. 2, chapter 4, q. 2, and *Summa*, word *Reserved Case*, no. 8), Quarti (*On Reserved Cases*, sect. 2, chapter 4), Joseph de Januario (*Selected Resolutions*, res. 1, no. 8, and res. 8), Paul Mezger (*Scholastic Theology*, vol. 4, tract 18, disp. 49, art. 2, section 2, no. 15), Baucius (in Quarti, *loc. cit.*), Louis Engel (*Manual for Pastors*, part 3, chapter 2, section 2, no. 7), Marcus Struggl (*Moral Theology*, tract 11, q. 3, art. 4, no. 48), Louis Babenstuber (tract 8, part 6, disp. 6, art. 4, section 2, no. 26), Diana (vol. 1, tract 5, resolution 39, no. 3); Dominic Viva (*On Penance*, q. 9, art. 3, no. 4), Mazzotta (*loc. cit.*), Reuter (*On Penance*, no. 371), and Elbel (*On Penance*, conference 14, no. 375) also admit that it is probable.

[12] Marcus Struggl, an excellent Theologian of the Order of the Servants of the Blessed Virgin and a contemporary of St. Alphonsus (*Moral Theology*, tract XI, q. 3, art. 4, no. 48), speaks thus concerning this matter from the common opinion, as he says: *A traveling penitent can be absolved by any legitimate Confessor when he brings a case reserved in the diocese of the Confessor but not in the diocese of the penitent.* Thus Babenstuber commonly, with Mezger and others. Suarez first introduced the opposite opinion with reasons assuredly weak, and for that reason he did not have even one author whom he could allege for it.

[13] The reason is sought from the doctrine which is held as an axiom among all, namely, that *Jurisdiction must be given by the Superior of the one who is to be absolved*, as Dicastillus says (tract 8, disp. 10, no. 245).

But who is this Superior? Fagnanus (on chapter *Omnis utriusque*, no. 52 and following) explains thus: *Observe that sacramental confession must be made only to one's proper priest, and not to an alien one except with the permission of one's proper priest.... Because sacramental confession is a judicial act.... But the nature and reason of judgment require that sentence be pronounced only upon subjects, since no one can be bound or absolved by one who is not his judge.... Hence it was always believed in the Church of God, and the Tridentine Synod confirmed it as most true..., that an absolution which a priest pronounces upon one over whom he does not have ordinary or subdelegated jurisdiction must be of no moment.* And that these things are to be held from divine law was indicated above (in the Note at no. 555).

Hence Fagnanus deduces the consequence (ibid., no. 70) that by common law travelers cannot of themselves be absolved: *By common law no priest can absolve a penitent not subject to him, even in the diocese in which he is approved.* From this Eusebius Amort (*Moral Theology*, tract 13, section 17, q. 5, 6), to the question, *Does a Bishop or another confessor have jurisdiction over the diocesans of another Bishop?*, replies without circumlocution (q. 6): *He does not have it, nor can he delegate it to others over the subjects of another Bishop without the express or tacit concession of that Bishop.... It is evident from the Acts of the Councils, where Bishops are prohibited... from receiving an alien... diocesan to the Sacrament without the consent... of his proper Bishop.* And he had prefaced concerning the same matter: *It is proved from the constancy of the observance of the Church which flourished throughout the whole world until the fifteenth century*, etc. Therefore visitors can be absolved only by authority which has been delegated in some manner by the Ordinary of the penitent. Hence Pichler (book 5, tit. 38, no. 14): *Those who absolve travelers and visitors... hearing their confessions obtain a power tacitly delegated to themselves.*

But if a priest absolves travelers by power delegated by the Ordinary of the penitent, he must attend to how much this Ordinary communicated to him, and not to the kind and measure which his own Ordinary granted him for his own subjects. Schmalzgrueber speaks excellently (book 1, tit. 29, no. 31): *The power of the delegate must be measured from the authority and power of the one delegating, and from the mandate granted. For the delegate, in the jurisdiction granted to him, takes the place of the one delegating.* Therefore the greater or lesser restriction of jurisdiction, namely the mode and measure of reservation, when there is question of absolving a visitor or traveler, must be taken from the laws of the diocese to which the latter belongs, and by no means from the laws of reservation which the Ordinary of the priest established for his own subjects.

John Stoz (*Tribunal of Penance*, book 2, q. 2, section 5, no. 64) most aptly applies these principles, which plainly accord with the divine economy of this sacrament, to the present case of a sin reserved in the diocese of the Confessor but not in the diocese of the penitent: *A Confessor absolves a traveler coming from another diocese through jurisdiction delegated by the Bishop or pastor of the traveler from received custom. But* (by hypothesis) *this has not been* restricted by them in any way. Therefore, although the confessor by virtue of his own ordinary jurisdiction* (which he has from his own Ordinary) *cannot absolve his own subject from a case reserved in his own Diocese, he can nevertheless, by virtue of delegated jurisdiction, absolve a traveler from another Diocese in which that case is not reserved.* Reuter also gives this reason (*On Penance*, no. 371), saying: *because he absolves by virtue of jurisdiction delegated by the Bishop who does not reserve that sin.*

Ugolinus touches in another manner upon the reason why, in the case, a visitor is immune from the reservations of the alien diocese in which he confesses, where he writes (*On the Office and Power of a Bishop*, chapter 39, section VI, no. 1): *First, therefore, one who is not the subject of him who reserved the cases does not fall into those reserved cases.* And Marcus Struggl (*loc. cit.*) gives the same reason for the preceding thesis: *The reason* (he says) *is that the reservation of sins is valid only concerning the subjects of the reserving Bishop.*

Nor indeed do these things pertain to singular opinions, but to common principles. And surely Arriaga (*On Penance*, disp. 40, no. 4), asking *Whose sins can be reserved?*, replies: *The sins of all those over whom the one reserving has jurisdiction.* Cardinal de Lugo likewise establishes the same as a general canon (*On Penance*, disp. 20, no. 9): *The sins of those who are subject to the one reserving can be reserved.* Therefore Amort most aptly defines reservation thus (*On Penance*, disp. 9, q. 1): *It is a restriction of jurisdiction over SUBJECTS.* Indeed, the Tridentine Synod establishes this very thing, saying that Bishops can reserve sins by the authority delivered to them *over SUBJECTS*.

Engel, moreover, admirably presses the patrons of the opposite opinion thus (*Manual for Pastors*, part 3, chapter 2, no. 7): *I ask: when the case of the penitent is not reserved in his own diocese, should he be sent to his own Bishop or to the Bishop of the place where he confesses? Not to his own, because that Bishop did not reserve the case to himself; nor to the Bishop of the place where he confesses, because he is not subject to him, and reservations of cases are understood only concerning subjects* (Trent, session 14, chapter 7); *for they are introduced so that each Bishop may keep his own subjects, not those of another, in their duty.* Paul Mezger argues in like manner

(*Scholastic Theology*, tract 18, disp. 49, art. 2, section 2, no. 25): *A reservation of cases made by a Bishop exists only concerning his own subjects; but by hypothesis the one confessing is not a subject of the Bishop in whose diocese he confesses; therefore the reservation is not valid concerning him. And to whom would such a penitent be sent? To his own Bishop? But with him the case is not reserved. To an alien Bishop? But the latter has no jurisdiction over the alien subject.*

These things, although too few for the gravity of the question, suffice for the brevity of an annotation. For the rest, the difficulties by which the recent authors have entangled a matter most simple in itself and among the ancients would assuredly furnish matter worthy of the labor of a longer treatment.

** It is surely remarkable that the VV. wrote only eighteen columns (pp. 525-533) against this Note, although otherwise the question could only have seemed to them of the gravest moment.

They therefore object that it is undeservedly affirmed in the Note, as an axiom held among all, that jurisdiction must be given by the Superior of the one who is to be absolved. - Reply. That assertion is to be held as an axiom because it is certain doctrine of the Church defined in Ecumenical Councils, as was already shown above (in the Note at no. 555, q. 13), and at the same time (ibid., nos. 12, 15) the nullity of the little argument brought forward against it by the VV. was disclosed. A reply to certain words which the VV. (p. 527) added from Coninck was omitted there. Let the VV. have their reply in these other words of the same Coninck (*On Penance*, disp. 8, no. 31): *When a penitent is granted the faculty of choosing a confessor for himself, or of confessing to some certain one..., the penitent himself does not give any jurisdiction to the confessor, but only designates him TO WHOM THE SUPERIOR, by the very fact that he is chosen, GIVES JURISDICTION. For by the very fact that a Superior grants to someone the power of choosing a confessor, HE GIVES JURISDICTION TO THE ONE CHOSEN under this condition, if he is chosen.* Does Coninck not clearly say that jurisdiction is bestowed by the Superior of the penitent?

To the remaining things which are read in the Note, the VV. write (p. 528): *The general principles which Father Ballerini brings forward here are certain and established and received by all, no one contradicting. Hence there was no need to bring forward the testimonies of individual Authors for them.* Reply. Thanks be to God! But if these principles are certain and received by all, then, by their own admission: 1. it is certain that confession must be made to one's proper priest, and not to an alien one except with the permission of one's proper priest. Why, then, did they contend (p. 511) that no inquiry is to be made whether the Bishop of the visitor consents and has not objected? 2. It is therefore certain that the nature of sacramental judgment by divine law requires that sentence be pronounced only upon subjects. Why, then, do the VV. say with Voit (p. 530) that for absolving the visitor a faculty can be sought from the Ordinary of the place, of whom the visitor is not a subject? - 3. It is therefore certain that a Bishop does not have jurisdiction over the subjects of another Bishop, and consequently cannot delegate it to others; and thus that a priest who absolves travelers and visitors hearing their confessions obtains power tacitly from the Ordinary of the visitor. Why, then, do they contend (p. 511) that jurisdiction is from custom and by no means from the will of the Bishops of the visitor, and that their dissent is not to be considered? - 4. It is therefore certain, by their own admission, that the power of a priest delegated to absolve a visitor must be measured from the power of the one delegating, namely the Ordinary of the visitors, and from the mandate granted; and thus that the measure of jurisdiction and reservation must be taken from the laws of the diocese to which the visitor belongs, and not from the laws of reservation which the Ordinary of the place, to whom the visitor is in no way subject, established. Why, then, do the VV. themselves throughout this whole controversy always contend that it is to be inquired whether the priest hearing the visitor's confession has jurisdiction restricted by the Ordinary of the place, who has no jurisdiction over the visitor which he can restrict or not restrict?

Nevertheless, since the aforesaid principles, certain, established, and received by all, are expressed in the Note in the words of Fagnanus, Amort, and Schmalzgrueber, the VV. object from Fagnanus (p. 528) that by the reservation of cases only the person of the Confessor, whose jurisdiction is restricted, is affected, and the penitent only indirectly. Therefore, say the VV., a Confessor from whom jurisdiction concerning certain sins has been removed absolutely and without distinction, that is, was not granted by his Ordinary, cannot absolve any penitent confessing sins of this kind, nor accept or execute any delegation, whether tacit or formal, of an alien Bishop. - Reply. I concede the Antecedent, which is Fagnanus's (on chapter *Omnis utriusque*, no. 85); and I deny the Consequent and the Consequence, which are not Fagnanus's. Jurisdiction is power OVER SUBJECTS. Therefore a Bishop can restrict the jurisdiction of a Confessor with regard to absolving his own subjects, because he himself grants this; but with regard to aliens or non-subjects, I deny the supposition, namely, that the Bishop has jurisdiction which he either confers, restricts, or relaxes. Do the VV. now contend that this confessor is incapable of receiving jurisdiction delegated by another Bishop? But do they not admit among the certain principles that this also is received by all: that a priest who absolves travelers and visitors hearing their confessions obtains power tacitly delegated to him by the Ordinary of the visitor? Or perhaps can the Bishop of diocese A restrict the jurisdiction which the Bishop of

diocese B delegates for absolving his own subject? Can a Bishop restrict the jurisdiction of a secular confessor whom a Regular Prelate has chosen to hear the confessions of his own subjects? Let this be the conclusion: a cause which rests upon no other supports than those which the VV. employ makes its condition sufficiently and more than sufficiently manifest.

The VV. object (p. 529): Amort with Schmalzgrueber absolutely denies that travelers can be absolved by a simple Confessor from a sin reserved in this diocese, although not in that of the penitent. Reply. In that place (tract 13, section 22, q. 26) Amort gives this reason: because a Bishop can prudently deny jurisdiction to confessors concerning graver crimes, etc. He says these things not of the Bishop of the penitent, for by hypothesis the latter did not reserve that sin, but of the Ordinary of the place where the visitor confesses. Yet Amort (see his words related above in the Note) absolutely denies that a Bishop has or can delegate any jurisdiction over the diocesans of another Bishop, and the VV. agree that this is a certain principle received by all, no one contradicting. Therefore Amort is less than consistent with himself, and his reply rests upon a false supposition; for the traveler is absolved by jurisdiction delegated by his Ordinary, or tacitly conceded. But it belongs to the one who grants jurisdiction to restrict it, not to others who have no jurisdiction over the penitent. Therefore. Amort adds (ibid.): *I add that in the first twelve centuries it was lawful for no one, in relation to sacramental absolution, to subject himself to an alien Bishop or pastor without the permission of his own pastor or Bishop.* But did he himself not write (see his words in the Note) that this was observed until the fifteenth century? And, what is the chief point, was he ignorant that this is a doctrine not disciplinary but dogmatic, defined by the Ecumenical Councils as of divine law, namely, derived from the essence of the sacrament instituted by Christ? But there is now no need to spend time and labor refuting Amort; he sufficiently refutes himself by his own contradictions.

Let us come to Schmalzgrueber. He gives this reason for his opinion (book 5, tit. 38, no. 58): because reservation affects not so much the penitent as the confessor, from whom it removes jurisdiction over the reserved case. - Yet the VV., as we saw, agree that it is a certain principle that jurisdiction for absolving travelers proceeds not from the Ordinary of the confessor but from the delegation of the Ordinary of the travelers, who by hypothesis does not restrict jurisdiction. Therefore the reason employed by Schmalzgrueber labors under a false supposition. - Schmalzgrueber adds allegations of Suarez and Cajetan. - Reply. Concerning Suarez a little below. But the allegation of Cajetan, taken from Suarez, here labors under a twofold defect: 1. because it is adduced by Suarez for another purpose, namely, where he treats of a sin reserved in the diocese of the traveler; 2. because Cajetan is also wrongly alleged for that purpose. - Schmalzgrueber had better prefaced (*loc. cit.*) that there were those who judged that even in this case a traveling penitent can be absolved by ordinary confessors, *because, since he is not subject to that Bishop, the reservation made by him does not seem to touch a traveler of this kind.* And here this excellent man indeed touched the matter to the point. But touching the question very lightly and in passing, he allowed himself, like several others, to be carried away by the authority of Suarez; and in this he was not consistent with himself.

Let the same reply be made as regards Pichler, produced by the VV. (*loc. cit.*), because he said (book 5, tit. 39, no. 14) that it is more probable in the case that the traveler cannot be absolved. - Reply. Pichler brings forward the reason that reservation regards not so much the penitent as the confessor, from whom it removes jurisdiction. Suarez; Cajetan. Yet it is evident that he transcribed this from Schmalzgrueber and, moreover, unhappily contradicts himself. For he now supposes that jurisdiction flows from the Ordinary of the confessor; yet a little before he had prefaced: *Those who absolve travelers and visitors hearing their confessions obtain a power tacitly delegated to themselves..., since from general custom the tacit consent of the proper Bishop* (of the visitors) *is judged to be present.* What indeed do votes and voters of this kind contribute to the cause when they themselves fight with themselves?

The VV. object (p. 529) that the testimony of John Stoz is brought forward truncated in the Note. For (*loc. cit.*) there follows: *But I speak here only of a traveler and not of a sojourner. For the latter, since he has a quasi-domicile in the place of his sojourn, is subject to the ordinary jurisdiction of that place.* - Reply. The question was and is about penitents who are not subjects of the Ordinary of the place. Therefore what Stoz has concerning sojourners who contract a quasi-domicile in that place, such as, for example, students who for the sake of studies remain for the greater part of the year in another diocese are commonly considered among the Authors, did not pertain to the matter; therefore we did not bring forward the text of Stoz truncated, but it did not seem equitable to us that pages be filled with useless things.

The VV. object (pp. 529-530): Father Ballerini alleges several texts from Ugolinus, Arriaga, Cardinal de Lugo, and Eusebius Amort to prove the affirmative opinion, which nevertheless have nothing to do with the matter. - Reply. The sense of the texts brought forward in the Note is this, to use the words of Ugolinus: *One who is not the subject of him who reserved the cases does not fall into the reserved cases*; or, in the words of Cardinal de Lugo: *The general rule is that the sins of those who are subject to the*

one reserving in this sacramental forum can be reserved. And since the question is whether those who are not subjects of the one reserving are subjected to the reservation, why or how do those texts not pertain to the matter? Do they not render a negative reply to the question directly and openly?

The VV. add (p. 530) that Voit (vol. 2, no. 840) replied thus to those things which were brought forward in the Note from Engel and Mezger: *A visitor can be sent to any confessor of his own diocese, where he will easily be absolved, since he does not have the case reserved there; or he can be sent in the alien diocese to another confessor who has the faculty of absolving from reserved cases; or at least the Confessor should seek permission from the Ordinary... to absolve from the reserved case.* To these things the VV. say: *Voit admirably!* But another perhaps will say: Not admirably! For is it not, as we saw above and as the VV. admit, a certain principle that a Bishop does not have jurisdiction over the subjects of another Bishop? Therefore does Voit admirably send the confessor to seek the faculty of absolving from that Ordinary who has no jurisdiction over that penitent? Or is the penitent admirably sent to another confessor, one indeed endowed there with a faculty for reserved cases, but a faculty given by that Ordinary who by hypothesis cannot delegate jurisdiction which he himself does not have? Finally, did Voit admirably find no other remedy than that the penitent be sent back to his own diocese, so that, for example, a Roman visitor might be sent back from the city of New York in America to Rome in order that he may be absolved? And does doctrine of this kind perhaps have any appearance of verisimilitude, not to say truth?

To what had been said in the Note, that Suarez first introduced the opposite opinion with reasons assuredly weak, and therefore did not have even one author whom he could allege for it, the VV. reply (p. 531): *Whether the negative opinion is supported by reasons assuredly weak we have already seen above.* - Reply. But whatever the VV. have brought forward for that opinion has already been set forth here.

But whether they have brought forward any firm reason, the equitable reader has already been able to see with his own eyes up to this point. Yet it is altogether fitting now to examine the reasons brought forward by Suarez, from which it will also become evident how remarkably the patrons of this opinion, in defending it, perpetually fight both with themselves and among themselves; this surely is not an indication of truth.

Suarez (*On Penance*, disp. 30, sect. 1, no. 6) brings forward a threefold reason for this innovation of his; otherwise he does not treat this most grave question laboriously, but touches upon it most lightly and in passing in a few words. First, he produces his thesis as a consequence of the preceding thesis, in which, relying upon three false allegations, he had established generally that a visitor bringing a sin reserved in his own diocese can be absolved by a simple confessor of another diocese if the same sin is not reserved there. - But in this Suarez deduced from a false antecedent a gratuitous and entirely rejected consequence, adding a false allegation of Cajetan and of others whom he does not name, and could not name.

Concerning the antecedent, indeed, there will be discussion in its place. But the consequence must be called gratuitous, because if some thought that a penitent of another diocese could for some special cause or necessity be absolved from his own reserved sins, as, for example, Paludanus, St. Antoninus, and Cajetan, they nevertheless employed principles which can provide no occasion or reason suitable for deducing the Suarezian consequence. I said gratuitous and entirely rejected, because if any before Suarez spoke of this case, they stand without any controversy against Suarez, as, for example, Bartholomew Medina and Ugolinus, Peter Ledesma, Vega, and Graffius, alleged by Leander (vol. 1, tract 5, disp. 12, q. 27). I said, *if any before Suarez*, etc.; for among the remaining ancients not even a word concerning this case is found. But why? Because a question of this kind in itself could rightly have seemed nothing but absurd to them. For they knew that a visitor is absolved by virtue of jurisdiction conferred by the Ordinary of the visitor and in no way restricted by hypothesis; to what purpose, then, would they ask whether another Bishop restricted jurisdiction for his own subjects? It would be just as if someone were seriously to ask whether Ubaldus, deputed by a Regular Prelate to hear the confessions of exempt Nuns and at the same time sent by the Bishop to hear the confessions of girls dwelling in a boarding school, could not absolve the girls from certain sins because the Regular Prelate reserved those sins to himself with regard to the Nuns. Would not everyone call this question and doubt concerning Ubaldus absurd? But is the question in our case any less absurd, since here also there is question of two distinct jurisdictions conferred by different Ordinaries for different respective subjects?

Suarez seeks a second reason from the general principle which he himself elsewhere defends more sharply, namely, that visitors are bound by the laws of the places where they stay or through which they pass. Hence he writes (*loc. cit.*): *Although he otherwise is not a subject, nevertheless he is then judged as a subject and as an inhabitant of that place; therefore according to the manner and jurisdiction granted there.*

But: 1. even St. Alphonsus (book 1, no. 156) regards that general principle as less probable and less commonly received. 2. Suarez teaches absolutely that jurisdiction for absolving a visitor is bestowed by the Ordinary of the visitor; and concerning this matter he adds (disp. 30, sect. 1, no. 4): *These things which we have said concerning the concession of jurisdiction made directly to the confessor have place in the same proportion in a faculty granted to the penitent to choose a confessor.* What, then, does he mean when he now says that a visitor is judged according to the jurisdiction granted there, namely, in the place of confession? For either he signifies that jurisdiction is then granted by the Ordinary of the place, and thus he manifestly contradicts himself, no less than we saw above that Schmalzgrueber, Pichler, and Amort fight with themselves; or he understands jurisdiction bestowed by the Ordinary of the visitor, and behold, even Lugo (disp. 20, no. 73) proclaims that, if the visitor is absolved by virtue of jurisdiction conferred by his Ordinary, his Bishop alone could by reservation remove or limit the jurisdiction of the delegated Confessor, and not that other Bishop upon whom he does not depend. Dicastillus speaks no otherwise (disp. 11, no. 241): *If we treat of voluntary jurisdiction outside the contentious forum, such as this is, then, if that confessor had jurisdiction, at least delegated, in that Episcopate in which there is no reservation, he can absolve the aforesaid penitent even if the cases are reserved in the Episcopate in which he is while he confesses; for he can absolve him by using the jurisdiction which he has in the Episcopate of the domicile of the penitent, in relation to which jurisdiction that case is not reserved.*

And the Doctors plainly give this same reason why a Pastor in another diocese can absolve his own subject from sins which are indeed reserved there but not in his own diocese: namely, because he does not use jurisdiction received from the Ordinary of the place. Thus Arriaga (*On Penance*, disp. 39, nos. 33-34): *Because the proper pastor has the power of absolving, not from the Bishop of the place where they now are, but from the Bishop of the place whence they departed; but there that sin was not reserved.* Likewise Edmund Simonnet (*On Penance*, disp. 9, art. 6, reply 7): *The case in which someone there confesses to his proper pastor is to be excepted; for there he could be absolved by him, because his jurisdiction IS ENTIRELY INDEPENDENT of the Bishop of the place in which the case is reserved; and thus he cannot be impeded from absolving by a reservation made by the Bishop of the place in which his subject confesses to him.* And Lugo concerning the same hypothesis (disp. 20, no. 73): *I reply by denying the consequence. The reason for the difference is that the former pastor does not have jurisdiction from this Bishop, but from his own Bishop or dependently upon him.* And, to omit others, even the Salmanticenses (*On Penance*, chapter 13, no. 27): *If the proper pastor were to come together with this traveler who is his subject, he could absolve him there without permission for reserved cases from that sin which was not reserved in his own diocese, although it was reserved here.... Indeed, if that confessor has jurisdiction at least delegated in the Episcopate of the domicile of the penitent from which the traveler departed, and in which there was no reservation, he can absolve the aforesaid penitent even if the cases are reserved in the Episcopate in which he is while he confesses; because he can absolve him by using the jurisdiction which he has in the Episcopate of the domicile of the penitent, in relation to which jurisdiction that case is not reserved.*

And here we shall subsume: But any confessor absolves a visitor only by using jurisdiction indirectly granted to him by the Ordinary of the penitent, as Suarez himself and all with Suarez must concede according to the things said. Therefore it is wrongly established that the measure of jurisdiction, as Suarez said, is to be taken from the reservations of the Episcopate in which the visitor confesses. - But you will say: Do not Arriaga, Simonnet, and the Salmanticenses agree with Suarez in the remaining matters if you except the aforesaid case of the pastor, although they also admit with Suarez that a visitor is absolved by jurisdiction granted by his Ordinary? Reply. Entirely so; but from this finally conclude what everywhere strikes the eyes in this question, namely, that as many as abandoned the unanimous doctrine of the ancient Doctors, most plain and resting upon certain principles, after the most unfortunate footsteps of Henriquez and Suarez, involved themselves in perpetual contradictions and must continue to involve themselves in them.

Finally Suarez proposes the third reason thus (*loc. cit.*): *Likewise, because in order that*

a concession be just, it ought to be equal on both sides; and he who is freed from one burden ought to feel another which follows from it. But such a person can be absolved by any confessor from sins reserved by his Bishop if they are not reserved there; therefore, conversely, he cannot be absolved by the same confessors from sins reserved there, even if they are not reserved by his Bishop.

Reply 1. If this reasoning were admitted, the argument could be turned back most excellently. For since, according to the laws, as we shall see below, a visitor who has not obtained special permission for this from his Ordinary cannot be absolved from his own reserved sins, consequently, in order that equity be preserved, since the visitor bears the burden of his own diocese, he must be said to be immune from the burden of the other diocese, and therefore not subject to its reservations. For the rest, not only the Minor proposition but also the Major of the Suarezian argument must be denied. For it is generally false that one who is exempted from one burden must necessarily undergo another burden. This plainly appears in one who departs from his own territory. For according to the common opinion, once he has departed from his own territory he is not bound to observe its special laws; nor nevertheless is he thereby bound to observe the laws of the alien territory. Likewise, while a visitor is said to be exempt from observing the laws of the alien territory, the Doctors commonly

teach that he can nevertheless enjoy the privileges of the same place. See St. Alph., book 1, no. 161. Therefore it was not gratuitously asserted in the Note that Suarez introduced that new theory only with plainly weak reasons.

But to return to the VV., they finally allege (pp. 531-533) many Authors who went over to the opinion of Suarez. - Reply. Let it now be passed over whether all who are alleged there pertain to the matter, which can be entirely denied, for example, of Dicastillus, Filliucius, and Illsung. It is better to employ a briefer and peremptory reply to this argument. We shall therefore answer: let the reasons by which those Authors seem to have been moved to follow that opinion be produced and weighed; then let it be shown how many and who they are whose reasons do not conflict with those firm and universally admitted principles which they themselves, being in no way consistent with themselves, admit and profess. Then indeed something can be conceded to their authority; otherwise, let permission be given that their authority be set entirely aside without reproach.

The Reply of the Sacred Penitentiary dated November 21, 1873, which the *Analecta Iuris Pontificii* relate (fasc. 121, February 1875), must also be considered here. The case is proposed in these words: *Titius, a priest, approaching the tribunal of penance, discloses sins partly simply reserved, and partly also reserved with an episcopal censure in the diocese of the confessor. He grieves for him here* (so!!) *and humanely admonishes his brother to present himself to one having the faculty; but the latter presses for absolution and says that the confessor, since he is not a judge of opinions, can and must absolve a penitent who wishes to follow an opinion not only probable but even most common among ancient and living theologians. The confessor, firm in his own opinion, does not acquiesce and dismisses the penitent without absolution. - It is asked: 1. Did the confessor conduct himself well? 2. Can he always conduct himself thus in the case? The Sacred Penitentiary, having considered the things set forth, replies: To both, affirmatively.*

This case, no less than the other proposed at the same time concerning a simple priest who absolves a penitent in danger of death even from sins with reserved censure, although another confessor endowed with faculties would not otherwise be lacking, these cases, I say, were contrived, as is sufficiently evident, to stir up odium against opinions which do not please the proposer; and therefore in each case even living theologians are brought upon the stage.

Let us omit the second case, concerning which the Sacred Penitentiary replied: *Let the petitioner consult approved authors*; a few things concerning the first, which according to the mind of the proposer pertains to the argument of this Note. I said, according to the mind of the proposer; for although this is in no way expressed, the proposer nevertheless, by an entirely inept contrivance, wishes it to be inferred that the priest penitent is of another diocese, and attempts tacitly to insinuate this by the words "in the diocese of the confessor"; but unskillfully, because this manner of speaking is aptly employed also for distinguishing reservations of common law, or of a province, or of the whole Church. Indeed, when he adds *episcopal censures*, he rather intimates and supposes that the penitent is of the same diocese; for we shall not consider the writer of the little story so unskilled in theological matters as to be ignorant that visitors are not subject to the particular censures of a diocese, unless perhaps there is question of one imposed by sentence in the external forum, absolution from which, however, neither is customarily nor can be sought from a simple confessor.

Meanwhile the distinguished Writer of the *Analecta* judged that these things should be prefaced in French. He places this title: *Decision of the Sacred Penitentiary. Cases reserved in the diocese of the confessor, but by no means in the diocese of the penitent.* Then he proposes this question: *Can a Confessor absolve a penitent from cases reserved in the diocese* (understand: his own, where he hears the confession) *but not reserved in the diocese of the penitent?* And he replies: *The Sacred Penitentiary, asked for its judgment concerning this question, judged that in those circumstances the confessor cannot absolve without a special faculty of the reserving Ordinary. Hence it follows that it is not lawful to follow theologians, both ancient and recent, who think otherwise.*

May the most distinguished man allow these things to be answered candidly. 1. I deny the Antecedent. For the Reply of the Sacred Penitentiary extends no further than the proposed question necessarily and clearly requires. But the words by which the question is proposed, whatever finally may have been the mind of the inept proposer, neither necessarily nor manifestly require that they be understood of a priest who is a visitor in that diocese; indeed, those things are unskillfully mingled there which of themselves suggest that the penitent is of the same diocese as the confessor and altogether require the penitent to be a subject of the Bishop imposing the censures. Therefore both the proposed question and the Reply of the Sacred Penitentiary are wrongly drawn into the controversy concerning a case reserved only in the diocese of the confessor but not in the Episcopate of the penitent. Hence the consequence deduced from it by the distinguished man must likewise be denied, namely, that after this Reply of the Sacred Penitentiary it is not lawful to follow the opinion of the ancients and the recent authors who hold that diocesan reservations can in no way impede or prevent a visitor from being absolved from those sins which his Ordinary did not reserve for his own subjects. And another most grave reason indeed counsels this. For by what means could anyone finally prove that the Sacred Roman Congregation wished to disapprove a practice which,

resting upon the unshaken principles of Catholic dogma, flourished in the Church through all past centuries until Suarezian novelties gradually began to increase and, through an accumulation of mutually contradictory assertions, to take root?

But, 2. let it also be permitted to reply: I deny the hypothetical consequence, namely, even if someone wished to suppose that the Reply of the Sacred Penitentiary was rendered to that question as the distinguished man fashioned it, that it nevertheless follows therefrom that it is not lawful to follow theologians who profess another opinion. For in the first place, who is ignorant of what the Salmanticenses also have (*On Censures*, chapter 2, no. 56), namely: *When a Sacred Congregation pronounces decisions resting upon a probable opinion, it does not remove the probability of the opposite opinion so that it is not lawful to follow it?* And in fact, did not even the holy Doctor Alphonsus sometimes set aside Replies of the Sacred Penitentiary and adhere to the opposite opinion? See book 6, no. 556.

Moreover, these things ought to avail all the more in the present matter, since the Sacred Penitentiary is presented as judging not concerning doctrines but concerning the act of the confessor, whether or not his manner of acting is to be disapproved. And surely this confessor in the hypothesis would have thought it lawful for himself to follow a doctrine which St. Alphonsus (book 6, no. 588) called more common and far more probable. But if the matter stands thus, how could the Sacred Penitentiary have disapproved this, when elsewhere, to the Question proposed to it, *Is a Confessor who follows all the opinions of Blessed Alphonsus de Liguori in the practice of the tribunal of sacred Penance to be disturbed?,* it had replied on July 5, 1831: *Negatively?* But was it, or can it now be, the mind of the Sacred Penitentiary that while it does not disapprove a Confessor who in the practice of the tribunal of penance adopts the opinion of the holy Doctor Alphonsus, for that very reason it thereby denies that it is lawful for others to follow the opposite opinion? Yet the Sacred Penitentiary itself rejects a consequence of this kind, and indeed rejects it in precisely the same Reply, for it continues: *Without, however, judging those worthy of reproach who follow opinions handed down by other approved authors.* Therefore the consequence which the distinguished man deduces in his hypothesis is not admitted by the Sacred Penitentiary itself.

Let this also not be omitted here: that it is less pertinent, indeed unskillful, in the case to introduce the priest penitent objecting to the confessor that the confessor, since he is not a judge of opinions, can and must absolve the penitent who wishes to follow an opinion not only probable, etc. For in the case there is in no way question of an absolution denied to the penitent because he wishes to follow a probable opinion. But this and no other is the case concerning which both St. Alphonsus and the theologians commonly establish that absolution cannot be denied to a penitent of this kind.

Finally, with regard to the argument of this Note, it is fitting to dispel a doubt which you will seek in vain in the books of theologians, but which is carried about on the lips of certain persons. Some say, namely, that a visitor cannot be absolved from sins reserved in the diocese of the confessor, not because jurisdiction conferred by the Ordinary of the visitor, who did not reserve those sins, is lacking, but because the confessor lacks the approval of his own Ordinary. For, they say, when the Ordinary reserves certain sins, by that very fact he restricts the approval of the confessor with regard to those sins. Therefore, when approval is lacking, by that very fact the confessor becomes incapable of receiving jurisdiction from any other Ordinary and of using it concerning those sins; and consequently it would be just as if someone confessed to a confessor not approved, whose absolution the Tridentine Synod decreed to be null and void. Thus these neo-theologians.

Something, therefore, concerning this doubt also. And first, it can and ought indeed to seem remarkable that although this way, so easy and entirely obvious, was at hand by which the present question would be resolved peremptorily, nevertheless among so many Doctors who flourished for three centuries from the Tridentine Synod down to us, no one perceived it, indeed, no one even suspected the least thing concerning it. Nor is it less remarkable that although all theologians, both of the first and lowest rank, disputed so subtly and extensively concerning this necessary approval of the Ordinary, and investigated all the limitations which the Ordinary's approval can have as to places, classes of persons, and time, nevertheless no one thought anything about this new circumscription of approval as to species of sins. But can this remarkable dullness of mind, which these neo-theologians must so easily and necessarily ascribe to all theologians for three centuries, and indeed to all pastors of the Churches, not warn them, and with them all of us, that we should regard this newest light of theirs as suspect? Moreover, does this new prodigy of theological science agree with those things which are held as certain and settled in the schools of theology and indeed in the practice of the Church? Let us taste a few by way of example.

Let there be the case of which we spoke above (Note at no. 173, p. 111). Let a servant of Regulars approach, with sins reserved to the Bishop, a confessor lacking a faculty for reserved cases. It is certain, as we said (*loc. cit.*), and St. Alphonsus also teaches, that he is validly absolved even from the reserved sins. But the confessor does not have the Ordinary's approval for reserved sins. Approval cannot be had from the Regular superior. How, then, does he validly absolve? - Let

there be a Superior of Regulars who, for hearing the confessions of his own subjects, summoned a secular confessor indeed approved by the Ordinary, yet without a faculty for sins reserved by him; the Regular superior, moreover, grants his subjects permission generally that they can be absolved from reserved sins, among which some are also reserved by the Bishop, for example, perjury, sacrilege, etc. I ask: whence does this confessor have the approval which the neo-theologians require? Does he validly absolve without approval? And perhaps do not object that by virtue of the Tridentine Decree the approval of the Ordinary is not necessary for hearing the confessions of Regulars. For it will be answered: what of the Capuchins, who by a Decree of Benedict XIV cannot choose a secular confessor unless he is approved? - Let there be a confessor who has obtained from the Sacred Penitentiary the faculty of absolving from certain sins, either through the customary *Pagella* or through other letters; among these sins suppose that some one is reserved by the Bishop, for example, sorcery. Indeed, the Sacred Penitentiary does not grant approval but supposes it, and expressly imposes the condition that the confessor be legitimately approved by the Ordinary of the place. Now behold, the question returns: for the Sacred Penitentiary does not grant approval; the confessor by hypothesis does not have approval from his own Ordinary for those sins; how, then, does he validly absolve? But what shall we say concerning the faculties which on the occasion of a Jubilee are granted to all approved confessors? Whence comes approval for these? Therefore, lest we add more, from these things it is now lawful to conclude that if not one of the whole company of Theologians who cultivated this sacred discipline for three centuries spoke of this new and singular manner of limiting episcopal approval, it must certainly not be said that this happened because they lacked sufficient acuteness of mind to discern it, which assuredly required neither the greatest nor a singular acuteness, but because in a theory of this kind they perceived nothing but an empty phantom, which accords less with certain doctrines and leads to absurdities.

QUESTION 5. Can the subject of another diocese be absolved when the sin is reserved in his own diocese but not in the place of confession?

Reply 1. He can be absolved by Regulars by virtue of the privilege granted to them in the Constitution *Superna* of Clement X [14].

[14] The Apostolic Constitution (section 7) establishes that a Regular Confessor in the Diocese in which he is approved can absolve those coming together from another Diocese from sins reserved there but not in the Diocese in which the same confessor is approved, unless he knows that the same penitents have migrated to the alien diocese in fraud of the reservation in order to obtain absolution. How these words of the Constitution present no obstacle to the things noted at the preceding Question will become plain below.

Reply 2. As regards secular Confessors, the older Theologians most commonly deny it, from chapter *Si Episcopus* 2, *De Poenit. in VI* [15], which stands thus: *If a Bishop has granted to his subject that he can choose a fit confessor for himself, the one whom he chooses has no power at all in cases which are specially reserved to that Bishop: since those things do not come under a general concession which one would not probably grant in particular.* Thus Bartholomew Medina (*Instruction for Confessors*, book 1, chapter 10, section 3), Cajetan (*Summa*, word *Absolution* 2, final proposition), Navarrus (on chapter *Placuit*, *De Poenit.*, dist. 6, nos. 62-63), the *Summa Armilla* (word *Absolution*, no. 30), Emmanuel Rodriguez (*Explanation of the Bull of the Crusade*, section 9, no. 92), Sayrus (*Summa of the Sacrament of Penance*, chapter 21, no. 6), Jacobus de Graffiis (*Golden Decisions*, book 1, chapter 13, no. 46), Fagnanus (on chapter *Omnis*, *De Poenit. et Remiss.*, no. 95), Dominic Soto (*In IV Sent.*, dist. 18, q. 4, art. 2), Marcellus Megala (*Institutions for Confessors*, part 1, book 4, chapter 7), Finellius (*Selected Golden Cases Reserved*, chapter 9, no. 8), Fagundez (*On the Second Precept of the Church*, book 8, chapter 8, no. 20), John Chapeauville (*Treatise on Reserved Cases*, part 1, chapter 4, difficulty 9), the *Summa Pisanella* (word *Confession* III), Alphonsus Vega (in Fagundez, *loc. cit.*, and Barbosa, *On the Office and Power of a Bishop*, part 3, allegation 53, no. 15), the *Short Summa of Raymond* (tract 4, chapter 5), Bartholomew Ugolinus (*On the Office and Power of a Bishop*, chapter 39, section 4, nos. 3-4), John of Freiburg (*Summa*, book 3, tit. 34, art. 39), Escobar (*Moral Theology*, book 16, chapter 7, no. 66), the *Summa Astensis* (book 5, tit. 14), the *Summa Angelica* (word *Confession* V, no. 6), the *Summa Tabiena* (word *Confession* I, no. 41), St. Antoninus (*Summa*, part 3, tit.

17, chapter 4), the *Summa Rosella* (word *Confession* III, no. 32), Peter Paludanus (*In IV Sent.*, dist. 17, q. 3, art. 3, conclusion 4), the *Summa Sylvestrina* (word *Confession* I, section 11), Berarduccius (*Summa Corona on the Sacrament of Penance*, no. 51, doubt 3, section *Fourth, when*), Engel (*Manual for Pastors*, part 3, chapter 2, no. 7), Comitolus (*Moral Resolutions*, book 1, q. 28), Cosmas Philiarchus (*On the *Office of a Priest*, part 2, book 2, chapter 26), Cajetanus Verani (book 5, tit. 38, section 8, nos. 12, 13), Amort (*Eclectic Theology*, vol. 3, *On Penance*, disp. 9, q. 25), Barbosa (*On the Office and Power of a Bishop*, part 3, allegation 53, no. 15), etc. The more recent authors, however, made the privilege of Regulars common to secular Confessors; custom against which the Ordinaries do not protest, it must be considered can be validly and even licitly absolved. Except in each case if someone has transferred himself from his own diocese to another in fraud of the reservation [16].

[15] Although in this Chapter of Boniface VIII there is discussion only of a subject to whom the Bishop granted that he might choose a fit confessor for himself, which is an indirect delegation of jurisdiction, concerning whom it is established that the confessor chosen by that subject has no power at all in cases which are specially reserved to the same Bishop, nevertheless it is not to be doubted that the same avails in a general concession made to a priest, namely, the faculty of hearing confessions, which is a direct delegation of jurisdiction: namely, that the faculty of absolving from reserved cases is never comprehended unless it is expressed. Moreover, with regard to the first case, as Cardinal Cajetan argues well (*Summa*, word *Absolution*), if explicit permission, namely, to choose a confessor, does not comprehend reserved cases, much less does implicit permission, namely, that which is tacitly granted to those departing from the diocese, extend to them.

But how it came about that many afterward departed from the most common opinion of all the ancients, receive this brief history. Although all agreed that no one can validly be absolved by an alien priest without the permission of his proper Ordinary, and that this permission does not extend to reserved cases unless this is expressed, they nevertheless excepted a case of necessity, to which they referred also the obligation of the Paschal precept; and they taught that then a traveler could be absolved also from an episcopal case. Thus Paludanus (*In IV Sent.*, dist. 17, q. 3, art. 3, conclusion 4), St. Antoninus (part 3, tit. 17, chapter 4), the *Summa Rosella* (word *Confession* III, no. 32), the *Summa Tabiena* (word *Confession* I, no. 41), Cajetan (*Summa*, word *Absolution* 2), etc.

Most, however, added that the Confessor must enjoin upon the penitent that, when he has access to his own Bishop, he should confess that reserved sin to him again and receive penance for it from him. Thus John of Freiburg, Master General of the Order of Preachers (book 3, tit. 34, q. 59), the *Summa Pisanella* (word *Confession* III), the *Summa Astensis* (book 5, tit. 14), the *Summa Angelica* (word *Confession* V, no. 6), the *Summa Sylvestrina* (word *Confessor* I, section 17), the *Summa Corona* (*On the Sacrament of Penance*, no. 51, doubt 5, section *Fourth, when*), and Cosmas Philiarchus (*On the Office of a Priest*, part 2, book 2, chapter 26). And indeed the last three expressly say that the confession of reserved sins is therefore to be repeated so that they may be directly absolved, since they were not absolved by the alien priest.

Finally Cajetan (*loc. cit.*) thought that the practice of obtaining absolution at Easter even from an episcopal case was confirmed by a certain oral oracle of Eugene IV, which he relates thus: *I remember having read elsewhere that Eugene IV granted or declared by an oral oracle that travelers, wherever they found themselves at Easter, were to be considered as having acquired inhabitancy with regard to the Sacraments of Penance and the Eucharist*. Yet neither Soto (Dominic, *In IV Sent.*, dist. 18, q. 4, art. 2; Peter, *Instruction of Priests*, lecture 5, *On Confession*) nor Navarrus attributed to this declaration, omitting for now grave doubts concerning its authenticity, that force or sense; but they judged that by it this alone was prescribed: that travelers could not confess to others besides the plebans or pastors of the places. Thus far the most common opinion of all the ancients.

But behold, first Henry Henriquez (*Summa of Moral Theology*, book 6, chapter 14, no. 8), relying upon no other equipment than a heap of fallacious allegations, transfers to a general norm that very thing which the ancients had excepted from the general rule concerning a case of necessity or of the Paschal precept; and he is the first to infer the canon that a traveler can be absolved from a sin reserved in his own diocese if it is not reserved in the diocese of the confessor. Henriquez's disciple Suarez succeeds him and, seizing from his master three fallacious allegations, namely, of Paludanus, St. Antoninus, and Cajetan, which you may then see copied in good faith by a long series of Authors down to St. Alphonsus, not only repeats that canon but in addition is the first to establish the new, and until that time unheard-of, inverted canon concerning a traveler being subjected to the reservations of a diocese of which he is not a subject if he wishes to confess there, according to the things we said in the note at the preceding question. Nevertheless neither of these men yet dared entirely to

renounce the principle in which the economy, or rather the essence, of the judgment of this sacrament is contained; and Henriquez expressly supposes that permission of the proper pastor of the penitents is possessed, and that the alien priest absolves from a tacit commission of the proper Bishop which bestows jurisdiction.

But not even these limits were preserved by others. See Lugo, *On Penance*, disp. 20, no. 70, and St. Alphonsus, book 6, no. 589. In order to extricate themselves from the difficulty which chapter *Si Episcopus* presented against their new theory establishing that visitors are to be judged according to the laws of the place in which they confess, they established that the power of absolving them is to be derived not from their proper Pastor but from custom. By an incredible anachronism, they said that this custom was approved by Eugene IV when, namely, no man had even dreamed of theories of this kind; and from his oral oracle, if any such existed, others in addition, by a remarkable power of imagination, fabricated an extravagant Decretal. See Villalobos, *Summa*, vol. 1, tract 9, difference 59, no. 4. This is the genuine history of the vicissitudes of this controversy and of the immense confusion introduced into it.

** The VV. opposed forty columns (pp. 533-544) against this and the immediately following Note. Nevertheless, many words are not needed to satisfy their objections, all the more because there is question here not so much of opinions concerning which the Doctors went in different directions as of a historical matter.

1. First, therefore, the VV. (pp. 535-540) fill eight columns with texts of St. Antoninus, Cajetan, Navarrus, and the *Summa Angelica*, in order to prove that it is undeservedly asserted in the Note that the negative opinion was most common among the ancients.

To these, Reply 1. Let the Antecedent pass, and I deny the Consequence. The reason is that even if it were true, which is false, that these four dissent from the general opinion of others, these few, in comparison with the immense multitude of others who are seen alleged in the text, nevertheless would not prevent that doctrine from being called most common among the ancients. In this place let the testimony of a man by no means suspect avail, Eusebius Amort, who, when discussing the privilege of absolving penitents of another diocese from their reserved sins, which he asserts for Regulars but denies to every secular confessor, has these most explicit words (*Eclectic Theology*, vol. 3, *On Penance*, disp. 9, q. 25): *I said that this was declared concerning Regular Confessors. But whether Bishops wish to extend jurisdiction over their own subjects with regard to reserved cases to external non-privileged Confessors, that is, non-Regulars, or whether the Pope wishes even against the will of Bishops to extend that jurisdiction to external non-privileged Confessors, is a question of fact, in which every positive concession of this kind, NEW AND BY NO MEANS CONFORMABLE TO THE MORE ANCIENT OBSERVANCE HANDED DOWN, indeed by no means connatural to the nature of things, is to be denied and regarded as null in practice so long as it is not sufficiently proved by arguments morally certain or at least more probable and placed beyond prudent doubt.* Could the unanimous doctrine and practice of the ancients have been expressed more clearly? For the rest, it is truly remarkable that the VV., because of the dissent of these few fashioned by themselves, deny that this opinion of the ancients can be called most common; but a little later (p. 542) they do not hesitate to write that the opposite opinion of St. Alphonsus is with the best right to be considered most common, although it has against it that immense throng of thirty and more Authors who are alleged in Gury's text! Does not that saying rightly recur here (Prov. 20:10): *Weight and weight, measure and measure?*

2. But Reply 2. I deny the Antecedent also. Therefore something concerning each of those writers objected as dissenting; and first concerning St. Antoninus. It had been said in the Note that, according to St. Antoninus and some others, a traveler can be absolved also from an Episcopal case in a case of necessity, as, for example, when the Paschal precept presses. But the VV. (p. 537) deny that this is restricted by St. Antoninus to this case. Let the words of St. Antoninus (*Summa*, part 3, tit. 13, chapter 4), which he copied from Paludanus, therefore decide the question; they are as follows: *If they departed with the permission of their Bishop or Pastor, by that very fact they have interpretative permission to confess, since they cannot worthily travel without confession. If Easter also comes, they can communicate on account of* the same implicit permission and also be absolved from an episcopal case. Hence thus: If a general faculty for reserved cases had existed, St. Antoninus would have placed it in the first member, where he speaks of the general permission to confess. But he placed it not in the first but in the second member, where he speaks exclusively of the occasion of Easter. Therefore. And let the same also avail concerning Paludanus, whose words St. Antoninus took literally.

3. Now concerning Cajetan, with whose texts the VV. fill two columns (pp. 537-538). They press these words of his (*Summa*, word *Absolution* 2): *I remember having read elsewhere that Eugene IV granted or declared by an oral oracle that travelers, wherever they found themselves at Easter, were to be considered as having acquired inhabitancy with regard to the Sacraments of Penance and the Eucharist; and according to this, at Easter there is no need of interpretative permission of this kind, but they can THEN be absolved by those confessors by whom inhabitants are absolved, even from episcopal cases, according as the Bishop of the place disposes.* But, the VV.

subsume (p. 538), Suarez writes (*On Penance*, disp. 25, sect. 2, no. 9): *I understand this to be an extension, not a limitation.* Therefore, the VV. conclude, the same avails at other times of the year.

Reply. The VV. (p. 534) call the Note which they here attack in those forty columns *wearisome*, certainly paying less attention to the fact that *fastidious* is usually said not of one who causes weariness but of one who is affected by weariness. Nevertheless, according to the sense affixed to this word by the VV., another will perhaps with better right regard as wearisome the method of disputing which they themselves employ here. For what? Suarez (*loc. cit.*, no. 8) merely contends that visitors can confess either to the pastor of the place at which they arrive or to other priests having jurisdiction there; and to confirm this he adds (no. 9): *Cajetan signifies the same opinion... and relates that Eugene IV declared this even in the annual confession; which I understand to be an extension, not a limitation*; an extension, namely, even to the annual Paschal confession. Hence he infers that if even at Easter, when there seems to be the greatest obligation of confessing to one's proper priest, confession can be made to another from the declaration of Eugene, it can also be made at any other time. Therefore the extension of which Suarez speaks here consists merely in this, that even at Easter a visitor can confess to another and not to the pastor. See this sense also in Filliucius, who, in order to prove that a visitor can confess to others besides the pastor, uses the same argument thus (tract 7, chapter 7, no. 195): *Cajetan also relates that Eugene IV declared this concerning annual confession and Communion; wherefore much more at other times.* Since these things are so, how then do the VV. twist the words of Suarez to signify that the faculty of absolving from an episcopal case was extended by the declaration of Eugene to other times outside Easter? And what can seem even less tolerable, how through this distortion of the Suarezian context do they attempt to insinuate that this is also the opinion of Cajetan? I said that this can seem even less tolerable; for Cajetan immediately and expressly adds these things, by which he rejects that extension: *But in all the remaining aforesaid permissions* (namely, apart from that which he says was granted by Eugene), *whether explicitly or implicitly by Bishops or Pastors, I DO NOT APPROVE that those licensed can be absolved from cases reserved to the Bishop, because this is AGAINST THE DISPOSITION OF LAW in chapter Si Episcopus, where it is said that when a Bishop gives permission to someone to confess, he does not thereby grant the reserved cases.* Therefore there is no, or very little, reason why Cajetan should be said to have departed from the most common doctrine of the School, or rather of the Church; and it can rightly seem troublesome and grave, the VV. may say wearisome, that against the manifest truth a doctrine which he expressly reprobates is attributed even to Cajetan, and that, to persuade this, words of Suarez which have nothing to do with the matter are thus distorted.

4. As regards the *Summa Angelica*, Blessed Angelus de Clavasio first establishes this general principle (word *Confession* V, no. 6): *Whether a Bishop, granting permission to someone to choose a fit Confessor, by that very fact grants to the said chosen Confessor permission to absolve from his cases? I reply that he does not, unless he expresses this, or unless it is evidently established by other signs that he wishes specially to grant this. Chapter Si Episcopus, De Poenit. et Remiss. in VI.* Then (ibid., no. 12) he adds concerning the case of travelers: *Whether pilgrims and travelers who, with the permission of their proper priest, confess to another who nevertheless has cases reserved to Bishops can be absolved by the one whom they chose as confessor. I reply according to Rodriguez that they can, especially if the time of general confession, as at Easter, is at hand; nevertheless it must be enjoined upon him that when he has access to his Bishop, he should confess that reserved sin to him again and receive penance for it from him.* Now according to the VV. (p. 536): 1. Blessed Angelus, where he denies that a penitent can be absolved from reserved cases, speaks of one who remains in the diocese of his Bishop, not of travelers, whom he afterward says can be absolved outside the diocese. 2. He in no way restricts this faculty for travelers, for he mentions Easter there because then all the faithful confess.

Reply to 1. I deny the whole; for it is not lawful gratuitously to fasten this qualification upon Blessed Angelus so that, against the unanimous and absolute opinion and interpretation of all, he thus perverts the sense of chapter *Si Episcopus*. I said gratuitously, because there is no reason here why anyone should attribute this false interpretation of that Chapter to Blessed Angelus. Nor is it opposed to that Chapter that one who has reserved sins, when a just cause requires, but has no access to the Superior, can according to the laws be absolved by another, whether he remains in the diocese or is distant from it.

Reply to 2. I likewise deny the whole; for those words *especially at Easter* express a comparison with other less urgent causes on account of which one who has reserved sins can be absolved, as St. Alphonsus also intimates (book 6, no. 285). And indeed, if that penitent could be absolved at any time and occasion, the expression *ESPECIALLY at Easter* would be absurd, which it is not lawful gratuitously to attribute to Blessed Angelus.

But, 3. I further deny that Blessed Angelus either departed in any way from the most common doctrine or in any respect favors the new theory. And the VV. silently pass over these words of the question proposed by Blessed Angelus: *Who* (travelers) *confess to another who nevertheless has cases reserved to Bishops.* Therefore Blessed Angelus supposes a confessor endowed with a faculty over reserved cases; and indeed, since he does not say cases reserved to the Bishop of the place but

cases reserved to Bishops, he supposes a privileged Confessor, such as the Mendicant Orders were in the time of Blessed Angelus. See Lezana, vol. 1, chapter 19, no. 17. But he would not have sought a privileged confessor if, departing from the common opinion of that time, he had judged, as the new theory introduced, that the penitent could be absolved by any confessor. Therefore.

Moreover, the VV. did not do well when, in relating the text of Blessed Angelus, they suppressed certain words. Blessed Angelus has: *I reply ACCORDING TO RODRIGUEZ that they can*; but the VV. truncate the beginning and write: *And he replies that they can.* Yet that allegation of Rodriguez has much moment, however troublesome it may be to the new theories. For Rodriguez touches this question in two places; and in one he indeed denies that absolution can be given, although the Confessor has a faculty over the reserved cases of that Diocese. Thus he writes (*Explanation of the Bull of the Crusade*, section 9, no. 92): *It is asked whether, if a subject of one Bishopric were to go with reserved cases into another Bishopric where they were not reserved, the approved SECULAR Confessor there who had the cases of his Bishopric, although he did not have the Bull, could absolve him. Navarrus holds that he can, relying upon custom. Medina in his Summa says no. I hold the latter opinion to be truer.*

And from these things it can be seen why Blessed Angelus supposes a Confessor not merely having a faculty for the reserved cases of that diocese, but one who generally possesses a faculty over Episcopal cases, as the Mendicants were then endowed. In the other place, however (*Summa*, chapter 55, no. 5), Rodriguez reserves the absolution of a visitor of this kind to the Bishop of the place and derives it from the consent of the Ordinary of the visitor. *A Bishop*, he says, *can absolve... a traveler who comes from another Episcopate with cases reserved to his proper Bishop, because it seems that such a Bishop will ratify whatever the other has done, especially if he comes from far away, as if someone were to come to Salamanca from the Indies.* And perhaps for this reason Blessed Angelus added that when the visitor has access to his Bishop, he should confess that reserved sin to him again and receive penance for it from him. These things have nothing in common with the new theories.

5. Navarrus remains, from whose texts the VV. construct nearly four columns. But to what purpose, someone may ask? For even in those things which they themselves bring forward from Navarrus, there is what suffices for our matter; and even if he had otherwise departed from the general doctrine of the ancients, would this prevent that doctrine from being called most common?

From the Commentaries of Navarrus on chapter *Placuit*, *De Poenit.*, the VV. bring forward these things (p. 538, no. 63): *If a Bishop has granted the faculty of traveling, he seems also to have granted that one can be absolved from Episcopal cases, according to Paludanus, whom Antoninus follows literally; but not if the faculty was granted by the pastor, according to the same authors. Yet this distinction displeases me; for the express faculty of choosing a confessor granted by a Bishop does not include reserved cases. The text is express and singular in that chapter 2, De Poenit., book 6. Therefore much less does a tacit faculty include them. If those Fathers had remembered that text, they would never have said this.* In these things, therefore, Navarrus, no less than the ancients unanimously, relying upon the very well-known chapter *Si Episcopus*, denies that a faculty for reserved cases is contained in permission to choose a confessor, even if this permission is granted by the Bishop. But these things, contrary to what the VV. contend, plainly prove rather that Navarrus entirely adhered to the general and most common principle of the ancients.

The VV. take another text of Navarrus from chapter 27 of the *Manual*, no. 261, and it is as follows: *To the question whether a pastor having the faculty of absolving from cases reserved to his Bishop can absolve a penitent of another Episcopate, with just permission granted to him, from sins reserved to his own Bishop, I replied that he can. Both because the gloss on chapter Placuit, 16, q. 1, and, more clearly through many passages, Panormitanus, hold that the legitimate confessor of one parish can absolve one confessing from sins committed anywhere; and Bishops seem tacitly to be bound to will that the same hold for sins reserved to them when the confession is made to one having a faculty of absolving from cases reserved to his own Bishop.* In these things Navarrus, rather than departing from the most common doctrine of the ancients, indeed shows himself more severe. For from this he requires some special tacit consent of the Bishop of the visitor for absolution from reserved sins. But if you suppose consent of this kind, surely no one of the ancients denies that the visitor is legitimately absolved. Therefore Navarrus is falsely represented here as dissenting from the ancients. Moreover, Navarrus requires that the confession be made to a pastor who there has a faculty of absolving from reserved cases. But none of those who, as was indicated in the Note, concede that a visitor can be absolved from reserved sins at Easter requires that the confession be made to one having a faculty for reserved cases there. Therefore Navarrus appears even more severe. Nevertheless Navarrus was so firm in requiring a faculty concerning the reserved cases of the proper diocese with regard to the confessor of a visitor that he denied even to Mendicants dwelling at Rome the power of absolving visitors of this kind. For as he himself reasoned, the Most Eminent Vicar at Rome reserves no case, thus indeed Navarrus concerning his own times, and otherwise he was discharging the office of Canonist in the Sacred Penitentiary; therefore no faculty concerning reserved cases was granted to the Mendicants in that Roman diocese in which they were approved. But if they cannot absolve from Episcopal reserved cases in the diocese in which they are approved, *a fortiori* they

will not be able to absolve from sins reserved to an external Bishop. Thus he writes (*Counsels*, book 5, counsel 21). From these things, that also is discovered to be false which the VV. write concerning Navarrus (p. 539), namely, that he does not deny that travelers are to be regarded as inhabitants, and therefore can be absolved from sins reserved to their Bishops. For the rest, this singular opinion of Navarrus pleased neither the older nor the more recent authors; and among the older authors not only Comitolus attacks it (*Moral Replies*, book 1, q. 28), but also Ugolinus (*On the Office and Power of a Bishop*, chapter 39, section 4), Rodriguez (*On the Bull of the Crusade*, *loc. cit.*), and Cosmas Philiarchus (*On the Office of a Priest*, part 2, book 2, chapter 26).

6. The VV. have two things concerning Navarrus which it is equitable not to pass over. For, first, in order to excuse St. Antoninus and Paludanus from a lapse of memory concerning chapter *Si Episcopus*, which Navarrus attributes to them in the first text cited above, they write: *Boniface VIII speaks of a subject remaining in his own diocese, but not of those traveling or journeying.... Thus also others understood the aforesaid text, notably, as we saw, Clavasius.*

Reply. A more plausible excuse should rather be sought from the words of St. Antoninus, who copies Paludanus. For after he said that a visitor can be absolved also from Episcopal cases, see no. 2 above, he proceeds thus: *Because the Bishop, by not retaining to himself the authority of licensing travelers, by this very fact seems to give them permission to confess concerning Episcopal cases, just as the Pastor does concerning parochial cases.* Therefore, if Navarrus considered chapter *Si Episcopus* sufficiently provided for when he himself, as we just saw, has recourse to a certain tacit consent of the Bishop, the same thing must be said to suffice for St. Antoninus and Paludanus, who openly suppose tacit consent of this kind. But no one will judge tolerable the reason for excuse submitted by the VV. and resting upon that preposterous and abnormal interpretation of chapter *Si Episcopus* which they wished gratuitously and injuriously to fasten upon Blessed Angelus de Clavasio above, no. 4, since it was rejected by all Doctors of every age. And every sensible person will surely judge that Cardinal de Lugo is to be pardoned if, after rejecting as less consistent with himself that common theory after Suarez, and unhappily entering upon a new path, he cast himself into an inextricable labyrinth of difficulties and devised this evasion of some kind (disp. 20, no. 70); in this, just as he had no one who preceded him, so he obtained no follower after him.

The VV. have another thing worthy of notice concerning Navarrus (p. 539), where they write: *This final proposition, namely, that custom can give jurisdiction to one not having it, Navarrus already defended in the Commentaries, no. 32, where he teaches that priests can choose a confessor for themselves; and he observes that chapter Si Episcopus seems to stand in the way, in which it is said: No custom can introduce that anyone, apart from the permission of his Superior, can choose for himself a confessor who can loose or bind him.* And after bringing forward the reply of Navarrus, namely, that priests do this by the tacit or express faculty of Superiors, concerning which see above and the passage of Suarez in no. 22 of the Note at section 555, question 13, the VV. append these words of Navarrus: *Nevertheless, concerning the aforesaid decision of that chapter Si Episcopus there is the greatest doubt for me. For custom can give jurisdiction even to one otherwise having none, chapter Contingat, De foro competenti, where this conclusion is received by all. Why, then, can custom not give this jurisdiction?* And here the VV., adding not even a word, thus break off the discourse, so that in the less cautious reader, especially in view of the preceding context, they may at least engender a grave suspicion that by this interrogative figure Navarrus in fact wishes to affirm that this jurisdiction also, namely, for validly absolving, can be given by custom, which is the doctrine tenaciously defended by the VV., as we have already seen above in the Note at no. 555, question 13.

But the matter stands entirely otherwise. For in that place Navarrus, after he gathers many things to amplify the difficulty or doubt (on chapter *Placuit*, *De Poenit.*, disp. 6, nos. 36-38), replies to the question thus (no. 39): *In this matter, which is for me a great difficulty, two things at present occur as replies. The first is that this custom cannot be introduced for this reason, because the Roman Pontiff reprobates it and does not permit it to be introduced.* But Navarrus is not content with this solution, which, as is evident, is negative, because the text of the Chapter says something more. Hence he continues: *Yet against this is the fact that the text does not say that the Roman Pontiff reprobates a custom of this kind or does not wish it to be introduced, but that it cannot in any way be introduced; and thus it says something much greater than that.* In these words he absolutely denies that the custom can be introduced. The other reply of Navarrus is a certain anomalous interpretation of the same chapter, which found neither patron nor follower. *The second thing*, he says (no. 40), *which occurred was that the mind of the Roman Pontiff is to say that a custom cannot be introduced whereby someone chooses a confessor who binds and absolves him by virtue of that election, unless he has from elsewhere the power of doing this. For this consideration that opinion makes,* namely, that when a pastor simply gives his parishioner the faculty of confessing, the parishioner cannot choose a confessor who presides over no jurisdiction; but when he not only simply gives a faculty of this kind, but indeed commits his own place to whomever the parishioner chooses, then the parishioner can choose one who actually exercises no care of souls. Yet Navarrus himself admits that this opinion was rejected by all later authors after Panormitanus, and thus, as he says (no. 42), that it is the same thing for permission to

choose a confessor to be given to a parishioner by the pastor and for the power of hearing to be committed by the pastor to the one whom his parishioner chooses. And indeed it is manifest that this interpretation of the Chapter was afterward admitted by no one; therefore it is superfluous to discuss these things further. It is evident, therefore, that the VV. gratuitously fasten upon Navarrus this opinion rejected by the Sacred Canons.

7. The VV. add another article (pp. 540-541) in which they attempt somehow to clear Henriquez and Suarez from the reproach of novelties badly introduced. But the matter can be dispatched in a few words.

For: 1. that each abusively sought patronage for his novelties from Cajetan, Paludanus, and St. Antoninus is sufficiently evident from the foregoing. - 2. That Henriquez strengthened his novelty only by a heap of other false allegations the VV. themselves plainly confirm by their silence. - 3. But what the VV. add (p. 540), *It is certain that Henriquez was not the first who introduced the doctrine that a traveler can be absolved from a sin reserved in his own diocese if it is not reserved in the diocese of the confessor*, has an easy reply: let the VV. produce anyone who before Henriquez has this general assertion, and then they can be believed.

8. Since the VV. call Henriquez as a patron, it will not be foreign to the matter to indicate briefly here how the whole system of the VV. is completely overthrown from the doctrines of Henriquez.

First, the VV. contend with St. Alphonsus that a visitor is now not absolved by the consent of his proper pastor, nor is jurisdiction had from him. But Henriquez speaks to the contrary thus (book 6, chapter 14, no. 8): *An alien Bishop could absolve a traveling citizen, while he has business in his diocese, from sins reserved to his proper Bishop FROM THE TACIT RATIFICATION OF THE PROPER BISHOP, especially if the proper Bishop is very far distant.* Adam Tanner also copied this opinion thus (*On Penance*, q. 9, no. 86): *An Ordinary can absolve a traveler from reserved sins under the ratification of the proper Bishop, especially if the proper Bishop were very remotely distant, as if he came from India.* But that this ratification imports the conferral of jurisdiction, Henriquez had clearly said before (book 6, chapter 13, no. 13): *The ratification of a Prelate, which because of necessity or other reasons is believed to have been given by some external sign in past or present time, GIVES JURISDICTION TO THE CONFESSOR*. And Henriquez had already established this general principle (book 6, chapter 8, no. 5): *Travelers... can choose a Confessor from among those set forth along the way and at the end of their journey; for custom is interpreted as their having the permission of their proper pastor, although they did not seek it; and an alien Bishop or one acting in his place could, from a certain tacit commission of the proper Bishop, absolve him from sins reserved to his proper Bishop.* Henriquez says these things to prove the more general assertion, namely, that jurisdiction is given by reason of status, etc. Elsewhere, however (Note q. on book 6, chapter 14, no. 8), he adds that the Doctors who deny that a traveler can be absolved from the reserved sins of his Bishop must be interpreted as meaning that the alien Bishop cannot do so by his own right. Therefore the theory of the VV. is overthrown by the first author of these novelties.

2. The VV. establish another foundation of their system in this, that custom bestows jurisdiction, which they do not wish to derive from the Ordinary of the visitor. But Henriquez, as is evident from his words last transcribed, attributes no other role to custom than that it indicates the permission of the Ordinary of the penitent: *For custom* (he says) *is interpreted as their having the permission of their proper pastor*; and this permission, as he himself adds, bestows jurisdiction. The same Henriquez again inculcates this thus (book 6, chapter 8, no. 2): *Although custom cannot confer jurisdiction, it is nevertheless a witness and interpreter of the tacit permission which Pontiffs, while they see and remain silent, are considered to grant*.

3. The VV. rely upon the words of Henriquez where he holds (book 6, chapter 14, no. 8) that the accused is accustomed to be judged according to the laws and customs of the place where he is present. But behold Henriquez himself, who elsewhere writes (book 6, chapter 7, no. 2): *By reason of the offense in the external forum the accused can by law be punished by the judge of the territory; yet because of this the accused does not seem to acquire a favorable forum so that he can be absolved from sins by an alien pastor.* See these same things defended as certain by Suarez (disp. 25, sect. 1, no. 18); and Lugo adds that the opposite opinion is deservedly rejected by all (disp. 19, no. 9). Now if the accused does not acquire a forum, how must he be judged according to the laws of the place? Moreover, since Henriquez teaches that jurisdiction in the case is bestowed by the Ordinary of the traveler, that absurdity which Lugo also censures returns, when he writes (disp. 20, no. 73) that if the Confessor does not have his jurisdiction from this Bishop, namely, of the place, but from the proper Bishop of the visitor or dependently upon him, then the Bishop of the visitor alone could by reservation remove or limit his jurisdiction, and not this other Bishop upon whom he does not depend. But it is no wonder that the authors of a new confusion involve themselves in perpetual contradictions.

9. But let us pass to Suarez, from whom the VV. relate these things (p. 541; from disp. 30, sect. 1, no. 4): *The foundation is that he who thus remains in an alien Episcopate can confess and be absolved there not because he uses*

the faculty of choosing a Confessor, but because by this very fact, that he remains in an alien Episcopate, he can there be absolved after the manner of the inhabitants of that diocese and conduct himself as if he were a subject of the Bishop of that place; for in this sense the custom explained above and approved by Eugene IV must be understood. - To these things it can be replied briefly: 1. that the interpretation which Suarez here fastens upon the Declaration of Eugene IV is gratuitous and false, as is gathered both from the sense of the Doctors who are alleged in the Note and from those things said above, and indeed from the sense of Suarez himself; 2. that Suarez openly conflicts with himself when he here contends that jurisdiction in the case is had from elsewhere than through the election of the penitent; for we have already seen him several times defend that jurisdiction flows indirectly from the Ordinary of the penitent.

Another reason of Suarez (*loc. cit.*) is that confessors of another diocese are not bound to know which cases are reserved to another Bishop; therefore they ought to hear and judge the visitor according to the rite of their own Episcopate. Lugo also amplifies this reason thus (disp. 20, no. 72): *For the Confessors of this city neither ought nor can interrogate individual penitents concerning their native place, or whether they are travelers, and much less concerning cases reserved in their native place, which surely neither the Confessor of this city nor the traveling penitent himself can know.* Other authors also transcribed this argument.

Reply 1. But elsewhere we related these words of Bonacina (*On Penance*, disp. 5, q. 7, point 2, no. 6): *One who undertakes a journey for this purpose alone, that he may avoid his proper pastor and confess to another, cannot validly confess before the pastor or priest of the place at which he arrives, as Coninck, Vasquez, Suarez, Reginaldus, and other recent authors well observe.* And Suarez in fact writes thus (disp. 25, sect. 2, no. 9): *If someone were to undertake a journey only for this, that he might have the occasion of confessing to another and not to his proper priest, this would no longer be necessity but will, and it would not be according to the intention of the pastors nor according to the custom of the Church; and therefore the confession would not be valid.* Nor does Lugo think otherwise, who has these things in the clearest words (disp. 19, no. 7): *Those who travel and make a journey can now, from the tacit will of their pastors, confess even to the pastor whom they find in the place where they are, provided that they did not deliberately depart from their domicile in order that, on the occasion of the journey, they might confess to another.* How, then, is the Confessor said neither to be able nor to be bound at all to inquire concerning the diocese of the penitent and for what end he departed from it, when he knows that absolution will be invalid if the penitent deliberately departed in order to confess to an alien priest? And, moreover, it is no less necessary, as we shall see, to know concerning alien reserved cases.

2. Meanwhile, if the expression be permitted, a difficulty of this kind ought in a certain manner to provoke laughter if, setting aside for a little while the new theories which after Henriquez were built upon a heap of false allegations, we return to preceding times. Indeed: 1. before these novelties a visitor, as we have already seen, could not be absolved from reserved sins except in a case of some necessity, such as the occasion of the Paschal precept; 2. although Paludanus, St. Antoninus, and Cajetan, when speaking of absolution from reserved sins on the occasion of Easter, introduce no mention of any condition, nevertheless the Doctors more commonly, as is intimated in the Note, establish that an obligation must be imposed upon the penitent to disclose the reserved sin afterward also to his proper Ordinary.

But did this practice not require confessors to know that this or that sin was reserved in the diocese of the visitor? And since this practice flourished in the Church through so many centuries, yet we find not even the least indication among the Doctors that the ministry of this sacrament displayed any difficulty for this reason, what indeed is the reason that the recent authors, under the pretext of this difficulty, judge that all the principles concerning the economy of jurisdiction must necessarily be overthrown?

But, 3. we shall see a little later that the Apostolic See elsewhere prohibited by a most severe law that any confessor, whether Regular or Secular, should dare to absolve from sins which Ordinaries had reserved to themselves unless he had obtained from them a special faculty for this; and it was established that this was to be observed also concerning the reserved sins of other dioceses with regard to their subjects. But when Clement X confirmed for Regulars the privilege of absolving visitors in certain circumstances from sins reserved in their diocese, he imposed this condition: provided that they had not come in fraud of the reservation. But if anything were to be conceded to the reason which Suarez and Lugo, and afterward several others, repeat here, could anyone not with right represent these dispositions of the Apostolic See as less wise? Could anyone not repeat with Suarez and Lugo that a confessor neither knows nor is bound to know the reserved cases of other dioceses, and that he neither can nor ought to interrogate individual penitents as to which diocese they belong or whether they have reserved cases? How also could that which St. Alphonsus has (book 6, no. 590), and Scavini after him (tract 10, disp. 1, chapter 4, art. 2), be observed in practice: that a visitor cannot be absolved from censures reserved in his own diocese? Let it therefore be concluded that an argument of this kind has some appearance, but no solidity.

10. We must come to that part of the Note where there is discussion of the new theory brought forth by Lugo. Against this the VV. write an article (p. 541) with this title: *St. Alphonsus and Lugo Are Vindicated from the Injurious Attacks of Father B.*

Reply 1. There is no attack in the Note, but a merely historical exposition of the opinion both of Lugo and of St. Alphonsus.

Reply 2. One is called injurious who inflicts an injury; but an injury (law 1, ff. *De iniuriis*) is said to be that which is done not by right. Yet nothing occurs in the Note, as will soon become evident, which was said not by right. Therefore the attacks are called injurious without cause. But to the matter.

Enough was said in the Note at section 555, question 13, concerning the opinion of St. Alphonsus which denies that visitors are absolved from the will or consent of the respective Ordinaries, namely, from their indirect concession of jurisdiction.

But as regards Cardinal de Lugo, it is indeed seen that he also followed the common doctrine of all, otherwise most true and most certain, that jurisdiction for absolving a visitor is to be derived from the indirect delegation of the Ordinary of each penitent. And according to this sense he wrote (disp. 19, no. 7): *Those who travel and make a journey can now FROM THE TACIT WILL OF THEIR PASTORS confess even to the pastor whom they find in the place where they are.* And he added (ibid.) that almost all agree in this. Moreover, what he adds a little later (ibid., no. 9) returns to the same thing and confirms the opinion: that it is deservedly rejected by all that in this forum, namely, the penitential forum, jurisdiction is acquired by reason of a delict committed in such a place. But when he embraced the opinion which says that the norm of the place in which the confession is made is to be observed even concerning the absolution of the reserved sins of visitors, because otherwise an entirely intolerable care would be required in the Confessor, namely, of inquiring and knowing what the native place of individual penitents is and which cases are reserved in their dioceses, while from another side he recoiled from that absurdity which we already indicated above at the end of no. 8, namely, that jurisdiction delegated by the Ordinary of a visiting penitent is to be subjected to the laws and measures which another Bishop prescribed for jurisdiction granted by himself for other subjects, he took another new path, namely by having recourse to jurisdiction which would to some extent be acquired by custom alone.

Yet he expressed this opinion in such a way that, under a certain obscure wrapping of words, he appears to assert the very thing which he appears to deny in the same place. For he writes (disp. 20, no. 70): *I reply that the penitent in our case does not have from the Bishop a faculty of choosing a Confessor, but has a faculty introduced by custom and the approval of Prelates.* Now when he denies that a faculty of choosing a Confessor is had from the Bishop of the visitor, by that very fact, according to the sense received by all, he plainly appears to affirm that jurisdiction is not delegated by that Bishop. But, on the contrary, when he says that the penitent has a faculty (of choosing a confessor, surely) introduced by custom and the approval of Prelates, does he not affirm what he had previously denied: that the faculty of choosing a confessor is had from the approval, that is, the will and consent, of the proper Bishop? And if the faculty is had from the will and consent of the Bishop, does it not return that jurisdiction for absolving that penitent is indirectly delegated by the same Bishop?

But if you wish to attribute this sense to that obscure proposition, that by the approval of Prelates it is understood that not the faculty of choosing a confessor, but the custom, was introduced, we shall now ask: What is that custom? If you say the custom of choosing a confessor, behold, again we have this faculty granted by the Bishop and, consequently, a conflict with what precedes. But if you understand a custom by virtue of which, apart from at least the tacit concession of his proper Bishop, a visitor can be absolved by an alien priest, then we ask: Whence does that confessor have jurisdiction? For it is of divine law, as the Ecumenical Councils defined, that for absolving there is required either ordinary jurisdiction or jurisdiction delegated by one having ordinary jurisdiction. But it is absurd that ordinary jurisdiction was bestowed upon any confessor who might happen to be chosen by the visitor. Therefore it will be delegated jurisdiction; but by whom? Not by the Ordinary of the visitor, by hypothesis; nor, again, by the Ordinary of the Confessor, because he has no jurisdiction over one not his subject, nor therefore can he delegate to another what he does not have. Shall we therefore say that, according to Lugo, the Prelates approved this custom so that visitors, contrary to divine law, might be absolved by a priest who has neither ordinary nor delegated jurisdiction? But there is nothing wonderful in this. For you will never fail to find confusions of this kind, which conflict with themselves and with first principles, among those who, after Henriquez and Suarez, allowed themselves to be carried away by these novelties. Otherwise, even Lugo disposes of these most grave questions altogether lightly and in very few words.

11. In order to repel the charge of anachronism from the Declaration of Eugene IV invoked by Lugo and St. Alphonsus, the VV. write these things (p. 542): *Eugene IV, who died in the year 1447, pronounced that Declaration at the request of certain Prelates.... And when the same Prelates made it widely known, the custom by which pilgrims, with regard to the sacraments of Penance and the*

Eucharist, are equated with inhabitants of the place grew stronger and stronger. They then call Navarrus and Jacobus de Graffiis as witnesses of this custom.

Reply. I now pass over those things which the VV. fabricate concerning the request of Prelates who afterward promulgated the Declaration of Eugene IV, and the custom which thence grew stronger and stronger, etc. For this Declaration could have been nothing other than a reply given orally to someone on the occasion of some doubt or controversy raised by some parish priest; and the universal silence of all concerning this matter down to Cajetan commends this, for he writes that he had learned something of it from no other source than a chance reading. But the things which we are about to say will plainly show that whatever the VV. have fashioned concerning Prelates promulgating it and a custom gaining strength must be relegated to dreams. Now to the matter itself.

The witnesses of the custom produced for us by the VV. are Navarrus and Jacobus de

Graffiis. Let us begin with Navarrus. A twofold custom is found mentioned by Navarrus: one in the Commentaries on chapter *Placuit*, *De Poenit*., disp. 6, no. 32, by which priests could choose a confessor for themselves. Now with regard to this custom Navarrus replied (ibid., no. 33) that priests did this by the tacit or express faculty of their Superiors. But the custom of which Lugo speaks excludes a faculty of choosing which is from Superiors. Therefore the custom of which Navarrus speaks here does not pertain to the matter; indeed, it proves a contrary custom.

Navarrus mentions another custom in the *Manual*, chapter 27, no. 261, by which a Pastor having the faculty of absolving from cases reserved to his own Bishop could absolve a penitent of another Episcopate, with just permission granted to him, from sins reserved to his own Bishop. But this allegation labors under a twofold defect. First, because a custom of this kind, requiring, namely, that the confession of reserved sins be made to one having a faculty over reserved cases, is so far from being the custom of which Lugo speaks that he rejects it (disp. 20, no. 71). Second, because Navarrus here also supposes that just permission has been granted to the penitent. But the custom upon which Lugo relies requires that no permission be present. Therefore this also does not pertain to the matter; indeed, it commends the opposite.

Nor does the matter stand otherwise as regards the other witness. The VV. bring forward a passage from Jacobus de Graffiis in which he testifies (*Golden Decisions*, book 1, chapter 13, no. 48) that there was a custom at Naples by which a priest who has the FACULTY (of absolving) from cases reserved by his own Bishop can absolve the subjects of another Bishop from those reserved by him in his own diocese. But we have already said that this theory is not admitted by Lugo. Therefore these things also are not fit to bear witness to the custom which Lugo asserts. But let us inquire further: What did Graffius think concerning Lugo's hypothesis? Behold what he writes in the very place alleged by the VV. (no. 46): *It is asked whether a confessor can absolve one not his subject... from some sin reserved to his own Bishop, which nevertheless is not reserved where he confesses; for example, the Bishop of Nola has reserved adultery to himself, which is not reserved where the adulterer confesses, namely, at Naples: can a confessor appointed by the Archbishop of Naples absolve him? I reply that... if he has not changed his domicile, as is the case with pilgrims, THEN HE CANNOT BE ABSOLVED; because, since by reason of domicile and habitation one is called a subject..., therefore he is not said to be exempted from subjection to his own Bishop, who reserved the sin, and consequently he cannot be absolved.* Graffius therefore professes without ambiguity a doctrine diametrically opposed to that which Lugo and St. Alphonsus defend and for which they allege custom. What, then, might someone perhaps think of the VV., who allege and relate from Graffius the things following a little later and therefore could not have failed to see those adduced here also, yet do not hesitate to allege Graffius for that fabricated custom?

12. But for fuller evidence of the matter, it will not have been enough to show that the only two witnesses whom the VV. produce are wrongly alleged by them and moreover commend the opposite; besides, these would have been less suitable for proving a custom which existed in the age of Eugene IV, since they were later by a century and more, and in fact these two speak of the usage of their own age, not of an earlier one. Let us therefore inquire concerning the age of Eugene IV, when Eugene is said to have approved this custom as already existing, and then concerning the following age, when according to the VV. this custom grew stronger and stronger.

St. Antoninus was contemporary with Eugene, indeed was appointed Archbishop by Eugene himself. What does St. Antoninus say concerning that custom? In a few words: that custom, as Lugo says, supposes that the penitent does not have from the Bishop a faculty of choosing a confessor. But St. Antoninus has this (*Summa*, part 3, tit. 17, chapter 4): *Concerning pilgrims it must indeed be said that, if they departed without the permission of their Pastors and Bishops, they have no privilege in this matter.*

In this Innocent, Hostiensis, and William agree, namely, that pilgrims and merchants, and other travelers, if they do not have permission from their Pastors or Bishops..., cannot be absolved by others. Therefore St. Antoninus openly testifies that the opposite custom existed.

The same is evident also from the *Summa Pisana*, which St. Antoninus often praises. For it has these things (word *Confession* III): *Can pilgrims confess to an alien priest? I reply: if they received the scrip and staff from their proper priests, or otherwise undertook the journey with their permission, it is to be presumed that permission to confess was given to them.... But if they travel without the permission of their proper priest, they cannot be absolved by another except in necessity.* And a little below: *Whether a pilgrim who has a crime whose absolution the Bishop had retained to himself can be absolved by a simple priest while on pilgrimage? I reply: He can be absolved, especially if the time of general confession is at hand, as at Easter. But it must be enjoined upon him that, when he has access to his Bishop, he confess it to him again and receive penance from him for it.... But if there was no necessity, neither was the absolution valid. Concerning which necessity it was said above. There it is said of the necessity of danger of death. And thus the Author seems to hold that the approaching time of Communion is not a just cause why anyone can be absolved by an alien priest.* Do not these things in all their parts oppose the custom fabricated by the VV. and show that it was falsely fashioned?

And in the *Summa Armilla* of Bartholomew Fumus (word *Absolution*, no. 30): *When someone has permission to confess from the Bishop or Pastor, he will not on this account be able to be absolved from reserved cases, because this is contrary to the disposition of the law in chapter Si Episcopus; and thus Cajetan holds.* Therefore, contrary to what that boasted custom would imply, Fumus both requires permission to choose a confessor and denies a faculty over reserved cases.

And in the *Summa* entitled *Summula of Raymond* (tract 4, chapter 5): *Concerning traveling pilgrims I gather... that if they do not contract a stay anywhere* (namely, a domicile), *they will not be able to confess there unless they have received from their proper Bishop or parish priest permission to confess anywhere...; because then they could also confess and be absolved there; ... nevertheless it would be safer to seek permission specially, and that the cases which his Bishop reserves to himself be declared to him, since they cannot be absolved from such cases without his permission.* Do not these things also show that a custom existed altogether opposite to that which the VV. wrongly boast to have existed already from the age of Eugene IV and afterward to have grown stronger?

13. But indeed it must now seem superfluous to add the many things which would readily be at hand on the same matter, when even the VV. were able to produce nothing more suitable to the matter than those two testimonies of Navarrus and Graffius, which are most unsuitable to the cause of the VV. themselves and indeed manifestly overthrow their assertions entirely. Yet whoever desires more may approach the Authors alleged in Gury's text regarding the present question, and he will find as many truthful witnesses against that fabricated custom, traces of which he will find neither before the novelties introduced by Henriquez and Suarez nor even afterward, before Lugo, in order to avoid the absurdities with which the new Suarezian theory also abounds, entered upon this new path, assuredly with less success.

And indeed another blemish is not lacking in the appeal to the Declaration of Eugene IV. Cajetan, to be sure, is the sole witness who found a remembrance of this Declaration (where it was written he does not say); therefore what kind of Declaration this was can and must be elicited from Cajetan alone, and consequently whatever others have added as an appendage, which is not necessarily elicited from Cajetan's words, must be called gratuitously devised and asserted.

In the first place, therefore, it is most manifestly established from Cajetan's words that the Declaration of Eugene IV pertained solely to the occasion of annual confession and Communion at Easter.

Thus Cajetan: *I remember having read elsewhere that Eugene IV granted or declared by an oral oracle that travelers, wherever they found themselves AT EASTER, were to be considered as having acquired inhabitancy with regard to the sacraments of Penance and the Eucharist.* Moreover, from the testimony of Cajetan, which alone can be held as authentic here, it is so certain that this Declaration regards only the occasion of Easter that he expressly denies that it can be extended to other occasions. What is it, therefore, that both Suarez and Lugo, and others after them, when they establish as a general rule upon which their whole edifice in fact rests that pilgrims as visitors and travelers must always be held as inhabitants of the place with regard to the sacrament of Penance, place the chief, not to say sole, foundation of this rule in the Declaration of Eugene? What is it that they hand down this rule of theirs as a custom approved by Eugene when Eugene's Declaration pertains merely to the occasion of Easter?

Nor is this enough. For what, at last, was that which Eugene declared concerning the occasion of Easter? Dominic Soto (*In IV Sent.*, dist. 18, q. 4, art. 2) saw this alone in the Declaration: that *pilgrims and wanderers, as parishioners of the towns where they find themselves, ought to confess only to the plebans* (by which name he seems to understand confessors appointed there), *because they ought not to be of freer condition than the inhabitants.* For thus he understands the words of the Declaration described there from Cajetan: *to be considered as having acquired inhabitancy.* Nor otherwise Peter Soto (*Instruction of Priests, On Confession*,

lecture 5): *Cajetan reasonably judges, from the concession of the Pontiffs..., that every traveler can be absolved wherever he finds himself at Easter, and by that right by which the other subjects of that place are, that is, by those by whom the others are absolved.* Navarrus also refers the Declaration of Eugene to this (*On chapter Placuit*, disp. 6, no. 66), saying: *In favor of Thomas de Vio is what he says he read somewhere: that Eugene declared by an oral oracle that travelers, in the place where they were found, were to be considered as inhabitants of that place with regard to the sacraments of the Eucharist and Penance. Since, therefore, inhabitants can confess to no others than their own pastor, it follows that nothing else is to be conceded to pilgrims.* And Filliucius (tract 7, chapter 7, no. 195): *Pilgrims and those making a journey... from custom and the tacit permission of Pastors can confess either to the pastor of the place... or to other delegated priests.... Cajetan also relates that Eugene IV declared this in annual confession or Communion; therefore much more at other times.* Therefore what Eugene IV declared is finally concluded in these things: 1. that when Easter time occurs, travelers can make their confession and receive the Holy Eucharist in the place where they are then found; 2. that they ought to make confession there either to the pastor or to other delegated priests, no otherwise than the inhabitants, since travelers ought not to be of a better condition than the inhabitants, so that, namely, to use Cajetan's words, *they can choose as confessor whomever they wish*.

And since these things are so, what, I ask, was there in the Declaration of Eugene IV upon which both Suarez and Lugo could construct their theories? What was there by which Lugo might contend that a custom of which no one before him had thought was confirmed by Eugene? But now to other things; for what has been said thus far makes sufficiently plain whether the history of the vicissitudes of this controversy and of the immense confusion introduced into it, as it was outlined in the Note, is genuine or, as the VV. prefer (p. 543), spurious. But now to other things.

14. The VV. append another article with the title (p. 542): *St. Alphonsus with the best right considers the affirmative opinion* (namely, that a visitor can be absolved from his own reserved sins by any confessor if they are not reserved in the place of confession) *most common*; and then through seven columns they bring forward texts of twenty-nine Authors besides nine others whom the holy Doctor Alphonsus had alleged.

Reply. The question is not whether many entered upon the new and false path which Henriquez and Suarez had opened; for this stood clearly stated in the Note. And otherwise those allegations of theirs by no means prove that the history set forth in the Note is false and spurious.

In order to prove that the history set forth in the Note is spurious, behold the heads which they ought to have proved by solid arguments:

1. That the most common doctrine of all the schools unanimously, as it is exhibited in the Note, did not exist until Henriquez undertook to corrupt it, and Suarez after him.

2. That Henriquez, relying upon equipment other and suitable than a heap of fallacious allegations, introduced his new canon. Why did the VV. devote not even a few lines to repelling this charge? Why did the VV. not attempt to show that at least one of all those allegations of Henriquez pertained to the matter?

3. That the new inverted canon concerning subjecting a pilgrim to the reservations of the diocese where he confesses was not first introduced by Suarez.

4. That Lugo did not cast aside even those principles in which the essence of sacramental judgment is contained, so that he might in some way escape the absurdities which necessarily followed the new theory of Suarez.

5. That both the custom and the force of that custom, as Lugo supposes it, were so acknowledged and approved from antiquity that, apart from an incredible anachronism, it could be said to have been confirmed by Eugene IV.

6. That the oral Declaration of Eugene IV, if there was any, was not converted by Villalobos into a certain Decretal Constitution solely by a remarkable power of imagination.

But the VV. have accomplished none of these things, nor do the allegations of so many Authors which they add accomplish the same. Indeed, another labor would remain for the VV. regarding those Authors, namely, that they purge those Authors from the charge of contradictions in which they perpetually involve themselves. For, to say only one thing, setting aside now those authors who plainly show that they themselves do not sufficiently know why they affirm or deny something concerning these questions, you will find others who wish to render some reason for their assertions, on the one side asserting jurisdiction delegated to the confessor by the Ordinary of the penitent, but on the other supposing the same jurisdiction to have been granted not by the Ordinary of the penitent but by the Ordinary of the confessor, and therefore to be restricted or not restricted. But we have already said more than once: after authors, with Henriquez and especially

Suarez as leaders, began to depart from the beaten and most correct path of the ancients, whose principles nevertheless they could not all deny, this series of contradictions could be avoided in no way.

15. But since the VV. attacked both the present Note and the Note immediately following at the same time, and the matter bears it because each Note pertains to the same question, we shall append here a reply also to those things.

First, therefore, through eight columns (pp. 547-550) the VV. attack what is said in the Note, namely, that in the Constitution *Superna* of Clement X there is question merely of the privilege of Regulars, namely, the privilege of absolving visitors from sins reserved in their own diocese. *It is not true*, they say (p. 548), *that it is the common opinion that in the same Constitution there is question merely of the privilege of Regulars*.

Reply. At first sight someone will perhaps understand with difficulty what the VV. mean here or to what this paradox of theirs tends. The words of the Constitution are these: *But that a Regular Confessor can, in the diocese in which he is approved, absolve those coming together from another diocese from sins reserved in it*, etc. Now the VV. first appear to wish to deny that there is question of a privilege. For they observe (p. 548) that the word *can* and the title of the Constitution prove nothing; and they give the reason (p. 548), that in the Constitution there is merely defined what Regulars can and cannot do. To these things, Reply. The title of the Constitution is this: *A Constitution in which the privileges of Regulars with regard to... the administration of the Sacrament of Penance are declared.* Now since the word *can* signifies *to have power*, while what kind of power is in question must be drawn from the nature of the matter being treated, and the subject is a Declaration of Privileges, it is manifest that power of this kind pertains to privileges.

But this is more clearly evident from the context in which the alleged clause lies. For where mention of privileges is made in the Constitution, only these things are had (sections 6 and 7): 1. that by virtue of privileges Regulars cannot absolve from cases reserved to himself by the Bishop; 2. that by confirmations of privileges obtained after Trent, the privilege, if any which Regulars had, of absolving from cases reserved to the Bishop did not revive; 3. that those having a faculty of absolving from all cases reserved to the Apostolic See cannot on that account absolve from cases reserved to the Bishop; but that they can... absolve those coming together from another diocese from sins reserved in it; 4. finally, that by virtue of the aforesaid privileges it is not lawful for Regulars to absolve penitents from censures with regard to the external forum. Since, therefore, it is there declared what by virtue of privileges they can or cannot do concerning the questions raised, while the sole power asserted there for Regulars is that they can absolve those coming together from another diocese from things reserved there, it clearly appears that this power pertains to privileges.

And this is elicited thence by another most evident argument. For after it is there said that BY VIRTUE OF PRIVILEGES it is not lawful for Regulars to absolve penitents from censures with regard to the external forum, etc., it is added: *Indeed, those bound by ecclesiastical censures and denounced can be compelled by the Bishops to conduct themselves as such.* Whence thus: here there is manifestly question of cases from which Regulars absolved by virtue of privileges; therefore there is question of reserved cases, for otherwise no privilege is required to absolve from them; moreover, there is question of cases reserved to a Bishop, as is evident from the cited words of the Constitution; finally, there is question of things reserved in another diocese, because from things reserved to the Bishop in the diocese where the Regular is approved, the Constitution itself, as we saw, declares that Regulars cannot absolve by virtue of privileges. Therefore it is most evident that the faculty of absolving those coming together from another diocese from things reserved there, etc., is declared in the Constitution itself as a privilege of Regulars. And behold the reason why the assertion of the VV. can deservedly be called a paradox.

16. But since the VV. (p. 547) do not hesitate to write that the concession concerning cases not reserved in the diocese of the Confessor, which is contained in the Constitution *Superna* of Clement X, is not a privilege specially conceded to Regulars, and moreover contend (*loc. cit.*) that this very thing is confirmed from a certain declaration of the Sacred Congregation of the Council, it will certainly be profitable, for refuting prejudices of this kind, briefly to weave the history of those things concerning the absolution of episcopal cases which preceded the Constitution of Clement X: namely, whence arose the disagreements concerning this matter between Bishops and Regulars, to the removal of which Clement applied his hand. For, as John Marin writes (*Speculative and Moral Theology*, tract 22, disp. 10, no. 45), *Clement X, since before his Pontificate he had a complete knowledge of it because for more than thirty years he had been Secretary of the Sacred Congregation, after he was elected Pontiff, desiring to extinguish disagreements of this kind, promulgated the Bull*, etc.

We therefore see that the origin of the disagreements arose from the fact that Bishops bore it unwillingly that Regulars, by virtue of their privileges, attributed to themselves the faculty of absolving even from episcopal cases. For that Regulars absolved from these we have witnesses prior to Trent. Thus Fumus (*Armilla*, word *Absolution*, no. 26): *The Friars who are held as presented according to the aforesaid form of the Clementine Dudum can absolve from all cases* (except precisely those reserved to the

Bishop or Superior BY LAW), *however much other cases may be reserved to the Bishop by custom or Constitution or another's good pleasure.... Because the grace which the Pope grants, namely, to be able to absolve from all unless they are reserved BY LAW, cannot be revoked or restricted by an inferior.... Therefore this opinion is to be held and practiced.*

And the *Summa Tabiena* (word *Dispensation*, no. 16): *Since, therefore, the aforesaid Friars cannot absolve from cases reserved to Bishops BY LAW, as is said in the Clementine Dudum, therefore they can absolve from all others, as from those reserved by a particular custom of the place or by a synodal Constitution; because, by denying one thing, it conceded the other by being silent.... Nor can Prelates revoke or curtail the aforesaid concession, not directly, by denying the hearing of Confession, because they have it through the Clementine Dudum; not indirectly, by prohibiting parishioners from confessing to them..., nor by the retention of many cases, because this would be done in fraud of the law, which ought not to be done.* After Sylvester related this opinion (*Summa*, word *Confessor* II, no. 5), he adds: *Which opinion all Summists and Doctors commonly follow, and this reasonably and truly.* Reginaldus testifies that Alphonsus Vivaldus held this same thing toward the close of the sixteenth century (book 8, no. 55). See also Lezana (*Summa of Regular Questions*, vol. 1, chapter 19, no. 17). Yet that there were some who contradicted is sufficiently indicated by the witnesses alleged, as also by Navarrus (*Manual*, chapter 27, no. 266).

Let us pause here a little. This controversy, to which Clement X finally put an end, rested wholly upon this, as is evident: how far the privileges of Regulars extended. But in that age no one, as we saw above, even dreamed of a faculty which unprivileged secular confessors might have for absolving episcopal cases; for the novelties introduced by Henriquez and Suarez had not yet disturbed this question. Therefore neither the controversy itself nor its resolution pertains in any way to unprivileged seculars. But to the history.

17. Meanwhile, in the year 1577, when St. Charles asked the Sacred Congregation of the Council whether Regulars could by privilege absolve in cases which the Bishop had reserved to himself, and the Congregation referred the matter to His Holiness, His Holiness, also following the opinion of the Congregation, judged that from the faculties granted to Regulars through the *mare magnum* or other privileges no power had been given to them of absolving from cases reserved to himself by the Bishop.

Under Clement VIII there followed a decree of the Sacred Congregation of Bishops and Regulars, issued January 9, 1601, by which all priests, both Secular and Regular, were commanded that none of them, under the pretext of privileges, indults, or faculties, etc., should dare to absolve anyone from the cases contained in the Bull *In Coena Domini*, or otherwise in any way reserved to the Apostolic See, nor even from cases which the Ordinaries of places had reserved to themselves. But afterward, by another decree of November 26, 1602, the same Sacred Congregation, by mandate of Clement VIII, thus moderates and declares the preceding Decree: namely, that under its prohibition henceforth are comprehended only the cases in the Bull *In Coena Domini*, and in addition (there are appended here the well-known five cases thereafter called Clementine), likewise all cases which the Ordinaries of places have reserved or will reserve to themselves in the future.

Again let us pause here a little. The VV. will reply that from the decree itself it is elicited that the controversy was also about secular confessors. Reply. I distinguish: concerning seculars endowed with some privilege or indult, I concede; concerning others, I deny. This is evident not only from the cited words of the Decree of 1601, but the Decree of 1602 speaks more clearly for our matter thus: *Moreover, it declares that those priests, both Secular and Regular, WHO SHALL BE SUPPORTED BY ANY OF THE PRIVILEGES, INDULTS, AND FACULTIES EXPRESSED IN THE AFORESAID DECREE, can, according to their privileges, indults, and faculties..., absolve from cases not comprehended in the present Declaration; BUT TO OTHER

PRIESTS NOT HAVING PRIVILEGES OF THIS KIND, NOTHING NEW IS CONCEDED.* Therefore unprivileged secular priests HAVE NOTHING. Therefore the controversy, which did not reach its end even after this Decree, in no way pertains to them.

18. I said that even after this decree no end was made to the controversies. For, as is evident from the Declaration of the Sacred Congregation of Bishops and Regulars of January 7, 1617, very many Regulars did not hesitate to absolve from reserved cases, asserting that in the Decrees issued by command of Clement VIII excommunications reserved to the Apostolic See or to Ordinaries were by no means comprehended. Therefore the Sacred Congregation, by mandate of Paul V, renewed the preceding Decrees and, declaring in addition, commanded that none of the aforesaid priests, supported by whatsoever privileges, indults, and faculties, should dare or presume to absolve from excommunications or from cases reserved to the same Ordinaries or to the Apostolic See.

But still there was no end to the controversy. For the Regulars, adhering to the words of the above-mentioned Decree issued by command of Clement VIII on January 9, 1601, namely, *He commands all priests, both Secular and Regular, dwelling THROUGHOUT ALL ITALY OUTSIDE THE CITY...*, concluded, with some appearance of truth, that those who dwelt outside Italy or within the City, and indeed within the district of the City, were not bound by that Decree. Hence they contended that it was lawful for them in those places to absolve both from cases reserved to himself by the Bishop and also from those contained in the Bull *In Coena Domini*. Therefore, behold, the same Sacred Congregation again, on November 17, 1628, by command of Urban VIII, issued a Decree that *Regulars of whatsoever Order... neither within nor outside Italy, by force of privileges..., can absolve anyone from the same cases in the Bull In Coena Domini or reserved to the Ordinary of the place; and if they act otherwise, the absolutions will be and are null and void.* And here it is useful to observe that, according to Thesaurus (part 2, word *Absolution*, chapter 3, no. 4), by the name of secular Priests endowed with some privilege in the preceding Decrees were designated certain churches or distinguished sanctuaries in which those visiting them could by privilege be absolved from reserved cases. Of these, indeed, we see mention made in the decree under Paul V in the year 1617; but in the last one under Urban VIII, Regulars alone now come forward.

Moreover, that even this last decree of Urban VIII did not remove the controversy, behold Sporer as witness, who has these things (*Sacramental Theology*, part 3, no. 746): *By the same privilege and by the same most reasonable extension, in the more common and safe opinion, on account of the very ample and most universal clauses of the Bulls..., we Mendicant Regulars absolved from cases reserved by Bishops ab homine, namely, those which the Bishops themselves, each in his own diocese, reserve to himself, even notwithstanding the Decree of Urban VIII of November 17, 1628, prohibiting this absolution, because that Decree either did not extend outside Italy or certainly was not sufficiently promulgated.* But afterward so many authentic Bulls and Declarations in favor of Bishops were published or became known that, after weighing them, Alexander VII, in the thirteenth place among the condemned propositions, prohibited this also: *Mendicants can absolve from cases reserved to Bishops without obtaining for this the faculty of the Bishops.* Here again Regulars alone appear implicated in that controversy; and since the Decree of Alexander VII was issued in the year 1665, we now almost reach the time when Clement X defined this question in the manner which we have seen.

19. Meanwhile, it had already been observed, as Wigandt has (tract 14, examination 2, no. 59), that the precept imposed upon Regulars not to absolve from cases reserved to the Bishop was to be understood of those reserved by the Bishop of the place where confession is heard. Thus Wigandt: *When Clement VIII... prohibited confessors from absolving from cases reserved to Ordinaries, it must be understood of the respective Ordinaries, namely, of those places where those confessors are found.*

And, to omit others, Filliucius also noted this same thing (tract 7, chapter 9, no. 284), writing: *I reply that the prohibition of Clement VIII must be understood of the respective Ordinaries, that is: let no one absolve from things reserved to his own Ordinary; but he is not prohibited from things reserved to another, not his own, because there is no discussion of this reservation in that decree.*

And indeed in favor of this interpretation is the fact that the same Clement VIII, in another Constitution which begins *Quaecumque a Sede Apostolica* (December 7, 1604, section 9), uses this same manner of speaking thus: *We decree, moreover, that the same confessors... can in no way absolve... from other cases reserved and to be reserved for the time being, both by Us and by Our aforesaid Vicar in the City, and by the respective Ordinaries of places.*

To this also pertains the fact that Urban VIII, in the Decree of November 17, 1628 cited above, restricts the prohibition to cases reserved to the Ordinary of the place: *Regulars... neither within nor outside Italy can, by force of privileges, absolve anyone from cases... reserved to the Ordinary of the place.*

Therefore, since the prohibition of absolving from reserved cases was to be understood of those reserved to the Ordinary of the place in which the confessor was approved; and since Regulars could use their privileges even according to the decree of Clement VIII; and finally, since by virtue of privileges they could absolve penitents coming from anywhere even from things reserved in their own diocese, the conclusion was obvious that, even after the Decree of Clement VIII, Regulars could absolve visitors also from things reserved in their respective dioceses.

20. And that this conclusion was most correct, Fagnanus supplies us a clear argument, for he discharged the office of Secretary of the Sacred Congregation of the Council for many years and dictated his work a little before the Pontificate of Clement X. For thus he, when discussing chapter *Si Episcopus* of Boniface VIII, by which, as he says, custom is not simply taken away, but no custom can be introduced because it conflicts with the principles of its introduction, afterward adds these things (*On chapter Omnis utriusque*, no. 95): *But because this question does not belong to the present inquiry, we have not judged that we should dwell longer upon it. It is enough, as regards the doubt now being treated, that Regulars in the diocese in which they are approved can absolve those coming together even from cases reserved in another diocese; for in this an APOSTOLIC PRIVILEGE effects more than custom*, etc.

But what especially bears upon the present purpose, Fagnanus denies that this faculty is common to secular priests. Thus he (*loc. cit.*): *Yet this opinion, as regards secular priests, suffers the greatest difficulty, indeed does not appear true; because it can be introduced by no custom that anyone, apart from the permission of his Superior, can choose for himself a confessor who can loose or bind him, which are the formal words of the text in chapter 2, Si Episcopus.*

Thus also Reiffenstuel, who himself wrote before the Constitution of Clement X (*Moral Theology*, tract 14, dist. 9, q. 1, no. 2): *Regulars within the diocese of the approving Bishop can absolve a penitent of another diocese from cases reserved in the diocese of the penitent, if these are not reserved in the diocese in which they hear confessions, since Regulars have jurisdiction from the Pope.*

Indeed, Ferraris indicates that this had already been declared by the Sacred Congregation before the Constitution of Clement X (word *Reservation of Cases*, no. 4). For after he said: *Hence penitents coming together from another diocese with sins reserved in it can be absolved by a Regular in the diocese in which he is approved*, etc., and related in confirmation of it the text from the Constitution of Clement X, he proceeds thus: *For that Regulars within the diocese of the approving Bishop can absolve even penitents of another diocese had already been expressly declared by the Sacred Congregation of the Council in Fagnanus..., because they have jurisdiction from the Pope, whose ju-*

risdiction is not restricted to the boundaries of any territory..., but the whole world is his diocese.

Let us therefore conclude that the history also of those things which preceded the Constitution of Clement X concerning this controversy all tends to this: that the words of Clement pertain merely to declaring and confirming the privilege of Regulars.

21. The VV. object here (p. 547) that that multitude of Authors concerning whom there was discussion above, no. 14, hold that the declaration of Clement X pertains not to a privilege specially granted to Regulars but to all confessors, even seculars.

Reply. I distinguish: those Authors inconsiderately followed the badly founded opinion of Suarez, I concede; they denied that it belonged to Regulars by privilege or that this privilege had been granted by the Apostolic See to all, I deny. One obscure Author of the theology for the Seminary of Perigueux insinuates this; but from the very fact that he alone dared to teach what, in a matter so obvious, no one else thought himself permitted to affirm, he sufficiently condemns himself.

I said, the badly founded opinion of Suarez. For all the things which Suarez has concerning this matter (*On Penance*, disp. 30, sect. 1, no. 4) are finally contained in these words: *Some therefore absolutely deny that a visitor can be absolved there from cases of this kind* (reserved in his own diocese). *Soto holds this, and Navarrus indicates it. The foundation is that reserved cases are not comprehended in a general faculty according to chapter Si Episcopus 2, De Poenit. et Remiss. in VI; but that faculty* (given to visitors by their proper Ordinary) *is only general. Nevertheless, the contrary opinion, which Cajetan, Paludanus, and St. Antoninus hold, pleases me more. The foundation is that he who thus remains in an alien Episcopate can confess and be absolved there, not because he uses a faculty of choosing a confessor, but because, by this very fact that he remains in an alien Episcopate, he can be absolved there after the manner of the inhabitants of that diocese and conduct himself as if he were a subject of the Bishop of that place; for in this sense the custom explained above and confirmed by Eugene IV must be understood.* All of which things, with the reverence due to the distinguished Doctor preserved, can deservedly appear intolerable. For: 1. What is it that he attributes the negative opinion to Dominic Soto alone, when this was the unanimous doctrine of all preceding Doctors, and indeed founded upon the essence of this sacrament? 2. What does that phrase, *and Navarrus indicates it*, mean, when Navarrus also openly professed the negative opinion, as above, no. 5, unless perhaps the chosen Confessor was endowed with a faculty over reserved cases also? 3. What is it that he proposes as a general rule for every occasion what Paludanus, St. Antoninus, and Cajetan had said, as above, nos. 2-3, concerning the sole case of necessity on the occasion of Easter? 4. What is it that he adduces the Declaration of Eugene IV for the same matter, when Cajetan, from whom he took this, in the most explicit words absolutely denies that Eugene's Declaration has any place outside the occasion of Easter? 5. What is it that he there poses the question concerning the concession of jurisdiction through a faculty of choosing a confessor granted to one making a journey, by which tacit faculty introduced by custom the traveler can confess; and a little later, when resolving the question, contradicting himself or at least submitting elements foreign to the proposed question, disputes concerning a custom in which that faculty of choosing a confessor has no part? And indeed he introduces that custom which he himself elsewhere denied could be introduced because it was repugnant to divine law. See above, note at section 555, question 13, no. 19. Behold the foundation, and indeed the sole foundation, of that new opinion introduced against the unanimous doctrine of the ancients!

22. The VV. insist (p. 547) with those things which Benedict XIV has (*On the Diocesan Synod*, book 5, chapter 5, no. 8), where a Response of the Sacred Congregation of the Council of September 16, 1649, is commemorated. They conclude:

Therefore, generally and without distinguishing between Regular and Secular Confessors, the Sacred Congregation declared the absolution invalid if the penitent departed fraudulently from his own diocese in order to avoid the reservation. From which declaration it must necessarily be gathered that penitents who departed for another purpose can be absolved.

Reply. Let the Antecedent pass, and I deny the Consequence which the VV. infer. The case proposed to the Sacred Congregation, as it is read in vol. 18 of the Decrees, p. 677, is this: *Since an abuse has crept into the Diocese of Conza whereby many obtain absolutions from cases reserved to the Archbishop from neighboring Ordinaries, under the pretext that cases reserved in one diocese are not reserved in another, it is asked whether an absolution of this kind can be sustained. The Sacred Congregation replied that absolution of penitents who fraudulently transfer themselves to another diocese cannot be sustained.* Therefore the Sacred Congregation resolves the question by adding that reason which holds in every hypothesis. But it entirely passes over the controversy concerning the fitness of the minister for absolving from reserved cases. Therefore nothing can be forced from this. Add that in the Question there is discussion not of a simple confessor but of Ordinaries; but by the name Ordinary a Bishop is understood. Therefore for another reason this resolution does not pertain to the matter, because the VV. dispute concerning a simple confessor. But what is prefaced in the cited book *On the Synod* is nothing. *Moreover* (thus there), *this opinion formerly invaded the minds of many: that it was free to anyone to pass from his own diocese, where he had fallen into a reserved case, to another in which it was not reserved, for this purpose, that he might there be absolved by a simple confessor.* And then the Declaration of the Sacred Congregation cited here is appended against that opinion. This, I say, is nothing. For it pronounces no judgment concerning that opinion beyond condemning the fraud; indeed, since in the Response of the Sacred Congregation there is no discussion, as we observed, of a simple confessor, it is plain that Lambertini passed over this question entirely. But if the VV. wish to contend that he inclined toward the new Suarezian opinion because he afterward appends certain words of that obscure Author of the theology for the Seminary of Perigueux whom we mentioned, another will reply: Let it pass.

23. The VV. object (p. 548) that the Authors alleged in the Note as testifying that the decree of Clement X regards Regulars rather hold the opposite.

Reply. I distinguish: that is, those Authors after the Suarezian novelties attribute the same faculty to secular confessors, let it pass; they do not admit that the decree was issued for Regulars, I deny. Let these things related by the VV. themselves serve as a specimen. Collet: *The things which are said in the Constitution concerning Regulars, parity of cause commands to be extended to others*, etc. And Roncaglia: *Although the Pontiff there speaks of Regular Confessors*, etc. Say the same of the rest.

24. The VV. reprehend (p. 549) what is said in the Note, that the faculty bestowed upon Regulars in the Constitution of Clement X is circumscribed by this condition: that they not absolve from things reserved in both dioceses. They object, on the contrary, that this is not a limitation imposed by Clement but is the unanimous opinion of all, because, as Suarez says, the Confessor has delegated jurisdiction from neither Bishop.

Reply. This objection can have some force as regards the followers of the novelties of Suarez himself, let it pass; as regards those who think that they must not depart from the most correct doctrine of the ancients, I deny. In the preceding Notes it has already been shown that, according to the most true and certain doctrine of the ancients, which the more recent authors, perpetually contradicting themselves, now admit and now forget, jurisdiction for absolving a visitor is delegated not by the Bishop of the place but by the Ordinary of the visitor. Moreover, it is a canon, as Engel says, that *a delegate judges not from his own jurisdiction but from the jurisdiction of the one delegating* (argument from chapter *Sane* 11, *De officio Delegati*), or, as Schmalzgrueber expresses the same canon (book 1, tit. 29, no. 31), *The power of a delegate must be measured from the authority and power of the one delegating and, with the common and from the mandate granted. For the Delegate, in the jurisdiction granted to him, acts in the place of the one delegating.* Hence, as we saw elsewhere, Lugo most deservedly judged absurd the Suarezian theory by force of which another Bishop, upon whom he does not depend, can take away or limit jurisdiction delegated by one Bishop. Wherefore, when there is discussion of absolving a visitor, nowhere among the ancients will you find any account taken of the jurisdiction which the confessor obtains from the Bishop of the place or of the reservation which prevails there. Since these things are so, the consequence is obvious in itself: a Regular confessor can assuredly absolve a visitor, however the latter may bring a sin reserved in both dioceses. For the diocesan reservation of the place does not stand in the way, because this pertains nothing to the cause, as was said; likewise, the reservation of the alien diocese does not stand in the way, because a Regular confessor, by virtue of privileges, can absolve those coming from alien dioceses even from reserved cases. Therefore, the matter considered solely in itself, nothing prevents a Regular from absolving from a sin reserved in both dioceses. Therefore he cannot do so only because the Apostolic See, which bestowed upon the Regular the privilege

that he could absolve a visitor from his own reserved sins, wished to restrict that faculty by this condition: namely, if the same sins are not reserved also in the diocese of the confessor.

But if also in this place there is need of some material example, so to speak, to explain the matter for the capacity of an unlearned man, imagine a Regular who wishes to use that privilege concerning which St. Alphonsus speaks (book 6, no. 586), namely, of choosing, even without the permission of Superiors, once in life a confessor who may absolve him from any reserved cases; then imagine some sin of his to be reserved to the Ordinary of the place. Would anyone therefore say that a Regular of this kind cannot be absolved by the chosen confessor? And is not this rule common to all exempt persons? And are not visitors exempt by reason of territory? Therefore the same thing must be said in the proposed question, unless Clement X had circumscribed the privilege of Regulars in that manner, to greater abundance, in favor of Bishops.

25. But it will help to indicate here a typographical error which crept into the *Vindiciae* in this place. For after we read there (p. 549) that it was the unanimous opinion that pilgrims cannot be absolved whenever the case is reserved in BOTH dioceses, immediately afterward (p. 550) you find it written thus: *But the Authors do not even specially propose the case in which the sin is reserved in BOTH dioceses. Those who commemorate this case, such as La Croix and Amort, commemorate it for another end.* In these things, do you not have an open contradiction? But the contradiction is absent when in the second text you read not *both*, but *either*. For the words of the VV. regard that clause of the Note where it is said: *From which it also becomes manifest that someone could vainly suspect that those words of Clement X regard the case in which the sin is reserved in only one of the two dioceses.* For the words of the VV. also refer to the sense of Clement's text.

And indeed the VV. themselves (p. 550) bring forward for this same matter texts both from Croix and from Amort. For Croix (book 6, part 2, no. 1631) writes in express words: *But if the case is not reserved in the diocese of the penitent but only in the diocese of the confessor, Clement declares nothing expressly concerning this case.* And Amort (*Scholastic Theology, On Penance*, disp. 9, q. 26): *But I judge that no argument can be elicited from that Bull of Clement X, because the Pontiff does not deny that pilgrims can be absolved from sins reserved only in the diocese of the confessor, but precisely denies that they can be absolved from sins if they are reserved simultaneously in their own and the alien diocese.*

We have Voit alone, who, in order to elicit from Clement's Bull that a pilgrim cannot be absolved by any confessor if he confesses a sin reserved only in the diocese of the confessor but not in his own, reasons thus (vol. 2, no. 840): *Clement X establishes that a confessor can absolve those coming together from another diocese from things reserved elsewhere, but not from things reserved in that where the same confessor is approved.* But how does he not see the absurdity which he places in the mouth of the Pontiff? For in the Constitution it is added: *unless he knows that the same penitents migrated to an alien diocese to obtain absolution in fraud of the reservation.* But can a pilgrim come in fraud of the reservation if the sin is reserved only in the diocese of the confessor?

26. The VV. urge (p. 551) that in the Note the more recent authors are falsely and unjustly accused of having introduced immense confusion into this question; for in the Note it is conceded that pilgrims can be absolved from sins reserved in their own diocese insofar as the Bishops see this custom of absolving and remain silent, which is a sufficient sign of consent and ratification *de praesenti*; moreover, Suarez rightly explains that the older Authors also, Hostiensis, Raymond, Astensis, Gerson, William of Mont-Lyon, and Gabriel, who seemed to hold custom as sufficient even taken by itself alone, tacitly understood the consent of the Superior.

Reply. I deny the Supposition, as though it were said that the more recent authors introduced immense confusion into these questions because they derived the force of custom from the tacit consent of the Superior. In the Note it is said that confusion was introduced because Henriquez and Suarez introduced, only by means of false allegations, a practice and doctrine unknown to all the ancients and indeed rejected by them. On the contrary, it was added in the Note itself that these innovators by no means dared wholly to renounce that principle in which the economy of sacramental judgment is contained. But this also was added in the Note: there were not lacking some who, in order to avoid other graver absurdities, seemed to renounce even that principle, thereafter entangling themselves and the whole matter in equivocations and contradictions. See above, nos. 10 and 21.

27. The VV. add (p. 551) that the more recent Authors differ from Gury's opinion only in this: that in the present question he derives the validity of absolution from the tacit consent and ratification of the Bishops, whereas the more recent authors, at least most of them, say that the custom of absolving was confirmed by the authority of the Holy See, namely: 1. by the Declaration of Eugene; 2. by the Declaration of the Sacred Congregation of the Council in the year 1649; 3. by the Constitution of Clement X. From which premises the VV. then think themselves permitted to conclude thus (p. 553): *We*

have now sufficiently proved that in the present matter pilgrims are no longer absolved from the tacit consent of the Bishops, but from the authority of the Holy See or, as they otherwise said, from the authority of the Church.

Reply 1. I deny first that the Declaration of Clement X was alleged by Authors for this matter; for one obscure Author of the theology of Perigueux dared this, as was said above, no. 21. But then I deny that this Declaration can be extended to anything other than the singular privilege of Regulars, as was clearly shown above, no. 15. Therefore the VV. gratuitously flee to it in order to find some pontifical approval of that custom.

Reply 2. I deny first that any Author had recourse to the Declaration of the year 1649 to establish that fabricated approval. But then I deny that anything can be forced from that Declaration in favor of an approval of this kind. See above, no. 22.

But this also must be added here: the Sacred Congregation was so far from judging that customs of this kind were to be approved that in that age it decreed that the privilege whereby they could hear the confessions of those coming together from an alien diocese was proper to Regulars. Thus testifies Fagnanus, then Secretary of the Sacred Congregation (*On chapter Omnis utriusque*, from no. 69). For when Lord Vulpius, Archbishop of Chieti, proposed to the Sacred Congregation against the Cassinese Monks the doubt, *Whether Monks approved for hearing the confessions of seculars... can hear the confessions of those coming together from an alien diocese*, Fagnanus replies that by a ratification *de praesenti* a pilgrim of this kind (nos. 70-72): *It must be replied that the aforesaid Regulars can hear the confessions even of the diocesans of the Archbishop, because, although by common law NO PRIEST can absolve a penitent not his subject even in that diocese in which he is approved; indeed, NO CUSTOM CAN BE INTRODUCED whereby anyone, apart from the permission of his Superior, can choose for himself a confessor, as is read in chapter 2, De Poenit. et Remiss.; nevertheless, something else appears to be said in the present case, since the Monks of the Cassinese Congregation approved by the Ordinary can by PRIVILEGE hear the confessions of one of another diocese, even against the will of the Bishop.* Fagnanus then adds (no. 75) that the Sacred Congregation judged that it should be referred to His Holiness, and that His Holiness approved the privilege; and finally he relates the judgment of the Sacred Congregation thus (no. 79): *The Sacred Congregation declared that Regulars within the diocese of the approving Bishop can absolve even a penitent of another diocese, SINCE THEY HAVE JURISDICTION FROM THE POPE, whose jurisdiction is not restricted to the boundaries of any territory, but the whole world is his diocese.* Therefore the VV. vainly seek in the responses of the Sacred Congregation that fabricated approval which excludes the necessity of at least the tacit consent of Bishops.

Reply 3. I deny that any approval of the kind produced by the VV. is deduced from that famous Declaration of Eugene IV. For we have already shown above, no. 13, that nothing else is contained in that Declaration except that on the occasion of Easter a visitor can confess either to the pastor of the place or to other priests appointed there, but to no one else.

Let us therefore conclude that that pontifical approval by which the VV., with a fruitless attempt, wish somehow to dignify that fabricated custom, by virtue of which pilgrims would no longer be absolved from the tacit consent of the Bishops, must be relegated to empty phantoms; and what is to be thought concerning it is sufficiently evident from those things noted above at question 13, section 555.

28. The VV. add (p. 552) that the Church confirmed that custom at least indirectly insofar as she approved that pilgrims, with regard to the sacrament of Penance, are considered as domiciliaries and equated with inhabitants. By this pilgrims, by the fact itself and by law, can be absolved from sins not reserved in the place of confession.

Reply. I deny the Antecedent. For the rule that pilgrims are equated with inhabitants is nothing but that new and false theory which Henriquez and Suarez introduced by means of false allegations and abuse of the Declaration of Eugene IV. What the sense of the Church is can be learned: 1. from the declaration mentioned by Fagnanus above, no. 27, where even merely hearing the confessions of those coming together from an alien diocese apart from at least the tacit consent of the Bishops is exhibited as a privilege of Regulars; 2. from the Constitution of Clement X, according to which the ability to absolve those coming together from an alien diocese from sins reserved in their Episcopate is again exhibited as a singular privilege of Regulars; 3. from the dogmatic Constitution *Auctorem fidei* of Pius VI, according to which the doctrine which holds that it makes no difference whether or not the penitent who is absolved is a subject, apart from jurisdiction at least indirectly and tacitly delegated by the respective Ordinary of each, is defined as *false, rash, pernicious, contrary and injurious to Trent, erroneous*. See above, note at question 13, section 555. Behold the genuine sense of the Church.

Consequently I deny the Consequence also. For the sole reason why visitors are validly absolved from reserved cases, if confession is not made to a privileged Regular, is the tacit consent of the Bishops, all the more because there is discussion of reserved cases. For if there is question of sins not reserved, confession outside the diocese, if made to a Regular, will be valid even against the will of the proper Bishop of the visitor, as we saw in the preceding number; but if there is question of

reserved sins, confession, even if made to a privileged Regular, must be called invalid if it is made against the will of the Bishop, because it would be made in fraud of the reservation. And let these things suffice concerning this question, for it is not worth the labor to pursue certain other ineptitudes objected.

[16] That in the Constitution *Superna* there is question merely of the privilege of Regulars is evident: 1. from the very words related above, *that a REGULAR Confessor can*; 2. from the title or subject of the Constitution, which is of this kind: *A Constitution in which the privileges of Regulars with regard to the preaching of the Word of God and the administration of the Sacrament of Penance are declared*; 3. from the common opinion of the Doctors. On this matter may be seen Simonnet (tract 15, disp. 9, art. 6, reply 7), Elbel (conference 14, no. 376), Roncaglia (tract 19, q. 7, chapter 2, q. 1, reply 2), Platelius (*Synopsis*, part 5, no. 909), Ferraris (word *Reservation of Cases*, no. 4), Viva (*On Penance*, q. 8, art. 1, no. 5), Antoine (*On Penance*, chapter 3, art. 1, q. 6), Collet (*On Penance*, chapter 8, part 2, no. 560), Eusebius Amort (*On Penance*, disp. 9, q. 25), St. Alphonsus (book 6, no. 589), and finally Father Anthony of St. Joseph (tract 27, no. 389), who published the *Compendium of the Salmanticenses* at Rome in 1789 during the pontificate of Pius VI. Therefore, that it could have seemed to some that this clause of the Constitution *Superna* contained some common principle which would have force as a law for all confessors, even seculars, is to be attributed first to the theory introduced by Henriquez and Suarez and thence received by many, concerning which there was discussion in the preceding note; and then also to the opportune argument deduced from the same Constitution that a visitor cannot be absolved from a reserved case whenever the case is reserved in both the diocese of the penitent and that of the Confessor. For it is the common opinion of the Doctors that the faculty bestowed upon Regulars was circumscribed by this condition through the words: *But not in that where the same Confessor is approved*, namely, lest they absolve from things reserved in both dioceses. See La Croix (book 6, part 2, no. 1631), Ferraris (*loc. cit.*), Eusebius Amort (*loc. cit.*, q. 26), Marcus Struggl (*On the Sacrament of Penance*, q. 3, no. 48), Reuter (*On Penance*, no. 371), Mazzotta (tract 6, disp. 2, q. 3, section 2, no. 11), Viva (*On the Sacrament of Penance*, q. 9, art. 3, no. 4), Platelius (*loc. cit.*), Emmanuel Thesaurus (*On Penance*, part 2, word *Absolution*, chapter 3), Giordanini, commonly the Author of the work *Instruction for New Confessors* (vol. 2, no. 503), Wagemann (*Synopsis of Theology*, part 3, tract 2, chapter 5), Illsung (*On Penance*, no. 224), Gobat (tract 7, no. 376), Antoine (*On Penance*, chapter 3, art. 1, q. 6), etc.; from whom it also becomes manifest that someone could vainly suspect that those words of Clement X regard the case in which the sin is reserved in only one of the two dioceses.

Moreover, the reason brought forward by the Author why secular confessors also, although they do not have the privilege conceded to Regulars by the Apostolic See, nevertheless can absolve those coming together from alien dioceses even from things reserved there, notwithstanding the Constitution of Boniface VIII (the cited chapter *Si Episcopus*), is the only one in fact which coheres with the essential principles of sacramental judgment solemnly defined by the Council of Trent and again inculcated by Pius VI in the Constitution *Auctorem fidei* (no. 37) against Jansenist artifices: namely, that no one can be loosed or bound by one who is not his judge, and that an absolution which a priest pronounces upon one over whom he does not have ordinary or delegated jurisdiction is of no moment. For the Constitution *Si Episcopus* stands in the way insofar as it establishes that permission, tacit or express, to choose a confessor granted by the proper Ordinary in no way includes a faculty also for reserved cases. Therefore, whenever it is established by some sign that the Ordinaries, together with the aforesaid permission, consent also to a faculty over reserved cases, the Constitution of Boniface VIII is sufficiently observed. But a sufficient sign of this consent of the Ordinaries is that they know this custom of absolving and remain silent; for thence arises that ratification *de praesenti* which in the case suffices for the validity of absolution. To this pertain those things of Reginaldus (book 1, no. 70): *It must be held that sufficient jurisdiction... is acquired through tacit permission, which is had from ratification de praesenti, occurring when, while the proper priest who can contradict sees, knows, and remains silent, the sacrament of penance is administered.* Therefore, with regard to absolution from reserved cases, there avails that very thing which Cardinal Cajetan (*Summa*, word *Confession* 2) said generally concerning confession made in an alien diocese from the tacit permission of the proper priest: *Tacit episcopal permission gives force to absolutions, and custom concurs only as a witness of permission.*

And with these things is most aptly connected what Clement X declared Regulars must guard against and what, a fortiori, as St. Alphonsus says (no. 589), must now be transferred also to secular Confessors on account of this new practice introduced: namely, that penitents who go to an alien diocese to confess in fraud of the reservation, that is, to evade the judgment of their proper priest, are to be excepted from that law. For in these circumstances the consent of the Ordinary, from which jurisdiction for absolving flows, can in no way be supposed. To this, therefore, returns what the Theologians, whether all cohere with themselves let others see, commonly establish concerning simple confession to be made outside the diocese: namely, that the absolution will be valid provided, to use the words of Bonacina (*On Penance*, disp. 5, q. 7, point 2, no. 6), *they do not make the journey in fraud of the law for this cause alone, that they may... avoid their proper pastor and confess to another..., as Coninck, Vasquez, Suarez, Reginaldus, and other more recent authors well observe.* Lugo places the same condition (*On Penance*, disp. 19, no. 7): *provided, however*, he says, *that they have not deliberately departed from their domicile so that on the occasion*

of the journey they might confess to another. Concina also repeats this more recently (*On Penance*, book 2, diss. 2, chapter 4, no. 20), denying that they, the subjects, are validly absolved if they deliberately departed in order to confess elsewhere. See above, no. 555.

Although this reason does not appear to avail as regards Regulars, who, since they have jurisdiction not from the Bishops but from the Apostolic See, by that very fact appear not to need that delegation of jurisdiction which is contained in the tacit consent of the Ordinaries or ratification *de praesenti*, nevertheless another reason exists as regards them: namely, the prohibition of the Apostolic See, which, while it circumscribes the privilege conceded to them by this condition, provides with equal efficacy for order and so guards discipline that there is nothing which may impede the Bishops from governing and correcting each his own flock.

QUESTION 6. Can Regular Prelates or Superiors reserve cases in their Order or Monastery?

Reply. They can reserve only certain cases determined by Clement VIII, which are eleven in number, as may be seen in St. Alphonsus, etc. But they can by no means reserve others without the consent of the General Chapter for the whole Religion and of the Provincial Chapter for the whole Province [17].

[17] The decree of Clement VIII is as follows: *Our Most Holy Lord, who long ago carefully weighed and learned from experience that the reservation of the faculty of absolving Religious penitents from certain graver sins, unless Superiors use it very prudently and moderately, can lead certain infirm persons, who sometimes fear to reveal to the Superior the stains of their conscience, into danger of eternal damnation and despair of a spiritual remedy; therefore, that His Holiness might provide opportunely against this evil, he decreed that none of the Superiors of Regulars reserve to himself the absolution of sins except those which follow, or some of them, according as they shall prudently judge in the Lord to be expedient for the advantage of their subjects.*

Poisonings, incantations, divinations.

Apostasy from Religion, whether the habit is laid aside or retained, when it proceeds so far that an exit is made beyond the enclosure of the Monastery or Convent.

A nocturnal and furtive departure from a Monastery or Convent, even when made without the intention of apostatizing.

Ownership contrary to the vow of poverty, when it constitutes a mortal sin. A false oath in a regular or legitimate judgment.

The procuring of, assistance toward, or counsel for causing an abortion after the fetus has been animated, even when the effect does not follow.

The falsification of the handwriting or seal of Officials of the Monastery or Convent.

The theft of property of the Monastery or Convent in a quantity constituting a mortal sin.

A voluntary carnal lapse consummated in act.

The killing or wounding, or grave striking, of any person.

The malicious obstruction, delay, or opening of letters from Superiors to inferiors and from inferiors to Superiors.

If, besides these, it should seem that some other grave sin must be reserved for the preservation of the Religion or for purity of conscience, this is not to be done except by the mature discussion and consent of the General Chapter for the whole Order, or of the Provincial Chapter for the Province.

But other things most worthy of being known are also contained in the same Decree. First, indeed, it is established that subjects are not to be obliged to confess to Superiors: *It shall not be lawful for Superiors of Regulars to hear the Confessions of their subjects, except when they have committed some reserved sin, or when the subjects themselves spontaneously and of their own motion have requested this of them.*

It is then decreed that several confessors are to be appointed in each house, so that subjects may be free to confess to any of them at their pleasure; and a norm is also added concerning the faculty to be given to those confessors for absolving even from reserved cases. *Superiors shall appoint in each house two, three, or more Confessors according as the number of subjects is greater or smaller; and they shall be learned, prudent, and endowed with charity, who shall absolve them from non-reserved cases and to whom absolution from reserved cases also shall be committed whenever a case occurs in which the Confessor himself especially judges that it ought to be committed.* As regards the first point, the interpretation must be rejected altogether as though only one Confessor could be given if the number of subjects is not so great; or as though, when several are given for their great number, a certain

determined portion could be assigned to each in such a way that individuals would have only one to whom they might confess exclusively. As regards the second point, however, it is manifest that, in determining whether a faculty for absolving from reserved cases is to be granted to the Confessor, the principal part must be deferred to the judgment of the Confessor himself.

To these was added a declaration of the greatest importance, which it is evident was issued by the same Clement VIII from those things which Ferraris relates (word *Regular Prelate*, no. 58). It is appended to the same Decree of Clement in these words: *His Holiness afterward declared and declares that, if the Superior should be unwilling to grant a faculty for some reserved case to the Confessors of such Regulars when they request it, the Confessors may nevertheless, FOR THAT OCCASION, absolve Regular penitents even without having obtained the faculty from the Superior.* Clement wished the matter to be deferred to the judgment of the Confessor to such an extent that, even if the Superior denies the faculty to him, he nevertheless can absolve the penitent from the reserved cases. Pellizzarius (*On Nuns*, chapter 9, no. 29) wisely observes that this declaration avails also for the confessor of Nuns when he requests from their Ordinary a faculty for absolving from reserved cases, whether that Ordinary is a Regular Prelate or the Bishop of the place, according as the monastery is or is not exempt. Moreover, when the Declaration says that the confessor, after the faculty has been requested although not obtained, can absolve FOR THAT OCCASION, this is not to be understood as though the Pontiff conceded it for only one occasion, but as meaning that the Confessor cannot again absolve either the same or another penitent from a reserved case unless he again asks permission from the Superior; and if this is denied, the confessor can again absolve, and so forth. Therefore, the sense will be that, as often as the faculty is requested and denied, so often can the confessor absolve, and so forth. On this matter St. Alphonsus (book 6, no. 586) relates that Collet adduces a decree of Urban VIII; but this is a mere hallucination of Collet, who wrongly interpreted certain words of Diana's *Compendium*, published at Rome in 1654, to which he himself refers.

But it is altogether to be desired that Superiors leave no occasion for recourse to the use of the faculty conceded by this Declaration. For Suarez most wisely observes (*On Penance*, disp. 30, sect. 4, no. 9) that, *regularly and morally speaking, the Superior ought to be easy rather than difficult in conceding this faculty*; and this according to the General Ordinances of the Society of Jesus (chapter 6, no. 1), where these words were read: *In no way ought the Superior to be difficult, but rather easy and prompt in conceding it*.

And an excellent reason is given in those words of St. Thomas (*In IV Sent.*, dist. 17, q. 3, art. 3, q. 4, ad 6): *But a priest would sin if he were not ready to grant permission to confess to another; because many are so infirm that they would rather die without confession than confess to such a priest; whence those who are too solicitous to know the consciences of their subjects through confession cast a snare of damnation upon many and, consequently, upon themselves.* And again (*Against Those Who Assail Religion*, chapter 4): *Certain persons, as has been found by experience, would desist from confession unless they could confess to others than their own priests, sometimes because of shame, because they blush to confess their sins to those with whom they converse daily; but sometimes because they suspect the priests to be hostile to them, and for many other reasons. Hence pious Prelates condescend to their infirmity, lest they fall altogether into despair, by providing other confessors for them.*

Therefore, after Suarez (*loc. cit.*) adds that, morally and in itself speaking, there is less danger in conceding this faculty than in denying it, he continues: *For it to be conceded, it ought to suffice that no special reason for denying it occurs; but for it to be denied, some special reason which requires this must always intervene.... Indeed, although it may sometimes seem to the Superior that a sufficient reason for denying the faculty intervenes, nevertheless, if it has become evident to him from the report of another or in another way that the subject is in no way willing to approach the Superior, nor can he be induced to do so after other remedies have been attempted, then the Superior ought never to deny the faculty, nor can he lawfully do so, except in a case of harm to others; because, notwithstanding whatever reason occurs and all things being weighed, it is then more expedient, indeed necessary, according to the laws of charity. Likewise, because this is a certain medicine for the subject; therefore, if applied with rigor it turns to his destruction, it must be tempered, and therefore the faculty must be conceded.* Hence Navarrus (*On chapter Placuit*, no. 149) says that the excessive shame alone of the penitent is sometimes a sufficient cause for this faculty to be given.

As for Suarez's exception of the case of harm to others, it must be understood when scandal or any harm would perhaps threaten either the Religion, the house, another person, or the penitent himself, and it could not otherwise be met except by making the matter known to the Superior. But then, if the subject refused, he certainly could not be absolved, not from a defect of jurisdiction in the Confessor, but from a defect of disposition in the penitent himself. For the law of nature requires that the subject remove that scandal or harm; and if the only means available is that the matter be disclosed to the Superior, he is certainly bound to this.

From these things it is now also evident that throughout this whole affair secrecy must be so provided for that the penitent is not discovered by the Superior himself. Thus the Doctors commonly. Hence in the General Ordinances of the Society of Jesus (chapter 6, no. 3): *Let the Superior beware, when the faculty is requested from him, lest he inquire curiously or do anything else from which he could conjecture who that person is for whom it is requested, and lest he seek any circumstances other than those which pertain to the matter. Let the Confessor also beware lest anything escape him from which the penitent could be recognized; and if he fears that, from knowledge of some circumstance, the Superior could probably suspect who that person is, let him know that he must omit it altogether and employ every caution in proposing the case, lest the Superior in any way be able probably to recognize the author. If he sees that, by proposing the case specifically, an occasion of suspicion would be given to the Superior, it will suffice if he says in general that someone has fallen into a reserved case which can bring harm neither to the Religion, nor to another, nor to the penitent himself. Finally, let both the Superior and the Confessor be mindful of the obligation of the Seal and so conduct themselves that in all things they take counsel for its purity and integrity.*

And as regards the Seal, another most grave point occurs which Clement VIII also had before his eyes in the aforesaid Decree: namely, that no one can in any way use for external government knowledge obtained on the occasion of hearing confession. Thus Clement: *Both the Superiors who exist for the time being and Confessors who have been promoted to the rank of Superior shall most diligently beware lest they use for external government that knowledge which they had in Confession concerning the sins of others.* Suarez indeed had once judged (*On Religion*, tract 10, book 8, chapter 5, nos. 12-13) that under the name of external government there did not come that government which might be necessary for avoiding a sin or scandal either of the penitent or of others arising precisely from that sin, and accordingly that the Superior could use knowledge had from confession for that end. But he himself afterward expressly rejected that opinion (*On Penance*, disp. 33, sect. 7, no. 4).

§ II. On Absolution from Reserved Cases

574. **Principles.** - I. By ordinary power, the following can absolve from reserved cases: 1. those who themselves reserve them; 2. their successors in the same power; 3. their Superiors.

II. Bishops or their delegates can absolve even from occult papal cases, excepting, however, those which His Holiness Pius IX declared to be reserved in a special manner to the Apostolic See. This is established from the concession of the Council of Trent, sess. 24, Decree on Reformation, chapter 6, *Liceat*, and from the Constitution *Apostolicae Sedis*, October 12, 1869.

Bishops can absolve from papal cases even when notorious or public all the faithful who, because of a legitimate impediment, cannot approach the Apostolic See, lest danger threaten souls from a delay of absolution. This is established from Canon Law.

III. No Confessor, even a Regular, can absolve from properly episcopal cases unless he has received the faculty from the Bishop himself, even if he can absolve from any cases whatsoever reserved to the Pope. Thus Clement X in the Bull *Superna*, where it is said: *Those having the faculty of absolving from all cases reserved to the Apostolic See cannot on that account absolve in cases reserved by the Bishop.* Except, according to what was said above, Regulars, who by the same Constitution of Clement X can absolve those coming together from an alien diocese from the cases reserved there, unless, however, they have come in fraud of the reservation and the sins are also reserved in the place of confession.

IV. There is no reservation at the moment of death. Therefore, all Priests can then absolve any penitents from all sins and censures. - Trent, sess. 14, chapter 7.

575. **Questions. - QUESTION 1. Can an inferior sometimes absolve one having reserved sins outside danger of death?**

Reply 1. He can indeed sometimes absolve, namely, whenever the faculty cannot be sought from the Superior, not even by letter [1], and otherwise there is danger in delay or a grave inconvenience threatens; and this avails even if the sin should be reserved with excommunication. The reason is

that the Church, a pious mother, and every Superior cannot be judged to wish to oblige anyone to something morally impossible or to undergo so great an inconvenience. - Thus commonly. - St. Ligorius, no. 585.

[1] Observe with St. Alphonsus (book 7, no. 89) that the common, more probable, and safe doctrine is that one who has an impediment to appearing before the Pontiff is not bound to seek absolution through an intermediary or by letter, even from the Sacred Penitentiary: 1. because by common law, while that impediment remains, Bishops possess the power of absolving; 2. because no obligation is present except that of appearing personally; if, therefore, anyone cannot perform this, he is bound to nothing else except what the legislator has substituted; 3. because obtaining absolution through the Sacred Penitentiary is a privilege, but according to the common axiom no one is bound to use privileges. Nevertheless, if a privileged confessor is lacking and the impediment is not perpetual, a petition for the faculty by letter will be useful, so that the penitent may be freed from the burden of appearing at some time.

Albitius (*On Inconstancy*, chapter 25, no. 33) adduces for the opposite opinion the example of a decision issued by the Congregation of the Holy Inquisition. But the example is not to the point. Someone had namely been absolved under the express condition that he present himself at Rome either personally or through a procurator; and when he alleged the inconvenience of the journey, it was granted to him that he might have recourse to the Sacred Penitentiary. Here, therefore, there is a special disposition for a special case, which neither ought nor can be converted into a general principle.

Reply 2. Yet in such a case he cannot absolve except indirectly from the reserved cases, although he absolves directly from the others. The reason is that he does not have jurisdiction over the reserved cases. Nor is the Church judged to supply this jurisdiction; for there is no necessity of supplying it, since indirect absolution from the reserved cases suffices for the present necessity. - St. Ligorius, ibid., and the others cited above.

Hence, 1. the Confessor cannot then absolve except with the burden that, when an opportunity is given, the penitent present himself to the Superior or to another having the faculty of absolving from reserved cases.

These things, however, avail when the penitent can within a short time approach the Superior or another having the faculty over reserved cases. But if the impediment lasts for a long time, which is computed from six months to five years, an inferior can absolve directly, with the burden nevertheless imposed of presenting himself to the Superior or his delegate if the sin is reserved with a censure. It is otherwise if the sin does not have a censure attached. - Suarez, *On Penance*, disp. 30, sect. 3, no. 7. - Lugo, disp. 20, no. 223. But when the impediment is perpetual [2], absolution is given directly without any burden of appearing before the Superior. Chapter *Eos qui*, 22, *De Sent. Excomm.*, in VI. Those things which are said concerning a reservation of the Pontiff can be extended to episcopal reserved cases [3]. Thus the common opinion in St. Alphonsus, no. 585 and book 7, no. 92.

[2] Those judged to have an impediment of this kind are children before puberty, sons of a family, the aged, servants, the poor, the infirm or sickly, women, Regulars, and much more nuns, those perpetually condemned to prisons or galleys, and finally all who are bound by a duty of supporting or administering a family, or of discharging a public office which cannot be left without public or grave detriment. See St. Alphonsus (book 7, no. 88).

[3] By episcopal reserved cases the Author seems to mean sins which a Bishop reserves to himself. Concerning these St. Alphonsus (book 6, no. 585) judges as more true that the rule handed down concerning papal reserved cases does not avail; but afterward (book 7, no. 92) he proposes the doctrine of Roncaglia (tract 4, q. 1, chapter 6, q. 5), who establishes this general principle: *Those things which have been said concerning cases reserved to the Supreme Pontiff can, from parity of reason, be extended to episcopal reserved cases*, etc.; and Sporer has things corresponding to these (*On Penance*, no. 750). But that St. Alphonsus opposes to Roncaglia Laymann, Soto, Coninck, and Suarez, by whose authority he had previously been moved to judge the first opinion more true, is in fact of no account. For the first three of these do not touch this question at all; but Suarez (*On Penance*, disp. 30, sect. 3, nos. 11-12), after adducing reasons for each opinion, merely says that he inclines more

to that side, lest in a matter so grave this faculty be attributed without sufficient foundation. Yet others rightly think that sufficient foundation is present in chapter *Eos qui*, 22, *De Sent. Excomm.*, in VI, which thus determines: *Those who are absolved by another from a sentence of a canon or of a man (when, because of the imminent moment of death or another legitimate impediment, they cannot have recourse for the benefit of absolution to him by whom otherwise they were by law to be absolved)*, etc.; for here there is question of any Superior whatsoever and not only of the Roman Pontiff. The same can also be elicited from chapter *Nuper*, *De Sent. Excomm.*, in which the question is expressly raised concerning any Prelate whatsoever. Nor indeed is Roncaglia alone with Sporer in that doctrine; for he himself alleges Hurtado and Diana, while Diana (vol. 1, tract 5, resolutions 18 and 19) adds Palaus, Henriquez, Marchant, Caelestinus, Gamachaeus, and Granadus. And he concludes (resolution 18, no. 7): *And I judge all these things sufficiently probable and safe; and let them be noted especially by Confessors, because they are not everywhere encountered in Authors, but are of daily occurrence in practice.*

Moreover, the same question is raised concerning those who, bound by a pontifical censure and hindered from approaching Rome, ought to seek absolution from the Bishop: whether, if they are also hindered from betaking themselves to the Bishop, they can be absolved by any Confessor. St. Alphonsus replies (book 7, no. 92): *Suarez, Lugo, Becanus, etc., more commonly deny it, according to Viva, On Penance, q. 9, art. 2, no. 9, because in law this is conceded only to Bishops, nor in a positive law does an argument from parity avail.* But in this he was deceived by Viva, who in that place badly confounds distinct questions; while Suarez was so far of the affirmative opinion that Lugo attempted to attack him for this reason (*On Penance*, disp. 20, nos. 228-229). Moreover, the laws are manifest not only in the cited chapter *Eos qui*, but also in chapter *Nuper*, in which the faculty is also given to others besides the Bishop in these words: *But if for some just cause it is difficult for the one to be absolved to approach the excommunicator himself, we grant by indulgence that (after security has been given according to the form of the Church that he will obey the mandate of the excommunicator) he may be absolved by his own Bishop or proper priest.* This sentence, as St. Alphonsus says (*loc. cit.*), the Doctors most commonly interpret not disjunctively, as though it were equally permissible to approach either the Bishop or another confessor, but substitutively, namely, that he can then be absolved by another confessor when the Bishop cannot be approached. But if the Doctors most commonly elicit this from this canon, how do they more commonly deny that one who is impeded can be absolved by someone other than the Bishop? And in fact the same St. Alphonsus (*loc. cit.*) adduces many more for the second opinion than for the first.

** The VV. expend twenty-four columns (pp. 554-565) in attacking this Note. Therefore, as regards the first part of the Note, in which it is said that no account is to be made of the fact that St. Alphonsus opposes Laymann, Coninck, and Soto to Roncaglia because they do not touch at all upon the question at issue, the VV. (p. 556) establish this thesis: *St. Alphonsus rightly alleges the Authors cited for the negative opinion.*

Reply. This controversy has an easy solution if the state of the question is rightly defined. Therefore, in the present matter there is question of a penitent who is impeded from approaching the Bishop for a long time; concerning this case St. Alphonsus elsewhere (book 7, no. 86) thus determined: *If, however, the impediment is FOR A LONG TIME, for example, for a year or six months..., he ought not to be absolved unless an oath has first been given*, etc.; that is, he teaches that he is to be absolved, with the burden imposed of presenting himself to the Superior when the impediment ceases, etc.

1. These things being established beforehand, we now come to Laymann. He (book 5, tract 6, chapter 12, nos. 9-10), to the question, *What is a Confessor to do if a penitent confesses, among other things, a sin reserved to the Superior?*, first replies: *Ordinarily he ought not to absolve him, but to send him to the Superior*, etc. Here, as is evident, there is no discussion of a penitent having a long-lasting impediment. Therefore these things are not to the point.

The other reply is this: *If some necessity urges, for example, if the penitent is far distant from the Bishop, then the confessor can absolve the penitent in such a way that the absolution falls upon the non-reserved sins..., but indirectly upon the reserved sins.* And here likewise there is no trace of a long-lasting impediment, indeed not even of a perpetual impediment. Therefore neither do these things touch the present controversy. Therefore it was rightly said in the Note that Laymann does not touch this question and accordingly is alleged in vain.

Indeed, it may be added that if Laymann has anything which can pertain in any way to the present matter, he inclines to the opinion opposite to that which the holy Doctor Alphonsus attributes to him. For (*loc. cit.*, no. 15) he has these words: *Finally I observe that, even outside danger of death, if there is a moral impossibility of approaching the Apostolic See for absolution from a sin reserved to the Supreme Pontiff, but neither the Bishop or his Vicar, to whom in such a case the faculty of absolution devolves accidentally, can be approached, nor can any privileged confessor be had, then it is very probable, as Felicianus, Scotus, Sylvester, Suarez, and Filliucius hand down from the argument of chapter Nuper, De Sent. Excomm., that even the Pastor or another inferior legitimate confessor can absolve, for example, a nun in enclosure; with an obligation imposed, or rather with the penitent advised of the obligation that, if it should happen that*

the impediment to approaching the Pope is removed, he ought to present himself to him, not that he may be absolved again, since he was truly and directly absolved, but, etc. Therefore Laymann teaches that one who cannot approach the Bishop can be absolved directly by an inferior. But why, finally, does Laymann admit this except from the general principle that a remedy ought not to be lacking, according to the Sacred Canons, for danger to souls and the necessity of the penitent? But are not the same danger and the same necessity present whether the case is episcopal or pontifical, for absolution from which the Bishop must be approached? Indeed, St. Alphonsus also (book 7, no. 92) does not reject this, both because, *where there is the same reason, there ought to be the same law*, as the Gloss says on chapter *Dilectus*, and because a law expressly granting this is not lacking; for in chapter *Nuper*, 29, *De Sent. Excomm.*, it is held that one impeded for a just cause from approaching a Superior having the right to absolve from a censure is to be absolved by his own Bishop or proper priest. In that place the holy Doctor treats the general question, *Whether those still impeded from approaching the Bishop for these censures, or OTHER RESERVED CASES, can be absolved by any confessor.* Therefore, since the same reason avails for each case, if anything can be conjectured concerning Laymann's mind, there is certainly no reason why he should be drawn into the opinion which St. Alphonsus attributes to him; but, on the contrary, he can rightly be alleged for the opposite.

2. Let us pass to Dominic Soto, concerning whom the VV. (p. 559) write: *St. Alphonsus alleges Dominic Soto only in book 7, no. 91, and indeed only indirectly from Laymann, where he treats reservations without a censure.*

Reply. This is not true; for St. Alphonsus alleges Soto also in no. 92, where he asks whether, if someone is impeded from approaching the Bishop, a simple confessor can absolve him from cases and censures reserved by that same Bishop; and this is our present question. Therefore let the VV. seek another place in the works of Dominic Soto where he denies that an inferior can absolve from episcopal reserved cases when there is a long-lasting impediment, for example, for four years, to approaching the Bishop. Moreover, to exempt this place of the holy Doctor from every reproach, it would perhaps be expedient to employ another interpretation of it, such that he does not oppose those four Authors, namely, Suarez, Laymann, Coninck, and Soto, to Roncaglia, but adduces them for the hypothesis of an impediment that is indeed temporary but not long-lasting. And thus this place is better reconciled with those things which he has previously, and which we adduced above, concerning those impeded from approaching the Bishop for censures and other reserved cases. For, in view of the context, it is not necessary that this question be understood only of pontifical cases.

3. As regards Coninck, the VV. adduce (p. 558) this passage of his (disp. 8, no. 88): *Others add that the same thing must be said of a Pastor with respect to cases reserved to the Bishop when the latter cannot be approached, but they do not sufficiently prove it, and necessity can scarcely occur, since a faculty for absolving from them can easily be obtained from the Bishop; unless perhaps in some sudden necessity, concerning which we shall say what must be done in the following doubt.* But in the following doubt Coninck has that which all others also have, namely, that the penitent is to be absolved directly from the non-reserved sins, but indirectly from the reserved sins, etc.

Reply. That someone indicates a means by which some necessity can be met does not solve the general question, in which it is supposed that a means of providing for the necessity is not present. Others here add that a simple confessor cannot absolve the penitent in the case if a privileged confessor is at hand who can absolve also from the reserved cases; but even this, as is evident, does not solve the question under the hypothesis in which a privileged confessor is lacking. Therefore let it be sought in Coninck what must be done when, for a long time and from whatever cause may finally be imagined, the means proposed by him is lacking. And since you will seek in vain for the solution of this question in him, he is consequently opposed without reason to Roncaglia, who discusses this hypothesis.

Moreover, the remedy which Coninck suggests here can have place also when someone impeded from approaching the Pontiff ought, according to the canons, to receive absolution from the Bishop, yet cannot approach the Bishop either. For even in this case the Bishop can delegate to another the faculty of absolving.

Why, then, do neither St. Alphonsus nor the VV. object to Coninck in this case, but admit that this penitent can be absolved by an inferior?

4. Nearly the same things which we said concerning Coninck avail with Suarez. His thesis stands thus (disp. 30, sect. 3, no. 12): *Absolutely speaking, I judge that inferior priests do not have jurisdiction over these reserved cases outside the moment of death BY FORCE OF COMMON LAW, because the Pontiffs speak only of cases reserved to themselves, in which there is the most special reason which was already touched upon.*

Reply. Let those words, *By force of common law*, be carefully observed. For Suarez continues: *And it can furthermore be explained because it pertained to the care of the Pontiffs themselves to commit this jurisdiction in their own cases; but as regards inferior Prelates it was*

not necessary for this to be established by common law, but just as reservation is made by them through particular statutes either of Dioceses or of Religious Orders, so it is committed to their care and prudence that they make it in a manner accommodated to the salvation of souls; and therefore in statutes of this kind it is ALMOST always customary to declare that, as often as access to the Prelate is difficult, absolution can in some way be obtained from others, lest penance be delayed too long. But, it can again be rejoined, these things do not pertain to the matter. For the question concerns the hypothesis of a penitent who for a long time must lack absolution because he can neither approach the Bishop nor has another at hand who possesses the faculty of absolving. But the hypothesis of Suarez stands otherwise. Therefore, in the hypothesis which is established here by us, the reason from which Suarez wishes to extricate himself retains all its force; and he proposes it thus (*loc. cit.*, no. 11): *Although the difficulty of appearing before the Superior occurs more frequently with regard to the Supreme Pontiff than with regard to inferior Prelates, nevertheless it cannot be denied that it can often happen with danger to souls arising from a delay of penance. Therefore, although the Pontiffs established that law on the occasion of cases reserved to themselves, yet, their reason being considered* (namely, *Lest danger threaten souls from a delay of penance*, chapter final, *De Poenit. et Remiss.*), *it can probably be believed that they established a general law to be observed in every reservation of cases.*

Indeed, someone could add that it not only can probably be believed, as Suarez has it, but must be held as certain that the Pontiffs established a general law to be observed in every reservation of cases. For are not the words of canon *Eos qui* (chapter 22, *De Sent. Excomm.*, in VI) most clear? *Those* (thus Boniface VIII) *who are absolved by another from the sentence of a canon OR OF A MAN (when, because of the imminent moment of death or ANOTHER LEGITIMATE IMPEDIMENT, they cannot have recourse for the benefit of absolution to him by whom they otherwise were by law to be absolved): if afterward, when it ceases*, etc. But the things contained in this canon pertain to common law; and the canon generally embraces all Superiors from whom absolution is to be sought, and Bishops certainly are comprehended among these. Therefore.

Moreover, the same Suarez (*loc. cit.*, no. 8) had written: *In pontifical cases the general rule of law is that, as often as access to the Supreme Pontiff or to his Legate or Delegate is not open except with great difficulty and delay, the sinner can be absolved by an inferior priest, with the burden*, etc. Yet he added (*loc. cit.*, no. 10): *It is often necessary to have recourse to the Bishop before inferiors, if this can be done, because the laws themselves declare this.* But from those things which we brought forward above from Suarez himself, it was necessary, for preventing danger to souls, that the Pontiffs should establish a law of this kind. Therefore, by Suarez's own admission, in order to ward off danger to souls it was necessary that those who could not approach the Bishop without great difficulty and delay should be capable of being absolved by an inferior priest. But, insofar as warding off danger to souls is concerned, what difference does it finally make whether the Bishop must be approached for absolution from a pontifical case or for absolution from an episcopal case?

And hence indeed we may learn, if you please, why Lugo wrote that Suarez inclined to the negative opinion, although his thesis which we adduced announces this in a certain absolute manner. For the whole context indicates that there was indeed in Suarez a strong will to deny, or rather an ineffectual wish, which nevertheless the preceding and following context proved altogether ineffectual. Therefore there was in fact no cause for the VV. (p. 559) to write these things: *Father Ballerini clearly shows that he did not examine the opinion of Suarez. The very thing happened to him which he everywhere reproaches St. Alphonsus with, namely, that he blindly copied Authors. For he himself was deceived by Cardinal de Lugo.* Reply. There was no deception at all, but a discreet and even benign interpretation of the Suarezian context.

It also does not appear why the VV. (p. 560) write: *Therefore, since Suarez calls the opinion that in a case of necessity the penitent can be directly absolved very doubtful and, rigorously speaking, not true, much more does he reject direct absolution where no necessity is present.* For to what purpose are these things? Whom perhaps do they attack? Why do the VV. not indicate who perhaps asserted what they there wish to refute? What do they desire to insinuate by that silence?

5. The VV. object (pp. 560-561): *Lugo demonstrates that the words of chapter Eos qui do not furnish a sufficient foundation for the affirmative opinion.*

Reply. I distinguish: Lugo attempts to extricate himself from this difficulty through a gratuitous and violent interpretation, I concede; he demonstrates it, I deny.

The VV. object (p. 561): *In chapter Nuper, De Sent. Excomm., there is openly discussion only of pontifical reservations, because it is said: let him be absolved by his own Bishop or proper priest.*

Reply. I deny the whole. The reason is that, as no one is ignorant, someone can legitimately be struck with excommunication even by a Bishop not his own if, for example, in another diocese he acquires a forum by reason of the offense, as if someone refuses afterward to take as wife a violated girl to whom a true promise of matrimony was made; for

the Bishop of that diocese can compel him by censures to keep faith. From that excommunication he can afterward, in those circumstances of which chapter *Nuper* treats, be absolved by his own Bishop.

6. As regards the other part of the Note, where there is discussion of absolving those who cannot approach the Pontiff, the matter can be disposed of in a few words, although the VV. discuss this matter through eight columns.

The VV. (p. 563) freely concede what is said in the Note, that the holy Doctor Alphonsus was deceived by Viva when he wrote (book 7, no. 92), *Suarez, etc., more commonly deny it*, but in these words: *It is only a mere inadvertence or slip of the pen that the holy Doctor alleges Suarez for the negative opinion.* Yet perhaps it would have been better to act here more sincerely or simply. For what they say of inadvertence is most true, and they very well allege the place of the holy Doctor where he attributes the opposite opinion to Suarez in these words (book 6, no. 585): *In pontifical cases the rule of law is, AS SUAREZ WELL SAYS, that as often as access to the Pontiff is not open, the penitent can be directly absolved by the Bishop; or, when an impediment to approaching the Bishop is also present, by any confessor*, etc. But what the VV. add concerning a slip of the pen is not to the point, because it is manifest, and the holy Doctor himself openly says, that he took these things from Viva.

7. To those things which are said in the Note, that Suarez was so far of the affirmative opinion that Lugo attempted to attack him for this reason, the VV. write (p. 564): *Rather, Father Ballerini himself was again deceived by Cardinal de Lugo; for Suarez does not hold the affirmative opinion to such an extent that he deserves to be rebuked for it, and the things which Lugo objects against him are unjust.*

Reply. It is indeed difficult to divine in what matter the VV. could have said that Father Ballerini was deceived by Cardinal de Lugo. Is it perhaps as though the Note said that Lugo's attack against Suarez was just or efficacious? But in the Note, on the contrary, it is merely said that Lugo attempted to attack him; and since in the Note itself the opinion of Suarez is exhibited as certain and confirmed by manifest laws, who would suspect that anything there is deferred to Lugo's attack? Does the deception perhaps reside in this, that the Note may seem to defer too much to the opinion of Suarez? Does what the VV. say perhaps look to this: that Suarez did not hold the affirmative opinion to such an extent that he deserved on that account to be rebuked by Lugo; namely, as though Suarez were not so firm in that opinion and Lugo therefore unjustly rose against him? But does not St. Alphonsus also (above, preceding number) praise Suarez because he relies upon a rule of law? Where, then, is this deception of Father Ballerini?

8. But the VV. also add another thing here (pp. 564-565), namely, they attack that rule of law and contend that in the alleged texts of Canon Law there is no firm foundation for the opinion which is treated here.

Reply. It is truly remarkable to what heat of contention and contradiction men can be carried away! Indeed, the holy Doctor Alphonsus (book 7, no. 92) wrote: *A law expressly granting this is not lacking; for in chapter Nuper, 29, De Sent. Excomm., it is held, AS WE NOTED ABOVE, that one impeded for a just cause from approaching the Superior having the right to absolve from a censure is to be absolved by his own Bishop or proper priest.* And in the place which he himself indicates, he has these things (book 7, no. 85): *The same is established also in chapter Nuper, where at the end it is said MORE GENERALLY that, AS OFTEN AS anyone can with difficulty for a just cause approach for absolution from an excommunication him by whom he was to be absolved, he is to be absolved by his own Bishop or proper priest.* And while the holy Doctor Alphonsus contends that it is established more generally in that canon that AS OFTEN AS, etc., is it not remarkable that the VV., under the assumed pretext of vindicating the holy Doctor, attack him instead?

9. Finally, the VV. take badly those last words of the Note: *If the Doctors most commonly elicit this from this canon, how do they more commonly deny that one who is impeded can be absolved by someone other than the Bishop?*

Reply. St. Alphonsus adduced three altogether, and among them Suarez, whom the VV. admit to have been alleged through inadvertence; and Becanus also could be joined to Suarez, since he touches this whole matter very lightly and in very few words and does not have this special question. Therefore Lugo alone remains. Thus, in order that they might defend the holy Doctor more suitably, others besides Lugo alone had to be adduced, so that it might be established that this doctrine is more commonly defended by the Doctors.

2. If the penitent has only reserved sins, he cannot be absolved unless he submits to the keys another sin, at least a venial sin of his past life, to be remitted directly. Otherwise no matter of the Sacrament would be given.

The cases in which an inferior can thus absolve are especially: 1. danger of infamy or scandal, for example, from the omission of the celebration of Mass; 2. the necessity of fulfilling the precept of confession or Communion; 3. fear lest the penitent remain for a long time in the state of mortal sin. - St. Ligorius, ibid.

576. ○ **QUESTION 2. Is one who has been absolved from reserved cases at the moment of death by an inferior bound to present himself to the Superior if he recovers?**

Reply 1. No, as regards a simple reservation. The reason is that, according to Trent, there is no reservation at the moment of death. Therefore there is also no burden of reservation unless it is proved from another source.

Reply 2. Authors commonly affirm this as regards censures attached to a reservation, from chapter *Eos qui*, 22, *De Sententia excommunicationis*, in VI, where no one is absolved at the moment of death from a reserved censure except under the law that, as soon as he conveniently can, he take care to present himself before the Superior, humbly to receive his mandate. Hence, if he recovers, he must have recourse to the Superior, and indeed under pain of falling again into the censures, unless a legitimate usage exempts him from this obligation. Nevertheless, some limit the obligation of presenting oneself to the Superior to the case of striking a Cleric or to another reservation which the Legislator may perhaps have excepted, of which kind the cases of the Bull *In Coena* were judged to be [4]. They elicit this both from the Council of Trent, by which it was declared without any restriction that every reservation ceases in danger of death, and especially from the Roman Ritual, which clearly intimates an obligation of presenting oneself to the Superior not absolutely but conditionally: *But if someone confesses while placed in danger of death, he is to be absolved from all sins and censures, however reserved they may be (for every reservation then ceases); but first, if he can, let him make satisfaction to whom he ought; and if he escapes the danger, and for some reason is bound to present himself to the Superior by whom otherwise he was to be absolved, as soon as he can let him present himself before him, to perform whatever he owes.* Navarrus, Henriquez, Avila, Filliucius, Sporer, Gobat, Diana, and others call this opinion probable; nor does St. Ligorius seem to contradict it [5].

[4] ** To this must be referred what is thus read in the Constitution *Apostolicae Sedis* of Pius IX immediately after the list of excommunications which are reserved in a special manner to the Apostolic See: *But let those presuming to absolve without the due faculty, even under any pretext whatsoever, know that they are bound by the bond of an excommunication reserved to the Roman Pontiff, provided there is no question of the moment of death; in which, however, the obligation of standing by the mandates of the Church, if they recover, shall remain firm with regard to those absolved.*

[5] St. Alphonsus (book 7, no. 87) adds Corneius and the Salmanticenses to the Doctors alleged by the Author; the latter say (*On Censures*, chapter 2, no. 66): *On account of the authority of such great men, we judge this probable.* Thomas Del Bene likewise holds that opinion probable (*On the Office of the Holy Inquisition*, part 1, doubt 66, no. 19), who adds Gambarupta to the aforesaid; Sporer (*On Penance*, no. 726) joins Jordanus and Joseph de Januario to these; finally Diana (vol. 6, tract 1, resolution 202, no. 2) writes: *Claudius Millardus, in the Summa of Pastors, On Penance, chapter 97, no. 10, observes that it appears most probable that this burden of presenting oneself before the Superior, if someone was absolved at the time of death from reserved excommunications, no longer has place and ceased after Trent.... Caelestinus, in the Compendium of Moral Theology, tract 1, chapter 7, no. 3, thinks that this doctrine can be approved with a safe conscience when the excommunication is not notorious or brought to the external forum.* Sporer held the same, establishing (no. 752) that even the obligation of appearing before the Superior because of the striking of a cleric most probably avails only for the external forum, namely, when the matter has already been brought to the contentious forum.

Observe furthermore that, according to the mind of St. Alphonsus (book 7, no. 87), this question has place not only if someone was absolved from reserved censures at the moment of death, but also when, because of a long-lasting

impediment to approaching the Superior, he obtained absolution from another and performed those things which the Superior would have exacted from him.

** The VV. write twelve columns against this Note and the text of Gury (pp. 566-571). We shall indicate in a few words those things which are of any or whatever importance.

1. Therefore, the VV. object (p. 567) that in the proposed case the negative opinion is rightly called more common and more probable by St. Alphonsus.

Reply. Let it pass; for this is denied neither in the Note nor in the text. But in the text it is merely said: *Nor does St. Ligorius seem to contradict it*.

2. But, the VV. say (*loc. cit.*), St. Alphonsus manifestly contradicts it and proposes the doubt only concerning one amended, who has already satisfied the parties.

Reply. Neither in the text nor in the Note does anything occur which excludes either satisfaction already fulfilled or the will of satisfying; indeed, an express mention of this is seen in the text of the Roman Ritual.

3. The VV. object (p. 568) that it is omitted in the Note that the Salmanticenses do not adhere to that opinion which they judge probable.

Reply. Let it pass. For it was sufficient for the purpose of the Note to indicate that the opinion had been judged probable by the Salmanticenses also.

4. The VV. (p. 569) prefix this title to another article: *The arguments brought forward by Fathers Gury and Ballerini for the affirmative opinion are weighed.*

Reply. I deny the supposition. For neither Father Gury nor Father Ballerini brings forward any argument, but they merely report both the opinion of others and some reason. Therefore, with fruitless labor the VV. fill two columns with texts of Patritius Sporer, whom they otherwise cannot deny to have judged the opinion which they attack to be most probable.

5. That the VV. may extricate themselves from the words of the Roman Ritual, they object that there is discussion there not only of reserved censures but also of reserved cases without a censure.

Reply. I concede the Antecedent and deny the consequence. For those words of the Ritual, *And if for some reason he is bound to present himself to the Superior*, would absurdly be drawn to a distinction between censures and other sins; rather, they openly indicate that there can be a doubt whether those who have been absolved from a censure are also bound to present themselves.

And let these things suffice for those twelve columns of the VV.; for certain other things do not require a reply.

577. ○ **QUESTION 3. Is one bound by a reservation, when under a necessity of communicating or celebrating, bound to confess to a simple Confessor when another is lacking?**

Reply 1. More probably he is not bound to confess if he has no other mortal sin except the reserved one; the reason is that he is bound to confession neither by reason of the reserved sin, which cannot be directly remitted, nor by reason of venial sins or mortal sins already remitted, since these are not necessary matter of confession. - St. Ligorius, no. 265 [6]. - Lugo. - Elbel, etc.

[6] If he has no other mortal sin except the reserved one, the Doctors agree that he is not bound to confession, but that it suffices for him to be contrite. St. Alphonsus (book 6, no. 265, q. 1).

Reply 2. If, however, he observes that he does not have contrition but only attrition, he will be bound to confess at least a venial or mortal sin already remitted on another occasion, so that he may thus be absolved indirectly from the reserved sins and communicate in the state of grace. - Thus commonly. - St. Ligorius, nos. 265, 585.

Reply 3. Furthermore, he is bound to confess if he has both reserved and non-reserved mortal sins. The reason is that the divine precept of premising confession before Communion urges, and no excuse from the precept of confession is given. - Thus most commonly, says St. Ligorius, against some who denied it because, as they said, the Confessor lacks jurisdiction over such a penitent; which is plainly false [7].

[7] It seems opposed to these things that St. Alphonsus (book 6, no. 585, doubt 2) says that this negative opinion is not improbable, and elsewhere (ibid., no. 596, q. 1) calls it sufficiently probable, because, as he says, *it is probable with Vasquez, Tournely, Armilla, Gerson, Trullench, etc., that a simple confessor lacks all jurisdiction over one having reserved sins, since he is not his competent judge; therefore he cannot absolve him even from the non-reserved sins.* Indeed (ibid., no. 265, q. 1), he adds for the same opinion Alexander of Hales, Sylvester, Richard, and Praepositus, and continues: *and Suarez, Palaus, and Filliucius rightly call this probable.* The reason is that that confession made to an inferior would be invalid, since it would be made to an incompetent judge who, because of the reserved sins with which the penitent is burdened, lacks all power over him. How, then, does the Author abruptly call false that which St. Alphonsus, after so many grave Doctors, affirms is rightly called probable?

But these things can easily be reconciled if the reason of the thesis is distinguished from the reason of the argument which St. Alphonsus adduces for it. For the thesis was in fact held at least as likely by those Authors whom St. Alphonsus himself alleges; hence it seems to have derived at least some extrinsic probability. But the argument drawn from this, that one cannot be absolved even from non-reserved sins unless the priest can absolve him at the same time from the reserved sins, belongs scarcely to a few, and has no strength from reason.

And indeed Vasquez (*In III Part.*, q. 91, art. 3, doubt 9, no. 24) argues from this, that if someone could in necessity be absolved indirectly from reserved sins, he could also be so absolved outside necessity. But this is manifestly false; for it is certain among all that necessity excuses from the precept of the integrity of confession, but that outside necessity no one is excused from it.

Sylvius, however (*In Suppl.*, q. 20, art. 2, q. 3), whose opinion Pontas (word *Reserved Case*, no. 21) and Collet (*On Penance*, part 2, chapter 8, no. 569) also report, argues from this, that according to the Council of Trent priests outside the moment of death can do nothing in reserved cases; but this would be false, in his opinion, if they could absolve at least indirectly from reserved cases. But that whole argument rests upon a perverse notion of indirect absolution, as though reserved sins were remitted in some way by the force of absolution, when among Theologians it is established that they are remitted no otherwise than they are remitted accidentally in the reception of the Eucharist or Extreme Unction, namely, consequently upon the infusion of sanctifying grace (as Dominic Soto says in *In IV Sent.*, dist. 18, q. 2, art. 5, proposition 2), and not by the force of absolution. To this, therefore, the words of the Author look when he says that it is false that a priest cannot be the judge and minister of the sacrament with respect to one who also has reserved sins.

Moreover, if certain others denied that anyone was bound to premise confession before the reception of the Eucharist when, besides other sins, he also has reserved sins, these did not deny that he could be validly absolved directly from the non-reserved and indirectly from the reserved sins; but they merely thought that in the case he was not bound to confess. For they thought that in a confession of this kind the reserved sins also had to be expressed; and since direct absolution from these would afterward have to be sought from one having the power for it, it followed, in their opinion, that the penitent would have to confess the same sins twice. They judged this burden of confessing the same sins twice so grave that for this reason they thought he should be excused from confession unless someone was present who could also absolve from the reserved sins. See Suarez, *On the Sacraments*, disp. 66, sect. 4.

But this reason also is destitute of all force; and therefore it was said that scarcely any merely extrinsic probability had belonged to the aforesaid thesis. And this indeed can be shown without any difficulty. For someone would be excused in the case from premising confession insofar as he would necessarily have to undergo that grave burden of confessing the same sins twice. But it is false that so grave a burden must then be undergone; for according to the common opinion it is far more probable (see the following question) that in that confession there is no obligation to express also the reserved sins over which the confessor has no power. Therefore it could at one time have seemed that a shadowy probability inhered in that thesis; but since it lacks a solid foundation, in fact it has no probability.

** The VV. object (p. 940, note 4) that in this Note the reasons of diverse Authors are refuted, but the foundation of this opinion which St. Alphonsus thus expounds is passed over: *The reason is that that confession made to an inferior would be invalid, since it would be made to an incompetent judge.* And the VV. continue: *What wonder if he seems an incompetent judge to whom the right*

of knowing the whole cause is denied, that is, all the sins committed, especially the graver ones, and the disposition and true state of the penitent? FOR THIS REASON, the holy Doctor, although he embraces the opposite opinion as more probable, nevertheless rightly called this opinion also probable with Suarez and others.

Reply 1. I deny that Suarez called that opinion simply probable; his words are (*On the Eucharist*, disp. 66, sect. 4, section *Fourth*): *It does not seem improbable.* But then I deny what the VV. insinuate by that phrase FOR THIS REASON, as though Suarez either deferred anything to that reason which St. Alphonsus employs or even mentioned it. This is altogether false; for Suarez said that opinion did not seem improbable because otherwise the penitent is obliged to confess the same mortal sin twice, which is a grave burden. It was already said in the Note that this reason is not efficacious, and Suarez admits it, nor do the VV. deny it.

Reply 2. As regards the argument of St. Alphonsus, the VV., as I think, would better have consulted the honor and reverence due to the holy Doctor if they had omitted disputing both the argument and the question itself.

First, indeed, it is most true that this opinion is called probable by St. Alphonsus. For he writes (book 6, no. 265, q. 1): *And Suarez rightly calls this probable*; which, however, as we have seen, is not altogether true of Suarez. But, passing over this, the holy Doctor himself elsewhere (book 6, no. 585, doubt 2) judges a little differently and merely says thus that it is not improbable: *Although the negative opinion is not improbable.* But behold, afterward he again judges differently, when he writes (book 6, no. 596, q. 1): *Antoine denies it, and speaking in itself his opinion is sufficiently probable.* Nevertheless, to omit for now that it is not true that Antoine denies it, because in the place which St. Alphonsus alleges (*On Penance*, appendix 4, chapter 3, art. 2, q. 5), Antoine, reporting two opinions, finally retains the affirmative at the end; to omit this, I say, St. Alphonsus lastly concludes thus in this place: *And since this opinion* (namely, the affirmative) *is common* (but he had called it most common in no. 265, q. 1), *as Antoine himself admits, and very probable, indeed CERTAINLY MORE PROBABLE, as we said, it can well be reduced to practice; for it is morally certain that with a probable opinion the Church supplies jurisdiction.* Therefore St. Alphonsus finally calls the affirmative certainly more probable. But, as is most well known, when the holy Doctor calls an opinion certainly more probable, he himself testifies that he does not hold the opposite as probable, but only as slightly or doubtfully probable. How, then, did he elsewhere call this same opinion sufficiently probable and say that Suarez rightly called it probable? Moreover, why is discussion of the Church supplying jurisdiction introduced here? For under the hypothesis the priest has jurisdiction over the non-reserved sins; therefore it is not necessary that this be supplied by the Church. But over the reserved sins the Church supplies no jurisdiction, and therefore the penitent must afterward present himself to the Superior to be absolved by him. Therefore the reverence due to the holy Doctor required that the VV. not at all raise a question about these things.

But this is not yet the end. The holy Doctor (book 6, no. 596, q. 1) asks, *Whether, if the penitent confesses it* (namely, the reserved sin) *when necessity urges, a simple confessor validly and licitly ABSOLVES him.* And he replies: *Antoine denies it* (which has already been said not to be true), *and speaking in itself his opinion is sufficiently probable; for, as we said in no. 265, q. 1, it is probable with Vasquez, Tournely, Armilla, Gerson, Trullench, etc., that a simple confessor lacks all jurisdiction over one having reserved sins, since he is not his competent judge; therefore he cannot absolve him even from the non-reserved sins.* But these things are far from the truth, because of these Vasquez alone taught that anomalous opinion, namely, that a simple confessor lacks all jurisdiction over one having reserved sins, etc., and attempted to defend it more diffusely (q. 91, art. 3, doubt 9, from no. 10), and for it he also brought forward that absurd reason which we indicated in the Note.

The cause of this error in the holy Doctor, which we shall call material, seems to have been that he had indeed alleged these Authors in no. 265, q. 1, to which place he refers, but the question was not proposed thus there. For the question (no. 265, q. 1) is proposed thus: *It is asked, 1. whether one who has a reserved sin and does not have access to a confessor having the faculty is bound to confess to an inferior confessor.* It is manifest, moreover, that this question differs greatly from the preceding one. Nevertheless, while discussing a penitent who simultaneously has reserved and non-reserved mortal sins, he again replies thus: *The first opinion denies that he is bound to confession and says that he can communicate after only contrition has been premised. Thus Vasquez, q. 91, art. 3, doubt 9; Collet, vol. 5, p. 499, word Hence one who; likewise Gerson and Alexander of Hales according to Lugo loc. cit.; Sylvester and Richard according to Diana, part 3, tract 4, resolution 104; likewise Armilla, Praepositus, Trullench, etc., according to Viva, On the Eucharist, q. 4, art. 7, no. 6; and Suarez, disp. 66, sect. 4, section Fourth, Palaus, and Filliucius according to Viva loc. cit., rightly call this probable.* But afterward he gives the same reason as above, thus: *The reason is that that confession made to an inferior would be invalid, since it would be made to an incompetent judge who, because of the reserved sins with which the penitent is burdened, lacks all power over him; whence, just as absolution cannot be divided to remit one sin without another, so neither can confession.* That the holy Doctor thought this reason was commonly adduced by all these Authors is manifestly apparent from his

words which we described shortly before from book 6, no. 596. But those Authors by no means hold that anomalous opinion of Vasquez.

For, 1. for example, St. Alphonsus alleges Gerson and Alexander of Hales according to Lugo, *loc. cit.*, that is, *On the Eucharist*, disp. 14, no. 87, at the end. But in that paragraph Lugo does not even name Gerson and Alexander of Hales. He indeed mentions them in no. 86, but for an altogether opposite doctrine. *This last argument persuades me* (he says) *that that opinion is not improbable which teaches that in the aforesaid case the penitent is not obliged to tell the confessor the reserved sins from which the confessor himself cannot absolve him, but only those from which he can absolve him; for concerning these alone is he judge, and therefore these alone can he legitimately hear in his tribunal. Although some call this opinion improbable..., nevertheless not a few and not contemptible Theologians admit it to be true or probable; GERSON, ALEXANDER OF HALES, and Major say that it is probable.* Indeed, and this will seem of greater moment, Vasquez attributes the same opinion to them (q. 91, art. 3, doubt 5, no. 3); so far, namely, were they from thinking the same as Vasquez.

2. He alleges Armilla, Praepositus, Trullench, etc., according to Viva, *On the Eucharist*, q. 4, art. 7, no. 6. But Viva, who also adds John Sanchez, alleges these by reference from Diana, part 2, tract 14, resolution 65. Now Diana adduces them, except Trullench, whom Viva had added on his own, as affirming that a priest, if scandal is present, can celebrate without previous confession because it seems a grave burden to confess the same sins twice. Therefore these also bring forward another reason and can by no means be invoked for the anomalous opinion of Vasquez. And say the same of Trullench, who, discussing the same priest, indeed concludes (*On the Decalogue*, book 1, chapter 3, doubt 4, no. 13): *If he cannot judge that he has perfect contrition, let him confess and be absolved by the confessor directly from the non-reserved sins.* These things are indeed diametrically opposed to the reason which St. Alphonsus borrowed from Vasquez.

3. He alleges Richard and Sylvester according to Diana. But in Diana (vol. 1, tract 5, resolution 132, no. 3), Richard, no otherwise than the Authors cited above, excuses from confession only because it is judged a grave burden to confess the same grave sins twice; while Sylvester (ibid., no. 4) is alleged by Diana as not rejecting the opinion which teaches that one bound by a reserved excommunication in a case of necessity can celebrate or receive the Eucharist after only contrition has been premised; where no trace at all of the opinion of Vasquez is discerned.

4. He alleges Suarez, Filliucius, and Palaus as judging that same reason probable. But we saw above that what did not seem improbable to Suarez was not the doctrine of Vasquez, but the opinion which excuses one from the burden of confession to be premised before the reception of the Eucharist lest one be compelled to confess the same sins twice. Nor does Filliucius have anything else, who gives the reason (tract 4, chapter 8, no. 213): *Lest the penitent be bound to confess the same reserved sin to two persons.* Nor does Palaus hold otherwise (tract 21, sole disp., point 12, no. 6), saying: *But if you are burdened by other non-reserved mortal sins, although some judge, not improbably, that you are not obliged to confess because you would be obliged to submit the same reserved sins to the keys twice..., nevertheless I judge it more true that you are obliged to premise confession at least of those which are not reserved.*

Therefore, of so many Authors alleged we have only Collet who followed the footsteps of Vasquez (*On the Eucharist*, part 1, chapter 6, art. 3, conclusion 4), who certainly is by no means fit to procure probability for any opinion. And indeed (*On Penance*, part 2, chapter 8, no. 570) he relies upon that absurd reason which we saw was also adduced by Vasquez in the Note: namely, that otherwise one having reserved sins could, in the same case of necessity, that is, of celebrating or receiving the Eucharist, confess even to one who is in no way approved.

And from these things it is now sufficiently evident that that great apparatus of so many allegations which we see in St. Alphonsus (book 6, no. 265, q. 1) certainly could cause the thesis which he there proposes to be called not improbable; but it is of no benefit at all for adding force to the Vasquezian reason which he employs both here and again in book 6, no. 596, q. 1, in which latter place, moreover, the holy Doctor without cause attributes it to all those Authors.

Moreover, to refute that opinion of Vasquez to which the VV. seem to defer so much weight, namely, that one having simultaneously reserved and non-reserved sins is not only not bound to premise confession before receiving the Eucharist, but that his confession is necessarily altogether invalid if he confesses to a simple confessor, to show, I say, that this opinion is altogether empty, it is enough merely to have examined the arguments by which Vasquez or Collet attempted to confirm it.

One altogether inept argument, which we now saw transcribed by Collet, had already been indicated in the Note. Vasquez takes another argument from chapter *Si celebret*, *De Clericis Excommunicatis*, which he himself develops more diffusely where he treats Excommunication (doubt 4, no. 9). But to reveal the absurdity of this argument it ought to suffice that from that

argument it would follow that all sacraments received by an excommunicated person, even Confirmation and Sacred Orders, indeed even matrimony, are invalid.

Vasquez draws a third argument from the Council of Trent because it is said (sess. 14, chapter 7) that outside the moment of death priests can do nothing in reserved cases; which argument you may also see transcribed by Collet (*loc. cit.*, no. 571). But, says Lugo (*On the Eucharist*, disp. 14, no. 97), it is easily replied that they can do nothing directly, but nevertheless can indirectly, just as in the case in which a penitent, forgetful of a reserved sin, confesses the non-reserved sins and is indirectly absolved from the reserved sins according to the opinion of all. Therefore it cannot be understood of a power even to absolve indirectly. On this matter the same Lugo wisely observes that the Council of Trent carefully said *they can do nothing in reserved cases*, and not *they can do nothing with respect to a person having reserved sins*. But by an argument drawn from one who either forgets the reserved sin or knowingly omits it in confession for another just cause, Lugo refutes *ad hominem* the opinion of Vasquez, who who holds that in these cases confession is valid. That these sins, namely, the non-reserved, are simultaneous with reserved sins does not impede the validity of the aforesaid absolution, as is established in one who for a long time invincibly forgot a reserved sin and meanwhile often confessed other non-reserved sins to an ordinary confessor, by whom he is indeed validly absolved directly from those and indirectly from the reserved sin. Vasquez himself admits this, though he attempts in vain to give a reason for the difference between that case and ours, such that in the former absolution from the non-reserved sins is valid, but in ours it is not; Suarez rightly attacks this reason. For Vasquez seems without foundation to remove the power of absolving indirectly from a reserved sin when it is disclosed, although this could be done if it were kept silent. For what difference does its being expressed make, such that it therefore cannot be remitted? Or why can the absolution not be terminated directly at the non-reserved sins alone, just as if the reserved sin had not been stated? Thus Lugo (*loc. cit.*, no. 86).

To add strength to the reason which St. Alphonsus took from Vasquez or Collet, the VV. added these things: *And in fact what wonder if he seems an incompetent judge to whom the right of knowing the whole cause is denied, that is, all the sins committed, especially the graver ones, and the disposition and true state of the penitent?*

Reply. This rejoinder does not prove what the reason of St. Alphonsus there has, namely, that the confession is invalid because the judge who does not have power also over the reserved sins is incompetent; but at most it could in some way prove that in the case not only the non-reserved but also the reserved sins must be disclosed in confession, if at any time this were altogether necessary for that end. Therefore this rejoinder concludes absolutely nothing for the opinion of Vasquez and the holy Doctor Alphonsus.

578. ◦ **QUESTION 4. Is one having reserved and non-reserved sins bound in confession also to accuse himself of the reserved sins?**

Reply. No, more probably. The reason is, says St. Alphonsus (book 6, no. 265, Question II), both because otherwise he would be bound here to confess those reserved sins twice, first to the inferior and afterward to the Superior; and because, as was said above (*loc. cit.*, Question I), there appears to be no obligation to confess those sins over which the confessor cannot be judge, since he has no jurisdiction over them. - Recall the things said in the preceding question, Reply 1 [8].

[8] Therefore, what St. Alphonsus writes concerning the same matter (book 7, no. 92), namely: *But whether one having reserved sins and censures is bound to disclose them to a confessor not having power over them, in a case where the necessity of communicating or confessing urges and access to the Superior is not open? See the things said On the Eucharist, book 6, no. 265, Question II, where we said that he is bound. See the reason there*, must plainly be understood of a case in which the penitent has only reserved sins or censures.

But that certain more recent authors make an exception from this norm if the penitent is a relapser into reserved sins or is in a proximate occasion (see St. Alphonsus, book 6, no. 265, q. II, and no. 585, doubt 3) is less to the point: both because it seems absurd that a Confessor, led by an empty suspicion, should ask penitents whether perhaps they have reserved sins in which those circumstances are present; and because questions ought to be restricted to those matters in which the confessor is judge; and finally because suitable remedies will not be lacking when those reserved sins are disclosed to one having the faculty, to whom it pertains to know that whole cause.

QUESTION 5. Is one validly absolved who in good faith accuses himself of a reserved sin to a simple Confessor, or who without fault forgets it?

Reply. Yes, if he submits another non-reserved sin to the keys; the reason is that the Confessor does not lack power over non-reserved sins, although he cannot absolve directly from the reserved sins. - Thus commonly with St. Ligorius, no. 565.

579. ○ **QUESTION 6. Can an inferior absolve a dying person from reserved cases when the Superior or another having the faculty is present?**

Reply 1. Yes, if the cases are purely reserved. The reason is that at the moment of death there is no reservation.

Reply 2. Yes, even as regards sins reserved with censures. This is elicited from Trent, sess. 14, chapter 7: *It has always been observed in the same Church of God that there is no reservation at the moment of death; and therefore all Priests can absolve any penitents from any sins and censures whatsoever* [9].

[9] Yet it would be useful to employ a confessor who possesses power over the reserved cases, because thus the necessity of approaching the Superior after health has perhaps been restored is removed, if indeed there is question of those reserved cases which require this; concerning which see the note above at no. 576. This observation also has place in the following question.

QUESTION 7. Is permission of the Bishop required for absolving a dying person from papal cases if it can easily be sought?

Reply. No. For, as is established from the adduced words of the Council of Trent, at the moment of death there is no reservation. This avails for both notorious and occult cases. Therefore the permission of the Bishop would be altogether superfluous.

580. ○ **QUESTION 8. Can the Superior absolve a penitent from reserved sins and remit him to an inferior for absolution from the non-reserved sins?**

Reply. No. The reason is that, from proposition 59 condemned by Innocent XI, it is not lawful to divide confession because of the multitude of affairs or penitents. - Thus commonly against some. - See St. Ligorius, no. 595 [10].

[10] Proposition 59 condemned by Innocent XI stands thus: *It is lawful to absolve those who have confessed only partially because of a great concourse of penitents, such as can occur, for example, on the day of some great feast or Indulgence.* But this, as is evident, is less efficacious for solving the question proposed by the Author, since it is altogether different.

But many and grave Authors say, according to Lugo (*On Penance*, disp. 20, no. 75), that a Superior can sometimes absolve from the reserved sins alone and remit the penitent to an inferior for completing the confession, because, on account of the occupations of Prelates, he does not have leisure to hear the integral confessions of subjects. Thus Cajetan, St. Antoninus, Paludanus, Henry, Navarrus, and both Sotos, etc. But then he continues (no. 76): *The contrary opinion teaches that, speaking in itself, this cannot be done, but that the Superior must either not absolve or hear the integral confession. Adrian, Sylvester, Victoria..., and the other more recent authors commonly hold this. This opinion is more true.*

Why he added the phrase *speaking in itself* he gives the reason below (ibid., no. 78) thus: *Nevertheless, we do not deny that a reasonable cause can be given for doing this sometimes and for absolving sacramentally from the reserved sins alone; for example, if the penitent should say that he needs the absolution of the Superior or his permission to confess to another, and that he would not wish to tell the species of the sin except in sacramental confession, because he does not wish to disclose the same sin to two persons; and, on the other hand, he could wait no longer because of an urgent necessity of communicating or something similar; and finally, the Superior should judge it necessary personally to hear the reserved sin because, on account of some circumstance, it would be very expedient: then a cause could be given for hearing and absolving in a divided confession; yet this case is most rare.* He then adds (ibid., no. 79) how it could happen that even a privileged confessor ought for the same cause to absolve in a divided confession. *But* (he concludes) *even this could happen only most rarely.*

QUESTION 9. Is reservation removed through an invalid or sacrilegious confession?

Reply 1. It is probably removed through a confession invalid without fault. The reason is that reservation is principally ordained to this, that sins be referred to the Superior. - St. Ligorius, no. 598.

Reply 2. It is probably removed even through a sacrilegious confession, because there is the same reason as for the preceding case. - St. Ligorius, ibid., and others more commonly. Except: 1. if the penitent culpably conceals the reserved sin itself, because it is by no means presumed that the Superior in a sacrilegious confession of this kind wishes to remove the reservation of a sin deliberately not referred to him; 2. St. Alphonsus also excepts the case in which the confession is made invalid in a Jubilee, because the Pontiff does not give the faculty of absolving from reserved sins except that the faithful may gain the Jubilee, and consequently otherwise he is not judged to wish to concede it [11]. But others with Lugo hold otherwise, disp. 20, no. 113.

[11] This reason, which St. Alphonsus (book 6, no. 537, q. II) took from La Croix (book 6, part 2, no. 1449), proves too much; for the consequence would be that reservation is not removed even in those who, after first confessing validly, afterward do not gain the Jubilee. Benedict XIV himself rejects this opinion of certain authors in his Constitution *Inter praeteritos*, section 86, in these words: *Since absolution from censures in the case of which there is question was and is given, not indeed with reincidence, but absolutely, therefore in the same Constitution LIV we declared that he by no means remains bound by the censures from which he had been loosed, or deprived of the grace of the commutations* (namely, of vows) *and dispensations obtained.*

Moreover, for enjoying the graces conceded in a Jubilee, Benedict XIV requires this one thing: that a sincere will of gaining the Jubilee be present. Thus the cited Constitution, section 86: *It was said above that one who has the faculties which are conceded during the year of Jubilee can use them only with those penitents who have a sincere will of obtaining the Jubilee and who, with this intention of fulfilling the works enjoined for obtaining it, approach confession.* Nor will you find anything more in section 62, to which St. Alphonsus appeals: *If all the faculties which are granted* (he says) *are directed to the obtaining of the Jubilee and are, as it were, a preparation for it, it clearly follows thence that there is no place for their use except with one who is prepared to obtain the Jubilee and has a certain purpose of fulfilling the works enjoined for acquiring it.* For this matter he also adduces these words of Suarez (*On Religion*, tract 6, chapter 16, no. 6): *The grace is not conferred except in order to this end and by way of preparation for the effect of the Jubilee; therefore one who does not have the intention of fulfilling the works and obtaining the Jubilee cannot enjoy the faculty.*

** To that which is noted here concerning the holy Doctor Alphonsus, the VV. rejoin (p. 576, note 2): *The reply is easy. The holy Doctor does not require that the Jubilee actually be gained after all the conditions have been fulfilled, but only that the confession be a true preparation for gaining the Jubilee. Hence the consequence rather is that reservation is removed in those who first confessed validly, even if afterward they do not gain the Jubilee for another cause.*

Reply. An easy reply is also at hand for these things, namely, I deny the whole. First, therefore, let those things which St. Alphonsus has (book 6, no. 598, at the end) be read. For among the cases in which he denies that reservation is removed this also is contained in express words: *Likewise an invalid confession made in a Jubilee, whether culpably or inculpably, must be excepted; because there, since the Pontiff does not furnish the faculty of absolving reserved sins except for the end that the faithful gain the Jubilee, HE IS NOT JUDGED TO WISH TO REMOVE THE RESERVATION IF THEY DO NOT GAIN THE JUBILEE.* But the reason which is here given why reservation is not removed if the confession is invalid even inculpably manifestly presents the more general principle, namely, that the Pontiff is not judged to wish to remove reservation if the penitents do not in fact gain the Jubilee. Therefore that reason proves too much, because it also comprehends those who, after first confessing validly, afterward do not gain the Jubilee.

The manner of speaking which Croix uses (book 6, part 2, no. 1449) falls upon the same rock. *That he may gain the Jubilee*, he says, *and consequently that he may acquire the right of absolution from reserved sins*, etc. These words clearly labor under equivocation. For according to the Pontifical Decrees, one who wishes to gain the Jubilee acquires the right to absolution from reserved sins, not one who in fact finally gains it.

The holy Doctor, say the VV., requires only that the confession be a true preparation for gaining the Jubilee.

Lugo replies here (*On Penance*, disp. 20, no. 113): *It certainly seems probable to me that, whenever the defect is not in the integrity concerning the reserved sins themselves, reservation can be removed by virtue of that absolution if the penitent has the intention of gaining the*

Jubilee, of afterward confessing validly, and of placing all the other requisites. For just as a Confessor validly absolving by privilege and delegation removes the reservation of the sin, although the confession is invalid because of a defect even known to the penitent, provided it is not concerned with the integrity due in reserved sins, I do not see why by virtue of the Jubilee the confessor cannot also loose the bond of reservation of the sin in like circumstances, although he does not absolve from the sin itself because of the indisposition of the penitent. Lugo observes the same thing (*loc. cit.*) concerning absolution from reserved censures. *I add* (thus he), *that even if the penitent notices the defect of the confession, he can nevertheless sometimes have the intention of gaining the Jubilee and of placing all the requisites; for example, if he has the intention of afterward confessing validly before the end of the week. And then he seems to be validly absolved from excommunication and reserved censures in that invalid confession, because absolution from censures is given before absolution from sins, and its validity does not depend upon the validity of the absolution.... Since, therefore, he has the intention of gaining the Jubilee, he now seems to be disposed for obtaining absolution from the censures, although he is not disposed for obtaining absolution from the sins.*

But these things avail a fortiori when the penitent confesses in good faith and therefore the confession is inculpably invalid. On this matter the same Lugo says (*loc. cit.*, no. 112): *As regards censures, it does not appear why the absolution would not then be valid, since by virtue of the Jubilee someone can be absolved from excommunication even outside the sacrament; therefore indisposition for justification does not impede absolution from excommunication. But from this an argument can be made for the removal of reservation; because if he is validly absolved from excommunication, therefore at least the reservation of the sin having a reserved excommunication is removed according to the common opinion of Theologians. Then, if by virtue of the Jubilee the Confessor can validly remove the bond of excommunication from one who confesses invalidly, why will he not by the same virtue be able to loose the bond of reservation of the sin, notwithstanding the invalidity of the confession?* And he had premised (*loc. cit.*, no. 111): *Just as a Religious who by privilege can absolve from reserved sins removes the reservation, although the absolution from sins is invalid because of the indisposition of the penitent.*

And from these things it is indeed gathered that the reasons which St. Alphonsus brings forward to the contrary (book 6, no. 537, q. 2) do not impede. The reason, he says, is both that one's fraud ought not to benefit anyone, and that the faculties are conceded in confession so that through it the faithful may gain the Jubilee. For, first, no fraud in fact intervenes when the penitent has a true will of gaining the Jubilee, although here and now he is not disposed; just as, according to Lugo, if someone for this same reason should outside the sacrament seek and obtain absolution from a reserved excommunication, although here and now he is not disposed and therefore wishes to defer confession until the following month. Otherwise, there is no reason why the confessor should be unwilling to use the faculties, especially because, as St. Alphonsus says (book 6, no. 598, q. 4), the end of reservation is obtained even in a sacrilegious confession. *The end of confession is one thing,* says the holy Doctor, *and the end of reservation another. The end of confession is that sin be remitted; but the principal and direct end of reservation is that those committing reserved sins of this kind be subjected to the judgment of the Superior. Therefore, when a subject refers his sin to the Superior and accepts the penance imposed upon him by the Superior, even if he confesses sacrilegiously, the end of reservation is already obtained, although the sin is not remitted. But that the sinner derives an advantage from such iniquity happens accidentally; for although by his interpretative will the Superior would be unwilling to remove the reservation if he recognized the sacrilege, nevertheless by his actual will he then already wishes to remove it.*

Consequently, neither do those things have force which the VV. report from St. Alphonsus (book 6, no. 537, q. 2), namely, that when the Pontiff concedes a faculty of absolving from reserved sins so that the faithful may gain the Jubilee, he is not presumed to concede it for those who cannot gain the Jubilee with that confession. Another will say otherwise: the Pontiff concedes that faculty so that all who have the will to gain the Jubilee may be able to obtain it. But they can gain the Jubilee even if they do not gain it by that confession but by another valid confession afterward, especially since the end of reservation, as St. Alphonsus proves, is already obtained even in the preceding invalid confession. And this can be confirmed from parity and by an argument *ad hominem*. For let us prescind from the occasion of the Jubilee. What generally is the end for which a Superior concedes the faculty of absolving from reserved sins? Certainly that a member of the faithful having reserved sins may be reconciled to God. Will the VV. therefore conclude that the Superior is not presumed to concede it for those who cannot by that confession, as culpably invalid, obtain reconciliation with God? But St. Alphonsus (book 6, no. 598, q. 4) adheres to the opinion which affirms that reservation is removed by that invalid confession, and excellently refutes the reasons of the opposite opinion.

581. ○ QUESTION 10. Is reservation removed if the penitent, while confessing to the Superior, forgets the reserved cases?

Reply. Yes, at least probably, because it is rightly presumed that the Superior wished to free the penitent from every bond from which he can absolve him. - Thus Lugo, the Salmanticenses, and

others commonly, against others who also probably deny it. - St. Ligorius, no. 597, calls the first opinion most common and the other more probable [12].

[12] Although St. Alphonsus (*loc. cit.*) called the opinion which denies that reservation is removed more probable, nevertheless he does not prohibit anyone from following the common, indeed, as he himself calls it, most common doctrine of Lugo, notwithstanding the objections of Suarez; but he merely adds a new exception to that doctrine thus: *Nevertheless, I think it must altogether be said that reservation is not removed when a positive presumption is present that, if the Superior had heard the reserved sin, he would have deferred absolution.* But it scarcely appears when this hypothesis can have place. For scarcely any other reason for deferring absolution can be present except that the penitent here and now is not disposed. Yet St. Alphonsus himself (ibid., no. 598, q. IV) proceeds so far as to concede that reservation is removed even when the penitent confesses sacrilegiously. Therefore no reason appears why in that case also the general foundation of this doctrine cannot avail, which Lugo (*On Penance*, disp. 20, no. 91) thus expounds: *The whole difficulty ought not to concern possibility, but fact or will: whether in fact the Superior wishes directly to remove reservation for forgotten sins whenever he absolves a subject. And as regards this, we say that according to the common opinion that will is probably presumed in the Superior.*

** In this place the VV. (pp. 572-573, in the Note), by instituting a comparison among the various editions, corrected the common text of the holy Doctor Alphonsus. For in all the editions after the sixth, of the year 1767, book 6, no. 597, it was read thus: *I judge this second opinion more probable; and Sylvius, vol. 4, Suppl., q. 20, art. 2, near the end, holds this as true with Sylvester, Angelus, Adrian, Navarrus, Covarruvias, Bonacina, Sa, Coninck, and several others, with whom Pontas, case 25, agrees, and to whom the Continuator of Tournely, vol. 6, part 2, p. 131, adheres. Although the first also seems probable, both on account of the authority of the Doctors, who, as Concina himself admits, commonly teach it, and because it can probably be presumed that the Superior consents*, etc.

But through the inadvertence of the printer, as the VV. relate, it happened that those nine Authors appeared to be alleged for the opinion denying, when St. Alphonsus, on the contrary, had added them for the affirmative. Therefore this passage ought to be read thus: *I judge this second opinion more probable. Although the first also seems probable, both on account of the authority of the Doctors, who, as Concina himself admits, commonly teach it, and Sylvius holds this as true with Sylvester, Angelus, Adrian, Navarrus, Covarruvias, Bonacina, Sa, Coninck, and several others, with whom Pontas agrees and to whom the Continuator of Tournely adheres; and because it can probably be presumed that the Superior consents that the reservation be removed*, etc.

Thence also that which the holy Doctor had premised in the same place must be corrected. For he had also alleged Sylvester and Angelus as patrons of the negative opinion, whom in the new addition he admits to stand for the affirmative. Indeed, Rosella and Gabriel must also be deleted there. St. Alphonsus cites them with the two aforesaid thus: *Likewise Sylvester, Angelus, Rosella, and Gabriel according to Lugo.* But Lugo (disp. 20, no. 85) adduces all of these not for the negative but for the affirmative opinion.

Moreover, in those twelve columns which the VV. (pp. 572-578) oppose to the present Note, they object to two things. The first is (p. 574) that it is asserted less correctly in the Note that scarcely any reason is given for deferring absolution besides the actual indisposition of the penitent. For, they say, the Bishop could defer absolution: 1. so that the scandal might first be repaired; 2. so that the penitent might first fulfill some part of satisfaction.

Reply. Absolution can also be deferred for other causes, for example, until the penitent repairs the damages inflicted, restores reputation, removes the occasion of sinning, etc. But these and other things of this kind in no way prevent the reservation from ceasing. The reason is that the sin omitted through forgetfulness must afterward be submitted to the keys. Yet even when reservation has been removed, the simple confessor to whom the confession is made will, according to his office, enjoin the things that must be enjoined and perform those things which the Superior would have performed, no otherwise than a privileged confessor to whom the penitent had confessed the reserved sins. Therefore the causes on account of which it may be presumed that the Superior does not remove the reservation are imaginary.

The other thing which the VV. reprehend is what is said in the Note, namely, that since St. Alphonsus concedes that reservation is removed even when the penitent confesses sacrilegiously, it must not be judged that reservation is not removed on account of the indisposition alone of the penitent, which could even be inculpable. The VV. rejoin (pp. 576-577): *The reason is different, and the distinction between this and the other question is essential. For the penitent who inculpably forgets a reserved sin indeed confesses validly; but the Superior, to whose judgment the offense is not submitted, can neither apply medicine, nor admonish the penitent as is fitting, nor impose upon him a due and at the same time salutary penance.... But none of these requisites is lacking in the confession which the other performs, although invalidly.*

Reply. It has already been said that in the case it belongs to the confessor, to whom the penitent afterwards confesses that sin, to take care of applying both the medicine and the admonitions, and also of imposing a due and salutary penance. Wherefore it is not true that the end of the reservation is thus not satisfied; nay rather, this is what generally happens when either the penitent, or the confessor for the penitent, seeks and obtains from the Superior a faculty for reserved cases in general.

QUESTION 11. Is one who confessed a doubtfully reserved sin to an inferior altogether freed from the reservation, even if he afterward recognizes it as certain?

Reply. Yes, more probably. The reason is that, since the doubtfully reserved sin was accused, it was already directly absolved, and consequently the reservation was directly removed [13]. - St. Ligorius, no. 600.

[13] Add that unless the reservation of the sin is certain, the sin is not considered to fall under the reservation at all. See what was said above, n. 572.

582. ○ **QUESTION 12. Can a Bishop absolve visitors from episcopal censures [14] which they incurred in their own diocese?**

[14] By episcopal censures the Author understands those which are proper to that diocese and at the same time reserved to the Bishop.

Reply 1. No, if there is question of censures *ab homine* by a particular sentence, as will be said in the Treatise on Censures.

Reply 2. If there is question of censures *a jure*, or even *ab homine* by a general sentence, it seems that the answer must be affirmative, while the present and common custom stands against which Ordinaries do not protest, although the older authors most commonly denied it. - Recall the things said above concerning a visitor to be absolved from cases reserved in his own diocese, no. 573, Question 5.

583. ○ **QUESTION 13. Can visitors be absolved from a reserved sin if they sinned in their own diocese and went elsewhere to confess?**

Reply. No, if they go elsewhere precisely in fraud of the reservation, as is established from the Bull *Superna* of Clement X. But Theologians do not agree how the phrase *in fraud* is to be understood. According to the more probable opinion, fraud of this kind intervenes when someone goes to an alien diocese for the principal end not only of confessing but also of avoiding the judgment of his proper Pastor. - St. Ligorius, no. 589, and others commonly. - Hence a visitor can be validly absolved if he went into an alien diocese for some honest end, for example, for conducting business, for gaining an indulgence, for confessing with less inconvenience or completing the confession more quickly, for finding an unknown or more prudent Confessor who might direct him better and take counsel for the tranquility of his conscience, or for other similar motives [15].

[15] Compare what was said above on these matters (n. 573, q. 3).

Appendix I. On Absolution of One's Own Accomplice in a Shameful Sin

584. ○ I. No confessor can absolve his own accomplice in a shameful sin; but one who presumes to absolve incurs *ipso facto* an excommunication reserved to the Pope. This is established from the Constitution *Sacramentum Poenitentiae* of Benedict XIV, June 1, 1741,

and likewise from another Constitution of the same Pontiff, *Apostolici muneris*, February 8, 1745.

II. A Confessor lacks all jurisdiction for absolving an accomplice with regard to the sin in which he was a participant. This is inferred from the express words of the Bull, in which it is said: *Any authority and jurisdiction for absolving any person whatsoever from a fault of this kind being moreover taken away from him by the law itself.*

585. **Questions. - QUESTION 1. What is comprehended under the name of a shameful sin?**

Reply. Every grave sin against the sixth precept of the Decalogue is comprehended, even if it is not consummated by intercourse; indeed, even if it is only a shameful touch. Some also add indecent conversation; but others contradict this, and this opinion, says Amort (*On Penance*, disp. 10), is more conformable to the words of Benedict XIV, *On the Synod*, book 7, chapter 14, no. 4, where he describes this crime.

It is required, however, that on each side there be a mortal sin not only internal but also in the character of an external act, and with formal complicity, that is, with mutual consent externally manifested. - St. Ligorius, no. 554, and others.

QUESTION 2. Under the name of accomplice are not only women but also men comprehended?

Reply. Yes. The reason is that the words of the Bull are altogether general; for in it is said: *Whoever dares to hear the sacramental confession of a person who is an accomplice in a shameful sin against the sixth precept*. Therefore the disposition of the Constitution is not to be restricted to the female sex. - Thus commonly. - Gousset, no. 488.

586. ○ **QUESTION 3. Can a Priest absolve an accomplice at the moment or in danger of death?**

Reply. Yes, validly and lawfully, if another Priest who can discharge the office of Confessor cannot be summoned; but if another Priest is present, even one not approved, who can hear the confession, he will indeed absolve validly but unlawfully, and he will not escape the penalties.

QUESTION 4. Can a Priest absolve an accomplice at death if another cannot be summoned or approach without infamy or scandal?

Reply. Yes, validly and lawfully. Yet the Priest who is the accomplice is bound, if he can, to forestall such dangers of infamy or scandal, for example, by departing under some pretext, etc. Otherwise he will not escape the penalties, although the absolution is valid. This is established from the Constitution of Benedict XIV. - St. Ligorius, no. 553.

QUESTION 5. Can a Priest absolve an accomplice at death if the latter refuses to confess to another?

Reply. It seems that the answer must be affirmative if the penitent is otherwise disposed, lest he perish, or at least lest his eternal salvation be endangered [1].

[1] There can be no controversy concerning the validity of the absolution if the penitent is rightly disposed; for Benedict XIV himself affirms that it is valid in the Constitution *Apostolici muneris*. Therefore the doubt can be only whether lawfully the Priest absolves lawfully. Now Benedict XIV, in the cited Constitution, condemns only one who, *with no necessary cause compelling him, presumed to hear the sacramental confession of his accomplice and to bestow absolution from that crime upon him*. But when a sick person near death refuses to confess to anyone else, not only does the eternal salvation of the sick person impose upon this Priest the necessity of hearing the confession, but a cause of scandal will also easily be present if he refuses to hear the confession of that sick person.

587. ○ **QUESTION 6. Can a Priest absolve an accomplice from other sins extraneous to himself after the accomplice has once been rightly absolved by another?**

Reply. Yes. The reason is that he lacks jurisdiction over this penitent only with regard to the sin in which he himself was a participant; therefore, once that sin has been blotted out through absolution imparted by another, the prohibition now ceases and jurisdiction is not lacking [2]. - St. Ligorius, no. 555, and others commonly.

[2] They relate that Benedict XIV, once asked by the Bishop of Brugnato whether a priest could absolve an accomplice after the latter had already been absolved by another confessor, replied that the accomplice could not be absolved by the priest who was his accomplice even if he had been absolved a hundred times by others. Nevertheless, this response in no way conflicts with the doctrine of the Author. For the Pontiff took away from the priest the jurisdiction by which he might absolve his accomplice from the crime in which he himself was an accomplice. And since this priest no longer has any jurisdiction over that crime, while that crime can be matter of absolution even after it has been remitted in another confession, it must certainly be said that the priest who was the accomplice cannot absolve the accomplice from that crime even if he has already been absolved by another; for with regard to that crime he perpetually lacks jurisdiction. But the Author is not speaking of absolving the accomplice from that crime, but of absolving him from other sins after that crime has been rightly expiated by confession made to another priest.

What, then, you will ask, is the Confessor to do if the penitent accuses himself of that sin, although remitted? I reply: If he accuses himself of this alone, the matter returns to the same as if someone confessed only a reserved sin to one not having the faculty over reserved sins; concerning which it was said above (section 575, Reply 2, no. 2) that he cannot be absolved, because thus no suitable matter of the sacrament is present. But if he also confesses other sins, it will be the same as if someone brought forward reserved and non-reserved sins together, namely, when matter partly suitable and partly unsuitable is proposed; but then the penitent can certainly be absolved, as was said in the cited section 575; yet the absolution, both from the nature of the matter and from the mind of the one absolving, falls only upon the suitable matter. Moreover, the present case differs from that preceding case in this: that for absolving one who with other sins also brings forward reserved sins, a cause excusing from the integrity of confession is required, as is noted in the same place; but in the present case no cause of this kind is required, because there is no need for that already remitted sin to be submitted again to the keys, and therefore its accusation occurs as something merely extraneous to the confession.

But if any shame remains in a Priest who through pitiable frailty committed a shameful sin with another, if any honor due to the Sacrament remains, he will never afterward hear the confession of his accomplice. Moreover, danger of a new lapse, or at least of grave temptation, can easily be present in the direction of such a penitent. - Gousset, ibid. - Therefore the faithful are to be warned, insofar as this can be done, never afterward to approach as Confessor the accomplice in their sin, except in a case of necessity.

In certain dioceses it had been provided by particular law that a Priest could never hear the confession of an accomplice, at least when intercourse had been consummated. Yet the Sacred Congregation of the Council more than once disapproved this; and when the Decrees of the Synod of Cosenza were proposed, although the defenders of this Decree brought forward many things in its defense and denied that danger of scandal was present, which others warned would easily arise from

such a decree especially in small places, the Sacred Congregation of the Council replied on December 2, 1679: *Let such a Decree be deleted* [3]. - *Analecta Juris Pontificii*, p. 752.

[3] Thus the Sacred Congregation most wisely took care that zeal for restraining the faithful from evil, which sometimes spares no devices or efforts, should not exceed the limits of prudence; from which perhaps it may happen that the power given by Christ (2 Cor. 13:10) tends rather to destruction than to edification, while the difficulty of the remedy drives into the abyss of despair one whom it did not restrain from evil.

And here indeed a much more difficult question presents itself to us. For what is to be done if in some place a woman who has miserably fallen into a sin of this kind with a priest has no other priest there to whom she might sacramentally confess that sin, and the circumstances of the persons, place, etc., are such that she cannot turn elsewhere to seek a confessor, nor is there any hope, as can happen, for example, in mission territories, that another priest will ever come there? Shall we say that the mind of Pope Benedict XIV, when he promulgated those Constitutions, was that a most wretched woman in these circumstances ought to lack the sacraments of the Church throughout the course of her whole life, until in the final moments of life she can at last be absolved by the priest who was her accomplice in the sin, as the Constitution of Benedict XIV provides? Indeed, since death sometimes comes unexpectedly and with no illness as though announcing its arrival beforehand, shall we say that the same woman is constrained also by this dreadful necessity: that after that sin she must undergo the danger, prolonged perhaps for very many years, of departing from this life without sacramental absolution? But then what is she to do when the precept of annual confession and Communion urges? Will you say that she can, and indeed ought, perpetually to approach the sacred table after merely premising contrition? What if scandal of the people and infamy of the woman follow if it becomes public that she does not approach the sacrament of Penance for several years? Someone may perhaps suggest that in this necessity one can act with a penitent of this kind no otherwise than with one having a reserved sin, and thus, passing over the fault over which the priest has no jurisdiction, the remaining sins can be submitted to absolution; and in this way that fault also can be remitted indirectly. But where and when will that fault finally be submitted to the keys of the Church? It must therefore be admitted that most grave difficulties occur, whichever way one may finally turn; nor, it seems, will anyone easily proceed to define anything in so grave a matter by relying upon his own judgment alone.

Yet there are two things which seem sufficiently clear. One is that Benedict XIV, when he took away from a Confessor who was an accomplice in the crime jurisdiction for absolving his accomplice from the same crime, indeed wished to remove the occasion of a most grave scandal, but by no means to close to the penitent the way of reconciliation instituted by Christ the Lord and imposed upon all the faithful; indeed, for this reason he rendered the Confessor who was an accomplice in the crime incapable of the ministry of this reconciliation, so that it might be obtained more fittingly and certainly through the ministry of another priest. He therefore supposed that which generally occurs, and occurred much more in that age, namely, that other priests were not lacking from whom the penitent might obtain, according to the law established by Christ, remission of his sin through confession and sacramental absolution which he sought. Therefore he perhaps will not have strayed very far from the truth who thinks that in the present hypothesis, as altogether extraordinary, a determination is sought in vain in those Constitutions.

The other is that the mind and practice of the Church have never been such that, whenever she restricts or removes jurisdiction for remitting certain sins and reserves their absolution to certain persons, she wished thereby to commit it that, with the law of Christ concerning seeking and obtaining pardon of sins through the sacrament of Penance set aside, the faithful should obtain the grace of justification only through contrition or even only through indirect remission of crimes. For however these means may seem, and in fact may be, sufficient for the grace of reconciliation with God and therefore for obtaining eternal salvation, nevertheless the Church, insofar as it lies in her, does not permit the economy established by Christ to be neglected. Hence that declaration of the Council of Trent (sess. 14, chapter 7): *It has always been observed in the Church of God that there is no reservation at the moment of death; and therefore all priests can absolve any penitents from any sins and censures whatsoever.* Nor indeed must it be judged that this was provided by the Church only for the moment or danger of death. For according to the sense of the same Church, which most manifestly reveals itself to us in the sacred Canons and the unanimous opinion of the Catholic schools, whenever it happens that someone, on account of a legitimate impediment, cannot have recourse for the benefit of absolution to him by whom otherwise he was by law to be absolved, he can be absolved by another (chapter *Eos qui*, 22, *De Sent. Excomm.*, in VI). We find the same established in chapter *Ea noscitur*, 13, *De Sent. Excomm.*, and chapter *Quamvis*, 58, same title. Moreover, according to the doctrine of the Catholic schools (see above, no. 575), this obtains when the impediment to approaching one who possesses the faculty of absolving persists for a long time, which is computed from six months. Indeed, what of the fact that the Church does not forbid Catholics dwelling in a

region of schismatics, if perhaps they feel themselves burdened with sins and do not judge that sufficient provision is made for the peace of conscience through contrition, to seek sacramental absolution from a schismatic priest when a Catholic priest is lacking? Therefore it is most alien to the mind and custom of the Church so to restrict or bind the jurisdiction necessary for administering the sacrament of Penance that it remains restricted or bound even when, for a long time and much more throughout the whole course of life, no access is open to the sinner to those who do not have it bound or restricted.

Nevertheless, it must not be denied that a distinction of no slight moment intervenes between the present question and the general question concerning reserved sins. For although the condition of each case may seem equal when only the lack of another confessor is considered in the necessity of confessing, nevertheless the character of the inconvenience which in the present case can be feared from confession to such a priest is different. To this difficulty perhaps this one thing can be replied: that fear of an inconvenience which can be called voluntary, because it lies in our will freely to admit or remove it, neither can nor ought to bring it about that those things which seem necessary are omitted. Hence Benedict XIV himself did not fear an inconvenience of this kind so far as to think that a Confessor who was an accomplice should be prevented from hearing the confession of his accomplice even when necessity urged. For it belongs to the Church as a pious mother not to fail her children in necessities and therefore not to withdraw the necessary aid of the Sacrament in these circumstances, lest, if anyone perish, his destruction be attributed rather to the negligence or severity of the mother than to the obstinacy of the children.

But it also happens from other causes that sacramental confession inspires in either the priest, because of certain conditions of a penitent, or the penitent, because of conditions of the priest, a fear of some inconvenience which is not empty. Yet who would therefore say that either the priest is to be deterred from furnishing the ministry or the penitent from making confession where reception of the sacrament appears necessary? Namely, when necessity demands the use of the sacrament, the necessary aid must by no means be denied on the one side, nor neglected on the other. If anyone abuses this aid, the fault of the ruin will fall entirely upon the malice of him who was unwilling to use a good well.

588. ○ **QUESTION 7. Can a Bishop absolve from the excommunication imposed upon a Confessor who absolved his own accomplice, if the case is occult, by the concession of Trent, chapter 6, Liceat, sess. 24?**

Reply. St. Ligorius, no. 556, replies thus. On the one hand it seems that the answer must be no; for if the Bishop or another delegated by him could absolve this case when it is occult, the reservation of the Pontiff would become useless and illusory, for this case can occur only occultly....

Nevertheless, it seems that it can probably be said that, even while preserving the faculty imparted to Bishops by the Council for absolving this case when it is occult, the reservation of the Pontiff would not become altogether useless and illusory: both because, although the case is ordinarily occult, nevertheless it can sometimes happen that it is public; and because the law of reservation would have place at least in Rome and in other places where Trent has not been received and where Bishops cannot use the aforesaid faculty....

Thus indeed St. Alphonsus according to the laws then in force. But now, since the Constitution *Apostolicae Sedis* of Our Most Holy Lord Pope Pius IX, in confirming the faculty attributed to Bishops by the Council of Trent, excepted censures reserved in a special manner to the Apostolic See, and since among these, no. 10, is enumerated the excommunication upon those absolving an accomplice in a shameful sin according to the Constitutions of Benedict XIV, it is evident that this controversy no longer has place.

589. ○ **QUESTION 8. Does a Priest incur excommunication who indeed hears the confession of an accomplice but does not absolve him?**

Reply. It seems that the answer must be no with St. Ligorius, no. 556 [4]. - Ituriaga, vol. V, case 50. - The reason is that this is sufficiently clear from the Constitution *Inter praeteritos* of Benedict XIV, where it is thus said: *No less was the penalty of excommunication imposed by us in the cited Constitutions upon a Priest who is an accomplice, who either outside the moment of death hears the confession of the penitent and absolves him, or who absolves him at the moment of death when another Priest is not lacking....* Therefore, according to the mind of the Pontiff, confession does not suffice, but absolution is also required.

[4] ** Thus the holy Doctor says on this matter (book 6, no. 556): *The question is raised whether a priest who does not absolve an accomplice but only hears him in confession incurs this excommunication. Concerning this doubt I consulted the Sacred Penitentiary, which on July 9, 1751, replied absolutely: The aforesaid confessor is not held by excommunication through a fictitious absolution. And I had long adhered to this opinion; but afterward, when I had read through the Constitution Inter praeteritos of the same Pontiff Benedict XIV, cited several times, I found the opposite sufficiently declared in section 59.*

Appendix II. On Solicitation in Confession

It is indeed to be lamented, and this can never be lamented enough, that at times ravening wolves are found in the fold of Christ; that those appointed as watchmen of the house of Israel themselves cruelly devastate it; that those placed over the salvation of souls cruelly thrust those same souls into destruction. For who, seeing so great an abomination standing in the holy place, will not be seized with horror? Who will restrain himself from grief and not strive according to his strength to remove it from the midst? That they might bring efficacious remedies to so great an evil, the Supreme Pontiffs at various times enacted severe laws against such perverse ministers of God. Hence:

590. **Matters to Be Established.** - I. By the common law of the Church, Priests [1] soliciting to sin against the sixth precept of the Decalogue in confession [2], or on the occasion, pretext, or simulation of confession [3], immediately before or after confession, or in a place where confessions are heard, or chosen for confession, are to be denounced to ecclesiastical Superiors. This is established from the Bull *Universi gregis* of Gregory XV, issued in the year 1622, which was confirmed by the Constitution *Sacramentum Poenitentiae* of Benedict XIV.

[1] A priest who lacks jurisdiction for validly absolving is also comprehended. Thus Benedict XIV expressly in the Constitution *Sacramentum Poenitentiae*, section 2; and a Decree of the Holy Inquisition, February 4, 1661, no. V, had preceded. For when the question was raised, *Whether a Priest lacking jurisdiction, if he solicits a penitent in confession, is to be denounced*, the reply was that he is to be denounced and that the negative opinion is not probable.

** Yet an interpreter is not comprehended. St. Alphonsus (book 6, no. 690), after saying that the most common opinion against a few is that there is no obligation of denouncing an interpreter, nevertheless continues that the interpreter is to be denounced on account of an edict of the Holy Office which commands that all who abuse the sacrament of Penance for indecent ends and for soliciting penitents are to be denounced. But what the opinion of the Holy Office is appears from the sixth among the Decrees of February 4, 1661, which were unknown to the holy Doctor. For this decree stands thus: *Whether an interpreter, if he solicits a penitent in confession, is to be denounced.* They judged that the negative opinion does not lack probability. And indeed, as Giraldi observes (*Exposition of Pontifical Law*, part 1, book 5, title 7, p. 637), probability is understood here not in any manner and slight, but such that one can and ought safely to govern himself by it in practice. But the Edict reported by St. Alphonsus (book 6, no. 680) says that it commands those things according to the Apostolic Decrees. Moreover, Decrees of this kind, as is evident, exclude an interpreter. Furthermore, if the holy Doctor himself (book 6, no. 288) concedes that by force of the Constitutions against solicitors a layman or cleric who, pretending to be a confessor, solicits is not to be denounced, a fortiori this can be said of an interpreter.

Likewise, by force of the Apostolic Constitutions there is no obligation of denouncing one who orders a confessor to solicit in confession. Thus the Resolution or Decree of the Holy Office under no. VII among those issued February 4, 1661, which

stands thus: *Whether one ordering a confessor to solicit in confession is to be denounced.* They judged that the negative opinion does not lack probability.

As regards a layman or cleric not yet a priest who, while hearing confession, solicits a penitent, St. Alphonsus rightly observes (book 6, no. 688) that, although they are not to be denounced by force of the Constitutions against solicitors, they are nevertheless to be denounced from another Constitution of Gregory XIII, which the Salmanticenses (tract 21, chapter 4, point 3, no. 27) indicate. And against the opinion of some who denied that these are to be denounced if they had not also imparted absolution, the same holy Doctor reports the words of an Edict of the Holy Inquisition by which it is enjoined that they are to be denounced although they had neither solicited the penitent nor proceeded to the act of absolving.

The question is usually added here whether soliciting Bishops are to be denounced. Some indeed deny it, because a Bishop even in the crime of formal heresy is not by law subject to Inquisitors; but solicitors are commanded to be denounced as suspected of heresy, as is evident from the letters of Pius IV. Moreover, in the Council of Trent (sess. 24, chapter 5) it is established that the graver and criminal causes, even of heresy, are known and terminated only by the Roman Pontiff; but the causes of Bishops are judged to be major causes. Others, however, whose opinion St. Alphonsus (book 6, no. 685) calls better, affirm it, saying that the denunciation is to be made to the Roman Pontiff if this can conveniently be done; otherwise it is to be made to the Inquisitors, who, although they cannot punish or form a process as regards Bishops, can nevertheless receive information to be afterward transmitted to the Roman Pontiff, as is gathered from the Extravagant *Cum Matthaeus*, *De haereticis*, where it is prescribed that proceedings be conducted thus against Nuncios and Officials immediately subject to the Apostolic See. Yet someone will reply that no firm argument is drawn from chapter *Cum Matthaeus*: both because those Officials can be denounced by force of the clause of Gregory XV, *fortified by whatever privilege and preeminence*, which clause must be judged a restriction of their immunity; and because the causes of these Officials are not judged among the major causes which by common law are reserved to the Roman Pontiff, wherefore the parity does not hold; and finally because, when there is question of imposing penalties, arguments from parity by no means avail. On the other hand, in the Constitution of Benedict XIV a denunciation is commanded which is to be made to the competent judge; but Inquisitors, as regards Bishops, are not competent. Indeed, a denunciation is there commanded to be made to the Ordinaries and Inquisitors of priests, namely, of whatever dignity and preeminence they may be. Therefore only those inferior to Bishops are understood, because Bishops are not to be denounced to Ordinaries and Inquisitors. Moreover, solicitors are said to be denounced so that Inquisitors and Ordinaries may proceed against them. But these can do nothing against Bishops. Therefore, since there is question of positive law and nothing in it is said either concerning denouncing Bishops or concerning denunciations to be made to the Roman Pontiff, it does not appear why that obligation should be imposed when no law commands it. Nevertheless, a denunciation made to Inquisitors will be lawful; but it is one thing for something to be done lawfully and another for it to be commanded by Pontifical Constitutions against solicitors.

[2] In the Apostolic Constitutions there is discussion only of abuse of the Sacrament of Penance. Hence from the common opinion of the Doctors (see St. Alphonsus, book 6, no. 684) it is concluded that there is no obligation of denouncing a priest who, for soliciting, abuses the administration of other sacraments. This is confirmed from the cited Decree of the Holy Inquisition, no. X; for to the question, *Whether a Confessor incurs the penalties of the Apostolic Constitution against solicitors if he solicits a woman in other sacraments, namely, baptism and matrimony, and whether he is to be denounced, and if he is to be denounced, whether he can be punished by the Inquisitors*, it was replied, as regards each article, that the negative opinion is probable.

[3] St. Alphonsus (book 6, no. 678) writes thus concerning these clauses: *It is said on the occasion of confession when the confessor or penitent invites to a true confession; but under pretext when to a fictitious confession. These two, however, differ from the simulation of confession insofar as occasion and pretext seem to indicate the cause on account of which it happens that the confessor and penitent meet and converse together; but simulation seems to be referred to the external appearance which the manner of conversing or speaking together presents.* It is also added in the Constitution *Sacramentum*, section 1: *in the confessional, or in another place destined for hearing confessions, or chosen with the simulation of hearing confession there*; for outside places of this kind, among which the chamber of a person truly or fictitiously sick must also be numbered,

** As regards the pretext of confession, St. Alphonsus (book 6, no. 679) rightly says that it must be denied that a confessor is to be denounced who, under the pretext of hearing a confession, obtains permission from the Superior to go to a certain house where he solicits or, according to an arrangement already made, perpetrates the evil. He adduces the reason that the pretext of confession is then not in relation to the penitent but in relation to the Superior. This reason indeed avails as regards the latter part, for in the case the pretext of hearing a confession is the means by which he withdraws himself from the Superior, not that by which he conceals the act of solicitation; but it does not avail thus as regards the first part, for it is not necessary that the pretext of confession be referred to deceiving or entrapping the penitent. Therefore St. Alphonsus

himself (book 6, no. 679) says that the Confessor is to be denounced if he should solicit outside confession and the woman should refuse, fearing defamation, and therefore the confessor should persuade her to pretend to be sick and summon him for sinning: *because then the confessor is directly soliciting the woman to furnish consent under the pretext of confession.*

St. Alphonsus then (*loc. cit.*), against several, thinks with Roncaglia that more probably a confessor is not to be denounced who agrees with a woman that, to elude the household, she should pretend to be sick and summon him to the house to perpetrate the sin. The reason, he says, is that it is then not verified that the confessor solicits under the pretext of confession, but only that under the pretext of confession he executes the sin. But, first, it does not appear in what this case differs from the preceding one; for if this is arranged to elude the household, the pretext of confession now serves for soliciting. Moreover, even if the priest were not to be denounced by force of this clause, he would nevertheless be to be denounced on account of the simulation of confession which he would abuse to keep away the household and for the present provocation and execution of the sin. For provocation and simulation of confession are not absent merely because each had previously agreed upon this. Otherwise a priest who by agreement held shameful conversations with a penitent in a place destined for confessions would not be to be denounced; for as regards the sick, the place of confession is indeed the chamber of a person truly or fictitiously sick. Hence the Salmanticenses (tract 21, chapter 4, point 4, no. 55), concerning the preceding case, namely, of the priest who under the pretext of hearing a confession obtains permission from the Prelate to go out, etc., thus limit the resolution of St. Alphonsus: *But the things said are true provided these things are not done under the appearance of confession to deceive the household, because then simulation of confession suffices for incurring the penalties of the aforesaid Constitution.*

St. Alphonsus adds (*loc. cit.*) that it seems much less to him that the confessor is to be denounced if a woman, with no agreement premised, summons and solicits him under the pretext of confession, although they afterward have intercourse; because according to the Bull the confessor is then to be denounced when he himself solicits under the pretext of confession, but in this case not the confessor but the penitent solicits the confessor under the pretext of confession. But this resolution also seems too difficult. For although the confessor is not to be denounced because he himself uses a pretext of confession devised by himself for ensnaring the penitent, nevertheless, while he believes that he is approaching to hear confession, he abuses the pretext of confession for consenting to the provocation and thus for an indecent transaction, and he performs this by simulating confession. For do we not here have an indecent transaction with simulation of confession in a place chosen for confession, although outside the occasion of confession, as is read in the Apostolic Constitutions?

the simulation of confession can scarcely, or not even scarcely, be had. For Gregory XV says thus: *We command all Ordinaries of places diligently to inquire and proceed against all Priests, both secular and regular, who in any manner whatsoever shall have attempted to solicit or provoke persons, whoever they may be, to indecent acts among themselves or with others, in the act of sacramental confession, or immediately before or after it* [4]*, or on the occasion or pretext of confession, even when confession did not follow, or outside the occasion of confession, in the confessional or in any place where confessions are heard or chosen for hearing confession, simulating that they hear confessions there; or who shall have held indecent conversations or dealings with them; commanding all Confessors to admonish their penitents whom they know to have been solicited by others as above concerning the obligation of denouncing the solicitors to the Ordinaries of places.* - See St. Ligorius, no. 675.

[4] According to the practice of the tribunal of the Holy Office, a Confessor is not judged to have solicited immediately after confession if the solicitation occurs after a whole day has elapsed, provided he in no way indicated his depraved intention in confession. See Giraldi (*loc. cit.*, p. 637). Yet this does not prevent a confessor of this kind perhaps being denounced by force of another clause.

II. Solicited penitents cannot be absolved before they have satisfied the obligation of denouncing, or at least unless they promise that they will shortly satisfy their obligation. Thus Benedict XIV in the cited Constitution [5]. But not only those who have been solicited are bound to this denunciation, but also all others who know it certainly, unless they have learned it under the secrecy of counsel; and this avails even if they cannot juridically prove the crime [6]. - St. Ligorius, nos. 695, 699.

[5] The words of Benedict XIV are (section 2): *Let Confessors furthermore take diligent care not to impart sacramental absolution to penitents whom they know already to have been solicited by others unless, first bringing the aforesaid denunciation into effect, they have*

indicated the delinquent to the competent judge, or at least pledge and promise that they will denounce him as soon as they can. Therefore certain authors, relying, as they think, upon the authority of Benedict XIV, wrongly contend that a penitent can never be absolved before the denunciation has been made; for the holy Pontiff most prudently uses a disjunctive precept. Hence you may say that the denunciation is indeed to be premised when absolution can conveniently be deferred and an occasion of denouncing will shortly be available; and this must be attended to all the more earnestly, the more difficult the penitent seems to be induced to it. But when the penitent can return to the same confessor either not at all or only after a long time, or a suitable occasion for denouncing is not at hand, for example, if there is question of a girl who is far distant from the Episcopal See and lives under the care of her parents in such a way that she is not free to approach the Bishop, while on the other hand she sincerely promises that she will satisfy her obligation, there is nothing to prevent the confessor from imparting absolution at once.

[6] This obligation is established not from the Constitutions either of Gregory XV or of Benedict XIV, but from an Edict of the Roman Inquisition which St. Alphonsus reports (book 6, no. 680). It is confirmed by the fourteenth of sixteen decrees of the Holy Inquisition which were issued on February 11, 1661, and were afterward confirmed by Benedict XIV with apostolic authority in the Constitution *Sacramentum Poenitentiae*, and which can be seen both in Albitius (*On Inconstancy in the Faith*, chapter 35, no. 66), in Giraldi (*Exposition of Pontifical Law*, part 1, book 5, title VII), and in Scavini (*On Penance*, chapter 4, art. 4). For when the question was put, *Whether anyone is bound to denounce a soliciting confessor if he heard this not from trustworthy persons, but only from frivolous persons*, and the Sacred Congregation replied that the negative opinion does not lack probability; it plainly follows that the obligation is present if anyone has learned it from trustworthy and serious persons.

III. The denunciation must be made within a month. Sacred Congregation of the Holy Office, March 10, 1677. - St. Ligorius, no. 693. But a penitent who, without sufficient reason, does not carry out the denunciation within the appointed time incurs a *latae sententiae* excommunication, reserved at Rome to the Pontiff, but outside the City not reserved after the denunciation has been made. From a Decree of the Sacred Penitentiary, March 22, 1852. - See *Analecta Iuris Pontificii*, series 2, col. 1606 [7]. In some places it is prescribed by particular law that any Priest soliciting to shameful acts be denounced, even though he is not a confessor or solicited without any relation to confession. But several Canonists, especially more recent ones, deny that a Bishop can enact a statute of this kind; because, since by Canon law a Priest cannot be condemned by the Bishop unless he has been convicted by legitimate witnesses and proofs, the Bishop can by no means punish an occult offense here, nor proceed against the accused, owing to the lack of every canonical and juridical proof. See Stremler, *Treatise on Ecclesiastical Penalties*, part I, chapter 4. - Craisson, *Manual of Canon Law*, nos. 3826, 3828, 3844. - *Analecta Iuris Pontificii*, vol. 4, p. 1866 ff., and others [8].

[7] The *Analecta Iuris Pontificii* (*loc. cit.*) neither contains nor intimates that Response of the Sacred Penitentiary, and perhaps the Author cites it because the following is read there: *If she (the person solicited) refuses to fulfill this obligation, she incurs major excommunication, which, for Rome, is reserved to the Sovereign Pontiff. But in other countries, absolution from it can be received from any approved confessor, according to what the same author says*; this indeed is also the practice admitted by the Author. Moreover, the author to whom the *Analecta* appeals is Albitius, whose passage is appended there (from chapter 35, *On Inconstancy in the Faith*, nos. 18-25). But Albitius in fact has nothing of the kind. For his words which pertain to this matter are as follows (nos. 20, 21): *But if they refuse to denounce, they then fall into the excommunication proposed in the aforesaid Edicts, from which, if it is reserved to the Pontiff, or to the Bishop, or to the Inquisitor, they cannot be absolved except by him to whom it was reserved. But if it is not reserved, they can be absolved by any confessor.... This absolution is not usually imparted unless the denunciation has truly and actually been made*, etc. Albitius, therefore, does not say that this excommunication is reserved at Rome to the Supreme Pontiff, but elsewhere is not reserved, so that any confessor can absolve from it; rather, he refers the matter to the various Edicts, so that it may be ascertained whether it is reserved or not.

Moreover, the Edicts of the Holy Office of the Inquisition concerning the denunciation of solicitors, as Laurentius Cozza reports them (*Selected Doubts concerning Solicitation*, final doubt), reserve absolution to the Holy Office even after the denunciation has been made; and the same Cozza rightly observes that the opinion which granted to any confessor the faculty of absolving the guilty person after denunciation (see St. Alphonsus, no. 693) arose originally from an equivocal sense conveyed by the words of a certain Edict as they were reported summarily by Lupus. Nevertheless, Giraldi also

indicates that the discipline in this matter was afterward changed (*loc. cit.* in the preceding note, pp. 627-628), saying: *One omitting to denounce a Confessor for solicitation within the said month, even if he afterward denounced him, formerly could not be absolved except by the said Roman Inquisition; today, however, by decrees of the same body from the years 1735 and 1758, he can be absolved by any Confessor.* The Response of the Sacred Penitentiary which the Author cites accords with these Decrees of the Holy Inquisition. Nevertheless, the Author combines the enactment of the Sacred Penitentiary less skillfully with the practice which the *Analecta* intimates. For the decree of the Sacred Penitentiary, just like the decrees of the Holy Inquisition mentioned by Giraldi, neither reserves absolution before denunciation to the Pontiff only at Rome, nor establishes that the cessation of the reservation after the denunciation has been completed avails only outside the City.

** Moreover, the Constitution *Apostolicae Sedis* of the year 1869 removes every controversy concerning this matter; in it, *Those who neglect or culpably omit to denounce within a month confessors or priests by whom they were solicited to shameful acts in any of the cases expressed by Our Predecessors*

Gregory XV, Constitution *Universi*, August 20, 1622, and Benedict XIV, Constitution *Sacramentum Poenitentiae*, June 1, 1741, are declared to incur a *latae sententiae* excommunication reserved to no one.

[8] Elsewhere it had been provided by a Bishop that a woman with whom a priest had sinned could not be absolved unless she denounced the priest himself. The Bishop had prescribed this manner of denunciation: the woman was to hand to the Confessor a sealed paper containing the name of the priest, and the Confessor, transmitting it to the Bishop, was to testify that he had no doubt that faith should be placed in the denunciant. But the Apostolic See judged that this law and practice too should be abolished.

591. **Questions. - QUESTION 1. Is a penitent bound to make a denunciation if he himself consented to the solicitation?**

Reply. Yes. The reason is that the law is general and does not appear in any way to except this case; for the crime of the solicitor and the danger to souls are not thereby diminished. Nor is it an objection that by natural law the penitent is not bound to accuse himself; for ordinarily he can certainly denounce the solicitor without admitting that he gave consent to the solicitation [9]. - St. Ligorius, no. 700.

[9] This is expressly provided in the Constitution *Sacramentum Poenitentiae*, section 2, where it is established that the confessor is to be denounced *even if.... the solicitation between the confessor and the penitent was mutual, or the penitent consented to the solicitation*.

Moreover, the Sacred Congregation of the Inquisition, July 23, 1624 (in Giraldi, *loc. cit.* in the preceding note, p. 641), declared that a woman who consented to the soliciting priest is not bound in the denunciation to disclose the consent given by her; she is nevertheless bound to denounce even if she herself first solicited and drew the confessor to consent. St. Alphonsus reports another decree on the same matter (book 6, no. 700).

Furthermore, an Instruction was issued by the Holy Office of the Inquisition in the year 1756 in which, while it is declared that even a woman who consented is bound to denounce, it is nevertheless added that she is not bound to disclose her consent, nor is she to be questioned about it by the Ordinary or Inquisitor; likewise, a soliciting confessor, if proceedings are brought against him, is not to be questioned about the penitent's consent, and if perhaps he spontaneously says it, it is not to be written down or entered into the acts. It then also admonishes Confessors to instruct penitents concerning these things where necessary, so that every obstacle to making the denunciation may thus be removed (in Giraldi, *loc. cit.*, p. 642).

QUESTION 2. Is a Confessor to be denounced who consented to a soliciting penitent, but did not himself solicit?

Reply. Yes [10]. For this is manifestly evident from the second among the Decrees of the Holy Office of February 11, 1661. For to the question, *Whether a Confessor who consents to solicitation, but immediately ceases to speak about that shameful matter, deferring its completion to another time and not furnishing absolution to the penitent, incurs the penalties contained in the Bull of Gregory and is to be denounced,* the reply was that he

incurs them and that the Confessor is to be denounced, the probable opinion, which they judged not to be probable, being rejected. The same thing is plainly elicited from among those same Decrees, where, to the question, *Whether a Confessor, if induced by fear he consents to one soliciting, is to be denounced*, the reply was that he is to be denounced and that the negative opinion is not probable. A fortiori, therefore, a Confessor is to be denounced where there is no excuse whatsoever from fear inspired.

[10] This case is manifestly comprehended in those words of Gregory XV: *Or shall have held illicit and indecent conversations or dealings with them*; these occur likewise in the Constitution *Sacramentum Poenitentiae* of Benedict XIV. For the nature of a dealing is that two or more persons act or agree among themselves concerning some matter to be carried out; nor does it matter which of them first proposes the matter, provided that each acts at least concerning the accomplishment of the matter, even if perhaps both do not afterward agree upon the conditions. The Doctors therefore rightly conclude that these words comprehend a Confessor who did not solicit the penitent but merely consents to one soliciting; for in the truest sense an illicit and indecent dealing takes place, by which each consents to shamefulness.

** St. Alphonsus, on the question *Whether a confessor who consents to a woman soliciting in confession is to be denounced* (book 6, no. 681), judges that the opinion which denies it seems more probable; and setting aside the reason adduced by others, namely, that the words of Gregory XV are to be understood of shameful dealings of which the confessor is the author, he regards this reason as the stronger one: because by the same Bull of Gregory Confessors are commanded to admonish concerning the obligation of denunciation, not just any penitents who have held indecent dealings with confessors, but those whom they know *to have been solicited by others*, as above. Therefore it is inferred that the penitent, if he wished, could lawfully denounce the confessor in the said case according to the first probable opinion; but it seems more probable that the penitent is not bound to do this, because, in order that he himself contract the obligation of denouncing the confessor, it is required that he have been solicited by him. Moreover, as is evident, after the Decrees of the Holy Inquisition cited in the text, this opinion can be held neither speculatively nor practically, especially since decrees of this kind were solemnly confirmed by Benedict XIV in the Constitution *Sacramentum Poenitentiae* in these words: *All and each of the aforesaid decrees* (among which those issued February 11, 1661, are also expressly mentioned there) *emanating for the interpretation and declaration of those* [namely, the Letters of Gregory XV], *by Apostolic authority and by the tenor of the present letters We approve and confirm, and to all and each of them We add the strength of inviolable Apostolic firmness.* But, as we have already said, these Decrees were altogether unknown to the holy Doctor Alphonsus; for no one had made them public before Ubaldus Giraldi, who published his work (*Exposition of Pontifical Law*, etc.) at Rome in the year 1769; and the work of Giraldi does not seem ever to have come into the hands of the holy Doctor Alphonsus.

This ignorance of the Decrees, as is manifest, was more than sufficient to remove every reproach from the holy Doctor. Nevertheless, behold the VV., who dedicate fourteen columns to this argument (pp. 579-587) and seek other defenses from elsewhere! Let the impartial reader judge whether they can be approved.

First, therefore, they propose the question (p. 581), *Whether, notwithstanding the two cited Decrees of the Holy Inquisition, the negative opinion of St. Alphonsus cannot be sustained.* And as regards the first of the cited decrees, they do not hesitate to reply, which is surely a matter for astonishment (p. 582): *With deference to a better judgment, we think that this Resolution of the Holy Inquisition does not prevent the negative opinion which the holy Doctor calls more probable from being sustained, namely, that a Confessor who consents to solicitation, but himself in no way solicits, is not to be denounced.*

I have said that these things are plainly worthy of astonishment. For what is this? A Decree solemnly confirmed by a Pontifical Constitution enacts that a confessor who merely consents to solicitation is to be denounced, even if he is induced to it by fear, as the other Decree reported in the text has it; and nevertheless shall we dare to affirm that a confessor of this kind is not to be denounced if, not indeed impelled by fear, but of his own free will, he professes that he consents? Is perhaps the one who consents under the compulsion of fear more guilty than one who consents willingly and under no compelling fear?

The VV. reply (pp. 581-582) that in the first Decree there is no question simply of a Confessor consenting to solicitation, but several circumstances are added, namely, that the confessor immediately DISSENTS, not because he repents of having consented, but because he proposes to defer completion to another time lest he incur the appointed penalties.

Reply. 1. In the Decree of the Holy Inquisition, as we have seen, it does not read, "immediately dissents," but "immediately ceases to speak about that shameful matter." Therefore, everything which the VV. build upon this immediate dissent is empty. 2. Whether it is the immediate dissent which the VV. imagine, or the immediate breaking off, as the matter truly

stands, of conversation about the shameful thing after consent, and the postponement to another time, these are not circumstances which increase, but rather those which diminish, the guilt of a shameful dealing on the occasion of confession. And in truth it would be most absurdly established that a confessor who, after assenting to the woman's solicitation, immediately ceases to speak about that shameful thing and puts off the completion of the shameful dealing to another time is to be denounced, but that he is not to be denounced if, continuing to speak about that shameful matter, he then completes the shameful dealing by agreeing upon the place, time, etc. 3. The substance of the guilt resides in the indecent dealing, which is completed through the confessor's consent, as is also evident from the cited ninth Decree. But this whole substance remains altogether whether those circumstances are present or are not present. Therefore, the obligation of denunciation is vainly referred not to the substance of the guilt but to those circumstances.

As regards the ninth Decree reported in the text, St. Alphonsus, ignorant of these decrees, as we have said, had written (book 6, no. 687, question 8): *Whether a confessor is to be denounced who consents to a soliciting woman on account of fear inspired by her, that she will accuse him unless he consents?* And he replied: *But it can better be said that this confessor is not to be denounced, because then he would truly be the one solicited, not the one soliciting, according to what was said in no. 681.* This resolution, as is evident of itself, is diametrically opposed to the Resolution of the Holy Office confirmed by Benedict XIV with Apostolic authority.

And in this response of the holy Doctor, the reason which he gives must also be noticed, namely, that the confessor is then the one solicited, not the one soliciting. For since he adds, *according to what was said in no. 681*, it is now evident that this is the same reason why the same holy Doctor had generally denied that a confessor who merely consents to a woman's solicitation is to be denounced. But this general principle is shown to be false by the Decrees of the Holy Inquisition, as we have said.

What here can scarcely be wondered at enough by anyone is that the VV. seem to defend that condemned resolution, adducing, namely, 1. the reason given for it by St. Alphonsus; 2. the support of Scavini, whom they say subscribes to the reason of St. Alphonsus; and, furthermore, 3. they contend that it is in some manner confirmed by the Instruction of the Holy Roman Inquisition of February 20, 1867. Let others judge how these things can seem tolerable to anyone.

As regards the first, St. Alphonsus (book 6, no. 681) gave this reason for his resolution: that it is rightly judged that the Pontiff was unwilling to oblige penitents to denounce confessors whom they themselves had tempted, because of the great difficulty which would deter penitents from denouncing in this case, in which the sin had its cause from them; and also because, if they denounced, their reputation would be placed in very great danger. But no one, I think, will dare to assert or suppose that a reason of this kind was unknown either to the Holy Inquisition or to the Roman Pontiff enacting the Decree. Shall we therefore say that St. Alphonsus judged better than the Apostolic See concerning the weight of this reason? Therefore, lest anyone act contumeliously against the Apostolic judgment, two things must be diligently observed. The first is that it pertains to the prudence of the Confessor to consider carefully and teach the penitent in what manner the denunciation can take place while preserving the reputation of the denunciant. The second is what St. Alphonsus himself (book 6, no. 695) teaches: that not only the solicited penitent, but also anyone else who has learned from another source that the solicitation was carried out, is bound to denounce. The holy Doctor confirms this also from an Edict of the Holy Inquisition which he reports in the preceding no. 680. And hence comes the response of the same Holy Inquisition contained in the fourteenth of the aforesaid Decrees. For to the question, *Whether anyone is bound to denounce a soliciting confessor if he heard this not from trustworthy persons, but only from frivolous persons*, the reply was that the negative opinion does not lack probability. Therefore, the reason adduced by St. Alphonsus is by no means adequate for establishing generally that a confessor who merely consents to solicitation is not to be denounced.

As regards Scavini, he in no way denies that a confessor of this kind is to be denounced; he merely observes that it can sometimes happen that it is difficult for the denunciation to be completed while preserving the penitent's reputation. Concerning this matter it has already been said that this business pertains to the prudence of the Confessor.

Finally, as regards the Instruction of the Holy Inquisition of the year 1867, the VV. think that it supports the condemned resolution under discussion because no mention is made in this Instruction of the ninth Decree, by which it is defined that a confessor who, impelled by fear, consents to a soliciting woman is to be denounced. - But do the VV. perhaps wish to insinuate by this that that Decree was abrogated? Indeed, if an argument of this kind were valid, then most of those sixteen Decrees would have to be said to have been abrogated, and among them even that first decree by which it is defined that a confessor who gives a penitent in confession a paper to be read afterward at home, in which he solicits her to venereal acts, is to be denounced; these things are plainly absurd. And in fact, in this Instruction scarcely a few things are mentioned concerning the cases in which a Confessor is certainly to be denounced.

The VV. add another Article (pp. 583-585), in which they contend that, apart from the second Decree of the Holy Inquisition, the negative opinion does not appear improbable from the Bulls of Gregory XV and Benedict XIV. Whether this assertion is free of grave injury to the Constitution of Benedict XIV, let it be the judgment of the more prudent. For, as is evident from the words of Benedict XIV cited above, those Decrees of the Holy Inquisition contain the interpretation and declaration of the Letters or Constitution of Gregory XV, and as such the same Benedict approves and confirms them and adds to them the strength of inviolable Apostolic firmness. And since these things are so, who indeed would dare so to represent the Interpretations and Declarations of the Holy Inquisition, confirmed by an oracle of the Pontiff of this kind, as alien to the sense of the Gregorian Constitution, that he should think himself permitted to hold and proclaim as not improbable what those Interpretations and Declarations define not to be probable?

But let us come to the reasons of the VV. The first is (p. 503) that in the Constitution of Gregory those words, "or shall have held illicit and indecent conversations or dealings with them," are to be understood of conversations and dealings which proceeded from the Confessor. - I ask: If not the Confessor but the woman first begins to hold indecent conversations, and the Confessor consequently also indulges in the shameful conversation and prolongs it, will he not be to be denounced because the shameful conversation was begun not by him but by the woman? That interpretation must therefore be called absurd, since it leads to absurdities. Say the same of an indecent dealing. For one who proposes as well as one who admits and accepts the proposed matter is most properly said to have a dealing; indeed, it is not even necessary for this that those who negotiate about the matter finally agree; for it is sufficient that they present themselves ready to agree if the incidental conditions are pleasing. For these are properly said to have had a dealing concerning that matter.

The other reason of the VV. is that in section 7 of the Constitution those penitents whom confessors know *to have been solicited by others* are said to be admonished concerning the obligation of denunciation. Therefore, the VV. conclude, it is presupposed that the confessor at least indirectly solicited. - Reply. The words of section 7 of the Constitution are these: *Let him admonish concerning the obligation of denouncing the solicitors, or, as stated above, THOSE HOLDING DEALINGS*. And again: *But if they have omitted this office* [of the confessor], *or have taught the penitents that they are not bound to denounce soliciting confessors, OR THOSE HOLDING DEALINGS, as above*, etc. Therefore, those holding dealings, or those having a shameful dealing, are also said to be denounced. Nor indeed should the VV. say that by the Constitution the Confessor is said to admonish only those who were solicited. For, to omit other things now, do not all those who know that shameful dealings took place in confession also have the obligation of denouncing that confessor, as we have seen above? Why, then, should the penitent who was a participant in the dealing be excluded?

In the third place the VV. add (pp. 584-585): *If it were sufficient to hold illicit and indecent conversations or dealings, even if the confessor does not solicit by these conversations or dealings, nor has the intention of soliciting, then a confessor would also be to be denounced who, without any necessity or reasonable cause, deliberately and minutely examines a penitent confessing a sin against the sixth commandment about the circumstances, but does so from depraved curiosity and delight in things of this kind without any intention of soliciting... for he truly holds indecent and illicit conversations with the penitent*. Reply. I concede the whole. For if, as the VV. concede, this confessor truly holds the indecent and illicit conversations which are expressly treated in the Apostolic Constitutions of Gregory XV and Benedict XIV, why would he not be to be denounced? - The VV. say, he did not have the intention of soliciting. - Reply. Let others see whether this excuse can have any value before the judges. Meanwhile, it is manifest that in the case the nature of the work and the intrinsic end of the work tend toward solicitation, since by the name of solicitation comes whatever provokes to venereal acts. But surely intention is no more necessary here than in giving scandal; for I do not think, according to the opinion of St. Alphonsus and even of the VV., that the guilt of scandal is absent if the work and the intrinsic end of the work of itself produce scandal, even if the intention of the one acting is not directed toward giving scandal. Moreover, whatever pertains to this case could have been passed over, and the consequence which the VV. wished to draw from it for denying the obligation of denouncing a confessor who had a shameful and indecent dealing with a woman in confession could have been denied. For what parity does an indecent manner of questioning have with a shameful dealing between a penitent and a confessor?

And the VV., relying upon three reasons of this kind, judged it must be concluded that the interpretation of the Gregorian Constitution proposed by them IS AT LEAST SUFFICIENTLY PROBABLE. Whether rightly, let those judge to whom the juridical judgment of so grave a matter pertains. But what certain of the VV. add (pp. 584-585), in order to fasten an interpretation of this kind also upon the Constitution of Benedict XIV, needs no reply. It is enough to remember that Benedict XIV in his Constitution holds the Constitution of Gregory XV ratified and confirmed in this manner: *Which* [he says] *We wish to be held here as inserted word for word*.

One thing must not be omitted: the VV. did not hesitate to write the following concerning Benedict's confirmation of the preceding Decrees: *Insofar, finally, as in the same Constitution the Decrees of the Holy Inquisition from the year 1661 are confirmed, this confirmation proves nothing, because these Decrees are simply mentioned by the Pontiff but are not explained, and therefore, if there is doubt about their sense, they are the more to be interpreted in that sense which accords with the Constitution itself.* - Leaving aside other things for now, let this be asked: What do they mean by a sense which accords with Benedict's Constitution itself? For it is manifest that in those Decrees to which Benedict adds the strength of inviolable and Apostolic firmness certain doubts are resolved whose solution you will not find in Benedict's Constitution itself, just as certain things are found more expressly explained in the Constitution of Gregory XV than in the Constitution of Benedict, which otherwise has certain things more explicitly than are perceived in Gregory's Constitution. What indeed will you conclude from this? In the Gregorian Constitution, for example, confessors who held indecent dealings in confession are expressly said to be denounced; but in Benedict's Constitution these are not expressly said to be denounced. Will you rightly conclude from this, as the VV. do concerning the decrees, that Benedict only mentioned the Gregorian Constitution but did not explain it, and therefore in doubt the interpretation must be received in the sense which accords with Benedict's Constitution? In brief: Benedict XIV not only confirms the Gregorian Constitution, but in the same manner confirms the interpretations and declarations of it which are contained in the Decrees of the Holy Inquisition. Moreover, to wish to elicit the sense either of the Gregorian Constitution or of the Decrees interpreting and declaring it from the Constitution of Benedict, even in those matters which it has less expressly, is a method and manner of interpretation not only altogether novel to the schools, but contrary to the common sense of men.

The VV. add (p. 585) an article with the title: *Whether it can be imputed as a fault to St. Alphonsus that he did not know the Decrees of the Holy Inquisition from the year 1661.* But no one calls this into controversy; and since it is evident that the holy Doctor used the Edicts or fragments of Edicts of the Holy Inquisition which he was able to see as a norm for writing, he would most religiously have accommodated his doctrine also to these Decrees if he had known them, nor, it must be held as certain, would he ever have used those empty reasons touched upon above to defend any opinion of his against those Decrees, which, moreover, he would have known to have been so solemnly confirmed by the strength of inviolable and Apostolic Authority.

Rather, it is opportune to admonish here that from that preconceived opinion concerning the confessor who is not to be denounced if he merely consented to solicitation, the holy Doctor Alphonsus came to another resolution which perhaps can be admitted even much less. For (book 6, no. 682), asking *Whether a confessor who, having been solicited by a penitent to intercourse, refuses and turns aside to touches alone is to be denounced*, he replies that it can probably be denied. The reason, he says, is that a woman soliciting to intercourse virtually provokes also to touches, which ordinarily are preliminary to intercourse; hence it is verified that the confessor then does not solicit but, having been solicited, consents. - But, as is evident, the two Decrees cited in the text exclude this opinion a fortiori, and that shameful dealing concerning which we have already spoken plainly reveals itself here, especially since the confessor himself actually invites and incites the penitent to evil, even though the penitent is judged to be ready for this. Hence in this case we have, furthermore, that mutual solicitation in which the Holy Inquisition establishes that the denunciation must necessarily be made in the eighth of the Decrees so often cited; in it, to the question, *Whether, when the confessor and the penitent solicit one another,*

the confessor is to be denounced, the reply was, *Yes, and the negative opinion is not probable*; indeed, Benedict XIV, section 2 of the Constitution *Sacramentum Poenitentiae*, expressly speaks of this case in these words: *Even if.... the solicitation between the confessor and the penitent was mutual.*

We also have another resolution among those sixteen Decrees of the Holy Inquisition, with which the doctrine of the holy Doctor Alphonsus may seem not sufficiently consonant. For he asks (book 6, no. 683), *Whether a confessor soliciting only to venially indecent acts is to be denounced.* And after reporting the affirmative opinion of others, he adds: *But the second and more probable opinion denies.... Nevertheless all agree... that if from the circumstances it were certainly inferred that by that slight act the priest had the intention of proceeding further, then the solicitation is to be judged grave.* Moreover, in the third of the aforesaid Decrees, to the question, *Whether a confessor, in soliciting, is to be denounced on account of the smallness of the matter*, the reply was: *Since in venereal matters there is no smallness of matter, and, if there were, it is not present in the matter at hand, they judged that he is to be denounced and that the contrary opinion is not probable.* In defense of St. Alphonsus, however, it can perhaps be said that, when the holy Doctor names acts slightly indecent, he wished to designate something which has nothing in common with venereal matters. But that clause of the Decree also seems not to be passed over: *And if* [smallness of matter] *were granted, it is not granted in the matter at hand.* For the words, *in the matter at hand*, do not signify, *in venereal matters*; therefore they signify, *in solicitation to something in any way less than honorable*. And if this indeed is the sense of the Decree, then what the holy

Doctor (*loc. cit.*) adds in this manner would not be sufficiently efficacious: *On the other hand, an act which in itself is slight against chastity cannot become grave in the sacrament; otherwise any venial sin in the matter of truthfulness, patience, or humility would become grave in the sacrament, which no one asserts.* For, as someone could reply, it is one thing for a priest in administering the sacrament to sin slightly against the virtue of chastity; it is another for a confessor in the confession itself to provoke the penitent to something less than honorable; between these two most diverse things a character of irreverence and indecency can rightly seem to intervene. But let the judgment concerning these matters belong to the wiser.

592. ○ **QUESTION 3. Does the obligation of denunciation bind if the guilty party has been reformed, or if the solicitation occurred a long time ago?**

Reply to the first. Yes, because the Pontiff does not intend only the reform of the guilty party, but also his punishment, so that the injury to the Church may be repaired and the scandal made good [11].

[11] Two decrees of the Holy Inquisition can pertain to this. The one is the thirteenth of the sixteen so often mentioned, in which, to the question, *Whether a Confessor who, on account of the solicitation of another, abjured* (namely, under compulsion by the Holy Inquisition that he abjure a slight or vehement suspicion of heresy) *is to be denounced*, the reply was that the negative opinion is not probable, and therefore he is to be denounced; this was also resolved on July 20, 1628. And the other which is cited here is a decree (in Giraldi, *loc. cit.*, p. 641, no. VI) by which it was defined that a solicited woman is bound to denunciation even if she knew that the solicitor had spontaneously appeared. Moreover, since abjuration in the Holy Inquisition itself is the strongest sign of reform, and voluntary self-accusation is the greatest indication of reform and repentance, and nevertheless according to the cited decrees these things do not excuse from denouncing the confessor, a fortiori other signs of reform which are usually enumerated will not excuse, some of which are plainly equivocal and others exceedingly difficult to ascertain.

Reply to the second. Yes likewise, for the same reasons; for if one who committed the crime a long time ago were not to be denounced, the reason would surely be that he was judged already to have been reformed; but this reason does not avail, as was just said. Furthermore, who could determine what is a long or a short time? Nevertheless, that circumstance would have to be disclosed to the Superior [12]. - St. Ligorius, no. 686.

[12] This question stands expressly resolved in the Constitution *Sacramentum Poenitentiae*, section 2, where it is defined that the confessor is to be denounced even if a long time has already elapsed after the solicitation itself. Refer here also what the Sacred Congregation of the Inquisition declared on May 11, 1707 (in Giraldi, *loc. cit.*, p. 641, no. VIII), namely, that a girl who was solicited while in a state of simplicity and without knowledge of the indecency is bound to denounce the soliciting Confessor after she has become capable and acquired knowledge of the past solicitation.

593. ○ **QUESTION 4. Is the penitent excused from making the denunciation on account of fear that he may incur the indignation and rebuke of the person denounced?**

Reply. No. The reason is that this vexation must be regarded as of the least account in a matter of such moment and one pertaining to the common good [13]. For it cannot be compared with the innumerable and very great evils arising from the corruption of a Priest.

[13] Nevertheless, it must be conceded that one is excused who would reasonably fear from the denunciation grave harm to his life, reputation, or temporal goods. For each person has a natural right to avert these harms, which prevails over positive law. Furthermore, the Church is not accustomed to urge observance of her laws with so grave an inconvenience. Yet where the solicitation arose from contempt of the sanctity of the sacrament or the destruction of souls would follow, the reason of the common good and submission to Religion would have to be preferred to private harm.

QUESTION 5. Is absolution to be denied to a penitent who refuses to denounce a soliciting Priest?

Reply. Yes, for otherwise the law would generally become useless and ineffectual. Therefore, in the most prudent manner he can, the Confessor must take care that the denunciation be made, namely, by deferring or even denying absolution to a penitent who refuses to obey.

Nevertheless, those things which Cardinal Albitius has as follows in *On Inconstancy in the Faith*, chapter 35, must be observed: *It was resolved on June 28, 1597, February 28, 1598, and April 15, 1612, that when a woman is noble and modest and cannot be induced to give testimony, the Sacred Congregation is to be consulted in the City* (Rome). *But if outside the City, the Bishop or Inquisitor is to be consulted; if they have difficulty, let them consult the Sacred Congregation; but if not, let them give Confessors the faculty of absolving the penitent who for just causes refuses to denounce; she is nevertheless to be absolved under the condition that, when the causes cease, she is bound to do this, and also that she no longer approach the Confessor by whom she was solicited.*

But in places where the observance of the Pontifical Decrees is not enforced, what must be done in these cases is to be learned from the Bishop [14].

[14] All Constitutions issued against those soliciting in confession extend their force universally to individual nations and comprehend Greeks as well as Latins within their scope. From the Constitution *Etsi Pastoralis* of Benedict XIV, section IX, no. V.

Nevertheless, those who dwell in the regions of schismatics, heretics, and Mohammedans, although subject to the Constitutions against solicitors, are to be absolved and freed from this burden of denunciation, according to a Decree of the Sacred Congregation of the Holy Office of February 21, 1630, in those local circumstances in which there is no hope that the person denounced will be punished, women cannot denounce without danger and infamy, and it is believed that the persons denounced can easily escape punishment by having recourse either to schismatic Bishops or to unbelieving lay judges, the aforesaid reasons being considered; nevertheless, they must be admonished that, when the dangers and impediments related above have ceased, they are bound to denounce (in Giraldi, *loc. cit.*, pp. 640-641).

594. ○ **QUESTION 6. Is a Confessor to be denounced who in confession asked a woman where she lived, if he afterward solicited her at home?**

Reply. Yes, because, although the question put in confession seems indifferent, nevertheless it is afterward known from the circumstances that it was put for the purpose of soliciting. - St. Ligorius, no. 676.

QUESTION 7. Is a Priest to be denounced who, when asked by a woman to hear her confession, solicits her?

Reply. Yes, according to the fourth of the aforesaid Decrees, if the solicitation takes place in the confessional or in the place of confession. Not so if the solicitation takes place outside the place of confession and without the pretext of confession [15].

[15] To Question IV, *Whether a Confessor who solicits a woman who says in the confessional that she wishes to confess on the following day and dissuades her from confession is to be denounced,* the Sacred Congregation of the Inquisition replied: if the solicitation takes place outside the place of confession and without the pretext of confession, the negative opinion is probable; otherwise, if it takes place in the Confessional or in the place of confession. Hence the opinion of St. Alphonsus is not to be admitted when he writes (book 6, no. 678) that a confessor who, when asked to hear a confession, turns aside and solicits is to be denounced, although he had not yet taken his seat nor had the woman knelt. To this also pertains the Response to Question XV, *Whether a Confessor who, sitting in the confessional, solicits a woman standing before the confessional without simulating confession is to be denounced*; the reply was that the negative opinion does not lack its probability. Moreover, no simulation of confession can be present in the case, because, since women do not confess while standing before the confessional, every appearance or suspicion of confession is absent.

595. ○ **QUESTION 8. Is one to be denounced who, having learned a woman's frailty in confession, afterward solicits her at home?**

Reply. It must be affirmed if he solicits the woman as a person whose disposition or frailty he learned from confession, and indicates this by words or in some other manner [16].

[16] St. Alphonsus (book 6, no. 678, doubt 2) skillfully refers this case to the clause of solicitation made on the occasion of confession, namely, when the Confessor, using knowledge from confession by which he has learned the penitent's frailty or inclination toward evil, or what she has done or desired to do with others, or the straits in which she is situated, or the necessities by which her constancy is pressed with a hard trial, etc., takes occasion from it to solicit her. The reason is that, since the occasion and impulse for soliciting flow from the confession heard, it is said with sufficient truth, with St. Alphonsus, that the solicitation takes place on the occasion of confession.

Nevertheless, for the penitent to be bound to denounce, it is necessary that it be established by certain indications that the occasion for soliciting was in fact taken from it. These indications are sufficiently present if, while soliciting, the confessor puts forth either certain words or some sign which refers to any of the aforesaid things known to him through confession; in this there can also be a sin against the sacramental seal. But it does not pertain to the substance of this case that these things happen shortly after confession; for even after a long time, the occasion for soliciting taken from it retains the same nature. But what St. Alphonsus reports from Roncaglia, that by force of the same clause a priest who solicits a woman while promising that he will hear her confession is to be denounced, seems plainly beside the point.

QUESTION 9. Is a Confessor to be denounced who praises a woman for her beauty?

Reply. This must be discerned from the manner of speaking or from other circumstances. For if he seems to act from a depraved affection, he is to be denounced; but not so if he speaks from a certain imprudence or mere levity [17]. - St. Ligorius, no. 703, etc.

[17] The twelfth of the sixteen Decrees of the Holy Inquisition so often cited accords with these things. For to the question, *Whether a Confessor, if he praises a penitent for beauty and comeliness, is said to solicit her and therefore is to be denounced*, the reply was that, if that praise is serious and savors of no depraved intention, the negative opinion is probable; otherwise it is not probable.

The Sacred Congregation judged that the same answer was to be given (decree XVI) to the question, *Whether a confessor who, while hearing confession, gives a gift to a woman, so that he is said to have solicited her, is to be denounced.* For it refers the matter to the response made to the twelfth question. Certainly, as St. Alphonsus (book 6, no. 703) observes, this of itself is something indifferent, and the malice will have to be taken from the circumstances, namely, from the condition of the penitent, the quality of the gift, its quantity, and the manner in which it is given.

596. ○ **QUESTION 10. Is faith readily to be placed in women accusing a Priest of solicitation?**

Reply. No; but the circumstances of things and persons must be diligently weighed both by the Confessor and by the Superiors. For more than once women have been seen who, from envy, hatred, jealousy, or some other perverse end, atrociously calumniated entirely innocent Clerics. Therefore, all the circumstances must be weighed by mature examination, especially when the woman shows herself ready and prompt to obey the precept of denunciation.

Furthermore, take care to observe that, according to the Constitution of Benedict XIV, the crime of false accusation of solicitation is reserved to the Apostolic See, but without censure [18].

[18] Indeed, Benedict XIV established the same penalty against those commanding, counseling, and all who can be called procurers. Thus in the Constitution *Sacramentum*, section 3: *And since certain wicked persons are found who, moved either by hatred or anger or some other unworthy cause, or incited by the impious persuasions of others, or by promises, or flatteries, or threats, or in any other manner... falsely accuse innocent priests of solicitation before ecclesiastical judges, in order, therefore, that such nefarious audacity and so*

detestable a crime may be restrained by fear of the greatness of the penalty, let every person who has involved himself in an execrable crime of this kind, or who has wickedly procured that it be done by others, perpetually lack hope of obtaining absolution from any priest... except from Us and Our Successors....

But the Superiors [19], once the truth of the crime is known with certainty, must proceed very cautiously, so that they may correct the guilty party according to the gravity of the offense, and not indiscriminately punish a fault long since past, or committed accidentally from frailty, just as one that is recent or committed from habit; likewise, so that at the same time they may consult the good of Religion, the Priesthood, and the matter itself, forestalling scandals and rumors insofar as this can be done.

[19] By Superior in this place must be understood either an Inquisitor of the Holy Office or the Ordinary of the place; for a denunciation can be brought at will to either one according to the Pontifical Constitutions.

597. ○ **QUESTION 11. What are the penalties against solicitors?**

Reply. The penalties against solicitors from the Bull of Gregory XV are suspension from the exercise of Orders, deprivation of benefices, dignities, and offices of every kind, and perpetual incapacity for them; and, furthermore, as regards Regulars, deprivation of active and passive voice. Nevertheless, they are all *ferendae sententiae* [20].

[20] Add that Benedict XIV, through the organ of the Sacred Congregation of the Inquisition, decreed on August 5, 1745, *that henceforth priests... soliciting to shameful acts in the act of sacramental confession, or on its occasion or pretext... besides the penalties inflicted upon them by law and the Apostolic Constitutions... also incur perpetual incapacity for the celebration of the Sacrifice.* Concerning this decree St. Alphonsus observes (book 6, no. 705) that, for a penalty of this kind to be incurred, a declaratory sentence of the judge is required, namely, from the general principle concerning privative or disqualifying penalties when the guilty party cannot himself carry out the penalty without his own infamy. Indeed, in the Instruction of the Most Holy Inquisition issued February 20, 1867, the following is read (no. 12): *It must be noted that all penalties of this kind, and the very incapacity for celebrating the most holy Sacrifice of the Mass prescribed in the decree of Benedict XIV of August 5, 1745, are only ferendae sententiae.*

598. ○ **QUESTION 12. How is a denunciation to be made?**

Reply. 1. The denunciation is to be made orally insofar as possible, not merely in writing. Therefore, the solicited woman must present herself before the Ordinary or Inquisitor, wherever a tribunal of the Inquisition exists, and declare the act of solicitation, without, however, in any way disclosing her own consent, if she gave any.

2. The denunciation is to be made to the Inquisitor or Ordinary of the place in which the penitent is staying, even if the soliciting Confessor belongs to another diocese. For it pertains to the local Ordinary or Inquisitor to receive the sworn denunciation and transmit it to the Bishop of the guilty priest.

3. If the denunciation cannot be made orally, it is to be made by a letter signed with one's own name and surname, or at least through an intermediary. For the obligation of denouncing the solicitor is not so much that of approaching the Superior personally as of reporting the delinquent to him, as Benedict XIV speaks in his Bull [21]. But one who is bound to the end is also bound to the means.

[21] The Author had before his eyes these words of Benedict XIV (Constitution *Sacramentum*, section 2): *Let Confessors furthermore take diligent care not to impart sacramental absolution to penitents whom they know already to have been solicited by others*

unless, first bringing the aforesaid denunciation into effect, they have indicated the delinquent to the competent judge, or at least pledge and promise that they will denounce him as soon as they can.

4. The Confessor, however, is not bound to undertake the burden of transmitting the denunciation to the Ordinary; rather, he satisfies his office by admonishing the penitent to denounce the solicitor properly at an opportune time. He can nevertheless offer his assistance if he judges it expedient; but knowledge of the matter must be received outside confession. - St. Ligorius, no. 699.

5. If the person solicited cannot in any manner be induced to carry out the denunciation in such a form, because she is affected, namely, by fear or insuperable shame, let her permit the Bishop to be informed of the matter; he can delegate someone to receive the denunciation. This faculty was granted to Bishops and Inquisitors by an Indult of the Sacred Congregation of the Inquisition with the consent of the Pontiff. But the delegated Priest must take an oath to preserve silence and to fulfill faithfully the office committed to him. - Decree of the Sacred Congregation of the Inquisition, September 27, 1624.

6. In every case a denunciation made through anonymous letters is altogether insufficient and wholly invalid, just as if it had not been made, as the Sacred Congregation of the Inquisition declared several times. - See *Analecta Iuris Pontificii*, September 1855, etc., etc. [22].

[22] If letters are sent to the Father Commissary or Assessor of the Supreme Tribunal with the name of the writer, in which a denunciation is contained, they are customarily remitted to the Inquisitors or Bishops, so that, after summoning the writer to themselves, they cause him to acknowledge them under oath, question him specifically concerning the things contained in them, and, after reducing them to the form of a denunciation, place them at the beginning of the Process, and examine witnesses informed about their contents. Albitius, *On Inconstancy in the Faith*, chapter 35, no. 21.

7. Solicited women are not bound to make the denunciation if Inquisitors or Bishops or their Vicars, living in distant regions, cannot be approached without grave inconvenience. But when the impediment ceases, for example, at the visitation of the Bishop, the obligation of denunciation must be urged. Thus the Sacred Congregation of the Holy Office declared on January 22, 1727.

Chapter II. On the Office of the Minister

Article I. On the Office of the Minister in Confession

We must treat: 1. of the duties of the Confessor in general; 2. of his manner of acting with the various classes of penitents.

§ I. On the Duties of the Confessor

A fourfold duty or office is assigned to the Confessor, namely: 1. of Father; 2. of Physician; 3. of Teacher; 4. of Judge.

Point I. On the Office of Father

599. ○ The Confessor is a spiritual father who gives spiritual life to the penitent, or restores and fosters it; for in the tribunal of Penance he acts in the place of the best of all parents,

namely, Christ Himself, and therefore is called by penitents by the sweetest name of Father. But that which stands out above all in the name of a true father is distinguished and inexhaustible charity. For what love is stronger than the love of a father? What is truer, purer, more chaste, more constant, fuller of solicitude, and more alien to personal advantage, indeed more ready and prompt for every kind of privation and inconvenience? Such, therefore, must be the charity of the Confessor, so that, clothed with the bowels of the mercy of Christ Jesus, Who came not to call the just but sinners, he may know how to deal attentively, patiently, and meekly with sinners (Leo XII, in the Bull for the Great Jubilee of the year 1825). Thus a good father will sustain all things for his spiritual children: *For charity is patient.... bears all things.... endures all things.* 2 Cor. 15:4.

The Confessor must be full of charity toward penitents at the beginning, during the course, and at the end of confession. Concerning these things it is profitable to hear St. Ligorius himself speaking in the *Practice of the Confessor*, at the end of the larger theological work, and also in *Apostolic Homilies*, treatise 21.

600. **I. At the Beginning of Confession.** - "First, the Confessor must employ charity in receiving everyone kindly, whether they are poor, uneducated, or sinners. Some take time only for hearing the confessions of long-standing devout persons or distinguished persons, because they do not have enough courage to repel these from themselves; yet if some wretched sinner approaches them, he is heard grudgingly and, loaded with reproaches, is driven away. Hence it happens that the wretched man, after exerting the greatest force upon himself to come to confess his sins, feeling himself received so harshly, conceives a hatred for the Sacrament of Penance; and, despairing of being able to find anyone who will aid him and absolve him from sins, he plunges headlong with loosened reins into the slippery course of a ruined life and falls into despair of salvation. Good Confessors act otherwise when sinners of this kind flock to them: they receive them kindly and, as a victor over captured prey, exult, considering that it has fallen to them to snatch a soul from the hands of the devil. They know that this Sacrament was properly instituted not for the just but for sinners; for venial faults do not need sacramental absolution in order to be remitted, since they can be effaced in many other ways. They also know that Christ declared in these words: *For I came not to call the just, but sinners.* Mark 2:17. Therefore, the Confessor, clothing himself with the bowels of mercy, the more he finds souls stained by the multitude and enormity of sins, the more he should embrace them with greater charity, in order to gain them for God, and furnish them his aid in these or similar words: 'Come, brother, be of good courage; do not fear; confess your sins without trepidation. Open everything confidently; be ashamed of nothing. It does not matter if you have not looked into every recess of your conscience; it is enough if you answer what is asked. Give thanks to God, Who has awaited you until now for penance. Now your life must be changed. Rejoice, because God certainly forgives you all sins, however enormous, if you have a good will; and for this reason He has awaited you, that He might spare you. Therefore say everything with a cheerful heart; conceal nothing under wrappings....'"

601. **II. During the Course of Confession.** - "He must show far greater charity while receiving the confession. Let him take care not to show himself impatient or affected by weariness; nor let

him show that he is struck with amazement by the sins which are related, provided the penitent is not so hardened or insolent that he would disclose numerous and atrocious sins without any shame and without any displeasure or feeling of soul; for then he must strive according to his strength to make the penitent perceive how great their deformity and enormity are. Therefore, a sharper correction is then required, so that he may awaken from a lethal lethargy. It is indeed true that during the act of confession Confessors ought to abstain from making a correction, lest perhaps penitents, terrified, keep back sins; nevertheless, this is understood as a general rule. Moreover, it is often expedient not to proceed to further things, but immediately to correct the penitent, especially when he confesses a very enormous sin, or if he has been habituated in some vice, so that he may comprehend the gravity of the sin. Yet let him take care not to exasperate or terrify him. Therefore, after he has corrected him as much as necessary, let him immediately encourage him to confess the remaining sins, saying: 'Come, brother, do you wish to recover from this vice? Is it so? And because you are ready to do this, be of good courage. Therefore relate the remaining sins, withholding nothing. Thus say everything with a strong heart; confess everything sincerely, for God is ready to spare you....'" (no. 4.)

602. **III. At the End of Confession.** - "At the end of confession it is also necessary that the Confessor apply himself with more vehement ardor and zeal, so that he may cause the penitent to perceive the gravity and multitude of his sins and the wretched state of damnation in which he is found; but let him always do this with the greatest charity. Nevertheless, it is more fitting then to use graver words, so that he may thus be able better to return to good fruit of mind; yet he must bring it about that the penitent understands that what is said to him proceeds not from an angry disposition, but from singular love and compassion for his soul. This can be expressed in this manner: 'My son, do you perceive the evil which you have wrought? What evil has your God ever done to you, Whom you have so ruinously despised? If no one had ever been so hostile to you as Jesus Christ, could you have behaved worse toward Him? But, I ask you, consider who this Jesus is. He is the One Who, although He was God and needed nothing, became man for your sake and willed to die upon the cross in order to redeem you from hell. Ah, my son, if you had died meanwhile, if you had died this night, where would you have gone? Where would you now be? You would be in the eternal fire of hell. What will become of you if in the future you continue to live the life you have led until now? Will you be able to be saved thus? Awaken, and see that, unless you change your ways for the better, you are already damned. What good have you gathered for yourself from so many sins? Come, my son, withdraw from evil, cease to sin, and commit yourself entirely into the arms of God, which are extended to receive you: it is enough how much you have sinned against Him. I wish to help you with my whole heart and all my strength; come to me always as it pleases you, for you will find a father who will receive you kindly. Behold, now resolve firmly that you wish to become holy. It depends upon you. For God is always ready, and for this reason He has granted you this time, so that you may turn away from evil and do good. O how good it is to have God as a friend!....'" etc.

Point II. On the Office of Physician

The Confessor is a true physician of souls, since he must deliver them from the various diseases of sin, free them from the depraved affections of the passions, and restore them to divine grace. Therefore, the Confessor, as a skillful physician, must: 1. know the cause of the evil; 2. heal it; 3. guard against relapse. Let us hear St. Ligorius again in the same place.

603. **I. The Confessor Must Know the Cause of the Disease.** - "In order that the Confessor may meet the infirmities of his penitent with suitable remedies, the origin and cause of all his spiritual diseases must be known. Some inquire nothing besides the species and number of sins: if they see the penitent disposed, they absolve him immediately; but if not, without expending one word, they dismiss him at once, saying with a sidelong glance: 'Depart from me, because I cannot absolve you.' Good Confessors proceed otherwise: for they first investigate the origin and gravity of the disease by inquiring about the habit of sin, the occasions, the time, the place, the persons with whom, and the concurrence of circumstances. For thus they will be better able to correct penitents, dispose them for absolution, and apply salutary remedies." (no. 6.)

604. **II. He Must Heal the Disease.** - "Once the origin and gravity of the disease are known, let the Confessor proceed to make the due admonitions. And although, as a father, he ought to listen to penitents with charity, nevertheless, as a physician, he is bound to admonish and correct them as much as necessary, especially those who, burdened with many mortal sins, rarely approach the Sacrament of Penance.... Nor ought the Confessor then to regard the other penitents who surround him.

For, as St. Francis Xavier used to say, it is better to hear the confessions of a few properly made than the disordered and fruitless confessions of many. Here it must be observed how wrongly those Confessors act who, if they encounter an indisposed penitent, immediately order him to depart from them lest they spend any time with him.... And it matters little that others wait or depart without confession; for the Confessor must render an account on the day of judgment only for this one who now confesses to him, not for the others...." (no. 7.)

"After the due corrections or admonitions, it is better that he labor to dispose the penitent for absolution through acts of true sorrow and purpose. Therefore I wish Confessors to be admonished that very few penitents, especially the uneducated, approach confession after first making an act of sorrow. Some Confessors think that they have sufficiently fulfilled their office if they merely question penitents of this kind in the following manner: 'Come, do you ask pardon from God for all these things?' (which in truth is not a true act of sorrow); 'Do you repent from your heart of all your sins?' And, without any other word intervening, they bestow absolution upon them. Entirely different from this is the practice of good Confessors. For these labor first of all that penitents (the discussion concerns those held by mortal sins) conceive true sorrow and detestation of sins. And first they prepare them through an act of attrition, for example: 'My son, where ought you now to be for eternity? In hell. Ah! You would be tormented in that fire! Nor would any hope remain for you to be delivered from there! You would remain there, abandoned by all and rejected by God for all eternity! Therefore, do you repent of having offended God on account of the hell which you have merited?' Afterward let him take care that an act of contrition be elicited in this manner: 'My son, what have

you done? You have sinned against God, the supreme and infinite good; you took no account of Him; you turned your face away from Him; you cast Him behind your back; you despised His friendship and grace. Come, therefore, because you have offended God, infinite goodness, do you now repent with your whole heart? Detest and hold in hatred above all evils all the injuries with which you have undeservedly afflicted so good a God. Are you not now ready to die a thousand times [1] rather than commit these things in the future?...." (no. 10.)

[1] See what was noted above at no. 459.

605. **III. He Must Guard Against Relapse.** - The Confessor will guard against relapse by assigning to the penitent remedies suited to the disease. The remedies are either general or particular.

1. The general remedies are: 1. devout prayer and love toward God; 2. frequent invocation of the Blessed Virgin Mary, the holy Guardian Angel, and one's patron Saint; 3. frequent reception of the Sacraments and confession immediately after any mortal sin has been committed; 4. consideration of the eternal truths, especially death and the last end, according to that saying: *Remember thy last things, and thou shalt never sin.* Ecclus. 7:40;

5. remembrance of the presence of God when temptation presses, saying: *God sees me*; 6. an evening examination of conscience with sorrow of soul and purpose; 7. mental prayer and pious reading, especially for Priests.

2. Particular remedies will be assigned according to the diversity of vices [2]. For example, to one who is held by some hatred, let it be suggested that he commend daily to God the person whom he hates [3], reciting the Lord's Prayer for him, etc. And when he is disturbed by the memory of an injury, let him remember the insults with which he himself has afflicted God. Let one who has fallen into shameful sins be enjoined to avoid idleness and flee evil companions and depraved occasions. Let one who has contracted a depraved habit in this vice over a long time be prescribed to avoid not only proximate occasions but also certain remote ones which, for one so weak, are as though proximate. Above all, however, let the Confessor take care that this person receive Communion frequently, because the Eucharist is called *wine springing forth virgins*. And so concerning the others.

[2] Most useful for this purpose is the little work of Philippus Maria Salvatori, published several times at Rome under the title *Practical Instruction for New Confessors*.

[3] This must be prudently weighed, whether it will be profitable; furthermore, care must be taken lest the penitent believe himself bound to it, or think that, unless he also adds this, he has not sufficiently fulfilled the precept of loving enemies. See vol. I, no. 226.

The Confessor will assign other remedies [4] according to his prudence, after considering the circumstances of occasions, persons, etc. For prudence is the chief quality which ought to excel in a physician. - See St. Ligorius, *Practice of the Confessor*, no. 15; and *Apostolic Homilies*, treatise 2, nos. 5 and 6.

[4] Those things must not be passed over in this place which Cardinal De Lugo wisely observes concerning the office of a physician (*Moral Responses*, book 1, doubt 28, no. 5): "The penitent," he says, "is bound only to fulfill the penance imposed upon him by the Confessor. But as regards other things, the Confessor can indeed declare to the penitent those things to which the penitent is otherwise bound under sin, for example, restitution, abandoning the proximate occasion of sin,

abstaining from such a usurious contract, and other similar things; if the penitent does not have the intention of observing them, he is not disposed for absolution. Nevertheless, the Confessor cannot command him under sin to do anything else except that which he imposes as penance, in imposing which he acts as a judge. But as regards other things he acts as a Physician, whose part is not to command, but to counsel and declare to the sick person what means are necessary or useful for preserving or recovering health."

Point III. On the Office of Teacher

In order that the Confessor may rightly fulfill the office of teacher, he must have sufficient knowledge to instruct penitents suitably.

Section I — On the Knowledge of the Confessor

606. **Principles.** - I. The Confessor is bound under grave sin to know all those things which are required for the proper fulfillment of his office. - Thus all teach with St. Ligorius in the *Practice of the Confessor* and in the *Apostolic Homilies*, where he speaks thus: *I affirm that a Confessor who exposes himself to hearing confessions without sufficient knowledge is in a state of damnation.* The reason is that otherwise a Confessor of this kind exposes himself to the evident danger of performing so grave an office badly, with injury to the Sacrament and great harm to souls.

Therefore God requires special knowledge from His Ministers, as is evident from various words of Sacred Scripture: *The lips of the Priest shall keep knowledge, and they shall seek the law at his mouth.* Mal. 2:7. - *Because thou hast rejected knowledge, I will reject thee, that thou shalt not perform the office of priesthood to Me.* Osee 4:6. - *If the blind lead the blind, both fall into the pit.* Matt. 15:14. - *Woe to you, blind guides!* Matt. 23:16. - It is also evident from innumerable testimonies of the Holy Fathers: *No art is presumed to be taught unless it is first learned by attentive meditation. The pastoral magisterium is therefore undertaken with great temerity by the unskilled, since the government of souls is the art of arts.* - St. Gregory, *Pastoral Rule*, part 1, chapter 1.

607. ○ II. The Confessor, however, is not bound to have such perfect knowledge that he can always immediately and by himself solve every doubt which occurs; rather, it is sufficient that he can do this in cases which commonly occur and that, concerning more difficult cases, he at least know how to doubt [1]. For greater knowledge can be had only with greater difficulty, since not even the more learned can immediately resolve every case. Nor is the Confessor bound to discern concerning each sin accused whether it is mortal or not, since this is often impossible; rather, it is sufficient that he hear each one as it was committed and judge concerning it [2], both according to common principles and according to the circumstances of the matters explained by the penitent, and that he know how to apply a suitable remedy. - St. Ligorius, no. 627.

[1] St. Alphonsus (book 6, no. 627), with the Salmanticenses, Suarez, and the common opinion, judges it sufficient if the Confessor understands the things which more frequently occur and knows how to doubt concerning the others.

And Cardinal De Lugo: *It is not necessary that, in the doubts which occur, he himself be able to resolve everything; it is sufficient if he knows common cases and at least knows how to doubt concerning the more difficult ones, so that he may consult books or more skilled men* (*On Penance*, disputation 21, no. 70).

[2] Cardinal De Lugo confirms these things (*On Penance*, disputation 21, no. 70): *This knowledge need not be so great that he can discern concerning everything which the penitent says whether it is mortal or venial; for often not even the most learned can do this, partly because they cannot know the fact itself perfectly, whether the penitent consented with full deliberation or not, and partly because even the law*

itself cannot be known in every matter. It is therefore sufficient if, in those things which commonly occur, he knows whether they are mortal or venial.... And immediately afterward (ibid., no. 71): *Hence I infer that it is not required that the confessor judge concerning everything which he hears from the penitent whether it is grave or light, indeed not even whether it is a sin; but concerning common things. Let him hear and understand the rest, and afterward absolve with the due intention.*

Nor ought it then to disturb the Confessor that afterward he knows with certainty what was uncertain to him during confession. St. Alphonsus (book 6, no. 627), with Suarez, admonishes to the point that, although in some case the Confessor does not discern which things are grave or light, nevertheless, if the penitent in good faith declares his sin, the confession is valid; and although it is afterward noticed that it was mortal, there is no reason for it to be repeated in another confession.

608. **Resolutions.** - 1. Every Confessor is bound to know all those things which pertain to the validity, substance, integrity, and effect of the Sacrament of Penance, and which are required for its licit administration both on his part and on the part of the penitent.

2. He must also know the common obligations and those proper to states of life, the various species of sins, their circumstances changing the species [3], the principles for discerning between mortal and venial sins, and which things are mortal and venial in the individual precepts, at least according to the general principles and the common opinion of Theologians. Likewise, which acts are valid and licit [4]. The reason is evident, because he must know that concerning which he is to judge; otherwise he will not be able to render an equitable judgment.

[3] Concerning this point several things should be observed. 1. Where there is disagreement among the Doctors whether some circumstance induces a diversity of species, just as the penitent is not bound to confess it, neither is the confessor bound to inquire about it; on this matter the little work of Thomas Tamburini entitled *Method of Expeditious Confession* will be read with profit. 2. Even if this diversity of species is present, nevertheless, when it appears that the penitent did not advert at all to that special malice, there will be no need for the confessor to inquire about it. 3. Furthermore, it will pertain to the prudence of the confessor whether he ought to admonish the penitent concerning that special malice according to the rules which will be given below concerning admonishing a penitent. Hence St. Alphonsus (book 3, no. 150): *Moreover, it is not always expedient to admonish an uneducated penitent of this kind concerning the gravity of perjury if the admonition is foreseen as not readily profitable.*

[4] When the Confessor must judge concerning these things as regards what is to be done in the future, but he himself remains doubtful, and it is not convenient either here and now to employ means for dispelling the doubt or afterward to speak to the penitent again, this admonition of Cardinal De Lugo will be useful (*On Penance*, disputation 21, no. 71): *When counsel must be given for the future, or restitution imposed, or a doubtful contract prohibited, or something similar, if the confessor himself cannot resolve it by himself, it will be good counsel to ask the penitent whether he is prepared to consult skilled men and to abide by their judgment concerning that doubt. If the penitent promises, let him absolve, declaring to him the obligation which he has of consulting one or more persons concerning that doubt.*

3. He must know reserved cases [5] and censures in force, impediments of matrimony, the conditions of contracts, the various causes of restitution, the roots and occasions of sins, the remedies to be applied to them, the salutary and suitable satisfactions to be imposed, etc.

[5] Cardinal De Lugo wisely admonishes (*On Penance*, disputation 21, no. 70) that those who have the faculty of absolving from reserved cases by a Bull or another privilege are in a better condition. For he experiences less difficulty who can remember from a brief catalogue the sins from which he cannot absolve penitents.

4. Therefore a Confessor sins who knows that he lacks the aforesaid knowledge, even if he hears confessions solely from charity and obedience. Nor does the approval of the Bishop excuse him

of itself; for this does not give the knowledge due from the nature of the matter, nor supply its defect [6]. - St. Ligorius, *Apostolic Homilies*, no. 100.

[6] Nevertheless, this must be limited if the subject does not indeed know with certainty that he is ignorant of necessary things, but is troubled by doubts concerning his own sufficiency, by which even more skilled men of a timid disposition are not rarely distressed. De Lugo speaks aptly (*On Penance*, disputation 21, no. 72): *I infer, secondly, that one sins gravely who without the knowledge respectively required exposes himself to hearing confessions; in this there is no difference, formally speaking, between a regular and a secular confessor, since each is bound by a precept of natural law. Nevertheless, there can be a material difference insofar as a Religious who doubts his fitness and sufficiency for that ministry can more easily lay aside that doubt when the Prelate, who knows him well, judges him fit and imposes such an office upon him.*

Although De Lugo says these things only of a Religious, they nevertheless have place also as regards a secular priest if in like manner the Bishop knows the subject well and constrains him to the ministry.

Furthermore, the case of necessity must be excepted; in it, as De Lugo says (*On Penance*, disputation 21, no. 73), *although a priest is ignorant and unlearned, he ought to hear the confession and absolve, because the knowledge of the confessor is required for the integrity of the confession; but since in that danger material integrity is not required, but it is sufficient to perceive some sin, or even sin in general, the ignorance of the confessor will not be an obstacle in that case.* Hence the same must be said when Christians who are held in servitude among unbelievers have only one ignorant and unlearned priest, as Suarez teaches (*On Penance*, disputation 28, section 2, no. 6), because this too is reputed a morally extreme necessity.

609. ○ 5. The Superior also sins who gives an ignorant Confessor permission to hear Confessions, because he consents to and cooperates in his sin [7].

[7] Nevertheless, the Doctors admonish that necessity sometimes brings it about that this ministry must be committed even to the less learned. Hence St. Alphonsus (book 3, no. 628), after saying that necessity excuses in this matter if otherwise penitents would have to lack confession for a long time, as happens among captives, then adds: *And the Doctors say the same concerning small towns or galleys, where, as they say, if learned priests cannot be had, less learned ones can be appointed; they are nevertheless to be admonished of the obligation of learning.*

Thus Cardinal De Lugo also observes (*On Penance*, disputation 21, no. 74) that Prelates who place unlearned and uneducated men over the ministry in these circumstances are to be excused. "I add," he says, "that on this ground Prelates who in some small and remote towns place unlearned and uneducated men over them as Pastors are often excused; for they generally do this because, on account of the small stipend, scarcity of provisions, and poverty of the inhabitants, no learned man is found who wishes to undertake that care. Hence, since those sheep cannot be assisted otherwise, as I suppose, it is better that in such necessity they have an unlearned confessor than that they be left entirely without every remedy. Nevertheless, the Prelate ought to admonish the pastor concerning the defect of knowledge from which he suffers and the obligation which he has of acquiring, if he can, the doctrine necessary for fulfilling his ministry. For the pastor and confessor always has this obligation, although the Prelate is sometimes excused by the necessity of the sheep when he sends a less sufficient minister."

6. The penitent himself also sins who deliberately chooses an unfit Confessor. If, however, anyone is in good faith, the confession will be valid, because on the part of the penitent there is an integral declaration of sins and the due disposition of soul; on the part of the Confessor there is at least knowledge of the sins under the confused character of sin, which suffices for the matter of the Sacrament [8].

[8] Cardinal De Lugo nevertheless intimates an exception in this manner (*On Penance*, disputation 21, no. 72): *Likewise, one who chooses an unfit person for this office sins; and not only the Prelate, but also a penitent who has the faculty of choosing a Confessor and knows that he is not fit, although approved, sins by choosing him, unless the penitent is such that by his own learning he can supply the ignorance of the confessor, as was said.*

7. Experience cannot supply knowledge, but can only assist it; but where it is deprived of the aid of knowledge, it will impel the rash confessor into very many and very grave errors.

8. Therefore every Confessor is bound to apply himself diligently to the study of Moral Theology; and, as St. Ligorius asserts, *Apostolic Homilies*, no. 100: *He ought never to interrupt that study, because among so many diverse and mutually dissimilar matters which pertain to this science, many, although read, fall from the mind with the passage of time because they occur more rarely; therefore it is necessary always to recall them to mind by frequent study.*

9. Hence it is evident how gravely those err who regard the science of Moral Theology as easy and scarcely worthy of any attention, repeatedly saying that nearly all cases can be resolved by some common sense together with a knowledge of general principles. - The same St. Ligorius speaks aptly, book 6, no. 628: *Those who desire this office of hearing confessions should not easily persuade themselves that they can render themselves sufficiently fit for so great an office without long study of moral science, for which it certainly does not suffice to run through some little summary of those which circulate; nor is it sufficient to know the general principles of this faculty, as some who despise casuists suppose. For moral science is not only very necessary to the Christian commonwealth, since the good government of souls depends upon it, but also exceedingly difficult: both because it requires a general knowledge of all other sciences, duties, and arts [9]; because it embraces so many diverse matters remote from one another; and because in great part it consists of so many positive laws which are found cited only among casuists, and especially among more recent ones, since laws of this kind appear daily. Finally, it becomes most difficult on account of the innumerable circumstances of cases upon which the variety of resolutions depends; for according to the diversity of circumstances different principles must be applied, and in this the difficulty consists, since it cannot be done without great discussion or an accurate reading of several books which examine and elucidate the matters.*

[9] Cardinal De Lugo wisely admonishes with others (*On Penance*, disputation 21, no. 70) that the knowledge required in a Confessor is not the same for all. For less suffices for some to hear the confessions of children or rustics; in others more is required for hearing merchants, judges, etc., who have more difficult cases. But for the confessions of a learned man much less is required, because the Confessor can be instructed by the penitent himself.

Section II — On the Obligation of Instructing Penitents

610. **Principles.** - I. The Confessor is bound to instruct penitents in all those things which pertain to receiving the Sacrament rightly here and now. The reason is that, since the Priest is the minister of the Sacrament, he must procure its valid and licit reception and therefore impart the instruction necessary here and now.

II. He must instruct penitents when he notices that someone is ignorant of any of those things which are necessary for living as a Christian, such as, for example, his own obligations. - St. Ligorius, no. 607 ff.

III. Nevertheless, of itself and strictly, he is not bound to instruct them concerning all the things which they themselves ought to know and can learn elsewhere. The reason is that the office of teacher in the Confessor pertains of itself only to the right administration of the Sacrament of Penance. Per accidens, however, an obligation from charity could be present when the penitent could

acquire this knowledge for himself, either by himself or through another, only with very great difficulty [10]. - St. Ligorius, ibid.

[10] This obligation of charity is not special to Confessors, but common to all who know the necessity of their neighbor and can provide for him without grave inconvenience. A special obligation belongs to pastors, who owe it from their office.

The obligation of the Confessor will especially be present when the penitent is ignorant of those things which are necessary to know for salvation by a necessity of means. How this is to be understood, however, is well explained thus by Sporer (*On Penance*, no. 796): *The Confessor who notices this* (and it is frequent in children and rustics) *is bound to instruct him in the manner of which he is capable here and now, not indeed doctrinally, so that he can comprehend, understand, retain in memory, and recite those things; but for the time it is sufficient that he intimate to him the obligation of learning and supply his ignorance by proposing to him the articles to be believed, so that he may elicit an act of faith concerning each one. For example: Do you believe that God is one in essence and three Persons, etc., as I and the Church believe? I believe.... Do you believe whatever the Holy Roman Church believes, and do you wish to die in her? I believe.... Furthermore: Are you sorry that you are so ignorant and have been negligent, etc.? I am sorry.... Do you firmly propose, when you have obtained a suitable occasion, that you will take care to be instructed and wish diligently to learn those things which are necessary for salvation? Certainly. If he elicits these acts, it suffices for the instruction to be furnished by the Confessor here and now and for sufficient disposition for the sacrament*, etc.

611. Questions. - QUESTION 1. Must a penitent laboring under ignorance concerning some obligation always be admonished?

Reply 1. Yes, if the ignorance appears vincible, that is, if the Confessor notices that the penitent doubts in such a way that good faith is already absent. The reason is that no danger threatens in giving the admonition; otherwise, the penitent acting with that doubt is not free from sin. Reply 2. If ignorance of some obligation is invincible, the penitent must be admonished if fruit is hoped for from the admonition; but not, generally speaking, if it is not hoped for. The reason is that on the one hand this admonition would not profit, and on the other it would harm him, since after being admonished he would sin formally in the future. - St. Ligorius, no. 610, and others commonly.

Therefore, the penitent must be admonished: 1. whenever he himself asks about the malice of some matter, because, since he doubts the lawfulness of the matter, he is no longer in invincible ignorance [11]; 2. whenever the silence of the Confessor would harden him in the purpose of carrying out an evil matter; 3. whenever his ignorance concerns the primary principles of natural law or their proximate conclusions, because such ignorance, if possible, cannot remain invincible for a long time; 4. whenever, if the admonition is omitted, the penitent would remain in a proximate occasion of sinning formally [12]. - St. Ligorius, no. 615.

[11] The reason is, says De Lugo (*On Penance*, disputation 22, no. 29), that the silence of the Confessor would be an approval of the error, which is never lawful. See St. Alphonsus, book 6, no. 616.

Sanchez excepts (*On Matrimony*, book 2, disputation 38, no. 14) when the penitent is moved to ask by a mere scruple (he calls a scruple a doubt from a false or frivolous reason); for then he judges that, if the admonition is foreseen to be harmful, the confessor can remain silent or reply that he should lay aside a scruple of this kind. The reason is that a scruple does not remove good faith. - De Lugo (*loc. cit.*), however, admits this only so far as the Confessor can indeed pretend that he did not hear, did not attend, or forgot to reply, so that the penitent may thus remain in the good faith which he previously had, yet not confirmed by the authority of the Confessor himself. - But if the reason for asking is truly frivolous, for example, if he raises a doubt concerning the validity of matrimony because he celebrated it in the state of sin, at a prohibited time, by a fictitious testimony of freedom of state, or contrary to a previously emitted oath or vow, it does not appear why the Confessor (who from another true cause, but one unknown to the penitent, knows that the matrimony is invalid) cannot reply that that reason is empty and the scruple vain.

[12] The hypothesis of a penitent who believes himself bound where there is no obligation, or even thinks that a grave obligation is present where only a light one is present, must not be passed over. This ignorance, as always harmful, must

always be removed.

QUESTION 2. Is an admonition to be given in doubt whether it will profit or harm?

Reply 1. Yes, if it will more probably profit; not so if it will more probably harm. - St. Ligorius, no. 916. - De Lugo. - Salmanticenses, etc., against some.

Reply 2. In a doubt equally balanced on either side, generally speaking, formal evils are to be avoided rather than material ones. - St. Ligorius, ibid., and others [13].

[13] Doctors commonly hold that an admonition which is foreseen as merely harmful is to be omitted, even if the ignorance results in the detriment of a third party. Thus also St. Alphonsus (book 6, no. 614). The excellent reason, touched upon by Sanchez and then by De Lugo (*On Penance*, disputation 22, no. 26), is that the admonition does not even profit the creditor and harms only the penitent.

The case is different, however, when the common good is at issue, as St. Alphonsus observes with others (*loc. cit.*, no. 615), for example, if someone in good faith believed himself to be a priest when he was not; his ignorance, as De Lugo says (disputation 22, no. 30), would redound to the common harm of those who receive a sacrament from him.

And to this pertains the case, which not rarely troubles the mind of the confessor, of a denunciation to be made which is ordered not to the private good of the person sinning but to the prevention of a common harm. This harm could indeed be so grave and so imminent that the obligation of denouncing would bind even with danger to life. Nevertheless, the Confessor, insofar as this can be done, must take care that the matter be carried out with the least danger to the denunciant. For to prevent, for example, a conflagration or treason, it is not always necessary either that the name of the denunciant be known or that he himself disclose the matter.

But when the harm does not appear so imminent, there must be weighed on the one hand the gravity of the harm and on the other the difficulty of denouncing which arises from the circumstances of persons, places, the business, etc. From consideration of these things it will be necessary to determine whether the gravity of the harm ought to impel the Confessor to admonish even with a slight hope of fruit and thus with grave danger of uselessly casting the penitent into bad faith, or whether the absence of every prudent hope of fruit ought rather to bring it about that, after the remedy against the common harm has been despaired of, he does not uselessly add grave harm to the penitent by removing his good faith.

Hence it is that in cases of solicitation, although denunciation is ordered not to the reform of the solicitor but to the common good, nevertheless the Apostolic See has sometimes been accustomed to dispense from denouncing. From this it is also evident that St. Alphonsus (book 6, no. 694) established too generally that an admonition can never be omitted when the common harm is at issue.

612. ○ **QUESTION 3. Is a spouse to be admonished of the invalidity of the matrimony on account of an occult impediment which the Confessor discovers?**

Reply. No, generally speaking, until the Confessor has obtained a dispensation, unless it can be obtained immediately and easily from the Pope or Bishop. The reason is that very great inconveniences would generally follow from it, for example, danger of infamy, scandal, quarrels, or incontinence, etc., and consequently material fornication would become formal. - Thus commonly with St. Ligorius, no. 611. - Elbel, no. 471, etc.

But can the Confessor oblige the spouse who is ignorant of the impediment and refuses the debt to render it? Reply. Yes. The reason is that, while the spouse is persuaded that the matrimony is valid, he is bound to render the debt so that he may follow the dictate of conscience. - St. Ligorius, ibid., and others commonly [14].

[14] Sanchez speaks well (*On Matrimony*, book 2, disputation 38, no. 8) as regards those who would wish the Confessor merely to say generally that spouses are bound to render the debt: *I confess that I do not grasp what difference there is between these statements: Render the debt; and, The wife is bound to render the debt; since each manner of speaking tends toward the same end, namely, to*

induce that spouse to render the debt. And if to induce by direct words were a fault, to induce by indirect words would not be free of it, since on the part of the Confessor the intention is the same in each manner of speaking, and the penitent understands precisely the same thing. Furthermore, because, since the penitent must be left in that ignorance, he sins mortally, supposing it, by not rendering; therefore the confessor is bound not to absolve unless he proposes that he will render it afterward. Therefore he can compel him to render it; and thus the confessor does not command an evil thing, but a thing owed, in view of the circumstances which occur.

613. ○ **QUESTION 4. Is a penitent about to contract matrimony to be admonished of an unknown impediment?**

Reply. Generally speaking, the admonition is to be given. - Thus commonly with St. Ligorius, no. 612. - The reason is that after the matrimony the ignorance can cease without difficulty, for example, because it is discovered that consanguinity, affinity, etc., exists between the spouses; and then, besides the ready danger of sinning formally, other most grave inconveniences can follow, namely, scandals, quarrels, and perhaps even the separation of the spouses, etc. - Nevertheless, probably except the case in which no fruit at all is hoped for from the admonition and the impediment cannot easily be discovered; because it is better to permit material sin until a dispensation is obtained than to furnish the occasion of certain formal sin. - Lacroix, book 6, part 3, no. 540.

Point IV. On the Office of Judge

We must treat: 1. of instructing the cause; 2. of rendering the sentence.

Section I — On Instructing the Cause, or on the Obligation of Questioning Penitents

614. **Principles.** - I. The Confessor is bound to question penitents concerning the species, number, and circumstances changing the species; concerning the causes of sins, habit, and proximate occasions, whenever he reasonably presumes or prudently doubts that these things have not been sufficiently declared. The reason is that the Confessor, as minister of the Sacrament, must procure its integrity and, as judge, must obtain for himself the knowledge necessary for rendering an equitable judgment. This is also evident from the Fourth Lateran Council and from the Roman Ritual. - St. Ligorius, no. 617, and *Practice of the Confessor*, no. 19.

II. The Confessor is not bound to question the penitent except with some ordinary diligence. The reason is that the penitent himself is bound to examine himself not with the greatest but only with moderate, that is, ordinary diligence. But the obligation of the Confessor cannot be graver than that of the penitent, since the Confessor is bound to examine the penitent only secondarily, or in default of him. - St. Ligorius, *Practice of the Confessor*, no. 20.

III. The Confessor is not bound to question penitents who, although uneducated, seem sufficiently instructed for their condition and diligent in confessing sins with their circumstances according to their state and capacity. - A fortiori, it is not necessary to examine those who confess frequently and rarely sin gravely, such as devout persons, Religious, and Ecclesiastics, unless something necessarily to be explained appears to be omitted by them. - St. Ligorius, no. 607, II and III; *Apostolic Homilies*, no. 103.

615. **Rules for the Practice of Questioning.** - I. Rule. Questioning must be moderate, and therefore the Confessor must take care not to be too anxious in questioning. Otherwise,

questioning, and consequently confession itself, will be grave and burdensome both to himself and especially to the penitent. Hence let him never ask useless things or permit them to be narrated to him. Therefore let him attend to those things which the Roman Ritual has: *Let him take care not to detain anyone with curious or useless questions, especially younger persons of either sex, or others, by imprudently questioning them about that which they do not know, lest they suffer scandal and thereby learn to sin.*

And St. Ligorius, no. 607: *Let the Confessor not be too anxious in questioning, but let him ask only about those things which probably pertain to the penitent according to his condition.* And in the *Practice of the Confessor*, no. 21: *Let him ask only about sins into which they can easily fall, their condition and capacity being considered.* Thus also Billuart (dissertation 6, article 10, section 2): *In a moral examination* (the Confessor ought to examine) *not with the greatest and exquisite, but with human and moderate diligence, and conformably to the capacity of the penitent. For the Priest is not bound to examine the penitent more than the penitent himself is bound to examine himself, since the Confessor is bound to examine him in default of the penitent. But the penitent is not bound to examine himself with the greatest and exquisite diligence, but with human and moral diligence. Nor does it matter that, if the Confessor examined more, perhaps he would discover more; for here attention must be paid not only to the material integrity of confession, but also lest the Sacrament be rendered burdensome and odious to penitents by the greatest and excessive industry in examining. It is therefore sufficient if the Confessor prudently judges that the penitent omits nothing.* Sporer, no. 792, has the same in nearly the same words. - Salmanticenses, chapter 12, no. 21. - Reuter, *The New Confessor*, chapter 3, at the end, etc.

616. **II. Rule.** - Questioning must be discreet; namely, the Confessor must question with great prudence, diligently taking care: 1. not to ask about sins which probably were not committed, considering the condition and capacity of the penitent, etc.; 2. not to ask about those things from which the penitent may learn to sin or may suffer scandal, according to what was just said from the Roman Ritual; 3. not to ask with curiosity or levity even concerning those things about which inquiry must be made, for example, immodestly concerning immodest things, etc., etc. In a word, he must strive that in every question gravity, piety, modesty, and paternal charity alone appear, as the nature and dignity of this office require. - See the Roman Ritual. Hence: 1. he must be very cautious in questioning concerning the matter of lust, especially with women, adolescents, and children, who can suffer scandal much more easily. For how many unhappy penitents have lost innocence and soul because of an incautious question or explanation of the Confessor! But with married persons let him never make mention of the conjugal debt without grave cause (Sacred Penitentiary, June 8, 1842); and it will be sufficient, when the matter requires, to ask the woman whether she has furnished due fidelity and obedience to her husband in all things.

2. The rule admitted by all must be diligently observed: *In the matter of lust it is much better to fall short in many things than to exceed in one by reason of the integrity of confession.* Therefore, in doubt whether in such a case you can or ought to question, the negative side must always be followed; for it is a lesser evil that the integrity of confession be lacking than to incur the danger of losing a soul.

617. **III. Rule.** - Questioning must be opportune, that is, it must be done at the time and in the manner which are suitable. But certain questions are ordinarily to be asked before confession,

though few, lest the penitent be offended, for example: How long has it been since he confessed? Was he absolved? Did he fulfill the penance [1]?... Is he at peace concerning his past life? This last question should be asked only when the penitent has not confessed for a long time or when a general confession is undertaken from a determined time. - The other questions concerning condition, state, age, etc., will more suitably be asked, as occasion is given, during the course of confession. Thus, on the one hand, every suspicion of curiosity and levity will be avoided, and on the other the penitent will answer more easily when his confidence in the Confessor has been increased.

[1] The Author does not contend that these questions must always be asked, but only that, if at any time, after certain things have been heard, it seems that they should be asked, they are more suitably asked at the beginning.

But those Confessors err who wish always to make a certain judgment concerning the quality of the sin, whether it is grave or light, and torment penitents in order to know with what intention or what conscience they did this; for these will often answer whatever happens to come into their mouth, so that, when questioned a little afterward concerning the same matter, they will deny what they had previously affirmed. The case is different, however, if they appear sufficiently instructed, or if there is doubt about full consent given to a temptation. Generally, unless the circumstances counsel otherwise, it can be presumed that the penitent apprehended the object of the sin as it is evil in itself.

618. **Questions. - QUESTION 1. What must the Confessor do in doubt concerning the sincerity of the penitent?**

Reply. It is a common rule and a received axiom: *The penitent is to be believed when speaking both for himself and against himself.* The reason is that in the sacred tribunal the penitent is at once the accused and a witness, his own accuser and advocate, and moreover in doubt he is always to be presumed truthful. Therefore, after suitable questions, the Confessor must absolve a penitent who denies. - St. Ligorius, no. 631.

619. ○ **QUESTION 2. What must the Confessor do if he knows with certainty that some sin is being concealed or denied by the penitent?**

Reply 1. If he knows it from the confession of another, he must, lest the seal of confession be violated, question only generally, as he otherwise would have done or ought to have done. But if the penitent, when questioned, denies it, let him reply nothing; rather, if he can do so without arousing suspicion, let him merely exhort him generally to open his conscience with all confidence. Whether the Confessor ought to absolve such a penitent is disputed. - St. Ligorius, after reporting the opinions of others, concludes thus: *In my judgment, Croix thinks better, that in this case he should by no means absolve, but should merely say some prayer in order to conceal the denial of absolution* [2]. - More commonly, however, other Doctors with Suarez, *On Penance*, disputation 32, section 3, no. 9, teach that absolution is to be denied only when it is altogether evident that the penitent is lying against the integrity of confession. Indeed, several say that absolution is to be granted in every case to a penitent denying his sin whenever knowledge of this sin has been obtained solely from the confession of another, namely, an accomplice, because this knowledge is to be held as nothing, since it was acquired from the confession of another. This, moreover, is sufficiently probable. Reply 2. If he knows it outside confession, of itself he must absolve the penitent who denies it, because the penitent speaking for

himself and against himself is to be believed; nor can the report of another of itself produce greater faith than the declaration of the penitent himself; therefore the Confessor is no more bound to believe others than the penitent. For if the penitent committed that sin, the Confessor must presume that he either forgot his sin, confessed it to another, has a just cause for concealing it, or that the reporters were instead deceived. - St. Ligorius, ibid. - Billuart, ibid.

[2] Illsung first introduced this opinion and practice (treatise 6, disputation 6, question 4, article 7, section 4, no. 128), relying upon a fallacious citation of Suarez, who (*On Penance*, disputation 32, section 3, no. 9) indeed teaches the opposite. Croix borrowed the same from Illsung (book 6, part 2, no. 1969), together with the fictitious support of Suarez, adding through inadvertence a citation of Dicastillus, whom Illsung had cited for another purpose. To these St. Alphonsus (no. 631) added Viva, who (*On Penance*, question 8, article 5, no. 2), although he reports the opinion of Suarez and De Lugo less exactly, nevertheless in no way adheres to that opinion. Therefore, that entire opinion is owed to an hallucination which wrongly adduced the authority of Suarez, Dicastillus, and Viva.

** The VV. oppose thirty-four columns (pp. 587-603) to the twenty-four lines of which this and the immediately following Note consist. Nevertheless, so great a bulk has more appearance than substance. As the matter demands, we shall give an account of those things which are said in the Note.

In this first little Note the question is whether a confessor can absolve a penitent concerning whom he knows from the confession of another that a sin is being concealed. But in the Note it is said that Illsung replied in the negative, relying upon a fallacious citation of Suarez, who indeed teaches the opposite. Therefore, that Illsung relies upon a citation of Suarez is beyond controversy. But the words of Suarez cited by Illsung prove that he cites Suarez fallaciously. These words of Suarez are (*loc. cit.* above in the Note): *It is replied that as a rule one must stand by the confession and word of the penitent. Hence, however much* (Illsung incorrectly has *from whatever source*) *the confessor knows the sin of the penitent from the report of others, he is bound in this judgment to believe the penitent himself rather, for the reason given. Then, if the confessor himself saw the sin with his own eyes and can probably judge that the penitent confessed that sin to another, he can dissemble and believe that he then denies it because he is not bound to confess it again. But if it is altogether evident that he is lying against the integrity of confession, he is not bound so to stand by the words of the penitent that he cannot use his knowledge to convince and reprove the penitent himself.* Moreover, Illsung argues from this text thus: According to Suarez, the confessor is not bound to stand by the words of the penitent if it is altogether evident that he is lying. But from the confession of another which has been heard, it can become altogether evident that the penitent is lying. Therefore.

But the reasoning is fallacious and contrary to the mind of Suarez if, according to Suarez, that complete evidence cannot be referred to a case of knowledge drawn from the confession of another. That, according to Suarez, that complete evidence cannot be referred to knowledge drawn from the confession of another is manifestly evident from these words of the same author: *HOWEVER MUCH the confessor knows the sin of the penitent FROM THE REPORT OF OTHERS*, etc. For the word *however much* embraces whatever certitude the Confessor can have from the confession of another. Therefore Illsung relies fallaciously upon the authority of Suarez.

The VV. here object (p. 589) that the words of Suarez, *as a rule one must stand by the word of the penitent*, are to be referred also to knowledge received from the report of others. - Reply. I deny the whole. For the context evidently proves that the word *as a rule* indeed intimates the exception which he adds, *if the confessor saw it with his own eyes and cannot conjecture that the penitent confessed that sin to another*; but the word *however much* in no way permits an exception as regards knowledge received from the report of another.

2. It is added in the Note that Croix borrowed from Illsung the false citation of Suarez and, furthermore, through inadvertence added the false citation of Dicastillus, whom Illsung had cited for another purpose. It is easily evident that these things are so. For Dicastillus, in the place which Illsung cites (*On the Eucharist*, disputation 9, no. 491), disputes whether the administration of the Eucharist can be simulated by giving an unconsecrated particle and, from this, generally whether it is lawful to simulate the administration of Sacraments. But Illsung cites him to prove that absolution can be simulated. Yet Dicastillus has not even one word concerning our present question. Therefore, through mere inadvertence Croix added the fallacious testimony of Dicastillus to the fallacious support of Suarez.

3. Finally, it is added in the Note that St. Alphonsus took from Croix the citations of Suarez, Illsung, and Dicastillus, and added to these Viva, who, although he reports the opinion of Suarez and De Lugo less exactly, nevertheless in no way adheres to that opinion (namely, of Illsung). - These things too are demonstrated with little business. For Viva indeed says

(*loc. cit.* in the Note) that a penitent is not to be absolved if the confessor prudently judges that the penitent denies the sin from shame; but he nowhere says that this prudent judgment is had in the case of St. Alphonsus. Moreover, he reports the opinion of De Lugo and Suarez less exactly; for these did not say, *if the confessor prudently judges*, but *if it is altogether evident*. Therefore, in their opinion, a judgment, unless it is altogether evident, will not be prudent. But De Lugo (disputation 22, no. 22) denies that a judgment which rests upon the testimony of another penitent is evident and therefore prudent. You ask, he says, what if the confessor knows evidently from the confession of others that Peter committed such a sin, which he himself afterward denies in confession? It is replied that it is contradictory for him to know this evidently from the confession of others, since that entire knowledge is resolved into the testimony of another penitent. And these things can suffice to give an account of those things which had been written in this brief little Note.

For the opinion of St. Alphonsus the VV. add (pp. 592-594), besides Henno, who inclines to that opinion, also the authorities of Babenstuber, Reuter, and Voit. - Reply. St. Alphonsus had already observed that not all Authors thought the same in this question; this ought therefore to seem even less surprising because different authors frame different hypotheses. Moreover, Babenstuber, Reuter, and Voit, no less than St. Alphonsus, manifestly transcribed from Illsung and Croix.

Finally, the VV. conclude this part thus (p. 594): *But it matters little whether more or fewer Authors approved the opinion of Father Illsung; for the holy Doctor approved it not on account of extrinsic authorities, but on account of intrinsic reasons which are certainly evident and convincing*. - Reply. The holy Doctor in fact adduces no reason, but merely cites the Authors whom we indicated in the Note; the Note itself also, as is evident, merely has certain things concerning the Authors cited by the holy Doctor. Moreover, if truly evident reasons were present, as the VV. boast, we would not thus have dissenting Authors. For why, in a matter which depends especially upon prudent judgment, would we have as blind in an evident matter Suarez and Cardinal De Lugo, easily the foremost of the Theologians?

And let these things suffice for those sixteen columns which the VV. wrote against the eight lines of the preceding little Note. We shall subjoin to the Note itself the response to the other eighteen columns which the VV. added against the sixteen lines of the following Note.

I said, *of itself*; for if the confessor is altogether certain of the sin committed by the penitent because, for example, he himself saw him stealing, heard him blaspheming, etc., or knows it from the certain report of others [3], he cannot absolve one who denies, provided he is certain that the latter has not forgotten his sin and has no motive for concealing it; for this rule, *The penitent is to be believed*, etc., avails indeed in a matter less certain, but not in a matter evidently certain.

[3] These words, *if he knows it from the certain report of others*, etc., seem to have slipped inadvertently from Benjamin Elbel (*On Penance*, conference 17, no. 454), from whom St. Alphonsus then took them, and our Author from him also. For Elbel adds that all think thus, although, even by the admission of St. Alphonsus, this is manifestly false, and that doctrine is the common one which Suarez expresses thus (*On Penance*, disputation 32, section 3, no. 9): *However much the Confessor knows the sin of the penitent from the report of others, he is bound in this judgment to believe the penitent himself rather, for the reason given.*

Indeed, Elbel himself teaches the opposite (*On the Sacraments in General*, conference 2, no. 44), where he proposes this case: "A certain bridegroom confessed that on the preceding night he had acted shamefully with his bride; and because the Confessor knew that he had already relapsed several times and was unwilling to avoid the proximate occasion, he dismisses him without absolution. Immediately after him the bride, very well known to the Confessor, approaches; nevertheless, perhaps fearing the denial of absolution, she says not a word about the sins of lust committed with the bridegroom. The Confessor doubts whether he ought to absolve." And he replies: "If the bride denies that she committed anything against chastity, he is bound to absolve her, because he is bound to place faith in the penitent as at once the accused and the accuser, speaking both for herself and against herself."

** It could seem incredible that from this brief Note the VV. could have taken matter with which to fill eighteen solid columns. For they heap together from everywhere texts of Authors by which they prove that a confessor cannot impart absolution to a penitent when he is altogether certain, when he knows evidently, that the penitent mendaciously and in bad faith denies the grave sin which he committed. But surely, with so great an apparatus of arms, are they not fighting against shadows?

For in the Note merely a certain defect of coherence in Elbel was noted: while he teaches that the confessor is bound in the proposed case to absolve the bride at least under a condition, he then says that absolution is to be denied if the confessor becomes more certain of the state of the penitent from the report of others. In what sense the words of Elbel in the Note are to be understood is evident from the fact that the opinion which St. Alphonsus attests to be commonly handed down is opposed to him. But this opinion is of this kind (book 6, no. 631): *A distinction must be made: if he knows outside confession and knows by his own knowledge, for example, by seeing him steal or hearing him blaspheme, without doubt he ought not to absolve if he denies it, provided there is not a prudent doubt*, etc. *But if the confessor has it from suspicion or from the report of others, Suarez, Laymann, Holzmann, Sporer, and others also commonly say that after diligent questioning he ought as a rule to absolve.* But if you understand the words of Elbel as referring to that certainty by which, for example, in Fagundez, cited by the VV. (p. 597), the Confessor is certain of someone's concubinage FROM PUBLIC NOTORIETY, the question is indeed reduced to such a condition that you seek adversaries to attack in vain. For this reason it was said that the VV. fashioned shadows for themselves against which they turned their arms.

620. ○ **QUESTION 3. How in particular must the Confessor deal with the uneducated?**

Reply. Ordinarily the Confessor himself must examine the more uneducated, because, if left to themselves, they will not examine themselves better; and if they are dismissed, they will never return better disposed. Indeed, deterred by the difficulty of examining their conscience, they will easily abstain from confession. - St. Ligorius, no. 607.

Section II — On Rendering the Sentence, or on Granting, Deferring, or Denying Absolution

621. **Principles.** - I. Absolution must be granted from justice and under grave obligation to every penitent who has confessed properly and is disposed. The reason is that in the very act of confession a certain quasi-contract has been entered into, by force of which a penitent who has confessed properly and is disposed has a right to receive the Sacrament. Otherwise, an intolerable burden would be imposed upon the penitent without just cause, namely, that he make a confession to another, without being able moreover to trust with certainty that he will receive absolution from this new Confessor. Furthermore, this is also demanded by the end of the institution of the Sacrament and the tribunal of Penance, which was instituted by Christ for the purpose of imparting mercy. Therefore, a Priest denying absolution to a disposed penitent would act unjustly, abuse the power of the keys, and render the Sacrament odious.

II. Nevertheless, absolution can be deferred for a brief time, even for a penitent rightly disposed [4], and even without his consent, when, namely, the Confessor judges that this is useful for his reform. The reason is that the deferral of absolution is not its denial; and although a disposed penitent has a right to absolution, nevertheless, he does not have, at least speaking *per se*, a right to obtain it immediately. For the Confessor is not only a judge, but also a physician [5], and therefore, if If, therefore, you inquire into the origin of this practice, you will easily find that it is owed to the zeal for devising everywhere new expedients by which, in certain circumstances, the faithful might perhaps seem capable of being helped more fully; but its reason and end were situated principally in this: that a penitent who, through sluggishness in fulfilling some obligation, was accustomed to weave new delays day after day, month after month, and even year after year, might at length be stirred to put his hand to the work. You have an example in St. Antoninus (part 3, title 14, chapter 19, section 19), where, treating of those who, as he says elsewhere (part 2, title 2, chapter 8, section 35), *always procrastinate and are found annually promising the confessor that they will make restitution, and afterward do not*

do so, he rejects the opinion of those (*ibid.*, section 2) who thought that these persons were to be absolved under the condition of future restitution, and admits the opinion of William that they ought to be absolved simply and without condition; then he adds: *After the Confessor has considered that such persons have done this several times, PERHAPS IT WOULD BE A GOOD PRECAUTION to tell such persons that they should first make restitution and afterward come to confession, or for absolution.*

[4] It is of the greatest importance to consider the origin and reason of this practice. Although scarcely any trace of it appears in the writings of the more ancient Theologians, one would nevertheless wrongly take occasion from this, with certain Jansenists, to attribute it to them as its first authors, even though those same men then most notably abused the discipline of canonical penance to deter the faithful from the Sacraments, and were sometimes able, under a feigned appearance of zeal, to impose upon certain Catholics.

But that these Doctors treat of a disposed penitent is manifestly evident from the fact that they suggest deferral of absolution not as necessary, but as merely useful, to be employed from mere counsel and only sometimes. Thus, for example, Suarez (*loc. cit.*), although he treats of a habit which, as he says, *has in a certain way passed into nature*, after saying that the penitent's purpose is to be believed notwithstanding any preceding frequency and inconstancy of his, finally adds: *If he has proposed more frequently to be corrected and does not do so, suitable remedies must be employed.... Finally, if these should not suffice, IT WILL SOMETIMES BE USEFUL to defer absolution for some days, IN WHICH HE MAY BE COMPELLED TO WATCH*, etc. He repeats the same (*On Penance*, disputation 32, section 2, no. 4) concerning a man who, being placed in a proximate necessary occasion of sinning, relapses again and again: *Nor is absolution to be denied to him, even if he relapse again and again, especially if he restrains himself somewhat and gradually diminishes the number of sins, as Navarrus noted, chapter 3, no. 21. SOMETIMES, however, absolution can be deferred* (note well: *can*, not *must*).

And Sanchez (*On the Decalogue*, book 2, chapter 32, no. 45): *If the penitent does not bear it very painfully, and it is hoped that he will not thereby be drawn away from confession, but rather that it will be a medicine, it will be A COUNSEL to defer absolution, employing the greatest possible gentleness; but if the opposite is hoped, it will not be a counsel.*

Filliucci (*loc. cit.*, question 10, no. 320): *The remedies are frequent confession, almsgiving.... If these should not profit, a deferral of absolution for some days would be useful.*

Gregory Sayrus (*loc. cit.*, no. 8): *SOMETIMES, however, it is a most salutary COUNSEL, as Medina, Peter of Aragon, Emmanuel Rodriguez, and Ludovicus Lopez rightly note, not to absolve before*, etc.

Palaus (*loc. cit.*, no. 6): *FROM COUNSEL the priest will be able to defer absolution if he judges that the deferral will be profitable.*

Bonacina (*loc. cit.*, no. 7): *Absolution does not seem to be denied to a penitent who has a firm purpose of abstaining in the future from oaths of this kind.... I add... that absolution can be deferred whenever the confessor shall have judged that this is expedient for the salvation of the penitent.*

Azor (*loc. cit.*, question 4): *Although absolution is not to be denied simply, it nevertheless seems that it should be deferred for a time, so that he may meanwhile devote some effort to this; unless there is otherwise a just cause by which he ought to be absolved from sins immediately.*

Reginaldus (*loc. cit.*, no. 87): *It is a salutary counsel to defer absolution for such a person, so that he may thus be induced to beware of relapse by watching more attentively.*

Cardinal De Lugo (*On Penance*, disputation 14, no. 166): *Finally, IT WILL SOMETIMES BE USEFUL to defer absolution for some days*, etc.

Cardinal Toletus (book 3, chapter 18, no. 3): *In these cases it is A USEFUL COUNSEL that absolution be deferred, after the whole confession has been heard, until some correction appears.*

And this indeed is the practice against which John Sanchez fought with so much ardor (*Selected Disputations*, etc., disputation 9, from no. 11), contending, not indeed that penitents are to be absolved indiscriminately even if there can be doubt about their disposition, as certain men wrongly impute to him, but that, generally speaking, the hope of greater fruit expected from the deferred absolution of one who is disposed is vain, and consequently that the counsel of deferring absolution for this penitent is not commonly salutary. Hence he further inferred that, when this cause for deferral ceases, the right of the penitent to absolution prevails, so that, since the priest, as his adversaries admit, can absolve immediately,

by that very fact he is bound not to defer it. But these things do not in fact oppose the preceding principle of the Doctors; for they too freely and unanimously agree that this medicine is not to be employed when it appears likely to harm rather than to profit. Whether, however, it is at times expedient on account of the fruit hoped for from it is a question pertaining to prudence, concerning which the Author presently treats. Nevertheless, that it can sometimes profit does not seem capable of being denied against the opinion of so many Doctors.

It will be useful to note this one thing: that a few persons proceeded further and contended that the confessor not only can defer absolution, but is bound to do so. But these either labor under an equivocation when they call the penitent disposed, or certainly affirm this against the common opinion. No means can ever be called necessary unless it is the only one. Moreover, the assertion that, with a penitent already disposed for absolution, the only means by which he may be compelled to carry something out is deferral of absolution smacks of a hypothesis altogether too improbable.

[5] Concerning the office of physician, see what we noted above from Cardinal De Lugo (in the note to no. 605).

You will see this expedient suggested more frequently among Theologians who are somewhat less ancient when they treat of the obligation of employing certain means for correcting a depraved habit, especially one which impels to evil semi-deliberately or even indeliberately, although those acts are culpable in their cause, namely, in sluggishness and neglect of correction, which in these circumstances place a man in a continual state, as they say, of mortal sin. Hence the reason why the Doctors generally touch upon this matter not where they treat of the Sacrament of Penance, but where they treat of the Second Precept of the Decalogue, and accordingly of the depraved habit of blaspheming, rashly swearing, and then committing perjury. Thus the Salmanticenses, treatise 17, *On an Oath*, chapter 2. - Suarez, *On an Oath*, book 3, chapter 8, no. 7. - Sanchez, *On the Decalogue*, book 2, chapter 32, where he treats of blasphemy, and book 3, chapter 5, where he treats of the habit of swearing. - Bonacina, *On the Second Precept*, disputation 4, question 1, part 14. - Filliucci, treatise 25, chapter 10, on blasphemy and an oath. - Sayrus, *Clavis Regia*, book 5, chapter 5, where he treats of an oath. - Palaus, *On an Oath*, disputation 1, point 9. - Viva, *On the Precepts of the Decalogue*, question 7, article 7, *On Perjury*. - Trullench, *Exposition of the Decalogue*, book 2, chapter 1, doubt 20. - Azor, part 1, book 11, chapter 3, *On an Oath*. - Reginaldus, book 18, *On the Second Precept of the Decalogue*. The same is to be said of Bartholomew Medina, Emmanuel Rodericus, Ludovicus Lopez, and others whom it would be lengthy to enumerate. he judges that such a remedy will be notably [6] profitable to the soul of the penitent, he can prudently use it. - Thus expressly St. Ligorius, no. 462, and in the *Practice of the Confessor*, no. 76. - Lacroix, no. 1764.

[6] How grave the cause must be on account of which the confessor employs this remedy, otherwise not necessary but merely useful, with a disposed penitent is clearly understood from those things which were disputed above (nos. 499 and 500). For there we saw from the common opinion of the Doctors that for anyone unwillingly to be deprived of the benefit of absolution is so grave a matter that a deferral beyond one or two days, according to Suarez, Viva, Renzi, Fagundez, Herincx, and others cited by the Salmanticenses (St. Alphonsus, book 6, no. 490), furnishes a sufficient cause why the penitent may licitly set aside either the natural precept of not defaming one's neighbor in a grave matter, or the divine precept concerning the integrity of confession; because, as De Lugo says (*On Penance*, disputation 16, no. 416), *it is a grave thing to be in the state of sin for three days; which he can deservedly fear, since it is difficult to have a true act of contrition; wherefore he will do no small thing if, on account of the reputation of his neighbor, he defers confession for two days.* Indeed, St. Alphonsus judged a deferral not only of two days, but even of one day excessive. *But to me*, he says (*loc. cit.*), *it seems harsh that one who is in mortal sin should remain without absolution even for a day*; and Antoine does not seem to dissent from him (chapter 2, question 13, reply 3), where he says that one who is in the state of mortal guilt is not absolutely bound to wait. Therefore, if absolution, as the Author adds with the common opinion of the Doctors, is not to be deferred when the deferral falls into no slight inconvenience of the penitent, it is readily evident with how much caution and prudent sobriety the Confessor must employ this remedy.

I said, *at least speaking per se*; because, if absolution cannot be deferred without inconvenience to the penitent, it must be granted immediately; for the penitent is then judged to have a strict right to

obtain it immediately. - St. Ligorius, *ibid.*, and others commonly.

622. ○ III. Absolution is altogether to be denied in every case, even that of extreme necessity, to penitents who are certainly indisposed. But absolution is to be denied to penitents who are doubtfully disposed outside the case of grave necessity; in a necessity of this kind, however, absolution under condition can, and indeed must, be imparted. - St. Ligorius, nos. 431 and 432.

623. **Questions. - QUESTION 1. Is it often expedient to defer absolution for a sufficiently disposed penitent for the sake of a remedy or experiment [7]?**

[7] It seems to pertain to an experiment rather than to a remedy when the confessor defers absolution because of a doubt not indeed about future constancy in fulfilling some obligation, but about the present will of the penitent. To this seem in part to pertain the things which De Lugo has (*On Penance*, disputation 14, no. 167), where, perhaps with none of the Doctors preceding him, he institutes the question: *Whether sometimes, when the confessor could believe a penitent saying that he here and now has sorrow and a purpose, he can nevertheless, FOR BETTER PROVING and confirming that purpose, defer absolution for some days.* But most frequent experience advises that this way is less suitable for that end and profits altogether little. Reason confirms it. For anyone who deceives himself and the confessor by affirming that he has a will which he does not in fact have will indeed bear this patiently here and will restrain himself until he obtains absolution, just as others who deceive themselves and the confessor abstain for some time before the paschal feasts from their accustomed sins, interrupt for a little while, or rather suspend, disgraceful friendships, etc., so that they may soon obtain absolution more easily; but that deferral of absolution alone should be thought to have induced that will which perhaps was previously lacking, and consequently that the confessor should be rendered more certain of the present disposition of the penitent, there is nothing which solidly persuades this.

Reply. The solution of the question depends upon various circumstances; but attention must principally be given to the greater good of the penitent.

Hence: 1. Absolution is never to be deferred when the deferral is foreseen as more likely to harm. This is evident from what has been said. 2. Nor is it to be deferred if the penitent would incur from the deferral a mark of infamy [8]. 3. Absolution is rarely to be deferred for a disposed penitent unless he himself accepts the deferral sufficiently easily; otherwise it would profit him with greater difficulty. For the rest, no certain rule can be established [9]; and if at any time some deferral of absolution appears expedient, it must be made only for a brief time, for example, for three, five, or eight days, etc. Sometimes, where it can easily be done, it will be useful to defer absolution even for one day or a few hours.

[8] Above (no. 621) the Author had already said that the same is to be done if absolution cannot be deferred without inconvenience to the penitent, as, for example, if he must lack the Sacrament for a long time, or repeat the confession before another, or undergo the burden of a long journey, or incur a mark, if not of infamy, at least of astonishment or a suspicion that absolution was denied, or lose an occasion of gaining an indulgence, etc.

2. Nevertheless, St. Alphonsus does not omit to indicate when, generally speaking, the outcome of this greater advantage can scarcely be hoped for. Thus he says (book 6, no. 463): *That I may pronounce my judgment here, I say that if the penitent has relapsed on account of an intrinsic cause or frailty, as happens in sins of pollution, morose delectation, hatred, blasphemy, and the like, I think absolution should RARELY be deferred for a recidivist who is sufficiently disposed.... I said rarely; for I judge that one should not regularly depart FROM THE COMMON OPINION handed down by Sanchez, Decalogue, book 2, chapter 32, no. 45; Laymann, chapter 4, no. 10; De Lugo, disputation 14, no. 166; Filliucci, treatise 7, instruction, chapter 3; Abelly, On Penance, chapter 5, section 20, no. 3; Dicastillus, disputation 10, doubt 29; Navarrus, chapter 3, no. 21; Croix, no. 1822, with the common opinion, as he asserts; Salmanticenses, chapter 5, no. 68; Sporer, chapter 2, no. 330; Toletus, book 5, chapter 13; namely, that absolution is not to be deferred for a penitent who has relapsed from intrinsic frailty, because in such a penitent it is to be hoped more that the grace of the Sacrament will be profitable than a deferral of absolution.* From this context someone could conclude that, if St. Alphonsus, while pronouncing his judgment, departs

somewhat from the common opinion, he departs not so as to incline toward the more benign way, but toward the stricter one. For he signifies that he departs from the common opinion in this, that he says absolution is sometimes, although rarely, to be deferred for recidivists of this kind, while the common opinion, by his own testimony, teaches that it is not to be deferred. And to this surely someone could refer these words of the same St. Alphonsus (no. 460): *I think that he by no means errs who directs himself according to opinions commonly received from Doctors of no humble reputation.*

3. But that he thinks somewhat differently concerning those who are involved in some proximate occasion of sinning will recur below for fuller explanation. For now it may be noted only that when Blessed Alphonsus (no. 464) endeavors with many arguments to confirm what he had said, namely, that absolution is regularly not to be deferred for those who relapse from intrinsic frailty, because it is to be hoped that the grace of the Sacrament will profit them more than deferral of absolution, he brought forward for this purpose also these words of the Salmanticenses from the treatise *On Penance*, chapter 5, no. 68: *Why is more to be hoped from a sinner who, through deferral, does not have grace than from one established by absolution in the friendship of God?*

Moreover, the Salmanticenses in fact altogether affirm this concerning those who relapse not merely from intrinsic frailty, but also from an occasion of sinning from which they cannot separate themselves either physically or morally; and they prefer that for these also, without interposing a deferral of absolution, you rather confer the benefit of absolution and the grace of the Sacrament twice, for example, today and again after eight days. John Baptist Faure agrees with them (*Theological Doubts*, etc., doubt 4, section 8): *Other things being equal, it is more useful for a disposed penitent to receive the Sacraments of the Church twice than once; that is, it is more useful to be absolved and also to communicate this Sunday, and again to be absolved and communicate on the following Sunday, than to do the same thing only on the following Sunday and not now. For the twofold reception of the Sacraments merits and confers greater sanctifying grace in this world, greater glory in the future world, and a richer abundance of helps for each end.*

4. On this matter it will not be useless to bring forward those things which John de Dicastillo has (*On Penance*, disputation 10, doubt 29, nos. 573-578), and which the Salmanticenses followed: *What* (he says) *if, various means having been tried, he still miserably relapses? Here certainly not a few are at a loss, and I confess that I have not rarely been at a loss. For what some say, that absolution is to be deferred for them several times until some correction appears, experience has proved not rarely to harm, unless it is done meanwhile as he is better instructed and the whole matter is considered according to those things which I said in disputation 6, doubt 21.* Here note that which he says, *as he is better instructed*, and, as he has below, *as he is better disposed*; for this is what Father Gury had before his eyes when he presently adds that it is sometimes useful to defer absolution for one day, or for a few hours, etc., namely, when the end of the deferral is not that the penitent should at length overcome the difficulty, for example, in making restitution, in pardoning an offense, in asking pardon, in destroying an obscene book or picture, etc., but that by some pious meditation, by more fervent prayers, or by some work of piety or mercy, he may dispose himself better and receive the Sacraments with greater devotion and richer fruit.

5. Note also that Dicastillus says that experience has proved that deferral not rarely harms. Indeed, Cardenas (*Theological Crisis*, part 4, disputation 39, chapter 2, no. 12) thinks the contrary is to be concluded from the little story he brings forward of a certain woman who, receiving the deferral with great indignation, departed; but returned on the following day full of contrition and tears, saying: *If the other confessors had acted thus with me, I would not have persisted so long in depraved morals.* But you might call this argument almost childish; and St. Alphonsus will meet us, saying (no. 464): *How many unhappy persons I myself have known who, on account of denied absolution, cast themselves into despair and wandered for many years alienated from the Sacraments!*

6. Why, however, deferral not rarely harms, Dicastillus adds this reason also: *For the rest, deferral precisely as such rarely profits and often harms..., and Confessors experience that it does not always turn out well, indeed that it often turns out badly. For thus many change their Confessor, so that now a new series of remedies may begin and they may receive the benefit of absolution for the first occasions; and if afterward it does not succeed with him, they change and proceed to another, renewing the cause and litigation from the beginning.*

7. Then, returning to the method of those who think that penitents of this kind are to be absolved only several times, he says: *But what is to be done if, although he does not approach another confessor nor omit confession for a year, but consults the same confessor again and more frequently and asks to be absolved, nevertheless no correction appears? Is he thus to be rejected? Or rather is he sometimes to be absolved? Surely, if he is never absolved throughout the whole year, what can that non-absolution profit, IF OTHERWISE HE IS CAPABLE HERE AND NOW when he approaches? For if he is not capable, there is no question, but it is certain that he is not to be absolved. But if HE IS CAPABLE WHEN HE APPROACHES, and it is thought that absolution is sometimes to be denied as a medicine, why so many times and not more frequently? Or why, if he is always capable, is it not always conferred upon him, especially if it is already known by*

experience that it is not very troublesome to him to be deprived of absolution several times? Hence I do not see what advantage that remedy can then have; indeed, it has rather the disadvantage that he is deprived of the grace of the Sacrament and of the helps which are accustomed to be given in view of its worthy reception and otherwise would not be given. On account of these and similar things, I judge (I confess) that the aforesaid remedy of denying absolution is rarely to be used; and it always seems harsh to me to deprive a penitent otherwise capable of so great a grace. Nor do I esteem the fear or trouble of denied absolution to profit so much as the helps of grace and the grace itself of imparted absolution, apart from the suitability of a time granted for better instructing and disposing him, as I have already said.

8. But that Dicastillus says these things concerning those who relapse on account of an occasion of sinning which is indeed necessary but proximate is evident from the words immediately following (*loc. cit.*, no. 576): *Therefore, in this matter, when just and reasonable causes for not removing the aforesaid occasion subsist, even if the penitent relapses more frequently, he is neither to be compelled to remove that occasion nor to be deprived of absolution, even if he is a most frequent recidivist; rather he is to be exhorted to come frequently to confession, and other means are to be employed which, with the state and opportunity of the person considered, seem expedient to a prudent Confessor, in which matter there are no, indeed scarcely can there be, any certain rules assigned.*

9. He gives the reason for these things thus (*ibid.*, no. 577): *This doctrine is thus declared, insofar as it can be done by me. Either that absolution is then to be denied on account of the frequency of sinning, or on account of the occasion not avoided. Not on account of the latter, because, as we suppose, he is not bound here and now to avoid it; not on account of the former, as the argument made proves, because that denial of absolution can scarcely profit except perhaps most rarely, and the frequency of Confession and the frequent benefit of absolution will profit more. Therefore, it is to be denied on no account, IF THE PENITENT IS OTHERWISE CAPABLE.*

10. Finally, he concludes the matter with these things, which the Salmanticenses also adopted (no. 578): *Therefore, just as in sins in which the occasion can be removed neither morally nor physically, as happens in the sin of masturbation, the Doctors and the practice of Confessors rather have frequent confession before the same Confessor enjoined than deprive one who comes of absolution; so in these sins, in which, if not a physical, at least a moral impossibility of turning away from the occasion is found, neither the remedy of separation from the occasion nor the remedy of denying absolution seems to be exacted, since Christ instituted this Sacrament not only to blot out past sins but to guard against future ones. But when absolution is denied, or* (which is the same in the present matter) *deferred, the Sacrament is denied, and consequently the remedy instituted by Christ against future sins. But who ever saw that it is necessary to deprive a sick person, otherwise capable of the remedy, of the best and greatest remedy for healing a wound, in order that the wound may be healed? Therefore I conclude that it is scarcely necessary, when the penitent is capable of absolution, to use a remedy of this kind, unless perhaps when absolution is deferred for a brief time so that he may be disposed still more perfectly, if this is hoped for, to receive... absolution.... For correction can rarely be hoped for from mere deferral of absolution. And surely I do not see why more is to be hoped* (these are the words first transcribed by the Salmanticenses and afterward by St. Alphonsus) *from a sinner who is merely attrite and consequently does not have the grace and friendship of God before absolution is conferred, than from that same person already established in the friendship of God through absolution conferred. But if he approaches not merely attrite but contrite, it seems much more harsh and incongruous to me to deprive one who is a friend of God and loves Him above all things, not now on account of past sins but on account of fear of future ones, of the benefit of the Sacrament and absolution.*

11. But what was noted concerning the words of the Salmanticenses can likewise be noted concerning the words of the Roman Ritual, which St. Alphonsus (no. 464) likewise brings forward to prove that absolution is regularly not to be deferred for those who relapse from intrinsic frailty, and which are as follows: *For those who easily relapse into sins, it will be most useful to counsel them to confess frequently.* For no distinction is had here whether anyone relapses from intrinsic frailty alone or also under the impulse of some proximate occasion which cannot be avoided; nor does the same Ritual reckon either of these among those to whom it afterward says absolution is to be denied or deferred.

** To this Note, which otherwise consists almost entirely in reporting the opinions of others, the VV. oppose twenty columns (pp. 768-778), and indeed columns written in a sufficiently fervent style. But in truth not much is needed to satisfy their complaints.

First, therefore, the VV. (p. 769) are vehemently indignant because in Note no. 2 it is said that someone could conclude from the context of St. Alphonsus that St. Alphonsus, if he departs somewhat from the common opinion, does not depart so as to incline toward a more benign way, but toward a stricter one. And they add: 1. that it can escape no sensible and attentive reader that in that proposition there is merely a less correct construction, and that the word *regularly*, which pertains to the second part of the proposition, was transferred into the first either by a slip of the pen, an error of the copyist (thus), or of the printer. - 2. They add (p. 770) that Father Ballerini knows well what St. Alphonsus says in the texts immediately preceding and how he explains his doctrine in the *Apostolic Man* and the *Practice of the Confessor*; and hence anyone can judge whether, by a manner of acting of this kind, unworthy of a Theologian, Ballerini has preserved the rights

both of truth and of Blessed Alphonsus. - 3. Finally, they take an argument (p. 770) from the fact that in the Cause of the Beatification of St. Alphonsus the Promoter of the Faith objected that the doctrine of St. Alphonsus concerning recidivists was too benign, namely, that *ordinarily speaking, it profits habitual sinners, recidivists, and those in occasions more that absolution be imparted to them when they approach disposed... contrary to the mind of Alexander VII and Innocent XI.*

Reply. Someone may deservedly find it marvelous that the VV. could be struck with so great an indignation for this reason alone: that someone could have believed that the holy Doctor, IF AT ANY TIME HE JUDGED that one should depart somewhat from the common opinion, inclined toward the stricter rather than the more benign way. For what? Does not the holy Doctor, in this very question concerning whether absolution is to be deferred for penitents otherwise rightly disposed, depart, as we shall presently see, from opinions which he himself calls common and most probable, inclining toward the stricter opinion? Why, then, could one think only by an absurdity that even in the disputed text the holy Doctor had departed at least somewhat from the common opinion? Indeed, since the disputed text clearly bears this sense on its face (nor were the VV. able to deny it), why could it appear so absurd to attribute to the holy Doctor the opinion which the text plainly bore on its face, that whoever did not suspect a corrupted syntax must be considered senseless and drowsy? And the VV. seem certainly to have considered too little upon whom that grave designation of a senseless and drowsy reader ultimately falls. Indeed, beginning from the edition of the year 1757, which is called the first Venetian edition after two Neapolitan ones, down to the most recent editions of our age, this text of the holy Doctor is read thus in all. Therefore, shall we regard as senseless and drowsy all those who read the Moral Work of the holy Doctor for a century and more, and indeed inquired most diligently into his doctrines, because they did not notice so enormous a fault in the syntax of the text? Let the excellent Father Haringer, the associate of the VV., bear this patiently; for he also, who prepared the Regensburg edition of 1846 and illustrated it with his Notes, suspected nothing of this perversion of syntax, and consequently he too will have to hear himself called a senseless and drowsy reader. But no more concerning point 1.

To point 2. Reply. I deny that from the immediately preceding texts it is so manifestly evident that the aforesaid fault of syntax is contained in the disputed text that only the senseless and drowsy did not see it. For in book 6, no. 463, the holy Doctor, after setting forth two opinions on the proposed question, merely adds two things: first, *it is better said that no certain rule can be established in this matter*; second, *that I may pronounce my judgment here, I say*, etc. But what is elicited from these things such that this fault should strike the eyes? Indeed, since the holy Doctor seems in a certain way to oppose his own judgment to the two opinions which he had set forth, while one of those is the one which the VV. contend is to be ascribed here to the holy Doctor, the preceding texts can rather suggest the opposite. Nor should the VV. say (p. 769) that among the Authors alleged by the holy Doctor for the common opinion there is no one who teaches that absolution is never to be deferred for those sufficiently disposed who relapse from intrinsic frailty, from whom, therefore, the holy Doctor thinks one should rarely depart. - Reply 1. Among them you have Laymann, Filliucci, Navarrus, and Toletus, from whose testimonies you will extract nothing. 2. The Salmanticenses (chapter 5, no. 68) do not treat only of recidivists from intrinsic frailty; therefore they do not pertain to the matter; indeed, concerning these they have these words: *The Doctors and the practice of confessors rather have frequent confession before the same confessor enjoined than deprive one who comes of absolution.* But Sporer, cited with others by the holy Doctor, has these most clear words (chapter 2, no. 330): *The penitent will have to be absolved as often as he seriously proposes to amend in the future and wholly to abstain, provided that the Confessor prudently believes that he truly proposes and speaks seriously.* Therefore, what the VV. assert so confidently is not true.

But as to what the VV. add, that this manner of acting is unworthy of a theologian and that the rights both of truth and of the holy Doctor were unworthily violated because the doctrine of Blessed Alphonsus could have been elicited more clearly from the *Apostolic Man* and the *Practice of the Confessor*: let it be omitted for now whether, through this comparison, the sense resulting from the Moral Work is excluded; let it also be omitted whether all the writings of the holy Doctor, indeed whether all parts of the same work, always bear altogether the same opinion, which it will surely be quite difficult to assert and defend; but let it be permitted to ask: Is sufficient discretion exercised toward the readers of the Moral Work of Blessed Alphonsus if it is exacted from them that, for every single proposition or opinion, they take upon themselves the burden of inquiring into all the Works and Opuscules of the holy Doctor, otherwise to incur the designation and accusation of a manner of acting unworthy of a theologian and of a right violated against truth and the holy Doctor? Let the excellent Father Haringer whom we praised also bear this patiently from his associates; he, when preparing the edition of the Moral Work, sometimes added notes taken from other opuscules, but nevertheless subjected no Note to the disputed text.

What of the fact that not even the holy Doctor escapes those insulting accusations? For he surely knew what he had written in the *Apostolic Man* and the *Practice of the Confessor*; he himself several times diligently reviewed his Moral Work. What,

therefore, is the reason that he always preserved untouched the disputed text, which, as was said, is read in the same way in all editions, even the first? Will the VV. represent the holy Doctor himself also as senseless or drowsy?

To point 3, finally. Reply. Let the antecedent pass, and I deny the consequent. I said, let the antecedent pass, because an apt argument for solving the doubt concerning the disputed text can be taken neither from the words of the Promoter of the Faith nor from those of the Defender. I said, I deny the consequent; and let the VV. find the reason for themselves in those things which it is known happened in the cause of the Doctorate of Blessed Alphonsus. Indeed, in the Additional Summary Father Ballerini is accused once and again of having represented the holy Doctor Alphonsus, in a certain little Dissertation, by a sacrilegious and blasphemous jeer as a man not of sound mind; which nevertheless the VV. themselves confessed had fallen from their pen through a mere hallucination. From this, then, let it be argued how much weight is sometimes to be attributed to the sayings of defenders. And let these things suffice concerning the objections of the VV. against no. 2; for otherwise it pertains little to the purpose of the things said there whether or not the holy Doctor departs somewhat from the common opinion.

As regards the other parts of the preceding Note, the VV. attack for seven columns (pp. 773-776) that which is said concerning the Salmanticenses (no. 10), namely, that they adopted those things which are brought forward there from Dicastillus. For after filling almost three solid columns, almost beside the matter, with texts of the Salmanticenses, they conclude (pp. 774-775) that the Salmanticenses hold a middle way between Thomas Hurtado and Dicastillus and approve neither opinion. *Father Ballerini* (they say, p. 775) *affirms that the Salmanticenses follow the opinion of Dicastillus; but the opposite is manifestly evident from the text brought forward.*

Let us therefore subjoin this text (*On Penance*, chapter 5, no. 68): *Although absolutely speaking the remedy of deferring absolution greatly pleases Thomas Hurtado...; on the contrary, Dicastillus asserts that experience has proved this sharp remedy not rarely to harm, unless it is done meanwhile for an hour or for a time, while the penitent is better instructed or something is prescribed according to the rules of prudence; and he judges NOT WITHOUT REASON that the frequency of confession and the frequent benefit of absolution MORE FREQUENTLY profit; and just as, in sins in which the occasion cannot be wholly removed even physically, as happens in the sin of masturbation, the Doctors and the practice of Confessors rather have frequent confession before the same confessor enjoined than deprive one who comes of absolution, so in those sins in which, if not a physical, at least a moral impossibility of turning away from the occasion is found, FREQUENCY RATHER THAN DEFERRAL WILL MORE FREQUENTLY HELP THE SICK PERSON OTHERWISE CAPABLE OF THE REMEDY OF ABSOLUTION, since Christ instituted the Sacraments not only to blot out past sins but to guard against future ones. BESIDES, why is more to be hoped from a sinner who is merely attrite and consequently does not have the grace and friendship of God before absolution is conferred, than from that same person already established in the friendship of God by absolution conferred AND VERY FREQUENTLY RECEIVING THE SACRAMENTS?* Thus the Salmanticenses. Now I ask: Do they not approve the doctrine of Dicastillus when they write: *HE JUDGES NOT WITHOUT REASON*, etc.? Do not those words marked here in capital letters, which the Salmanticenses supply to add force to the opinion of Dicastillus, indicate approval? How, therefore, do the VV. not hesitate to affirm that the opposite IS MANIFESTLY EVIDENT from the text brought forward?

The VV. (p. 775) bring forward the words of the Note (no. 3) concerning the Salmanticenses, that they prefer that for these also, without interposing a deferral of absolution, for example, for eight days, you rather confer the benefit of absolution and the grace of the Sacrament twice, namely, today and again after eight days; then they add: *But the Salmanticenses have not even a word about this matter, and the distinguished Professor attributes to them what Father Faure says in his Doubts.*

Reply. In the Note the opinion of the Salmanticenses is reported, but not word for word; otherwise, according to custom, it would have been marked in a different type. But you have their opinion repeated not once but several times, where they praise the frequent benefit of absolution and frequency of confession rather than deprivation of absolution; where they expressly say: *Frequency rather than deferral will help the sick person*; and finally where they praise one *very frequently receiving the Sacraments*.

The VV. add (p. 775): *From this genuine doctrine of the Salmanticenses, which we have now explained, St. Alphonsus in no way differs.*

Reply. I deny what is supposed, namely, that the genuine doctrine of the Salmanticenses is explained by the VV., as we have already seen. For the rest, to define by a decisive argument whether or not the opinion of St. Alphonsus differs from the doctrine of the Salmanticenses, it suffices to have noted this one thing. For the distinction is very well known which the holy Doctor establishes between absolving those who fall and relapse from intrinsic frailty (see Note no. 2) and absolving those who are situated in an occasion, even a necessary one: he establishes that absolution is rarely to be deferred for the former; but for the latter, when they approach confession for the first time, that it is always to be deferred, as the VV. themselves (p. 776) say in these words: *Therefore the holy Doctor declares that, supposing absolution can conveniently be deferred, he*

himself would always defer it for a penitent situated in a necessary occasion and approaching confession for the first time. But the Salmanticenses, as is evident from their text brought forward, treat both penitents in the same way in that place, so that from the practice observed with those who fall from intrinsic frailty they deduce the practice to be observed with those who are situated in the aforesaid occasion. It is therefore manifestly false that the holy Doctor Alphonsus does not differ from the doctrine of the Salmanticenses.

And indeed the VV. make this falsity openly evident by their own words. For, as is evident from their words brought forward, the practice which pleases St. Alphonsus more is that, as often as it can conveniently be done, absolution should always be deferred for occasionaries of this kind. But the VV. themselves, as we saw above, contend (although falsely) that the Salmanticenses held a middle way between Hurtado and Dicastillus. Thus they say (p. 775): *But* (the Salmanticenses) *approve neither opinion, but hold the middle way already indicated above, namely, that deferral is SOMETIMES expedient*. Therefore, by the admission of the VV. themselves, that enormous difference stands between the doctrine of the Salmanticenses and that of St. Alphonsus which intervenes between SOMETIMES and always.

Finally, the VV. (p. 777) censure what is said in the Note (no. 5) concerning Cardenas: *In part*, say the VV., *they have nothing to do with the matter, because Cardenas there speaks of habitual sinners; in part they are false, because Cardenas there thus concludes: But for this great prudence is required in the Confessor; for remedies which profit some can harm others on account of the different dispositions of the sick*.

Reply. In the question now at issue, whether imparted absolution or deferral of absolution can profit a disposed penitent more, and indeed prescinding from those circumstances in which it is already evident even from the common opinion of the Doctors which counsel is to be preferred, in this question, I say, even St. Alphonsus judges that absolution is rarely to be deferred for habitual sinners who fall from intrinsic frailty. Since, therefore, Cardenas, by an argument taken from that little story, shows himself more severe even concerning these, his citation pertains to the matter *a fortiori* when occasionaries are treated.

As regards the other part of the censure: Reply. Those words of Cardenas conclude nothing. For each person frames the laws of prudence according to his own judgment, so that even those who are considered most severe think and profess that they are led by prudence. But toward which side Cardenas inclines there can be learned even from this: that when (no. 6) he poses the question concerning one who has a purpose of correction KNOWN EVEN TO THE CONFESSOR, afterward (no. 19), in order to contend against Sanchez that the grace of the Sacrament confers no greater strength for not sinning than deferral of absolution, he objects, contrary to the hypothesis of the question, that perhaps on account of a defect of purpose the Sacrament is not valid. Behold what the name of prudence is worth in the mouth of certain men.

[9] 1. Thus wisely St. Alphonsus; for since the penitent in the case is supposed to be disposed for receiving grace in the Sacrament, and since this immense benefit ought not to be deferred except on account of some greater advantage of the penitent, the judgment must be taken from the proportionate outcome which can be expected from the deferral; and since this judgment depends upon the prudent consideration of all the circumstances, the saying of the ancients consequently holds here, that there is no science of particulars, and therefore no certain rule can be handed down. *Whether it is expedient* (say the Salmanticenses, *On Penance*, chapter 5, no. 68) *here and now, abstracting from circumstances, we cannot certainly determine, since it depends upon many things which are easily varied according to the diversity of subjects; hence, after these have been maturely weighed, it will pertain to the judgment of the prudent to impart absolution here and now or to defer it for a time....*

624. ○ QUESTION 2. Is certainty concerning the disposition of the penitent required in order that he may be absolved?

Reply 1. Absolute certainty is not required, nor even strict moral certainty, such as is required in the other Sacraments, for example, concerning the consecration of the Eucharist. The reason is that the Sacrament of Penance scarcely admits a more certain judgment of this kind.

Reply 2. A prudent judgment, or broad moral certainty, which, as St. Alphonsus says, is equivalent to prudent probability, is required and suffices. For penitents commonly display only a probability of disposition. - Thus St. Ligorius, no. 461 [10]. - Suarez, disputation 32, section 2, no. 1, and others commonly. - The Catechism of the Council of Trent, no. 60, agrees, where it is read: *If, after hearing the*

Confession, the Priest judges that neither diligence in enumerating the sins nor sorrow in detesting them has been altogether lacking to the penitent, he can be absolved.

[10] ** The words of St. Alphonsus (book 6, no. 461) are: *It suffices that the confessor have a prudent probability concerning the disposition of the penitent and that, on the other hand, no prudent suspicion of indisposition stands in the way; otherwise scarcely anyone could be absolved, since whatever signs penitents give furnish only a probability of disposition, as Suarez rightly teaches.* See the opinion of Suarez in the following Note.

625. ○ **QUESTION 3. What are the ordinary signs of sufficient disposition?**

Reply. The principal signs are the following: 1. if the penitent confesses candidly and humbly; 2. if he asserts from the heart that he is sorry for his sins and has a firm purpose of not sinning hereafter; 3. if he sincerely declares all sins, even the greater and shameful ones; 4. if he has freely approached confession from some pious motive; 5. if, from a desire of conversion, he has already ceased from sin. - Lacroix, no. 1734 [11].

[11] St. Alphonsus (no. 460) reckons nearly all these signs among the extraordinary signs of disposition.

Those words of Suarez seem more pertinent to the matter (*On Penance*, disputation 32, section 2, nos. 1-2): *Before* (the priest) *absolves, it is necessary that he prudently and probably judge the penitent to be disposed, because otherwise he would expose himself to the danger of erring and would act without sufficient knowledge. It remains to be explained what the Confessor ought to do in order to judge this prudently and satisfy his conscience. In this it must be observed that this disposition of the penitent arises from two things, namely, displeasure with the past and a purpose for the future. And indeed, as regards displeasure, the Confessor can easily satisfy himself; because, if the penitent in the very manner of his confession and accusation gives signs of sorrow, or certainly if he is a man not very uneducated and appears well-mannered, the Confessor is bound to employ no diligence in this; he will nevertheless always do well by proposing and counseling detestation of sin; and when he does not have sufficient signs of sorrow, he can and must ask the penitent whether he detests the sin from his heart, and he is bound to believe him when he affirms it. And the same is to be said concerning a purpose for the future, when from the confession no special obligation arises of making restitution or leaving some proximate occasion of sinning, but only the common and general obligation of not sinning hereafter.... Nor is it necessary that the Confessor persuade himself and judge even probably that it will so happen that*

QUESTION 4. Is the Confessor bound to arouse sorrow in the penitent?

Reply 1. Yes, if the penitent does not appear sufficiently disposed; the reason is that one who absolves an indisposed person exposes the Sacrament to the danger of frustration, but if he dismisses him without absolution, he exposes him to the danger of remaining for a long time in the state of mortal sin, or even of not returning again. - St. Ligorius, no. 608.

Reply 2. No, if the penitent appears sufficiently instructed and disposed, as are well-mannered penitents and those who confess frequently. For then the Confessor is bound to nothing, neither by reason of charity, since the penitent does not need special help, nor by reason of reverence for the Sacrament, which is exposed to no danger. - St. Ligorius, no. 608. - Laymann, chapter 13, no. 10. - Sporer, no. 792.

626. ○ **QUESTION 5. To whom principally is absolution to be denied?**

Reply. According to the Roman Ritual and St. Charles Borromeo, it is to be denied: 1. to those who give no signs of sorrow or are unwilling to amend their life; 2. to those who are unwilling to restore another's property, pay debts, repair injured honor or reputation, or repair any other grave harm, when they are able; 3. to those who are unwilling to use the remedies which are necessary for correction or for preventing a fall; 4. to those who refuse to lay aside enmities and hatreds, to pardon

an offense, or to be reconciled with enemies; 5. to those who are unwilling to abstain from usury, superstitions, illicit arts and trades, or any evil work; 6. finally, to those who are unwilling to leave a proximate occasion of sinning when they can, or who provide an occasion to others [12].

[12] You will have all these things, and many others which could easily be added, in this brief rule: namely, that absolution is to be denied to ALL and only those who refuse to fulfill some grave obligation.

627. ○ **QUESTION 6. Can a debtor be absolved before he makes restitution?**

Reply. Yes, if the Confessor discovers that the debtor is prepared to make restitution as he ought. But if the penitent has either several times not kept his promises of making restitution, or it is prudently foreseen that he will not keep his purpose, it is expedient that the Confessor exact restitution before he absolves, unless some grave reason nevertheless advises otherwise [13].

[13] ** In the preceding Edition this little Note had been placed here: *See concerning this question the doctrine of St. Antoninus in the Note to no. 621.* But in that place these things were said concerning St. Antoninus: "St. Antoninus (part 3, title 14, chapter 19, section 19), treating of those who, as he says elsewhere (part 2, title 2, chapter 8, section 3), *always procrastinate and are found annually promising the confessor that they will make restitution, and afterward do not do so*, rejects the opinion of those (*ibid.*, section 1) who thought that these persons were to be absolved under the condition of future restitution, and, admitting the opinion of William that they ought to be absolved simply and without condition, then adds: *After the Confessor has considered that such persons have done this several times, perhaps it would be a good precaution to tell such persons that they should first make restitution and afterward come to confession, or for absolution.*" This opinion of St. Antoninus indeed confirms what Father Gury has, namely, that in circumstances of this kind it is expedient for the confessor first to exact restitution, etc.

This passage of St. Antoninus stung the VV. not a little, since it seems to differ from the doctrine of Daniel Concina, into whose opinion St. Alphonsus also went (book 3, no. 682, and *Apostolic Man*, treatise 10, no. 105), writing in the latter place: *When the penitent can make restitution immediately, regularly speaking we say WITH CONCINA that the confessor CANNOT absolve the debtor unless he first makes restitution.* And in the other place: *But the second opinion, which Father CONCINA holds, altogether pleases me, that regularly the debtor IS NOT TO BE ABSOLVED unless he first makes restitution, when restitution is morally possible for him.* Therefore, concerning the preceding Note and the citation of St. Antoninus, the VV. write (p. 757): *Father Ballerini badly confounds two disparate passages and badly interprets them, and supposes in St. Antoninus a most lax doctrine which neither here nor any other of the older theologians who treat diffusely of restitution hands down.*

Reply. In the one place (part 3, title 14, chapter 19, section 19), St. Antoninus treats generally of those who do not perform that to which they are bound, but defer it, for example, to make restitution. But in the other place (part 2, title 2, chapter 8, section 3), he treats of those who, since they are bound to make restitution, certainly ought to live more sparingly so that they may gather what they are to restore, and nevertheless do not do so, but *always procrastinate and are found annually promising the confessor*, etc. Therefore, in the one place St. Antoninus touches upon the general question; in the other he touches upon a particular case which is contained under the general question. To what the VV. object, therefore, that in the Note two disparate passages are confounded, I reply with a distinction: disparate in location, I concede; disparate as regards the question, I deny. For the rest, it is sufficiently evident of itself that the words taken from the aforesaid place in part 2, *always procrastinate*, etc., are employed in the Note to indicate generally the condition of penitents of this kind, which St. Antoninus again indicates in the cited place from part 3, saying that *such persons have done this several times*, etc., and not insofar as those former words are said there of that special case.

Let us come to the accusation of bad interpretation, which appears incredible by the very fact that in the Note the mere words of St. Antoninus are reported without gloss.

The opinion of William which is indicated in the Note is contained in these words in St. Antoninus (*loc. cit.* from part 3): *But if the priest believes or doubts that the one confessing will not perform the penance, or that to which he is otherwise bound, such as to make restitution or the like, William says that the Confessor ought not on this account to exact a promise, vow, or oath, but it suffices if* (the one confessing) *says that he has a purpose of doing it. And thus he ought to absolve simply and without condition, after nevertheless making a declaration, if he is held suspect, that if he does not do it, he will render the fruit of confession void for himself.* Thus William. Moreover, since the VV. (p. 759) say that St. Antoninus supports William (which nevertheless is not altogether true, as we shall presently see), let it be permitted to argue *ad hominem* thus: St. Antoninus supports William teaching that the

confessor OUGHT TO ABSOLVE a penitent if, without any promise or oath, he says that he has a purpose of doing, or making restitution, however suspect the penitent may be held. Therefore, the doctrine of St. Antoninus is not the doctrine of Concina adopted by St. Alphonsus; nor does any bad interpretation appear here.

But the VV. wished to infer something else from William. *It is manifest, therefore,* they

We must treat: 1. of those who are situated in an occasion of sin; 2. of habitual sinners and recidivists; 3. of devout and timorous penitents. say, *that* (William) *supposes that such a penitent is not to be absolved who, after making that declaration, received absolution and returns to confession without having made restitution.* - Reply. I deny this entirely: 1. because it is asserted gratuitously; for the words of William in no way indicate or suggest it; 2. because it is in no way evident that William said these things only of one who had not broken the purpose of the preceding confession; 3. because St. Antoninus stands in the way, who judged that William's opinion, as though too general, should in some way be circumscribed or moderated by those things which we subjoin here.

For St. Antoninus, after bringing forward the opinion of William, proceeds thus: *But because many deceive themselves, promising in every confession to make restitution and the like, and always defer; after the confessor has considered that such persons have done this several times, PERHAPS IT WOULD BE A GOOD PRECAUTION to tell such persons that they should first make restitution and afterward come to confession or for absolution, or to assign them some suitable time within which they ought to carry it out*. Hence thus: St. Antoninus, as the adversative particle *But* manifestly signifies, wished to except something from William's general opinion, or wished to moderate it by some qualification. Therefore, either St. Antoninus did not grasp the force of William's opinion, or in the mind of St. Antoninus some exception or moderation of this kind seemed necessary to be added to William's opinion. But any moderation of this kind would have been superfluous if William's opinion bore the meaning which the VV. fabricate, namely, if in William's mind absolution was to be deferred, at least by way of some good precaution, for a penitent who returns without yet completing restitution. Therefore, no bad interpretation of ours has crept in here, but, from the testimony of St. Antoninus, this supposition and interpretation of the VV. is plainly gratuitous and fabricated at pleasure.

Meanwhile, from this latter text of St. Antoninus, the VV. (*loc. cit.*) wish to deduce that in his mind it is a good precaution for the confessor to defer absolution until the penitent has in fact made restitution, or to assign a suitable time within which he ought to carry it out, and (as the VV. infer a little later) within that time they may absolve him. - Reply. The VV. pervert the opinion of St. Antoninus under more than one head. For: 1. St. Antoninus did not say that it is a good precaution generally to defer absolution until he has made restitution, but to tell them that they should make restitution first; which supposes that this can then be done promptly and within a short time. 2. What the VV. add, that a time is to be assigned within which the confessor can absolve, bears a plainly absurd sense. For either it is supposed that within that time the thing which the penitent ought to do is to be carried out, so that, the matter having been accomplished, he can be absolved, and thus this second member of the disjunction falls back into the first; or the penitent is supposed to be absolved within that time even if he has not fulfilled his duty, and then this assignment of time becomes insipid. Therefore, that assignment of time does not pertain to deferral of absolution, but merely presents the second of the three modes by which St. Antoninus (*ibid.*) had said beforehand that the confessor can impose something upon the penitent, namely, by way of a declaration of a common obligation. And here it must be noted that this opinion of St. Antoninus is not restricted to the obligation of restitution, but extends to anything else which someone is bound to do. Hence he begins the paragraph by saying: *The confessor imposes something upon the penitent in three ways: in one way, by way of counsel and exhortation.... In another way, by way of a declaration of a common obligation.... In a third way, by way of special satisfaction for things committed....*

Furthermore, the VV. (*loc. cit.*) think light for understanding this text of St. Antoninus is to be drawn from another place, namely, from part 2, title 2, chapter 8, section 3, where, as we said, he treats of those who, by living sparingly, ought to gather something for making restitution, but who always procrastinate concerning that which they can do, and are found annually promising the confessor to make restitution, and afterward do not do so. - Reply. Perhaps the fact that the VV. use this comparison of passages will seem marvelous to someone. For if they reproached us because, by taking certain words from this passage in part 2, we badly confounded disparate passages, how do they now not hesitate themselves to have recourse to this passage, as though for them they now cease to be disparate passages? For the rest, since in the case the circumstances are such that the confessor cannot say, as above, that they should first make restitution, St. Antoninus thus applies that general rule disjunctively to these circumstances, namely, that they do not appear to be absolved unless they first act, that is, begin to put their hand to the work, or arrange the affair efficaciously so that it may have execution, that is, efficaciously resolve to put the matter into execution and determine something concerning the manner of doing it; by which things, as is evident, he does not impose the necessity of denying absolution. Hence St. Antoninus does not depart from his general norm.

Let us conclude: the doctrine of St. Antoninus and the doctrine of Concina manifestly differ from one another. The latter establishes that regularly the confessor CANNOT absolve unless the penitent has first made restitution, and does not distinguish whether he had confessed this previously and then proposed and promised it but did not keep the promise, if not several times, at least once. St. Antoninus, on the contrary, teaches only concerning those who have several times broken their purpose or faith that PERHAPS IT IS A GOOD PRECAUTION (which words present a counsel rather than a norm always and necessarily to be observed) to use either one of two remedies: namely, either to impose that they first make restitution and then come for absolution, or to fix a time within which they ought to carry out the affair, lest, by deferring the matter in the accustomed way to an uncertain time, they finally arrive, as before, at the point that they return to confession in the following year with the matter still undone. And indeed the VV., as we saw, do not hesitate to accuse the Note as though it supposes in St. Antoninus a most lax doctrine, although the mere words of St. Antoninus are reported. But perhaps it is not marvelous that the doctrine of St. Antoninus can seem most lax in comparison with the doctrine of Concina, whom the holy Doctor Alphonsus did not hesitate to call most rigorous.

the penitent will abstain from sinning; but it is sufficient that he judge that the penitent now has such a purpose, although after a brief time he is going to change it. THUS ALL AUTHORS TEACH.*

QUESTION 7. Can, or indeed must, a penitent be absolved who wishes to follow an opinion opposed to the opinion of the Confessor?

Reply. Yes, if it is truly probable, or at least if the penitent is prepared to stand by the judgment of another learned and prudent man. - Recall what was said *On Conscience*, volume 1, no. 78.

§ II. On the Manner of Acting with Various Kinds of Penitents

Point I. On Those Who Are Situated in an Occasion of Sin

628. **Definition.** - An occasion of sin is generally defined as an external circumstance which, either from its own nature or from the frailty of the man who is found in it, allures or induces to sin. Hence it differs from a danger of sinning, under which designation comes whatever impels to sin, whether it is intrinsic or extrinsic.

Division. A multiple occasion is distinguished, namely: proximate or remote, absolute or relative, voluntary or necessary, present or not present.

1. A proximate occasion is that in which men commonly sin for the most part; but a remote occasion is that in which men commonly do not sin for the most part. - St. Ligorius, no. 452 [1].

[1] ** Against this definition the VV. (p. 942, no. 140) oppose these words of St. Alphonsus (*Apostolic Man*, last treatise, no. 1): *Certain Authors hold that an occasion is not proximate unless it is one in which a man has fallen almost always or for the most part; but the more common and truer opinion teaches that the proximate occasion is that in which someone has sinned frequently.* They then also allege book 6, no. 452.

Reply. The holy Doctor here rejects two definitions; for, as he interprets himself, when he calls one part truer, he does not regard the opposite as probable.

Nevertheless, as regards the first, perhaps there will be someone who doubts whether the holy Doctor sufficiently grasped the sense in which that definition was employed. We have this sense in De Lugo (disputation 14, no. 149), where he writes: *Some say that a proximate occasion is defined by Gregory in canon Negotium, On Penance, distinction 5, namely, one which we cannot, or certainly cannot without difficulty, use without sin. This, however, needs moderation. For Pope Leo in canon Qualitas 2 and canon Contrarium 3, On Penance, distinction 5, says that commerce or military service cannot be exercised without sin except with the greatest difficulty; and nevertheless it is certain that a merchant or soldier is not bound to leave these offices; hence in Luke 3 St. John the Baptist did not counsel soldiers to leave military service, but to observe the laws of that state. Others therefore add that a proximate occasion is one which a man, the circumstances being considered, never or almost never uses without sin, as one who keeps a concubine at home.* From these

things it is sufficiently deduced that account is not taken here of the frequency of falls, from which it would be defined whether this is a proximate occasion for someone; rather, it is asked what circumstances are to be called a proximate occasion, whatever frequency of falls may at length be assigned, so that it can be called truly proximate.

As regards the other definition, the holy Doctor indeed seems to refer the words *for the most part* to the frequency of falls with respect to the man who is situated in that occasion. But the context of the holy Doctor is not without some difficulty. For in that same place (*Apostolic Man*, last treatise, no. 1), which the VV. object, St. Alphonsus shortly before thus defines a proximate occasion: *A proximate occasion, speaking per se, is that in which men commonly fail for the most part*. Hence Gury seems to have taken his definition from St. Alphonsus word for word. How, therefore, is it reconciled that St. Alphonsus appears to reject the definition which he himself hands down in the same place?

Likewise, in another place (book 6, no. 452) the holy Doctor writes: *Others define a proximate occasion as one in which the penitent is believed never or rarely to abstain from sin*. This definition perhaps seems to be taken in the sense which we reported above from De Lugo. The holy Doctor continues: *But this definition does not please; it is better said with Sanchez, Holzmann, De Lugo, Suarez, Collet, Wigandt, Croix, Viva, and Father Segneri that a proximate occasion per se is that in which men commonly sin for the most part*. Behold, therefore, the holy Doctor again adopts (*it is better said*, he says) that definition which he seems to reject elsewhere. How are these things easily reconciled?

And indeed, even in this place, when he defines a proximate occasion *per accidens*, he says: *Either because this man, although not almost always nor more frequently, has nevertheless frequently fallen in that occasion*. But now the same difficulty seems to occur here. For here the word *frequently*, since it is opposed to the word *more frequently*, intimates that, in order to constitute a proximate occasion, it is not necessary that the man sin in it more often than he does not sin. And since these things are so, how are they now reconciled with the preceding definition, that a proximate occasion is one *in which men sin for the most part*? For *for the most part* certainly is not said of those who abstain from sin more often than they sin.

I indeed would not doubt that these passages of the holy Doctor which seem to conflict with one another can be suitably reconciled, especially if the sense in which, as we saw with De Lugo, others define a proximate occasion is kept before the eyes; nevertheless, I find no trace or mention of that sense in the holy Doctor. Yet this is sufficiently manifest: the VV. would consult better for the honor and reverence of the holy Doctor if, before censuring the writings of others, they inquired somewhat more diligently into the doctrine of that same holy Doctor.

2. An absolute occasion, or one *per se*, is that which of itself induces to sin and accordingly is such with respect to men taken commonly; a relative occasion, or one *per accidens*, is that which, although it is not an occasion with respect to others, is nevertheless such with respect to someone, his frailty being considered.

3. A voluntary occasion is one which can easily be left; but a necessary occasion is one which cannot be removed physically or morally.

4. A present occasion, or one *in esse*, is one which someone has with him without actually seeking it, for example, if he keeps a concubine at home or is accustomed to sin with a maidservant; an occasion not present, or one *non in esse*, is one which someone does not indeed have in actuality but easily finds, such as a tavern in relation to a drunkard, or a mistress in relation to her lover.

629. **Principles.** - I. Absolution is not to be denied to a penitent situated in a remote occasion, even if he is unwilling to leave it. The reason is: 1. because it does not induce a proximate danger of sinning mortally; 2. because too harsh an obligation would be imposed upon the penitent, since occasions of this kind generally cannot be avoided morally. - St. Ligorius, *Apostolic Man*, last treatise, no. 2 and following.

II. A penitent who refuses to leave a voluntary proximate occasion of sin is never to be absolved, whether that occasion is proximate *per se* or *per accidens*, whether *in esse* or *non in esse*. This is evident

from proposition 61 condemned by Innocent XI, which reads thus: *One who is situated in a proximate occasion which he can and will not leave can sometimes be absolved; indeed, he directly and deliberately seeks it or thrusts himself into it.*

III. But absolution cannot be denied on account of that occasion to a penitent who is situated in a necessary proximate occasion, if he is otherwise found disposed and wishes to use the prescribed remedies. The reason is that no one is bound to the impossible, whether physically or morally; and otherwise an occasion of sinning is not of itself a sin, nor does it place a man under a necessity of sinning. - St. Ligorius, no. 453.

630. **Questions. - QUESTION 1. Can a penitent who sincerely promises that he will leave a proximate occasion of sinning be absolved before he has left it?**

Reply 1. Yes, *per se*, if it concerns an occasion *non in esse*, when the penitent, as we suppose, is truly disposed and the danger of breaking his purpose does not appear grave [2].

[2] Some grave danger could threaten from the circumstance of some effort which must necessarily be employed to avoid the occasion, as the Author presently notes. But when this difficulty is absent and the danger seems to threaten solely from human frailty or inconstancy, see the doctrine of Suarez reported above in the note to no. 625.

I said *per se*, because if the circumstances require some effort, for example, in fleeing some companion, or in not approaching some house in certain circumstances of time, persons, etc., then it will pertain to the prudence of the Confessor to weigh whether it is expedient that the penitent first overcome the difficulty. Reply 2. No, generally speaking, if it concerns a present occasion, or one *in esse*, which can easily be left immediately. If, however, the penitent gives extraordinary signs of sorrow, so that it can be believed that the danger of inconstancy in his purpose is absent, he can be absolved, especially if a reasonable cause is added, for example, a mark arising from omitting Communion, a solemnity, an indulgence, etc. - According to the mind of St. Alphonsus, the same is to be said if the penitent cannot return to the same Confessor, or at least cannot return except after a long time. For then, says the holy Doctor, he not only can be absolved, but has a right to receive absolution.

631. ◦ **QUESTION 2. Can one be absolved who, while situated in a necessary occasion, always relapses in the same manner after employing the remedies?**

Reply 1. Perhaps the supposition could be denied [3]. For it can scarcely happen that, when the remedies are employed, some correction does not follow if they are proposed opportunely and suitably to the circumstances.

[3] At first sight St. Alphonsus (book 6, no. 457) seems to deny that this penitent can be absolved. But it is evident from the context that he asserts this with Croix when there is no hope of correction, namely, as Croix says (book 5, no. 261), cited by St. Alphonsus, *when someone can in no way bring it about that a formal danger of sinning is not joined to the external occasion*, and, in other words, *can in no way bring it about that the proximate danger becomes remote*. Moreover, this is that hypothesis which the Author deservedly says is to be denied as absurd; for when remedies are suitably suggested and faithfully employed, a relapse could indeed be rendered morally impossible, for example, if, when external sins are at issue, conversation of a man alone with a woman alone is faithfully avoided.

But because St. Alphonsus (*loc. cit.*), after Croix (*loc. cit.*), seems to attack Cardinal De Lugo and others alleged there, it is not to be thought that these authors either disputed about that incongruous hypothesis or taught that due disposition is never lacking to a penitent who always relapses in the same manner. Indeed, the same St. Alphonsus (no. 457, at the end)

finally returns to the opinion of De Lugo, which he furthermore calls most common, namely, that this penitent can be absolved if he approaches with true sorrow and purpose. Thus De Lugo also says (*On Penance*, disputation 14, no. 158): *Even after that experience of no progress, true sorrow and the required purpose can stand without a will to remove the occasion with so great a loss. Therefore, the penitent can be absolved; for nothing else is required except confession with sorrow and purpose.* That true sorrow with the required purpose can stand even then, although the occasion perseveres, the same St. Alphonsus teaches thus (no. 455): *The Doctors commonly affirm that the penitent is not bound to leave the occasion if otherwise he would suffer grave harm, provided that meanwhile he is prepared to use the prescribed means.... The reason is that an occasion of sinning is not in itself a sin, nor does it bring a necessity of sinning; wherefore true detestation of sins and a firm purpose of not relapsing and of employing the due remedies can well stand with it.* But that sorrow and purpose of this kind can be had even after a preceding experience of inconstancy, St. Alphonsus himself, as we saw above, supposes, and the thing itself cries out. For to what end would you suspend absolution so that the penitent might resist more efficaciously, if you believe a purpose of this kind to be impossible? But go to Cardinal De Lugo himself (disputation 14, nos. 158-159), and those things which St. Alphonsus objected from the vain hypothesis of Croix will appear of no moment.

Reply 2. In the case, the general rule would have to be employed which St. Ligorius [4] proposes with the Author of the work entitled *Instruction for New Confessors*, namely, Francis Giordano, a priest of the Congregation of the Mission, who published his work at Rome in the year 1726, and which was afterward reprinted at Rome in 1841. A rule of this kind is (cited work, part 1, chapter 10, no. 244) that it should be maturely weighed whether, in practice, it is more difficult to remove the occasion than to avoid sin, with the occasion present, or whether it is easier. If it is more difficult to remove the occasion, let it be decided that it is morally impossible to remove it. And this norm, as the Author himself acknowledges, he took from the work of Venerable Paul Segneri entitled *The Instructed Confessor* (chapter 5), where these things are found: *The precept of fleeing the occasion was imposed by natural law to diminish sins, not to increase them. Therefore, when removing the occasion is more difficult in practice than, with the occasion present, effectively avoiding sin, there can be no obligation of removing it; otherwise the danger of doubling the guilt would be increased by those very means which are prescribed by law to destroy it.*

[4] ** The VV. rightly note (p. 605, in the note) that the holy Doctor Alphonsus has nothing about this general rule and did not allege the aforesaid Author for this purpose. **

For the rest, the things said here by Father Gury directly attack the opinion which Claude Croix (against very many, as he himself admits, book 5, no. 261) defends as more likely, and toward which St. Alphonsus also inclines as though truer: namely, that in the case someone is bound to leave the occasion even with the loss of all goods of fortune, reputation, and life. For this he furthermore falsely alleges certain authors cited by John Sanchez, as he says, and Stoz, neither of whom in fact has any of these things.

Indeed, whether with the same Croix you fashion the chimerical hypothesis of a man who can in no way bring it about that the proximate danger ceases, or whether you speak better of one who continually relapses into the same sins because through frailty he sometimes omits the use of the means, it will always be true that this opinion of Croix is neither consonant with reason nor capable of being prudently reduced to practice.

And surely, by the law of nature the penitent is indeed bound to avoid a proximate danger. But since this can be obtained in two ways, namely, either by using suitable means so that the danger becomes remote, as they say, or by removing or fleeing the occasion, the penitent is bound by the law of nature only to one or the other. By what right, therefore, will the Confessor impose this one upon him rather than the other? Can the Confessor, as we saw with De Lugo above in the note to no. 605, command anything other than what is necessary?

Moreover, since it is manifest that that which is judged morally impossible because more difficult to execute can neither be nor ought to be imposed upon the penitent, will it truly be easier to undergo the danger of all one's goods, as Croix says, both of fortune and of reputation and even of life, than to employ some remedies for diminishing the danger of sinning?

Furthermore, if, according to the evident reasoning of Venerable Father Paul Segneri, the Confessor ought to prefer that which removes the penitent further from the danger of sinning, he surely can never choose that in which the penitent is more certain to sin. Therefore the Confessor will never prudently prefer that which must appear less probable of execution.

But is it not less probable that the flight from the occasion with so great a danger will be hoped for than the suitable use of means for diminishing the danger? And it is surely marvelous that Croix (*loc. cit.*) shows that he is moved in no way by the reasoning of Pallavicini, whom he alleges, namely, that if the obligation of avoiding the occasion with so great a danger is imposed, the penitent will ordinarily violate it and will not leave the occasion; hence the imprudent Confessor will attain this alone: that he furnishes a certain occasion for committing still more sins!

For the rest, even if that indiscreet obligation is not imposed, another way is available to the Confessor, since meanwhile he can, where the matter requires, suspend absolution, so that the penitent may be efficaciously moved to employ the suitable means. For, as John Sanchez says (disputation 10, no. 10), *judgment must be rendered concerning these as persons having a habit of sinning, not as persons having an occasion, since it does not lie in their choice to avoid it.* And if some moral diligence appears in the penitent, the rule of Suarez will avail (*On Penance*, disputation 32, section 2, no. 4), that *absolution is not to be denied to him, even if he relapse again and again, especially if he restrains himself somewhat and gradually diminishes the number of sins; which Navarrus noted, chapter 3, no. 21. Sometimes, however, absolution can be deferred and some greater penance or precaution employed.*

It must also be added that, if the Confessor finds the penitent so frail and even inconstant in employing the means that he must judge him less disposed for absolution on account of a defect of efficacious purpose, he will still imprudently exact from so frail, infirm, and weak a man that which is more difficult and morally impossible for him; and much more imprudently will he rigidly and harshly reject him from himself. For thus he will attain this alone: that the despairing penitent is immersed more deeply in sins. On the contrary, charity, kindness, and patience in often receiving and hearing him will obtain at least this: that he is neither wholly abandoned to the devil, nor altogether casts aside the means and prayers, nor has the way cut off by which he can be helped by counsels and exhortations, and that he knows access to reconciliation always lies easily open to him; just as the Doctors advise must be done where they treat of the confessions of a prostitute, a usurer, and others of this kind, who are not sufficiently disposed but have some less efficacious desire of correction or a better life, or only a velleity. Nor surely in the case ought the confessor to forget the opinion by which Suarez (*On Religion*, treatise 5, book 3, chapter 8, no. 7) concludes concerning this argument: *Nor can human infirmities of this kind be cured more efficaciously by man.*

** Against this Note and the one immediately preceding, the VV. heap together thirty-four columns (pp. 603-620), or rather fill them with a vast mass of useless things. I said useless, since they scarcely, if at all, touch the hinge of the matter. And the VV. surely held a most convenient way of extricating themselves from the difficulties when they write (p. 620): *We omit to refute specifically the intrinsic reasons which Father Ballerini brings forward for his opinion, lest we undertake a superfluous labor; for the preceding explanation of the doctrine which St. Alphonsus holds sufficiently reduces all those reasons to nothing.*

But this is altogether false. And surely those intrinsic reasons which are indicated in the Note are contained in these very few points: 1. The penitent is indeed bound by the law of nature to avoid a proximate danger. But since this can be obtained in two ways, namely, either by using suitable means so that the danger becomes remote, or by removing or fleeing the occasion, the penitent is bound by the law of nature only to one or the other. Therefore, the confessor cannot impose this one upon him rather than the other. And the reason is that the Confessor is not a legislator and accordingly, excepting sacramental satisfaction, cannot by command impose upon a penitent anything to which the penitent is not bound by some other law. Moreover, I ask: Does anything occur in the explanation of the doctrine of St. Alphonsus which the VV. set forth beforehand by which this principle might perhaps be overthrown? Indeed, will anyone think that this principle can be shown to be false?

Another principle is this: It is manifest that, of two means by which the end can be obtained, the one which, as more difficult to execute, is judged morally impossible can neither be nor ought to be imposed upon the penitent by the Confessor. But it is more difficult to undergo the danger of all one's goods, as Croix says, both of fortune and of reputation and even of life, than to employ some remedies for diminishing the danger of sinning. Therefore.

There is added a confirmation from the observation of Venerable Father Segneri, which is a certain consequence of the preceding principle. Namely, the Confessor ought to prefer that which removes the penitent further from the danger of sinning, and accordingly can never choose that in which the penitent is more certain to sin. Therefore the confessor will never prudently prefer that which must appear less probable of execution. But the flight from the occasion with so great a danger (of all goods, namely, of fortune, reputation, and even life) is hoped for less probably than the suitable use of means for diminishing the danger. Therefore.

Moreover, in that whole explanation of the doctrine of St. Alphonsus to which the VV. refer the reader, they have not even a word about these things, much less have they attempted to reply to anything. This alone can be seen: that they endeavor (p.

619) to weaken the reasoning brought forward by Venerable Segneri by adducing these words of his, which are read shortly after the text brought forward here: *In doubt, always hold to the stricter side, because this, as we have seen, is the more favorable to the penitent*. These, as is evident, do not pertain to the matter, because the rule proposed by that same Venerable Author and confirmed above by unshaken reasons in no way concerns doubtful cases. Therefore the VV. in fact reply nothing to the preceding intrinsic reasons, however much they pretend that they have replied; St. Alphonsus never used so wretched an artifice for evading contrary reasons, and we most certainly believe he never would have used it.

Thus, in the explanation of the doctrine of St. Alphonsus which the VV. set forth beforehand through six columns (pp. 608-610), this alone pertains to the matter: that they attempt to show that the hypothesis thus described by Croix (book 5, no. 261) is not chimerical: *When someone can in no way bring it about that a formal danger of sinning is not joined to the external occasion*, or, in other words, *when someone can in no way bring it about that the proximate danger becomes remote*. This hypothesis we called absurd in the Note, namely, when remedies are suitably suggested and faithfully employed.

To prove that these things are falsely said, the VV. propose two examples, one of which, however (p. 610), taken from Cardenas, does not pertain to the matter. For Cardenas (part 4, dissertation 40, no. 145) proposes the case of a concubine who, if she resists the lust of her accomplice, will most certainly be expelled by him from the house; and, this having been done, she will perish from hunger. I said that this example does not pertain to the matter; for where is there any place here for employing remedies by which the danger may become remote, when this single choice is given her: either to sin or to be expelled from the house, about to perish from hunger? It is the same, namely, as when Mattathias was given the choice either to eat swine's flesh or to undergo death. And if the hypothesis of Claude Lacroix were ultimately directed to this, surely every controversy would be absent. But Lacroix (*loc. cit.*) asserts that most weighty Authors stand for the opposite opinion, whom he afterward also calls very many; and at the end he seems also to permit the contrary practice, saying: *He who wishes to defend the first, more benign opinion should read the Defense of Gobat*. Therefore the hypothesis of Lacroix is altogether another.

And to this clearly pertains the other example which the VV. (p. 608) fashion: namely, of a young man who is not his own master and desperately loves a female relative with whom he is compelled to live in the same house. Having committed several sins with her and being agitated by the stings of conscience, he approaches confession. The Confessor, recognizing that this occasion is necessary, prescribes THE CUSTOMARY REMEDIES for him, especially that he should endeavor to avoid being alone with her. The penitent omits none of the prescribed things and faithfully avoids being alone with her; but he does not avoid the accomplice, who industriously seeks him and by flatteries and solicitations brings him to the point that he again falls miserably and sins, if not by consummated acts, at least by imperfect acts or by consenting interiorly. He returns to the confessor, who does not hesitate to absolve one in no way negligent in employing the remedies. He returns again and yet again, a recidivist in the same manner.

He does not sin except when he is sought and solicited by the accomplice, so that the supposition, *always in the same manner*, is true in the strictest sense. But at length the confessor... defers absolution for him. The penitent returns, nevertheless again a recidivist in the same manner. From this the VV. conclude: *You therefore have in the strictest sense the case which St. Alphonsus proposes, and only two questions remain: 1. Whether in this case there is hope of correction, and 2. What the confessor must do.*

Reply. The Confessor, as the VV. say, prescribed the customary remedies. But I ask: why did he omit certain other remedies, indeed less customary, but altogether suitable to the circumstances? *The penitent*, they say, *omits none of the prescribed things and faithfully endeavors to avoid being alone with her; but he does not avoid the accomplice*. And below: *He does not sin except when he is sought and solicited by the accomplice*. But concerning Blessed Thomas it is read that he drove away with a firebrand even the woman who had been introduced to shake his constancy. Why, therefore, did the confessor not persuade the young man that, after first admonishing her in vain even with harsh words, he should at length drive away with a firebrand the wicked woman whom he now thoroughly recognizes as a snare to himself and a fatal cause of eternal damnation? And if he did not have a firebrand at hand, that he should receive her with slaps and kicks? For who does not know that this kind of remedy, if the others do not profit, is most suitably and not rarely employed, and further ought to be employed, both by a man with a wanton woman and by a woman with a wanton man?

But, what is more marvelous, the VV. finally arrive at the opinion which they seem to attack. For after wrongly fashioning that the confessor had employed all the remedies, and further had fallen from every hope of obtaining correction, and finally had seriously declared to the young man that no hope of salvation remained for him unless he left his paternal home, they present the young man himself as so disposed that, solicitous for his eternal salvation, he either leaves his paternal home or, about to attempt the utmost, straining every power and nerve and imploring divine help more fervently than usual and

with his whole heart, resists the solicitation of the accomplice and finally emerges victorious in this contest.... Indeed, even if he did not immediately enter into these sound counsels, nevertheless his watchful conscience would not permit him to languish in sins and would not cease to cry out until he had fulfilled one or the other in deed. Thus indeed the VV. (pp. 608-609).

But: 1. From these things it is now plainly gathered that the hypothesis of Croix is therefore chimerical and absurd, concerning a penitent who *can in no way bring it about that a formal danger of sinning is not joined to the external occasion*, or, in other words, who *can in no way bring it about that the proximate danger becomes remote*. For in this very case, which they otherwise present so that no hope of correction shines forth, they themselves suppose that the young man, after taking up a more fervent effort, can thus resist the solicitation of the accomplice so that he finally emerges victorious in this contest. Therefore they confess that, even while the present occasion perseveres, the proximate danger can become remote when suitable remedies are employed. Therefore they say contradictory things when they assert both that no hope of correction is present and nevertheless that a change of morals is to be hoped for.

2. Therefore they concede that the aforesaid young man is not necessarily to leave his paternal home, but that one or the other is to be chosen by him: either that with a firmer will he employ suitable means for conquering the temptations, or certainly that he flee from the occasion by leaving his paternal home, if he is unwilling to undertake the care and labor of employing the means. For otherwise, as the VV. very well write (p. 608), *it is certain that this penitent can resist the solicitation and does not resist on account of a defect of purpose; for no commands, divine*

grace assisting, is impossible for anyone to observe. Therefore, the conclusion against them is that, if purpose is lacking, the cause is to be sought in this: that suitable means are either not suggested and prescribed to him by the confessor, or he himself does not faithfully use them.

Hence there is a consequence against the opinion which Croix prefers. For if the penitent is bound only to one or the other, and satisfies his obligation if he chooses and holds to one of the two ways of escaping the danger of sin, the confessor therefore cannot impose one determined way of the two by command; and much less ought or can he prescribe that way which, since it is more difficult to execute, exposes the penitent, as Segneri said, to a more certain danger of sin.

From these things the reply to the texts of Authors which the VV. heap together through thirteen columns (pp. 610-617) easily discloses itself. Namely, the obligation which they urge of leaving the occasion is to be understood conditionally: namely, when the penitent does not bring himself to employ the suitable and indeed necessary remedies which render the danger remote from proximate.

The VV. complain, and indeed gravely censure (p. 607), that the hypothesis fashioned by Croix is called absurd and chimerical, while the practice consequently proposed by him according to that incongruous hypothesis, namely, of exacting from the penitent that which, according to the words of Segneri, exposes him to a more certain danger of sinning, is called imprudent, indiscreet, and not consonant with reason, when St. Alphonsus also preferred it, whose virtues and consequently prudence have nevertheless already been declared to have attained the heroic degree.

Reply to point 1. The VV. themselves, as we saw above, reject that hypothesis and prove it false while they seem to wish to defend it. As regards point 2, how, first of all, will the VV. prove that the holy Doctor praises that practice when, on account of its difficulty in comparison with the use of other means, it induces the penitent into a more certain danger of sinning? But then this kind of argument manifestly proves too much. Indeed, above (see the Note to no. 627, question 6) we saw, in this matter of prudence, namely, when the question is whether or not absolution is to be deferred for a penitent who has not yet satisfied the obligation of making restitution, that the doctrine of St. Antoninus differs from the doctrine of St. Alphonsus. And since the virtues and further the prudence of each were declared to be in the heroic degree, and indeed St. Antoninus possessed such dexterity in explaining counsels that he was called by the common praise ANTONINUS OF COUNSELS, as the Roman Breviary has, how can these things be reconciled in this manner?

Point II. On Habitual Sinners and Recidivists

632. ○ An habitual sinner, insofar as he is distinguished from a recidivist, according to more recent authors is said to be one who has contracted a habit of some sin into which, nevertheless, he has not yet relapsed after confession. But a recidivist is called one who

has contracted a habit and, after confession, relapses into the same sin. - St. Ligorius, no. 457 [1].

[1] The Author attributes these definitions to the more recent authors because in fact a distinction of this kind between an habitual sinner and a recidivist belonged only to certain more recent writers: so that the former is called one who has contracted a habit of some sin which he has not yet confessed (they add that a habit is contracted by an act repeated five times in a month); but the latter is one who, after once confessing following the contraction of such a habit, has relapsed into the same sins (see St. Alphonsus, *Practice of the Confessor*, nos. 70-71). These indeed can perhaps be admitted in some sense, as also that one should be called a recidivist who, after confession, relapses into a sin even of a different species, as a certain Franzoia wished with some others, who disfigured rather than illustrated the *Marrow of Moral Theology* of Hermann Busembaum with his Notes. But in the theological acceptation, the Doctors understand a frequent relapse into the same sins after many confessions without any correction, as Cardinal De Lugo says (*On Penance*, disputation 14, no. 166); or, as the Salmanticenses have (treatise 17, chapter 2, no. 167): *The question concerns one who, having been admonished more frequently, always remains in the same state, applying no care on his part so that he may return to better fruit.* And Gobat (*Experimental Theology*, treatise 7, case 16, no. 518): *When moral Theologians treat of recidivists..., they speak only of those recidivists who continue to commit the same mortal sin even after a purpose of correction and after several confessions*, as John Sanchez, De Lugo, Lessius, and Filliucci express. And Venerable Father Segneri (*The Instructed Christian*, part 3, discourse 22): *I intend to speak of another kind of recidivists, and they are those who, after confession, immediately return to the same fault without any correction and without any effort to correct themselves.* And Ludovicus of Granada describes the same persons: when they have first confessed their crimes at this time, they immediately relapse into the same things and remit nothing of their depraved habit and license of swearing, perjuring, lying, defaming, cursing, imprecating evil, and coveting, nor do they embrace any office of virtue and piety, but remain the same as they had been before. Thus this most holy man in Andreucci, who from the common opinion of the Doctors (*In the Opuscule The Recidivist Confessor*, section 1, in the appendix to volume 2 of Busembaum's *Marrow*, Rome, 1844, Press of the Propagation of the Faith) gathers that these three things are required to constitute a recidivist in the theological acceptation: 1. frequent relapse after several confessions; 2. relapse into sins of the same species; 3. a defect of every correction, even one begun.

Therefore, consideration of an habitual sinner who is not a recidivist in this sense can pertain here only when someone, perhaps abstaining from confession for several years and frequently relapsing into the same sins by force of the contracted habit, needs the particular care of the confessor, as laboring under that habit which, as Suarez says (*On Religion*, treatise 5, book 3, chapter 8, no. 7), *has in a certain way passed into nature*. For the Theologians inquire into a habit of this kind, and further into the difficulty of correcting it, not into the one more recently devised by the more recent writers.

The reason is readily evident why this diversity between the Theologians of the School and certain more recent writers in handing down the notions of an habitual sinner or a recidivist must be kept before the eyes. For once it is evident that these notions are received differently by the Theologians and by those more recent writers, it will manifestly appear that the subject of disputation is different for each, and that the authority and support of Theologians who were disputing about another subject are therefore wrongly invoked for theories built upon the new notion, although each uses the same terms.

Rules

633. **Rule I.** - Every habitual sinner can always be absolved, even the first time he confesses the depraved habit, although no correction has preceded, provided that he seriously proposes this and shows signs of repentance, even if only ordinary. - St. Ligorius, no. 450, and others commonly [2].

[2] This is against Juvenin and that Ludovicus Habert who, on account of his pertinacity in attacking the Constitution *Unigenitus*, was expelled from the Sorbonne

Academy and died unhappily in exile at Blois on April 7, 1718. They, with certain others, require that true conversion first be proved through correction of life; otherwise, as Juvenin says in his condemned *Theological Institutions* (see the Index of Prohibited Books, Rome, 1744, under JUVENIN, and more recent editions under *Theological Institutions*), *On Penance*, dissertation 5, chapter 5, article 1, it is morally certain that an affection for mortal sin is found in them. In these words you see two things badly confounded: namely, a certain inclination to evil, or better, a certain facility of some power toward its

acts, and a deliberate affection for mortal sin. And from this it would surely be proved that all are affected toward mortal sin and accordingly are always unworthy of the benefit of absolution, since, as Scripture says (Genesis 8:21), *the sense and thought of the human heart are prone to evil from youth*.

Against these St. Alphonsus (book 6, no. 459) urges these words of the Roman Catechism (*On the Sacrament of Penance*, no. 60): *If, after hearing the confession, the priest judges that neither diligence in enumerating the sins nor sorrow in detesting them has been altogether lacking to the penitent, he can be absolved.* And he adds: *Note, HAS NOT BEEN ALTOGETHER LACKING.* And indeed these things fit the matter excellently. Yet it may seem to someone that this must be asked: why do those words of the Catechism, which are most general, not equally avail even when the penitent has relapsed into the same sins after confession, but are gratuitously restricted to this single case?

Rule II

But absolution is to be denied to an habitual sinner if he refuses to employ the means prudently proposed by the Confessor and necessary for conquering the habit. The reason is that by this very fact he does not sincerely wish to be corrected, although he asserts that he wishes to change his life; and therefore he is simply indisposed [3].

[3] These things pertain to the general doctrine concerning which it was said above (no. 626) that whoever refuses to fulfill some certain and grave obligation is incapable of absolution.

634. **Rule III.** - A recidivist furnishing extraordinary or special signs of sorrow can be absolved as often as he comes. The reason is that by extraordinary signs of sorrow every prudent suspicion which the preceding falls, even if frequent, could have induced is removed, and the Confessor can prudently judge the penitent to be sufficiently disposed. - I said *can be absolved*, but not that he necessarily must be; for the Confessor can defer absolution in this case if he judges that the deferral will be useful to the penitent, although ordinarily it is more expedient that it not be deferred [4]. - St. Ligorius, no. 460, and *Practice of the Confessor*, no. 76.

[4] See those things said more diffusely concerning this argument above (no. 621).

635. **Rule IV.** - A recidivist, even one furnishing only ordinary signs of contrition [5], can be absolved and generally must be whenever absolution cannot easily be deferred. The reason is that, on the one hand, he can be judged absolutely to be sufficiently disposed from the ordinary signs, and, on the other hand, there is a grave reason for absolving him, lest he remain for a long time in the state of mortal sin; but before the Confessor absolves such a person, he will employ care to dispose him better and more certainly to receive the benefit of absolution [6].

[5] Above, in the Note to no. 625, we observed that the Author calls ordinary almost those signs which St. Alphonsus reckons among the extraordinary.

[6] Concerning this necessary care in Confessors, see the Note to the following number 27.

636. **Rule V.** - A recidivist returning with the same depraved habit, with no effort employed and none of the means prescribed by the Confessor fulfilled, cannot be absolved unless he shows extraordinary signs of sorrow. Thus St. Ligorius [7]: *The third common opinion which we follow, and which Sanchez, Palaus, Bonacina, De Lugo, Petrocorensis, Sporer, Azor, Viva, Laymann, Holzmann, Anacletus, Milante, Wigandt, and the Salmanticenses, treatise 17, chapter 2, nos. 168 and 170, with Suarez, Sayrus, Hurtado, Prado, Rodriguez, Lopez, etc., hold, teaches, that a recidivist sinner returning with the same depraved habit cannot be absolved unless he brings extraordinary signs of his disposition....*

The reason is that, in order that a confessor may absolve a penitent, he must be morally certain of his disposition; hence, although a sinner confessing for the first time is to be judged disposed, because (as we said) *no presumption to the contrary stands against him, nevertheless, when he has already been admonished in another* that frequent relapse furnishes a sign, or at least gives a prudent suspicion, that his repentance is not true; for one who firmly proposes (De Lugo well says, disputation 14, no. 160) a thing morally possible for himself does not so easily forget his purpose, but perseveres at least for some time and falls with greater difficulty or less frequently (book 6, no. 459).

[7] I would say that it was not done by chance that the Author alleges only St. Alphonsus for this doctrine. For (and these things are said only so that the rights of history and truth may be preserved) he indeed brings forward many authors (*loc. cit.*) and does not hesitate to call this opinion of his common. But: 1. Most of those whom he alleges here are the very same whom you have cited above in the note to no. 621, namely, Sanchez, Suarez, Palaus, Bonacina, Azor, Sayrus, Hurtado, De Lugo, etc.; and for the rest he indicates no other places of theirs than those which we brought forward there. Moreover, their opinion, which we indicated there by their own words brought forward, differs from this thesis by the whole heaven; for they expressly affirm, or manifestly suppose, that the penitent can be absolved, and propose a deferral of absolution as merely useful, and accordingly to be employed only from salutary counsel and only sometimes. Hence it seems attributable only to a slip of the eyes or of memory that St. Alphonsus took the citations from treatise 17, chapter 2, no. 168 of the Salmanticenses, as he himself alleges them there. For those Doctors are indeed brought forward there; but the opinion for which they are invoked there is not the thesis of St. Alphonsus, but another, which the Salmanticenses thus express: *Although IT IS A SALUTARY COUNSEL to defer absolution when such a deferral is believed likely to profit...; yet if the penitent approaches with sorrow and a firm purpose..., the confessor CAN ABSOLVE HIM, even if hitherto, after being admonished several times, he has not taken care to be corrected.* These words are as consonant with the sense of the Doctors alleged as they differ from the opinion of St. Alphonsus.

2. But St. Alphonsus himself (*loc. cit.*) also manifestly reveals that his doctrine is one thing and the opinion of the Doctors whom he had alleged for himself a little before is another. For not long afterward, after mentioning the opinion of Sanchez, Laymann, De Lugo, Palaus, Viva, Sporer, and others that a recidivist can well be absolved several times, even if he has relapsed in the same manner and employed no remedy, he adds: *I venerate the authority of such great Doctors; but I have never been able to acquiesce in their opinion.* But what the Doctors named here by St. Alphonsus hold, namely, that a recidivist can be absolved several times even if, etc., is common without exception to all whom he had previously cited for himself, and even to the author of the theology for the use of the Seminary of Perigueux, although the latter is accustomed to follow the footsteps of Juvenin, Habert, and Gennett rather than those of the theological schools.

3. If there are a few who introduce mention of an extraordinary sign of disposition, they do not exact this as a condition without which the Confessor cannot absolve, but either merely say that it also contributes to discerning disposition, as De Lugo (*On Penance*, disputation 14, no. 166), or mention it as a case in which, contrary to what St. Alphonsus thought (nos. 463-464), absolution is not to be deferred, as Laymann (*On Penance*, chapter 5, no. 10). Therefore you will find only the Salmanticenses who, in treatise 17, chapter 2, no. 170, hand down as more probable that then it will not only be a salutary counsel to defer absolution, but the Confessor will be bound to do so. Nevertheless, their opinion also departs from the opinion of St. Alphonsus. For first, they judge other opinions probable as well (*ibid.*, no. 167), the first of which (*ibid.*, no. 168), against the opinion of St. Alphonsus, teaches that absolution can be conferred, although it can sometimes be salutary from counsel to defer it. Then they limit that obligation of deferring absolution (*ibid.*, no. 170), *unless some scandal or other extrinsic inconvenience follows from denied absolution*; by which limitation they all but overthrow the thesis of St. Alphonsus, while by that very fact they concede that, speaking *per se*, absolution can be conferred. Finally (*ibid.*, no. 168), they themselves treat of one who, having been admonished MORE FREQUENTLY, always remains in the same state, etc.; wherefore they too must now be reckoned among those to whose opinion St. Alphonsus says, as we recently saw, that he was never able to acquiesce.

4. Likewise, if some whom the Salmanticenses (no. 170) most eagerly sought out used those phrases, *cannot be absolved, are not to be absolved,* nevertheless their opinion favors in no way either the opinion of St. Alphonsus or even that of the Salmanticenses. And surely, what support does it give to their theory that Sanchez (*On the Decalogue*, book 2, chapter 32, no. 45), when he says that one accustomed to blasphemies can be absolved, indeed is to be absolved, nevertheless excepts a case in which scandal is to be repaired: *unless*, he says, *he furnished enormous scandal to others by those blasphemies, and thus the*

Confessor judged that his private consolation was to be postponed, and that it was expedient for the divine glory that he not be absolved until he had satisfied for the public scandal by striving for the correction of his life? And this is the same as what Bonacina says (*On the Second Precept*, disputation 4, question 1, point 14, no. 7): *By reason of the scandal which one who perjures himself is accustomed to furnish to others, absolution is to be denied according to the judgment of a prudent confessor; for scandal is to be prevented.* Again, what support does it give their theory that Ludovicus Lopez and Bartholomew Medina, alleged by them, said that one who does not have a purpose of correcting the vice is not to be absolved? For Lopez, proposing his own opinion and that of Medina (*Instruction of Conscience*, part 1, chapter 25), says: *Medina seems to subscribe to this opinion of Soto, that one who is everywhere held by a habit of swearing, without choice and consideration whether he swears what is true or false, AND LACKS A TRUE PURPOSE of rooting out the wicked habit, is not to be absolved. But if he resolves upon correction and with a good will has embraced the remedies enjoined upon him by the Confessor, there is no reason why absolution should be prolonged for him.* What does it profit that Rodriguez, alleged by them (*Summary*, part 1, chapter 192, no. 13), said these things while transcribing Medina? *But one who is so defective in his depraved habit that in confession itself he swears at every word ought not to be absolved for that time.* Indeed, Ludovicus Lopez (*loc. cit.*) regards as more rigorous that which Medina had suggested and which Rodericus takes from Medina: that one who has burst forth into many oaths, snatched into them by the evil habit by which he is held, and who, although he had previously confessed this several times, never furnished correction, is not to be absolved but is to be sent away so that for some days he may conduct himself attentively toward rooting out so pernicious a habit. And the reason which Medina brings forward here for deferring absolution introduces another enormous difference between their opinion and the recent opinion of St. Alphonsus. Namely, St. Alphonsus, according to the theories of Juvenin and the like, universally denies that a penitent of this kind can be absolved, since he must be judged indisposed; but most of the Doctors whom either he himself or the Salmanticenses allege do otherwise. For these, as we noted elsewhere above in the note to no. 621, since they treat especially of vices of the tongue, regard deferral of absolution as a mere expedient for at length arousing and stimulating the sluggishness of those who, by force of a depraved habit, break forth into blasphemous or perjurious words that are even less deliberate and who are in a continual state of mortal sin, as Trullench also notes (*On the Decalogue*, book 2, chapter 1, doubt 20, no. 6), though he was wrongly cited for that reason by the Salmanticenses, unless they employ suitable care for correcting the vice. Indeed, as Medina expressly observes (*Instruction of Confessors*, book 1, chapter 54, section 5), since this sin is in the tongue rather than in the heart or affection, they disputed nothing about the disposition of the penitent; and therefore Azor also (part 1, book 11, chapter 3, question 4), himself wrongly alleged by the Salmanticenses, after saying, *Nevertheless, absolution seems to be deferred for a time so that he may meanwhile devote some effort to it* (to correcting the habit), immediately adds: *unless there is otherwise a just cause by which he ought to be absolved from sins immediately.*

If there are some who introduce discussion of deferring absolution on account of a suspicion that the penitent has approached less disposed, they do not propose it as a rule to be universally observed with recidivists, but say only that there is a place for a suspicion of this kind sometimes or at some time; concerning this we shall treat in the following Note. Furthermore, they themselves suppose that a penitent of this kind has already been absolved several times; in which, again, St. Alphonsus, as we saw, professes that he departs from them.

5. And these things, although few in view of the gravity of the argument (for the brevity of the Note does not permit more things which would make for a clearer demonstration of the matter), can suffice to establish that the preceding opinion of St. Alphonsus, whenever it is considered whole with all its parts, can be called, rather than common, contrary to the common opinion of the Doctors. Yet this is not said as any censure of that opinion, but only, as was said above, so that its own place and right may remain for historical truth, and from this there may remain the faculty of using that canon which the same St. Alphonsus (no. 460) praises, saying: *I think that he by no means errs who directs himself according to opinions commonly received from Doctors of no humble reputation.* For the rest, in what manner the opinion of St. Alphonsus can in some way be drawn toward the common opinion, we shall indicate in the following Note.

6. Meanwhile, note that the reason which the Author brings forward for that rule, and which certain others are accustomed to bring forward, is not free from a logical fault (for this must not be concealed). For grant that, after confession, someone has relapsed into the same sins in the same manner and, if you wish, even in a worse manner and measure; this could perhaps introduce some suspicion that the purpose in that confession was less efficacious; and I said, *perhaps some suspicion*, because, since the human will is subject to change, not even from a subsequent relapse can we logically argue to some defect of the preceding confession, since this must very often be ascribed not to a defect of a most sincere purpose, but, as daily experience teaches, to frailty and inconstancy after a sincere purpose. But if someone wishes further to argue from preceding falls to a defect of sorrow and purpose in the present, no law of logic permits it, as all Theologians reason excellently with St. Thomas.

** Indeed, it is not our intention, nor can it be, to pursue the VV. through those two hundred and eighty columns by which, with almost useless labor, they oppress every most patient reader. It will suffice us at present to give a sufficient account of those things which we noted concerning this argument.

It is said in the Note (no. 1) that St. Alphonsus did not hesitate indeed to call his opinion common; nevertheless, as is added (no. 5), it can be called, rather than common, contrary to the common opinion of the Doctors. Yet, so that a fair judgment may be formed concerning this affirmation, the words which are added there must not be neglected: WHENEVER IT IS CONSIDERED WHOLE WITH ALL ITS PARTS. Yet the VV. nowhere seem to have taken any account of these words throughout those two hundred and eighty columns.

Therefore, the first reason why we affirmed this is the one which we touched upon above in the Note to no. 632: namely, because the notion both of an habitual sinner and of a recidivist which St. Alphonsus hands down and Gury followed (see above no. 632 and below no. 638) is one thing, while that commonly handed down by the Doctors is another. Moreover, as was observed there, once it is evident that these notions are employed in a different sense by the Theologians and by those more recent writers, it will manifestly appear that the subject of disputation is different for each and that the authority and support of Theologians who were disputing about another subject are therefore wrongly invoked for theories built upon the new notion, although each uses the same terms.

To this reasoning, which otherwise is neither slight nor abstruse, you will seek in vain throughout those two hundred and eighty columns for any reply whatsoever.

And indeed in that Note to no. 632 we neither expressly attributed those new notions of an Habitual Sinner and a Recidivist to the holy Doctor, out of a certain reverence for him, nor there expressly deduced against him that latter conclusion. Nevertheless, if the VV. preferred this way of defending the holy Doctor, not so that they might defend his doctrine as it truly is in itself, but so that they might endeavor to show its consonance with the common doctrines of the schools, which is a question not of right but of fact, surely it was in no way lawful to neglect this part of the question, which is of the gravest moment.

We brought forward another reason for our affirmation, and one manifestly decisive, in the Note (no. 2), namely, by bringing forward those words of the holy Doctor himself: *I venerate the authority of such great Doctors; but I have never been able to acquiesce in their opinion*; where he says that he departs from the opinion of Sanchez, Laymann, De Lugo, Palaus, Viva, Sporer, and OTHERS. It does not pertain here now to inquire whether the opinion which the holy Doctor professes is better, or the opinion of those in whom he says he was never able to acquiesce; the question now concerns the fact itself: Does the holy Doctor depart from the common opinion? Concerning the controversy touched upon there by the holy Doctor, the VV. write (p. 656): *St. Alphonsus, AGAINST SEVERAL DOCTORS alleged for the first proposition, who judge that such a* (recidivist) *can be absolved up to the third or fourth time, establishes the following doctrine: An Habitual Sinner, or one Habituated, who, having already once been admonished, has relapsed in the same manner, cannot be absolved*, etc. Here the VV. speak the truth, but not the whole truth: namely, they admit that the holy Doctor departs from the Authors whom he had alleged for his own thesis. But if, by the admission of the VV. themselves, St. Alphonsus departs from the opinion of those great Doctors whom he himself had alleged for his doctrine, why, I ask, are they so angry with those who perhaps say that those Authors in no way support the thesis of the holy Doctor?

But I said that the VV. have here confessed the truth, but not the whole truth. For they say that St. Alphonsus established his thesis against several; which is most true. But the word *several* can indicate either simply many or, taken comparatively, some greater multitude in comparison with the contrary party. Yet in neither sense does that word express the whole truth. Why? Because the holy Doctor Alphonsus had no Author whom he could allege for his opinion, nor did the VV. find anyone, nor will they find anyone, unless perhaps they have recourse either to those who, as St. Alphonsus says (book 6, no. 459), *with intolerable rigor say that an habitual sinner can never be absolved unless his correction is established by long experience*, or to someone among those who perhaps resolved to transcribe St. Alphonsus for themselves, whose support otherwise would not prove that the holy Doctor did not depart from the unanimous opinion of all the Doctors.

And since it is most openly evident, even from the most express testimony of the holy Doctor Alphonsus, that he departed from the most common and indeed the unanimous opinion of all the Doctors, what finally is to be thought of those two hundred and eighty columns by which the VV. wish to contend that it was asserted only through calumny that the opinion of St. Alphonsus can be called, rather than common, contrary to the common opinion of the Doctors? To these things add what we indicated above: that the notions both of an Habitual Sinner and of a Recidivist which St. Alphonsus adopts are employed in another sense by all the Doctors whom he alleges, so that even if the theses of the holy Doctor agreed verbally

with the theses of the Doctors, they would nevertheless differ in sense. Therefore it is so much the more confirmed and becomes perspicuous that the doctrine of St. Alphonsus, whenever it is considered whole with all its parts, can be called, rather than common, contrary to the common opinion of the Doctors. Yet this was not said, as was observed in the Note, as any censure of that opinion, but only so that its own place and right may remain for historical truth and from this there may remain the faculty of using that canon which the same St. Alphonsus (book 6, no. 460) praises, saying: *I think that he by no means errs who directs himself according to opinions commonly received from Doctors of no humble reputation.*

These things having been set forth beforehand, which pertain to the substance of the matter, let us come to the remaining parts of the Note, which are of lesser moment, since they present incidental little questions.

And as regards those things contained in no. 1, behold, the VV. (p. 660) do not hesitate to affirm that the thesis of St. Alphonsus, who says that a recidivist cannot be absolved, etc., is altogether the same as that of the Authors whose express words we reported in the Note to no. 621 and whom the Salmanticenses bring forward (treatise 17, chapter 2, no. 168) for the opinion which establishes that a recidivist of this kind can be absolved absolutely, although it is sometimes useful for him to defer absolution. The VV. handle this argument through twenty-four columns and contend (p. 680) that the Salmanticenses falsely alleged these authors for that opinion. Surely it was a most unhappy design by which they undertook to fight against the manifest evidence of fact; yet a reader who has already been able to observe very frequently that this is customary with them will not be astonished.

Let the testimonies brought forward above in the Note to no. 621 be read, I ask; they suppose a penitent sufficiently disposed and capable of absolution. Is such the penitent whom St. Alphonsus denies can be absolved? There we brought forward, for example, the express words of Suarez, where he says that it sometimes profits to defer absolution for a recidivist penitent of this kind. But the VV. object (p. 669) that the text of Suarez is brought forward there truncated, because these words were omitted: *But if at length experience proves that these* (remedies) *do not suffice, the penitent will sometimes have to be compelled to remove the occasion*, etc. But is the thesis of St. Alphonsus of which we speak this: that the confessor can and ought sometimes to intimate to the penitent the obligation of removing the occasion? Whoever abounds in leisure and patience may read these and other things of this kind, merely suitable for imposing upon readers who are accustomed to judge from the great mass of volumes.

With the context of the holy Doctor considered more diligently, another reason presents itself on account of which we may say that the holy Doctor alleged the Authors brought forward by the Salmanticenses in no. 168 not altogether beside the matter, however much their opinion is opposed to the opinion which the thesis of the holy Doctor defends. For let these words of St. Alphonsus (book 6, no. 459) be considered: *The first part* (namely, of the thesis) *is against the first opinion, which says that recidivists ought always to be absolved when they approach the Sacrament*.

Let it now be omitted whether anyone in fact professed this most absurd doctrine. The VV. (p. 680) affirm that John Sanchez professes it in truth; and thus they openly make it evident that they did not read Sanchez, just as they themselves say that St. Alphonsus did not read other Authors whom he cites for the same opinion, but took the citations of them from the Salmanticenses. I said that the VV. did not read John Sanchez. For elsewhere, in the Note to no. 621, we already observed that this absurd opinion was wrongly ascribed even to John Sanchez, since he merely contends that absolution is not to be deferred for a penitent rightly disposed on account of the hope of greater fruit. Thus he says (*Selected Disputations*, disputation 9, no. 11): *It is inferred that it will not be a most salutary counsel sometimes to deny absolution to one having a habit of sinning, however much Sayrus, Suarez,*

Sanchez, Reginaldus, Toletus, Sa, and others counsel it. For if the confessor can LICITLY absolve the penitent, as they themselves admit, he will be bound to do so; for the penitent has a right that absolution not be denied to him, IF HE IS WORTHY, unless by his own consent. I certainly believe that the aforesaid authors, when they say that it will be a right counsel to deny absolution to a penitent having a habit of sinning, did not understand this absolutely, but with the penitent's consent first having been given. Yet I judge absolutely that it will never be a right counsel to deny absolution, however much the penitent may consent, supposing that it can be licitly imparted. For when it is denied, it ought to be done for this end, that the penitent may be rendered more cautious for preventing sins. Yet I do not understand that greater strength for avoiding sins will inhere in the penitent if he lacks sacramental grace and the other helps proceeding from the Sacrament than if he is clothed with it and them. And since counsel ought to concern the better good, surely I do not grasp that it is a better good for the penitent to lack the grace of the Sacrament for some time than to be clothed with it, etc. These are the words of Sanchez, which nearly return to that opinion of St. Alphonsus (book 6, no. 464): *It is to be hoped more that he will be corrected through the help of grace received in the Sacrament than through deferral of absolution.* Therefore, the holy Doctor judged that absolution is rarely to be deferred for these persons.

But how it happened that St. Alphonsus depicted the opinion of Sanchez in such different colors, as we explained, so that he even hurled against it the condemnation of proposition 60 among those proscribed by Innocent XI, can scarcely be understood: *Although no hope of correction appears, absolution is not to be denied, provided that he declares orally that he is sorry and proposes correction.* Indeed, the Salmanticenses, from whom the VV. (p. 680) say that the holy Doctor transcribed these things, treat of a sinner who approaches with sorrow and a stated purpose (*loc. cit.*, no. 169); but they had said (*ibid.*, no. 167), *if he approaches with sorrow for past things and firmly proposes correction for the future*, and again (no. 168), *if the penitent approaches with sorrow and a firm purpose*. Such, namely, is the penitent whom Sanchez, Bonacina, Sayrus, Palaus, Suarez, etc., alleged there, require so that then he can be absolved absolutely. Yet, against this opinion of theirs, it is surely marvelous that even the VV. (p. 677) do not hesitate to object the aforesaid condemnation of proposition 60, relying, namely, upon those most wretched later additions to the Salmanticenses.

But to return to the matter, whatever may be the case concerning these miseries, it is manifest from what has been said that the holy Doctor Alphonsus wished to establish his thesis even against this opinion which he reports in the first place, whatever opinion he may at length have fashioned for himself. Moreover, since this opinion, as he himself inexactly explains it, established that recidivists ought always to be absolved whenever they approach the Sacrament, the reason is now evident why he could oppose to this opinion not only the authors whom the Salmanticenses in no. 170 allege for the opinion which the holy Doctor himself followed, but also those whom the Salmanticenses allege in no. 168, who teach, namely, that it is sometimes useful to defer absolution for these sinners. For does not Sanchez also, as we saw, have these authors, namely, Suarez, Sanchez, Bonacina, Sayrus, etc., as opposed to himself?

Let us conclude two things from this. First, to give an account of why St. Alphonsus alleged Suarez, Sanchez, Palaus, etc., for his thesis, it is not necessary to suppose a slip of the eyes or memory. For the purpose he proposed to himself of attacking the opinion of Sanchez or of others, as he had fashioned it for himself, the Authors whom the Salmanticenses reported both in no. 168 and in no. 170 certainly pertained to the matter. And since this twofold citation contributed to the purpose of the holy Doctor, the correction was consequently not most wise which the VV.

confession, and has fallen in the same manner, with no effort employed and none of the means prescribed by the confessor fulfilled, say (p. 680, in the Note) was introduced into the Mechlin editions of 1845, Regensburg of 1846, and Turin of 1847, which deleted the citation of no. 168.

But secondly, it must altogether be retained that the authors brought forward by the Salmanticenses in no. 168 likewise do not stand for the doctrine of St. Alphonsus, not insofar as he refutes the opinion of Sanchez, but insofar as he establishes his own opinion, so that they can rightly be alleged for this, as was already shown above. Let the VV. have for themselves in this matter also the support of those who prepared the editions just mentioned, since they, not considering how that citation could conduce to the purpose of the holy Doctor, therefore judged that it was to be suppressed because they knew sufficiently well that those Authors were opposed to the opinion of the holy Doctor considered in itself.

We must now come to those things which are contained in the Note (no. 3) concerning extraordinary signs of sorrow; these, however, when the explanations of the VV. are added, scarcely have any difficulty. First, the VV. (p. 682) take care to remove the odium of a new term, namely, *extraordinary signs*; and according to that saying of the Poet, *If it is lawful to use great examples in small matters*, they bring forward those things which Benedict XIV writes in the work *On the Beatification of the Servants of God*, book 2, chapter 28, nos. 6 and 7: namely, that a doctrine cannot be qualified as new when some new word is employed, not so that a new thing may be signified, but so that the mysteries of our faith may be explained more easily and contrary heresies refuted.

Then the same VV. (p. 653, in the Note), to show that a new doctrine does not lie beneath the new term, and at the same time to soften whatever rigidity the term *extraordinary sign* may bear, first observe that those signs of sorrow which the holy Doctor calls extraordinary were taken from Authors wherever they mention some sign of the disposition of penitents. *St. Alphonsus*, they say, *gathered the extraordinary signs which are had separately in individual Doctors and set them forth jointly.*

They then add: *From this exposition it is at the same time evident that St. Alphonsus in admitting extraordinary signs shows himself not more rigorous but rather most mild, since these signs are of the widest latitude. For it can scarcely be thought, at least according to those things which commonly and regularly occur, that a recidivist not lacking true sorrow and a sufficient purpose would not bring forward one or another of these signs, since even a smaller number of sins, or some continence after the last confession, or fulfillment of the means prescribed by the confessor, suffices. It is therefore evident that St. Alphonsus in no way exacts extraordinary contrition, but extraordinary signs of sincere ordinary contrition; indeed, he does not even exact extraordinary signs in the strict sense, or signs rare and scarcely possible, but requires only that a penitent who has relapsed in the same manner should bring forward, beyond the accustomed confession and the customary doubtful*

declarations (add: if, nevertheless, he brings forth even these somehow and does not merely add to the confession, *I have nothing else*) *of sincere sorrow and firm purpose, some solid and proven sign from which a prudent confessor can form for himself a judgment concerning his disposition.*

And surely we shall have the holy Doctor altogether mild in this matter, especially if, where he exacts an extraordinary sign, he ultimately wishes to exclude only the opinion against which, as we saw above, he opposes the first part of his thesis, namely, the opinion condemned in the aforesaid proposition 60 among those proscribed by Innocent XI. And indeed this also seems to intimate that the holy Doctor, among other reasons, objects this condemned proposition against that very opinion, as he himself, as we said, apprehends it; otherwise than that most inept addition to the Salmanticenses praised by the VV., which objects the condemned Proposition even against the first opinion among the Salmanticenses and its patrons, whom indeed the holy Doctor alleges for his thesis.

Hence, indeed, it is evident that it was not without cause that it was finally added in the Note (no. 5) that the opinion of St. Alphonsus can in some manner be drawn toward the common opinion; this was afterward done more fully in the following Note, where we reported the mind of the holy Doctor. And you have things corresponding to those where he says (book 6, no. 459): *As often as the penitent brings true signs of sorrow and purpose, so often can he rightly be absolved.* And after bringing forward the testimonies of Sts. Jerome and Chrysostom, he proceeds: *Hence the Author of the book published at Rome, whose title is Instruction for New Confessors, part 1, chapter 15, no. 356, thus says: If the relapse arises from one's own frailty, without another voluntary extrinsic cause, it is almost rashness to say that every one who relapses is indisposed.* And therefore in chapter 9, no. 213, he says that a sinner who has relapsed through the force of an evil habit is to be absolved immediately if he has a firm will to employ the means for correcting himself; and he adds: *And we judge that to act otherwise would be excessive rigor, and that the Confessor, by acting thus, would depart from the true spirit of the Church and of the Lord, and from the nature of the Sacrament, which is not only a judgment but a salutary medicine.*

To these, moreover, add the conclusion which the holy Doctor (book 6, no. 461) deduces from the doctrine of the Roman Catechism, saying: *Therefore, whenever it is not known to the Confessor that sorrow was altogether lacking to the penitent, he can absolve him*; and from this, when these principles have been weighed, you will readily infer that the mind of Blessed Alphonsus can most easily be reconciled at last with the common doctrine.

Finally, as regards those things which are said in the Note (no. 6) concerning the argument which Gury uses to establish his rule, the VV. complain most bitterly (p. 692), as though they displayed a grave injury against the holy Doctor; and all the more because in the same Note (no. 4) it is premised that the theory of Juvenin and those like him savors of that principle that a recidivist cannot be absolved, since he must be judged indisposed: as though, the VV. say (p. 693), it were not a reproach when it denounces the holy Doctor as a follower of the theory of Juvenin, whose *Institutions* were condemned, and of Ludovicus Habert, who came to an unhappy end.

Reply. Did St. Alphonsus not often elsewhere allege Juvenin and Ludovicus Habert in support of some opinion approved by himself? Is not this very thing seen in this same paragraph, where he writes: *See Juvenin, Theological Institutions, book 7, p. 408, and the Salmanticenses*, etc.? Is anyone who therefore says that St. Alphonsus adopted the opinion of Juvenin to be thought to reproach the holy Doctor as a follower of Juvenin's condemned *Theological Institutions*? Let that be so if it were affirmed in the Note that Juvenin's *Institutions* were proscribed because he said that an habitual sinner, whenever he approaches confession, is never to be judged disposed for absolution. But this is not affirmed in the Note.

For the rest, the words of St. Alphonsus (book 6, no. 459) are of this kind: *When he himself* (the penitent) *has already been admonished in another confession, and has fallen in the same manner, with no effort employed and none of the means prescribed by the Confessor fulfilled, that frequent relapse furnishes a sign, or at least gives a prudent suspicion, that his repentance is not true.* And Gury, after St. Alphonsus, adds the reason: *For one who firmly proposes to avoid sin does not so easily forget his purpose, but perseveres at least for some time and falls with greater difficulty or less frequently*; these are in fact the words of De Lugo (disputation 14, no. 160), and the words of De Lugo are brought forward there by St. Alphonsus.

But there is no small difference between the opinion of De Lugo and the opinion of St. Alphonsus. First, De Lugo disputes about one who is situated in a proximate occasion of sinning; St. Alphonsus and Gury do not. Then De Lugo (*ibid.*, no. 156) speaks of one who, having been absolved more frequently, always relapses in the same manner; but St. Alphonsus speaks of one who has once been admonished and absolved. Moreover, De Lugo (*ibid.*, no. 160) says that a suspicion of this kind can SOMETIMES have place *per accidens*, just as Sporer (*On Penance*, no. 330) and Laymann (*On Penance*, chapter 5, no. 10) say that this can happen AT TIMES; but St. Alphonsus hands it down as a general norm never to be omitted in judging recidivists.

And indeed, to establish his opinion, St. Alphonsus (*loc. cit.*) brings forward the words of Isidore: *He worthily performs penance who so bewails past evils that he does not commit future ones again*; from whom the holy Doctor copied these words here does not appear. For Faure (*Theological Doubts*, doubt 3, section 4) shrewdly warns that the moderns copied this and other propositions of this kind from the impious Arnauld, and he shows that the ancient Doctors had formerly objected these propositions to themselves and explained them. And surely Peter Lombard (book 4, distinction 14) had thus replied to this objection: *The aforesaid words, To repent is to bewail what was done before and not to commit things to be bewailed, can rightly be taken thus: that they are referred not to different times but to the same time; namely, that at the time when he bewails the evils committed, he does not by his will commit deeds to be bewailed.* St. Raymond also has things corresponding to these (book 4, distinction 14).

And after Raymond, St. Thomas employed the same reply thus (III, question 84, article 10, reply to objection 4): *It must be said that to repent is to bewail what was done before and not to commit things to be bewailed, namely, while one weeps, either in act or in purpose. For he is a mocker and not a penitent who, at the same time as he repents, does that of which he repents, or proposes that he will again do what he has done, or even actually sins in the same or another kind of sin. But that someone afterward sins either in act or in purpose does not exclude that his repentance was previously true. For the truth of a prior act is never excluded by a subsequent contrary act. For just as one who afterward sits truly ran, so one who afterward sins truly repented.*

And in these things you have the reason why it was said in the Note that the rule of judgment proposed by Gury after St. Alphonsus is not free from a logical fault. A relapse, St. Alphonsus says, *furnishes a sign, or at least gives a prudent suspicion, that his repentance is not true.*

If the holy Doctor had said, *that his repentance was not true*, namely, in the preceding confession, even thus that saying of St. Thomas would meet him: *One who afterward sins truly repented.* For, as he says elsewhere (*On IV Sentences*, distinction 14, question 1, article 4, minor question 2), *however much efficacy some virtue may have, it does not remove flexibility from free choice while one is in the state of the way. Likewise, that which is future cannot belong to the substance or integrity of any virtue except insofar as it is present in apprehension or in the will, because virtue as regards the habit does not await something in the future.... Hence, since penance is a virtue, and insofar as it is a Sacrament does not extend beyond the act of virtue, future continuation will not belong to the essential integrity of penance except insofar as it is in the purpose; and therefore repentance can be true, and nevertheless someone can afterward fall away from it.* To this indeed pertains what St. Alphonsus also has (book 6, no. 459): *De Lugo, disputation 14, no. 166, teaches well with Suarez, Sanchez, Reginaldus, Henriquez, and others commonly, that sufficient disposition is present sorrow and purpose, not future correction; and thus the penitent can be absolved even though he is judged likely to relapse.*

But if the inference from a relapse into sins does not hold for excluding true preceding repentance, then *a fortiori* a relapse furnishes no argument for judging the present disposition of one who now approaches.

Hence St. Alphonsus afterward also tempers his aforesaid opinion thus (*loc. cit.*): *Although a relapse furnishes some suspicion, it nevertheless does not exhibit a certain sign of indisposition; for it can well happen that the penitent truly had a firm will not to relapse and yet relapsed through the force of a depraved habit.* These words surely import that the holy Doctor intimates that, from true preceding repentance, it can be argued that disposition is not lacking in the present either. And in fact, as the holy Doctor himself had premised, on the one hand the penitent is not to be presumed evil, so that he would wish to approach the Sacrament indisposed; on the other hand, he is presumed disposed while he confesses his sins, since spontaneous confession itself is a sign of contrition, unless some positive presumption to the contrary stands in the way, namely, as he adds (*ibid.*, no. 460), unless it appears that the penitent approaches confession merely from the obligation of the paschal precept, or impelled by parents, a tutor, a master, etc. But if relapse in the same manner furnishes some suspicion of indisposition, namely, of a will not so firm and efficacious for employing remedies, nevertheless, as the holy Doctor himself adds (*ibid.*, no. 459), whenever the penitent brings extraordinary signs of sorrow, that suspicion of indisposition is removed by them; and then the Confessor will be able prudently to judge that his penitent is sufficiently disposed. Moreover, since those sufficient signs of disposition which the holy Doctor calls extraordinary, if perhaps they are lacking when the preceding habit of life is considered, can, according to the teaching of St. Alphonsus himself, appear in and from the confession itself, as is handed down in the following Note, it again becomes clear how the opinion of St. Alphonsus can be reconciled with the common doctrine of others, however harsh the things which he had premised may appear. Yet those things will not appear harsh if the suspicion which a relapse repeated more frequently into the same sins without any correction casts upon him moves the Confessor, not indeed to decide *a priori* that the penitent is indisposed and to be dismissed without absolution, but to inquire more accurately, according to his office, into the penitent's present disposition.

637. **Rule VI.** - A doubtfully disposed recidivist is to have absolution deferred for some time, until a prudent sign of disposition appears. - St. Ligorius, *Practice of the Confessor*, nos. 71 and 72; *Apostolic Man*, last treatise, nos. 9 and 10 [8].

[8] That, except in a case of necessity, a doubtfully disposed penitent cannot licitly be absolved, namely, one whom no prudent reason persuades to be sufficiently disposed to receive grace in the Sacrament, ought to be beyond controversy. And from this is to be sought the reason why Theologians sometimes admonish that one should act thus with those recidivists who display either no indication, or certainly an ambiguous indication, of a good will, so that a not imprudent suspicion arises that they may here and now lack the suitable dispositions. But it is one thing that a penitent in that condition cannot be absolved, and another that he ought to be dismissed to be absolved at another time; as though either that delay had the power of procuring disposition, or patience in returning were a more certain indication of a better disposition in the penitent, or, on the contrary, it were not more expedient, indeed the office of the Confessor, then to employ every care so that, as far as it can be done with the grace of God, he may dispose the penitent to receive rightly the benefit of absolution.

Would that the words with which His Holiness Pope Leo XII, in announcing the Jubilee to the whole world (Constitution *Charitate Christi*, December 25, 1825, section 5), admonished Confessors were fixed in the minds of all priests: *Many indeed* (he says) *present themselves altogether unprepared to the ministers of the Sacrament of Penance, but very often they are of such a kind that from unprepared they can be made prepared, provided that the priest, clothed with the bowels of the mercy of Christ Jesus, who came not to call the just but sinners, knows how to deal with them diligently, patiently, and gently.* But that those, and those alone, are here called unprepared who lack an essential disposition is evident from what follows: *For those alone are to be judged unprepared, not those who have committed even the gravest crimes, or who have been absent from confession even for very many years,*

for the mercy of the Lord is without number and the treasure of his goodness is infinite; nor those who, being uncultivated in condition or slow in understanding, have not sufficiently examined themselves, since by almost no diligence of their own would they accomplish this without the assistance of the priest himself; but those who, after the necessary diligence has been employed by him in questioning them, yet not so as to burden them beyond measure, and after every effort of charity has been exhausted in exciting them to detestation of their sins..., are nevertheless prudently judged to lack the sense of sorrow and repentance by which they may at least be disposed to obtain the grace of God in the Sacrament (these are the words of the Council of Trent concerning attrition). From these things it is evident that even those who not merely are doubtfully disposed but manifestly approach indisposed can be absolved, since the patience, gentleness, and industrious charity of the priest can then and there obtain this: that from unprepared they become prepared, and that the Confessor can prudently judge this.

Therefore, the Supreme Pontiff further does not omit to censure those who, rather than undertake this care so that with solicitous charity they may reconcile sinners to God, enter upon an easy way of freeing themselves from this burden by sending penitents away to be absolved at another time. Therefore, after he indicated who are to be judged incapable of the benefit of absolution, *such* (he says) *are those who give NO signs of sorrow, who are unwilling to lay aside hatreds and enmities, or to restore the goods of others if they can, or to abandon the proximate occasion of sinning, or in some other manner to forsake sins and amend their life for the better; or those who have given public scandal, unless they make public satisfaction and remove the scandal*; he immediately gravely warns how far the conduct of those who, as soon as they hear some graver sin or perceive someone infected with a manifold kind of sins, at once declare that they cannot absolve, departs from the manner of an experienced physician who likewise pours wine and oil into the wounds of the injured man. *They refuse to heal those very persons* (the Supreme Pontiff proceeds) *for whose care they were especially appointed by him who says: Those who are well have no need of a physician, but those who are ill.* Wherefore he deservedly declares that a priest of this kind is more indisposed to hear confessions than a sinner approaches confession unprepared: *But if he* (the priest) *neglects to perform this, surely he is no more to be called prepared to hear than the others are to approach confession.*

From these things this also is gathered: it is not to be feared that a sufficient sign of disposition cannot be had even if no delay of absolution is employed, which otherwise is very often a fallacious test of disposition. St. Alphonsus also warned of this very thing (book 6, no. 459), where he writes: *Nor is it true that a test of time alone is the sole sign of a changed will; for a change of will depends upon divine grace, which does not need time but operates in an instant, and therefore can be manifested not only through a trial of time but also through certain other signs. Indeed, sometimes other signs of present disposition manifest a change of will much better than experience of time; for those signs directly indicate the disposition of the penitent, but experience only indirectly: so much so that it can NOT RARELY happen that someone restrains himself from vices even for a long time for the respectability of this world* (for example, that he may obtain absolution or be admitted to paschal Communion) *..., and nevertheless is not rightly disposed. Therefore, as often as*

the penitent brings true signs of sorrow and purpose, so often can he rightly be absolved. As regards these words, take care to observe that there are indeed some sins into which one falls from affection and with an affection tenaciously adhering to some unlawful object, for example, when from hatred and a desire for revenge someone detracts from his neighbor, wishes or even inflicts evils upon him, or when one ruinously coveting riches pursues unlawful gains, or desperately loves some woman with whom he has an adulterous relationship, etc.; and with these surely a discourse about a change of will fittingly occurs, since it ought to detest what it ardently loved.

But in many other sins, even if they are perpetrated from a certain habit, you would wrongly seek this affection toward the object of sin, as, for example, very often happens in sins of the tongue and frequently also in impurity. Hence it happens that a man indeed relapses again and again, yet not as though giving himself wholly to sin, but rather overcome by a certain sloth and frailty, at the same time accusing himself and soon repenting of the deed, now struggling against the vice, now succumbing to it through weakness, and always bearing the yoke of the vice in some manner unwillingly. Moreover, with one of this kind, as is evident, the matter concerns a will not so much to be changed as to be strengthened, so that he may become accustomed to watch more attentively if sins of the tongue are at issue, to resist more strongly if other vices are at issue, and to use suitable safeguards more diligently.

For the rest, since St. Alphonsus, when he requires extraordinary signs of disposition, appears finally to understand nothing other than what he has in the cited text, namely, some true sign of sorrow and purpose, so that he thinks one lacking some extraordinary sign (*Practice of the Confessor*, no. 71) to be designated in proposition 60 condemned by Innocent XI as one who merely declares orally that he is sorry and proposes correction, he will not with difficulty be reconciled in this respect with the common opinion of the Doctors and with the practice which the Supreme Pontiff and teacher of teachers, Leo XII, commends in the cited Constitution. For no one of the Doctors taught that one should be absolved who, as the Pontiff says, is prudently judged to lack the sense of sorrow and repentance by which he may be disposed to obtain grace in the Sacrament. Nor, again, does St. Alphonsus, as is evident from the cited text, contend that a delay of absolution is necessary so that the disposition even of a recidivist may either become sufficiently known if at first it appears doubtful, or may even be acquired if perhaps it appears altogether lacking to the penitent as he approaches. Indeed (*loc. cit.*, no. 460), among the signs which he himself calls extraordinary, he also enumerates this: *If the penitent, at the admonition of the Confessor, signifies that he has attained a new knowledge of his iniquity or of the danger of his damnation*.

The method by which this end can be attained without the trial of deferred absolution, and at the same time the practice commended by the Supreme Pontiff Leo XII retained, you have set forth as clearly as briefly by Philip Mary Salvatori in the opuscule published several times at Rome with the title *Practical Instruction for New Confessors*; concerning this, however, see what we noted above at no. 519, p. 405. He deservedly affirms that, just as this method cannot be observed without labor, so it cannot be omitted by the Confessor without fault where it is needed; and the things which we brought forward above from the Constitution of Leo XII confirm this. Thus, as that pious and learned Author, most practiced in the ministry of hearing the confessions of men of this kind, observes (part 2, section 1), even if the penitent, either at first encounter or even during confession, furnishes no other indication among those which others have called extraordinary by which the Confessor may judge sufficiently concerning his disposition, nevertheless, when the confession has been completed not without the suitable assistance of a patient and gentle priest, if the latter undertakes efficaciously to place before the eyes of the penitent the gravity, deformity, and baseness of his sins and vices; then the most evil effects of sins, the harms, the detriment to the soul, the danger to eternal salvation, and the treasure of wrath accumulated by a disordered life, as well as the vain hope of consulting for himself when the hour of death is already at hand and the judgment of God is imminent; and then also if he suggests an easy way by which he can both meet these evils and enter upon the right way of salvation; if, moreover, he adds to these things that every penitent must seriously weigh that sacramental absolution obtains an effect corresponding to the dispositions of those confessing, and accordingly, just as it looses and cleanses one who sincerely repents, so it binds more tightly those who lack the sense of true repentance and heaps sacrilege upon their other sins; if, I say, the Confessor proposes all these and other things of this kind, and does so not with the zeal of one indignant but rather with the great charity of one who has compassion and solicitously desires the salvation of penitents, the praised Author deservedly concludes that it cannot happen that the penitent does not exhibit some sufficient sign of his mind. Therefore, to one who affirms that he acts sincerely and that he wishes to perform those things which the Confessor requires, the Confessor can with a safe conscience impart absolution, even if the penitent has previously given no other sign of his conversion.

The reason is that, since in these circumstances that testimony of the penitent cannot reasonably be attributed either to ignorance or to fraud, that which is like an axiom among all Theologians now avails: the penitent is to be believed both for

himself and against himself. I said, not from fraud, because in the present case deceit has no end or cause, since it would merely turn to the destruction of the liar. Hence the distinction which St. Thomas notes between one speaking in confession about himself and about others (*Opuscule* 7, otherwise 12, question 6): *In confession, the sinner confessing is to be believed both for himself and against himself; but he is in no way to be believed against another; otherwise an occasion of feigned confession and fraudulent defamation would be given to many.* But, on the contrary, when the penitent speaks about himself, the holy Doctor thus intimates the reason (*On IV Sentences*, distinction 17, question 3, article 3, minor question 5, reply to objection 2): *As regards this knowledge* (namely, through the manifestation of confession), *the priest cannot receive greater certainty than by believing the subject, BECAUSE THIS IS FOR THE RELIEF OF HIS OWN CONSCIENCE; hence in the forum of confession a man is believed both for himself and against himself.*

And diligently observe those most weighty words of the holy Doctor: *He cannot receive greater certainty than by believing the subject.* And surely, does not the fact that Confessors with a safe conscience absolve penitents as though they had confessed integrally rest upon this one canon, although experience teaches that those who sacrilegiously conceal sins approach not infrequently? And even if someone wishes to follow the theory of extraordinary signs, can these not also be simulated? Indeed, is not the complaint frequent that Confessors are very often deceived by an appearance of piety and devotion fabricated by some for other ends? And yet who would for that reason rightly reproach Confessors? Or who will require Confessors, in order to guard against deceptions, to have faith in no one even when no prudent reason for denying faith is present? Would not the economy by which, according to the testimony of St. Thomas with all Theologians, the whole administration of this Sacrament is governed thus be overturned from its foundation?

Hence the Supreme Pontiff Leo XII, while commending the aforesaid practice in the cited Constitution, does not omit to censure those morose Confessors to whom (as he says) *scarcely any signification of sorrow and purpose seems sufficient for them to think that they can absolve; and they think that they have at last adopted a safe counsel if they send men away to be absolved at another time.*

Nor is St. Alphonsus to be said to dissent from these things or to require anything more; from him it will be useful to copy these words (book 6, no. 461): *As regards our proposition, it suffices that the Confessor have a prudent probability concerning the disposition of the penitent and that, on the other hand, no prudent suspicion of indisposition stands in the way; otherwise scarcely anyone could be absolved, since whatever signs penitents give furnish only a probability of disposition, as Suarez rightly teaches, On Penance, disputation 32, section 2, no. 1, where he says that it is necessary and sufficient that the Confessor prudently and probably judge that the penitent is disposed. And this seems sufficiently expressed in the Roman Catechism, On Penance, no. 60, where it is said: If, after hearing the confession, the priest judges that neither diligence in enumerating the sins nor sorrow in detesting them was altogether lacking to the penitent, he can be absolved. Therefore, whenever it is not positively known to the Confessor that sorrow was altogether lacking to the penitent, he can absolve him.* Hence the Author cited above, *Instruction for New Confessors* (namely, Giordanini), part 1, chapter 15, no. 360, speaks thus with Esparza: *Whence we finally establish here the conclusion which is the key of this whole matter: nothing else is required for administering penance than a prudent probable judgment concerning the disposition of the penitent. Hence, if the circumstances do not found a prudent doubt that he is not sufficiently disposed, the Confessor ought not trouble himself or the penitent to have evidence of it, which is impossible.* And to this conduces the text in chapter *A nobis* 2, *On the Sentence of Excommunication*, where it is said: *The judgment of the Church sometimes follows an opinion which can both deceive and be deceived.* Thus far St. Alphonsus.

Some are accustomed to be moved by this: that the facility of absolving which is introduced through this practice may produce a facility of relapsing into the same sins. To this objection a reply could indeed be made with the praised Salvatori (*loc. cit.*), whose words are these: *I reply first: I too had heard it said thus and in speculation believed it, but practice undeceived me. I have not yet found one person of ruined life who cast himself headlong into wickedness because of ease found in Confessors; but I have found many who did so because of excessive harshness and difficulty in absolving.* But then it must be altogether denied that there is a facility of absolving and a consequent facility of relapse when the Confessor, rather than freeing himself in a convenient manner by saying that he cannot absolve, whereby the penitent departs in the same and perhaps a worse state, as being indignant against both the priest and the Sacrament, undertakes immense labor himself and brings it about that the penitent is then absolved when, exhibiting sufficient signs of sincere and serious repentance, he furnishes a prudent hope that sacramental absolution will be salutary for him.

For the rest, it is not excluded by these things that absolution can sometimes be deferred, where the matter requires it, according to those things which we already noted above (at no. 621). Yet as regards this also, that which the Supreme Pontiff Leo XII warns in the cited Constitution is to be kept before the eyes: *With whatever mind those who approach the Sacrament of Penance may come, nothing is more to be guarded against by him* (the Confessor) *than that anyone... depart hostile to the Sacrament of reconciliation.... Wherefore, if there is a just cause why absolution is to be deferred, let him persuade those confessing in words as humane as he can that both his office and duty and their own salvation altogether require this, and let him most gently allure them to return*

as soon as possible, so that, when those things which were salutarily prescribed have been faithfully performed, they may be loosed from the bonds of sins and refreshed by the sweetness of heavenly grace. And surely, whoever has any experience in receiving confessions will confess that what the praised Salvatori affirmed (*loc. cit.*) is most true; it is better to report it in his own words: *And here I cannot refrain from saying something which, every time I remember it, makes my spirit shudder. Among the very many whom I encountered while hearing confessions in hospitals, or who had altogether withdrawn for many years from confession, or had made them incomplete and sacrilegious for many years,*

I found in the greater part (and other Confessors told me they had observed the same) *that the origin of this arose from the bad reception encountered with some Confessor.*

** It has seemed proper here to satisfy certain doubts which the distinguished priest Aemilius Berardi raised concerning the things said above about Recidivists in the opuscule *On Recidivists*, Faenza, 1873.

1. The distinguished Berardi writes (pp. 6-7): *Ballerini, Frassinetti, and Gury said some things pertinent to the matter so that they might open an easier way. But... concerning recidivists they do not determine the new facilities sufficiently openly, clearly, and precisely.*

Reply. Setting aside for now the cause both of Frassinetti and of Gury, especially since the latter in this *Compendium* followed St. Alphonsus almost exactly as regards Recidivists, I would confidently say that it was never my intention to bring forward new facilities of this kind, both because I never held anything more important than to follow the well-worn ways of approved Doctors, and because, after the most exact studies of so many Doctors, it will indeed seem sufficiently difficult to bring forward anything new. But if anything in these Notes seemed new to some, you may say that this occurred *per accidens*, insofar as something was again brought to light from the most abundant treasury of our teachers which could seem new to some, especially after, from the past century, even in our Italy, many schools had been invaded by the works and doctrines, for example, of Gennetti, Witasse, Merbesius, Collet, Juvenin, Ludovicus Habert, Antoine, and others of this flour. To remedy these evils also, indeed especially, divine providence raised up Blessed Doctor Alphonsus.

2. The distinguished Berardi adds (p. 7): *But what he* (Ballerini) *thinks concerning the benign opinion, which indeed concedes that recidivists can be absolved several times but afterward obliges absolution to be deferred for them unless they furnish some extraordinary sign, he does not declare sufficiently openly. On the one hand, he seems to exclude even then the obligation of deferring absolution, to deny the necessity of any extraordinary sign, and to reject the theory of extraordinary signs.... On the other hand, it seems altogether that he requires some extraordinary sign, namely, insofar as the penitent displays more manifest sorrow on account of a certain special admonition of the Confessor.*

Reply. Ballerini thinks that which all think, or at least ought to think, namely: 1. that one who is not disposed cannot be absolved, and that one who appears disposed can be absolved; 2. that it is the office of the Confessor to discern whether or not the penitent brings disposition, that is, as the Council of Trent says, sorrow of mind and detestation of the sin committed with the purpose of not sinning for the future; this office is necessary both if the penitent is habitual and a recidivist and if he is not such; 3. that it is to be gathered from the circumstances in what manner the Confessor may become sufficiently certain concerning this disposition. For sometimes this disposition appears sufficiently from the character and state of the penitent or other circumstances; sometimes the Confessor will remain uncertain about it; sometimes he will discover that it is altogether lacking. In the first case, there is no reason why the Confessor should be further solicitous; in the second, he will employ means to dispel the doubt; in the third, he will undertake the care of rendering the indisposed penitent disposed, if it can be done, with divine grace.

But that some, for the sake of a certain clarity, have distinguished the indications from which disposition is inferred into ordinary and extraordinary, or into common and special, let it be so, provided that they propose the matter sufficiently clearly; for Gury, for example, Gury calls certain signs ordinary which St. Alphonsus judges extraordinary; and again, that which is ordinary in Peter will seem extraordinary in John; indeed, according to the diverse judgment of Confessors, that will happen to be extraordinary for one which will not even be approved as ordinary by another. The Constitution of Leo XII, concerning which above in the Note, censures morose Confessors of this kind. For the rest, the substance of the matter resides in this: that the Confessor, from wherever he finally draws the arguments for judgment, form that prudent judgment concerning the disposition of the penitent which St. Alphonsus also, as we intimated in this and the preceding Note, judged sufficient for absolving rightly. Whether these arguments or indications of disposition are to be called ordinary or extraordinary according to the theories of some may seem a question of lesser moment.

3. The distinguished Berardi asks (p. 8): *What if, either on account of a defect of fervor in this admonition* (of the Confessor), *or however fervent it may be, the penitent never furnishes any special sign? Can he nevertheless always be absolved, or is there then a true*

obligation to dismiss him without absolution? What Ballerini thought is not sufficiently clear.

Reply. The solution of this doubt is easily gathered both from the text of Gury and from the appended Notes; namely, whenever the sufficient disposition of the penitent cannot be established, the norm which the most common doctrine hands down as to be observed with a doubtfully disposed penitent is at hand.

4. The distinguished Berardi adds (p. 29): *All say, or manifestly suppose, that the Confessor not merely can by counsel, but is bound to defer absolution for recidivists unless they furnish some extraordinary sign. Therefore, the opinion of Ballerini does not seem accurate when he writes: You will find only the Salmanticenses who hand down as more probable that then it will be not only a salutary counsel to defer absolution, but the Confessor will be bound to it.*

And on the same matter the distinguished man writes (p. 43): *Father Ballerini makes another objection as follows: Ten theologians, that is, De Lugo, Sayrus, Bonacina, Toletus, etc., establish no obligation of deferring absolution for recidivists; indeed, they openly suppose that they can always be absolved.* Then, after many things, he concludes (p. 48): *Therefore, for manifold reason this objection of Father Ballerini also seems to fall.*

And concerning the same matter the distinguished man had already premised (p. 10): *Ballerini says that, if you except the Salmanticenses alone..., the other earlier theologians expressly affirm or manifestly suppose that the penitent can be absolved, and they propose the delay of absolution as merely useful, and therefore as to be admitted only from salutary counsel and only sometimes.*

Reply. Those ten theologians are not brought forward by Ballerini against the practice of deferring absolution for recidivists who lack an extraordinary sign of sorrow, and much less to prove that recidivists of this kind can always be absolved. And, to speak plainly, it is somewhat difficult to understand how the distinguished Berardi or anyone else could persuade himself that this monstrosity of doctrine was handed down or defended by us. Indeed, according to them, if a recidivist bringing no extraordinary sign is not to be held as positively indisposed, he is at least to be judged one concerning whom it is not established whether he is disposed. But what reason do they bring forward that they do not hesitate to affirm that, according to the opinion of Ballerini, a recidivist concerning whom it is in no way established whether he is disposed can always be absolved? Indeed, who among theologians ever brought forward this prodigy of opinion? For we know indeed that this opinion was attributed to John Sanchez; but it was observed in the preceding Note that this was done erroneously, not to say through mere calumny.

For the rest, the purpose for which those ten theologians were brought forward is manifestly evident from the scope of that Note (Note to no. 621). There the discourse is expressly about a penitent rightly disposed; that the remedy of deferred absolution can usefully be employed with him so that he may be impelled to correct a depraved habit is confirmed by the authority of those ten theologians. Indeed, that the testimonies of the Doctors alleged there concern a rightly disposed penitent is proved there from the fact that they call the delay of absolution merely useful, not necessary. But that those Doctors, as the Note says in such express words, discuss A DISPOSED PENITENT is manifest from this: that they suggest a delay of absolution not as necessary but as merely useful, and from mere counsel, and as to be employed only sometimes. These words surely indicate sufficiently of themselves that according to us also a delay of absolution is necessary whenever the penitent is found less disposed or his disposition is not sufficiently established. But because the phrase *extraordinary signs* is not employed there to indicate a rightly disposed penitent, let the distinguished Berardi pardon us. First, this was not the place; second, let whoever wishes hold this phrase as necessary, so far as we are concerned. But let indulgence in turn be granted us, so that, since this manner of speaking did not seem necessary for so many centuries, no one be bound by this new theological law, much less understood wrongly if he uses another manner of speaking in accordance with the received custom of theologians.

5. Here perhaps the distinguished Berardi will observe that these ten theologians are brought into the discussion also in the Note immediately preceding this one, where the discourse concerns Recidivists.

Reply. This is most true. But at the same time it is true that those Doctors are alleged there, not indeed so that their opinion may be expounded concerning the manner of acting with recidivists or of judging their disposition, but only so that it may be shown that the holy Doctor Alphonsus alleged less pertinently these Doctors and those passages of theirs which had been brought forward by us in the Note to no. 621. Therefore, when the distinguished Berardi says, *Ballerini says that, if you except the Salmanticenses alone..., the other earlier theologians expressly affirm or manifestly suppose that the penitent can be absolved*, etc., this indeed expresses the sense which he seemed to himself able to attribute to Ballerini, but not the sense which either the words or the context of Ballerini's Notes bear.

Likewise, it is true, as the distinguished man has it, that when the contexts of the Notes are compared, the praised Doctors appear as opposed to the Salmanticenses. Indeed, because of the evidence of the fact, the matter could not be otherwise; for the Salmanticenses themselves (treatise 17, chapter 2, no. 170) openly profess that they depart from the opinion of those Doctors, which otherwise they call probable. Nevertheless, lest a sense less consonant with the truth be affixed to this opposition, the purpose on account of which mention is made in the preceding Note both of the aforesaid Doctors (no. 1) and of the Salmanticenses (no. 3) must be kept before the eyes. Namely, just as the sole end of bringing those Doctors upon the scene (no. 1) was to show that the opinion of the holy Doctor Alphonsus was one thing, but that of those Doctors whose allegations he himself indicated that he had taken from no. 168 of the cited passage of the Salmanticenses was another, so also the reason for discussing the Salmanticenses (no. 3) was that it might become manifest that the opinion of the holy Doctor differed also from the judgments of the Salmanticenses, from whom nevertheless he seems to have drawn his opinion. Moreover, from the fact that there seems to be exhibited there a different cause on account of which the doctrine of St. Alphonsus differs now from that of the praised Doctors and now from the opinion of the Salmanticenses, it surely does not follow that the reason for the opposition between those Doctors and the Salmanticenses is that which the distinguished man assigns. Indeed, there was no concern in the Note to add anything more about the question as the Salmanticenses treat it, since it in no way pertained to the purpose of the Note. But if it is examined, there will appear without difficulty both another reason for the aforesaid opposition and also the reason why the opinion of the Salmanticenses can be called altogether singular.

They namely institute the question (*loc. cit.*, no. 167) concerning one who has the habit of perjuring or blaspheming, who approaches confession with sorrow for past things and FIRMLY PROPOSES correction for the future. Then (no. 168) they bring forward the first opinion, which is probable to them, that although it is a salutary counsel to defer absolution when such a delay is believed likely to profit, yet if the penitent approaches with sorrow and a FIRM PURPOSE, the Confessor can absolve him. In bringing forward the second opinion they add that the penitent not only can but ought to be absolved if he approaches with sorrow and the AFORESAID PURPOSE..., unless from some circumstance he judges that he does not have true sorrow.

But do not these things display that state of the penitent which, as we have seen, St. Alphonsus also judged sufficient so that he can be absolved? Does not the allegation of Suarez, Sanchez, Palaus, etc., who are brought forward as judging that the penitent is sufficiently disposed so that he can be absolved, confirm this very thing? Does not the allegation of the second opinion also persuade this, where John Sanchez is brought forward as contending against the authors of the first opinion that absolution is never to be deferred, because the grace of the Sacrament profits more than a delay of absolution? Finally, do not the Salmanticenses themselves concede that this penitent can be absolved if some extrinsic reason seems to require it? Therefore, the opposition between the Salmanticenses and the Authors from whom they depart is not to be understood in such a sense as though the latter were judged to have thought that even a penitent whose sufficient disposition is not established can be absolved. Rather, when the whole context is considered, it is easy to conclude that the Salmanticenses declined somewhat toward a doctrine more severe than even that of St. Alphonsus himself, insofar as they required singular signs of sorrow where the penitent could already be recognized as sufficiently disposed. Nevertheless, it cannot be denied that certain elements are mingled there, which is not new in this work, and these leave complete coherence in that accumulation of matters to be desired.

For the rest, the greater good of the penitent must always be considered; thus very well St. Ligorius, no. 459. Concina (chapter 10, no. 24) says: *That you may avoid the sin of erring, if you see that by two or three absolutions you can cure the sick person, be rich in mercy. The correction of the sinner is a safer norm than all rules for either imparting or denying absolution.*

638. **Questions. - QUESTION 1. When is a habit judged to have been contracted?**

Reply 1. This cannot be determined by a general rule, because some contract a greater facility toward a certain sin by a few acts, for example, three or four, than others do by committing it more frequently; hence neither is one who has sinned many times in a certain kind always to be held habitual, nor is one who has begun to sin three or four times always to be held non-habitual. Reply 2. Generally speaking, a sin repeated more frequently in a short time more easily induces a habit of it

than if it were repeated the same number of times over a longer interval of time. - St. Ligorius, *Practice of the Confessor*, no. 70.

639. ○ **QUESTION 2. What are the extraordinary signs of sorrow?**

Reply. The following are commonly listed: 1. if the penitent has employed a much greater effort than before to correct himself, or if he has been notably corrected; *a fortiori*, if he has now wholly changed his life for the better; 2. if he confesses with great shame a sin long concealed; 3. if he has used more diligently the remedies prescribed by the Confessor;

4. if he has undertaken a long journey in order to make confession properly; 5. if he urgently requests to make a general confession or wishes to repeat the greater part of the sins of his past life; 6. if he was induced to confess by an extraordinary motive, namely, by a sermon heard, the death of some friend, etc.; 7. if he confesses with great humility and with words redolent of compunction of heart, at least ordinarily; 8. if he spontaneously asserts that he wishes altogether to avoid sin despite every inconvenience; *a fortiori*, if he says that he would rather die than sin; 9. if he gives forth sighs or groans, or sheds tears, at least ordinarily; 10. not rarely even spontaneous confession can be held as an extraordinary sign of sorrow, especially in those young men and men who must overcome themselves and human fear in order to approach confession.

640. ○ **QUESTION 3. Can absolution be denied to an habitual sinner who refuses to confess several times in the year?**

Reply. No, *per se*, if he appears sufficiently disposed from another source; because there is no precept of confessing several times in the year, and there are other means which can be enjoined for conquering the habit. Such persons are rather to be induced gently and firmly to approach more frequently, for example, on the feast of Pentecost, of the Assumption of the Blessed Virgin Mary, of the Nativity of the Lord, etc.

QUESTION 4. What is to be done with those who confess immediately before contracting matrimony and who hitherto have been addicted to a depraved habit?

Reply 1. If they have been accustomed to sin with each other, they can be absolved more easily; for the occasion will cease through matrimony.

Reply 2. The difficulty is greater if the depraved habit arises from another source; nevertheless, it is more expedient to absolve such persons, at least conditionally, than to dismiss them unabsolved, unless their indisposition is certainly established [9].

[9] A question of this kind and the solution added savor of the theory which not even the Author himself approves, namely, of those who define every habitual sinner *a priori* as indisposed and incapable of absolution. Those things which the Author premised above (from no. 633) also conflict with this theory. The certain doctrine of the Catholic schools is that any penitent, whether habitual or not, cannot be absolved if he does not appear disposed, but can be absolved if he furnishes sufficient indications of true repentance. And since in the case a delay of absolution induces grave inconvenience, when he appears sufficiently disposed he not only can but ought to be absolved without delay.

Point III. On Devout Penitents

The Confessor is appointed not only to absolve sinners, but also to direct souls in the way of perfection; for the Lord repeats to all Confessors what he formerly said to Jeremiah: *Behold, I have appointed you over the nations, that you may root out and destroy, build and plant*.

General Rules of Direction

641. **Rule I.** - Before all things, let the Confessor strive to perceive the intimate movements and condition of the souls of penitents, so that he may be able to accommodate instruction to their capacity and nature; for not all are to be led by the same spirit, nor are all to be governed in one manner. - See St. Ligorius, *Practice of the Confessor*, no. 99 and following.

Rule II. Let him lead penitents to perfection by degrees and in an orderly manner, so that they first strive to attain the first degree of virtue before they contend for the highest; for example, let them first learn to act with a right intention [1] and to perform ordinary actions rightly before they think upon higher things; let them first learn to bear light things patiently before they desire grave things; let them first learn to suffer with an even mind before they wish to rejoice in adversities [2].

[1] Understand a right intention negatively, that is, that they not add a disordered end to actions good from their object. For if you understand a right end, that the action may please God, be done for the love of God, etc., you have not the first or lowest degree of virtue but the highest, which resides in the exercise of perfect charity.

[2] Observe nevertheless that saying: *The Spirit breathes where he wills*; moreover, some, God thus permitting, are infected with defects while otherwise they abound in great gifts of God and solid fruit of virtues.

Rule III. Let him teach all that the perfection of each consists in this: that they perform ordinary works well; for example, that they pray well, assist at Mass, exercise themselves in labors, take bodily refreshment in the manner which is fitting, converse blamelessly with their neighbor, and finally rightly discharge all the things incumbent upon them from their office and state.

642. **Rule IV.** - Let him opportunely test penitents professing devotion, so that he may observe by what spirit they are led, whether of God or of the world, of love or of fear, and what affection is predominant in them, which must first be mortified. Nevertheless, not all are to be tested and treated in the same manner, but caution and discretion are needed. Thus those who are prone to sadness are to be received more kindly, lest they fall into dejection of spirit; souls as yet tender, whom God first conciliates to himself, are also to be treated more gently; but if souls are nobler or stronger, or have extraordinary benefits of God, a certain severity is to be joined to gentleness. But let the Confessor take care that the test not be open [3]; otherwise it profits nothing.

[3] Let him take care especially that he use tests of this kind more than sparingly and very rarely. For occasions of recognizing the spirit by which penitents are led will offer themselves spontaneously a hundred times.

Rule V. Let him not impose, indeed, where there is need, let him moderate extraordinary penances; but let him so instruct souls that they themselves spontaneously request them. Nor is trust to be placed in the spirit of those who are discovered studiously pursuing extraordinary things, unless certain signs are present that they are led by divine impulse. If someone is observed to be tenacious of his own judgment in matters to be done, he is to be corrected gently [4].

[4] Whether one is to deal gently with a person tenacious of his own judgment or not seems rather to be determined from his character and circumstances after these have been perceived. This surely is of the greatest importance: that the Confessor remedy this vice altogether efficaciously. For tenacity of judgment will with difficulty be reconciled with that perfect obedience without which scarcely any progress in true virtue can be hoped for and the danger of a grave fall also is not feared in vain. On this matter St. Ignatius Loyola (*Letter on the Virtue of Obedience*, section 11) fittingly brings forward the words of Cassian (conference 2 of Abbot Moses, chapter 11): *By no other vice does the devil draw and lead a monk so precipitously to death as when, after the counsels of his elders have been neglected, he persuades him to trust in his own judgment, decision, and doctrine.*

Rule VI. Let him take care that those who can approach sacred Communion frequently confess every week or at least twice in the month [5].

[5] At the same time, however, let him take care that, if perhaps persons of this kind cannot approach confession at stated times, they do not for that reason abstain also from Holy Communion.

See more in St. Ligorius, *Practice of the Confessor*.

Article II. On the Office of the Minister After Confession

There is a twofold obligation of the Confessor after confession: 1. *per accidens*, as regards repairing defects committed; 2. *per se*, as regards keeping the seal.

§ I. On the Obligation of Correcting Defects Committed in Confession

643. **Principles.** - I. An error concerning the validity of the Sacrament committed with grave fault or grave negligence, supposing grave harm to the penitent [1], must be repaired even with grave inconvenience to the Confessor. The reason is that the Confessor, from his office and from the quasi-contract entered into with the penitent, is bound to administer the Sacrament rightly to him. But if the error is inculpable or lightly culpable, the Confessor is indeed bound from justice [2], but with lesser inconvenience. - St. Ligorius, no. 619.

[1] Grave harm or danger to the penitent would be present if, for example, you absolved altogether invalidly or in no manner a sick person near death who would for that reason incur danger to eternal salvation; or also, as St. Alphonsus says (no. 619), if the penitent were in grave danger of not confessing again, for example, while he undertakes a long sea journey. But this grave harm to the penitent would be absent when, even if the Confessor absolves beyond his faculties from reserved censures and sins, or imparted absolution altogether invalidly or in no manner, nevertheless, in the first case the reserved sins would also have been indirectly remitted to the penitent in good faith, as we suppose, while in the other cases a remedy would not be lacking either in the reception of the Eucharist, which *per accidens*, according to the common doctrine with St. Thomas, would confer first grace upon a man having attrition, or in a subsequent confession with another priest, by which even the preceding sins would be indirectly remitted, no differently than happens with sins omitted through forgetfulness.

But when that grave danger threatens the penitent, and accordingly the Confessor must admonish the penitent in order to repair the error, there are some who say generally that permission must be sought from him, because according to the common opinion the seal forbids the priest to speak, even with the penitent himself after a completed confession, about matters heard in it, etc.; and if the penitent refuses permission, nothing remains to be done by the Confessor. But St. Alphonsus (no. 622) deservedly excepts the case of absolution imparted either in no manner or invalidly. The reason is that, when the Confessor merely says, for example, that he did not absolve him, surely neither shame is cast upon the penitent nor does any reproach of sin intervene, and accordingly the reason why the penitent would be unwilling and the confession would thereby be rendered burdensome is absent. These are the causes why a priest, spontaneously mixing conversation with the penitent about things heard from him in Confession, is judged to act against the seal. For the rest, in the case the Confessor would not be bound to acknowledge that he culpably erred; it would suffice to say that an error intervened, or even more simply that it is necessary for him to absolve him again. But if the penitent, not yet admonished, returns to the same Confessor, it will not even be necessary to admonish him concerning the error; for if he is excited to

sorrow for all the sins previously confessed also, the present absolution will be directly terminated also to the preceding sins.

[2] St. Alphonsus, whom the Author alleges in this place, prefers that a Confessor who has erred inculpably is bound only from charity, unless he is the pastor of the penitent. But, as seems truer to others, the priest indeed hears the confession from charity; nevertheless, after the confession has been heard, he is bound from justice to complete the Sacrament, because he is bound from his office, however spontaneously undertaken, and from a certain quasi-contract. This condition of the Confessor remains the same even if he has erred without fault. Therefore, according as the error was culpable or inculpable, the obligation of the Confessor will differ, not because it presses now from justice and now from charity, but only as the obligation of keeping another unharmed differs according as harm is inflicted through a formal injury or a merely material one; or also as the obligation of restoring a thing unjustly taken away differs from the obligation of seeking the owner of a thing which someone found by chance. For the latter indeed undertakes the care of the thing from charity, but after this care has been undertaken he is bound, not from charity but from justice, to guard the thing and, as the circumstances require, to seek its owner.

** The VV., about to defend the holy Doctor Alphonsus, construct nearly eight columns (pp. 621-624) against this Note. Thus, therefore, they argue (p. 623): *If someone gratuitously received a deposit from mere charity, he nevertheless is bound from justice to preserve and guard the thing with that diligence with which diligent men are accustomed to preserve and guard things of this kind.... But if, after the aforesaid diligence has been employed, the thing perishes or deteriorates without any fault, he is bound to nothing at all from the title of justice.* And concerning the example proposed in the Note they add: *After he has received the thing found, though from mere charity, into his deposit and care, he is bound from justice not only to seek the owner, as the circumstances require, but also to guard the thing with ordinary diligence; but if the thing perishes or deteriorates without fault on his part, and afterward the owner claims it, he is bound to nothing.* And from these things they conclude: *Therefore, there is no obligation from the title of justice for a Confessor who has erred inculpably to repair the harm. But if the Confessor is nevertheless bound, he is bound only from charity, and indeed from that general law of charity by which we are obliged to assist our neighbor and to avert temporal and spiritual harms from him insofar as this can be done without grave inconvenience.*

Reply. I deny the Supposition and accordingly the parity; and from this I deny the Consequent and the Consequence. The supposition is that through the error of the Confessor the matter has been brought into such a state that it cannot be repaired through those means to which the same Confessor is bound from his office, just as provision cannot be made through that diligence to which a depositary is bound for a thing deposited which has already perished without the fault of the depositary. But that this is manifestly false appears from the very state of the question. For if the error of the Confessor is supposed irreparable, it is wrongly disputed whether he is bound to correct it from justice or only from charity. Moreover, St. Alphonsus (book 6, no. 619) affirms that the Confessor is bound from charity to amend his error. Therefore, the question does not concern a thing reduced to such a condition that it can be compared with a deposited thing which has already perished.

In its own manner, a somewhat more fitting comparison would be with a depositary who through an inculpable error perhaps sold or gave away the thing deposited, or placed it in a place in which he afterward observed that it would perhaps perish or suffer harm. Let the question then be posed: Would this man be bound from charity alone, or rather from justice, to recover the thing perhaps sold or given away, if it can be done, or to remove the thing from the place in which it would suffer harm? And still more clearly to our matter: Would the diligence to which the depositary is bound from justice require that, in the hypothesis, he take care to recover the thing handed over to another, or remove it from a harmful place, or would we call this an office of mere charity? Let it therefore be concluded that the VV. deduced a false consequence from an incongruous parity.

Nor, indeed, was St. Alphonsus led by such a parity or argument when he asserted that in the hypothesis the Confessor is obliged from charity alone to admonish the penitent concerning an error committed by himself. The holy Doctor (*loc. cit.*) seems to have used this reasoning: the obligation in the case does not press under grave inconvenience; therefore the Confessor is bound from charity alone. Yet none of the Doctors whom St. Alphonsus alleges there reasons thus. For all derive the obligation of admonishing from the office of the Confessor, however much they add that in the hypothesis it does not press with great detriment or inconvenience. De Lugo explains the matter well (*On Penance*, disputation 22, no. 62), whom St. Alphonsus also alleges:

Everyone (De Lugo says) *is bound FROM JUSTICE not only not to inflict evil directly and purposely upon his neighbor, but also to take care, insofar as he CONVENIENTLY CAN, that harm contrary to the right of his neighbor does not arise from his action; for example, if you*

inadvertently set fire to another's house, you are bound from justice, as soon as you notice it, to extinguish the fire if you can conveniently do so, although another who did not set the fire would be bound not from justice but from charity to extinguish it. For although the action was inculpable, it was nevertheless yours, and you are bound to take care that your neighbor suffer no detriment in his own goods from your action, if you conveniently can; for this obligation is lesser than that other obligation of not harming positively, and therefore you are not bound to this unless you can conveniently prevent it. Likewise, if in good faith you defamed someone, thinking that the crime which you had heard about him was true, you ought afterward, if you conveniently can, once the error is known, to repair his reputation and extinguish the fire of reputation which you had inculpably kindled. But the same De Lugo (*loc. cit.*) had excellently premised this principle, namely, when the error happens without grave fault: *Then*, he says, *according to the rule established above it must be said that he ought, if he conveniently can, to admonish the penitent concerning the error; OTHERWISE THE IGNORANCE OF THE PENITENT WILL NOW BEGIN TO BE IMPUTED TO HIM.*

II. An error concerning the accidents of the Sacrament is not to be repaired outside confession if the Confessor conducted himself in this matter only negatively, even culpably. The reason is that the Confessor is not bound to procure the integrity of the Sacrament and the utility of the penitent except in confession, as a spiritual physician and minister of the Sacrament. But an error is to be repaired even outside confession if it was committed positively and with grave fault, because by natural law everyone must remove the cause of evil which he positively and voluntarily placed [3]. Nevertheless, the permission of the penitent must be sought; if the penitent denies it, the Confessor is bound to nothing further. - St. Ligorius, no. 620.

[3] That the Author seems to require for the obligation of admonishing outside confession that the error was committed with grave fault appears indeed to be against the more common opinion of the Doctors. They (see De Lugo, *On Penance*, disputation 22, no. 63, and St. Alphonsus, book 6, no. 620) concede only that one who has erred to the harm of the penitent without fault or with light fault is excused from giving the admonition by a lighter cause than if the error proceeded from grave fault. In this matter, there are moreover to be weighed, on the one hand, the inconvenience and detriment of the Confessor in admonishing, as well as whatever burden there may be to the penitent in renewing a discourse about the matter of confession, and, on the other hand, the harm or danger to be feared from the error. This can be lighter, if, for example, the Confessor erroneously said that the penitent is not bound to fast or to hear Mass and things of this kind; or graver, if, for example, the Confessor so deceived the penitent that he remains in a proximate occasion, or does not remove a scandal, or contracts an invalid marriage, etc.

III. There will be no obligation to admonish outside confession if the defect concerns the integrity of confession, because this error can scarcely, or not even scarcely, harm the penitent or others [4]. - Thus commonly.

[4] Some distinction seems to be employed here. For it is one thing if the Confessor merely did not take care that the confession be integral; it is another, as De Lugo says (*On Penance*, disputation 22, no. 73), if he was the positive cause why the penitent did not confess integrally, saying, for example, that it was not necessary to confess the species or number of sins. In the first case, the doctrine of the Author avails; concerning this see Suarez (*On Penance*, disputation 32, section 6, no. 8). In the other case, those things which were said in the preceding note rather have place. Yet there are two things which seem to diminish this obligation of admonishing outside confession. One is that in the following confession another Confessor will ask both the species and the number and will instruct the penitent who perhaps hesitates on account of the error with which he had been imbued, and accordingly will correct the error; and from this the necessity of admonition ceases. The other is the fact that in the case an admonition, from the nature of the matter, which necessarily concerns grave sins, introduces a discourse about them and thereby brings great shame to the penitent; and for this reason his offense can deservedly be feared. Hence *a fortiori* that which St. Alphonsus (no. 619) had observed concerning the omission of an admonition in the case of invalid absolution avails: for in our case more than in that case this offense and burden to the penitent arise of themselves.

644. **Questions. - QUESTION 1. To what is a Confessor bound who improperly released a penitent from making restitution, or, on the contrary, obliged him to it?**

Reply 1. If from malice, vincible ignorance, or grave negligence he improperly released the penitent, he is bound to correct the error; and if he does not correct it, or if the penitent, who otherwise would have made restitution, has meanwhile become unable to make restitution, the Confessor himself is bound to make restitution in his place, because he violated the right of the creditor, namely, by impeding the restitution owed to him.

Reply 2. Likewise, if from malice or grave ignorance or negligence he obliged the penitent to undue restitution, he is bound from justice to retract the error; and if the penitent has already made restitution, he is bound to compensate him for the harm.

Reply 3. If inculpably or from light negligence he improperly obliged the penitent or released him from the obligation, he is bound from justice to correct the error, but not with so grave an inconvenience. The reason is that, on the one hand, everyone is bound from justice to prevent his own action, even an inculpable one, from causing another a harm which he can easily prevent; and, on the other hand, an obligation with grave inconvenience does not ordinarily arise from light fault or merely material fault. - St. Ligorius, no. 621.

645. ○ **QUESTION 2. To what is a Confessor bound who omitted to admonish a penitent concerning restitution to be made?**

Reply 1. If he foresees the harm, he is bound to admonish the penitent concerning the obligation with some inconvenience, if no fault or only light fault intervened, at least by reason of charity; but with greater inconvenience if he sinned gravely in the omission. - Thus commonly with St. Ligorius, no. 624.

Reply 2. More probably, he is not bound to make restitution, even if he sinned gravely by omitting the admonition. The reason is that the Confessor is not bound from justice to prevent harm to the one to whom restitution is owed. Recall the things said in the Treatise on Justice and Right, where negative cooperators are discussed, no. 691. - St. Ligorius, *ibid.*

646. ○ **QUESTION 3. Is one bound to restitution who from only light fault released a penitent from the obligation of making restitution, if he afterward neglects to admonish him when he can easily do so?**

Reply. Yes. The reason is that, although the Confessor released the penitent from restitution without at least grave fault, nevertheless, since his counsel continues to influence the harm of the creditor, once the error is known he is bound from justice to remove the cause of the harm, if he can easily do so. - St. Ligorius, no. 622, and others commonly.

QUESTION 4. Can a Confessor, without the permission of the penitent, speak with him outside confession about a defect committed in confession?

Reply. No, if the penitent has already departed. The reason is that this admonition outside confession is burdensome to the penitent. Moreover, after absolution the judgment is complete; nor does it matter that the admonition is made to repair a defect of the same confession. - St. Ligorius, no. 622; Lacroix, no. 1776, etc. Nevertheless, if the error of the Confessor brings the penitent into danger of salvation, for example, if he had not absolved him, he could, even without permission being sought, disclose his error abruptly by saying, for example, that he had not absolved him. Surely in this way

neither is the seal broken nor can a reasonable offense of the penitent be present. - St. Ligorius, no. 619.

§ II. On the Seal of Confession

The seal of confession is the religious obligation of preserving secrecy concerning those things which are known from sacramental confession.

We must treat: 1. of the obligation of the seal; 2. of the subject of the seal; 3. of the object of the seal; 4. of the various ways of violating it.

Point I. On the Obligation of the Seal

647. **Principles.** - I. There is the strictest obligation of preserving the seal of confession inviolably. This is established: 1. from natural law, and indeed under the title both of justice and of religion; 2. from positive divine law, at least implicitly, for from the institution of Christ confession must be secret; therefore by that very fact the obligation of preserving the seal was imposed upon Confessors by Christ; 3. from ecclesiastical law, as is established from several passages of canon law, especially from the Fourth Lateran Council, chapter 21, *Omnis utriusque sexus*, where it is said: *But let the Confessor take every care not in any way to betray the sinner by word or sign or in any other manner; but if he should need more prudent counsel, let him seek it cautiously without any expression of the person.*

II. The obligation of the seal of confession always presses in every case, so that in no possible case is it lawful to reveal anything heard and received in confession. The reason is manifestly evident, because if some exception could be given, men would always fear that such a sin might be that cause for licitly breaking the seal, and consequently the Sacrament would become odious. Moreover, no cause of obtaining a good or avoiding an evil can compensate for this evil of hatred of the Sacrament. - See St. Ligorius, no. 634.

III. The obligation of the seal arises from every and only sacramental confession, namely, one which is made with the intention of accusing oneself and obtaining absolution. It is said, first, *from every*, because then the whole reason of the precept is present; and this avails even if absolution was not conferred for any cause whatever, since the confession is made in order that absolution may sometime be received. It is said, second, *from only*, because sacramental confession alone introduces the obligation of the seal, since any other manifestation has no relation to the Sacrament of Penance. - St. Ligorius, no. 536, etc.

648. **Resolutions.** - 1. A confession knowingly made to a layman or to a priest lacking jurisdiction does not introduce the obligation of the seal, but only that of natural secrecy. It would have to be said otherwise if the priest were believed approved, because the confession on the part of the penitent is truly sacramental.

2. If someone approaches a Confessor with the intention of deceiving him, mocking him, drawing him into sin, or extorting something from him, he does not accuse himself in order to the Sacrament, and consequently there is no obligation of the sacramental seal.

3. If someone opens his conscience to a Confessor without the will of receiving absolution, but in order to obtain counsel or to satisfy in some manner the command of a Superior, only the obligation of natural secrecy presses, because this is not done in order to absolution.

649. **Questions. - QUESTION 1. Is there slightness of matter in a violation of the seal?**

Reply. No, at least in direct revelation. The reason is that even the slightest matter includes the whole reason of the precept. - St. Ligorius, no. 635.

I said, *at least in direct revelation*, because if the danger of indirect revelation is very remote or little probable, lightness of matter can be given. For if some revelation should then perhaps follow, it would have to be judged to follow by chance and *per accidens*.

650. ○ **QUESTION 2. Is it lawful to use a probable opinion in the matter of the seal?**

Reply. No, because it is not lawful to use a probable opinion to the prejudice of a certain right which another possesses, etc. Therefore, the Confessor is bound to the seal even in doubt whether something was said by the penitent in order to confession. - St. Ligorius, no. 633 [1].

[1] It will be useful to add here what Diana has on this matter (volume 1, treatise 8, at the beginning), in the proem to the Treatise on the Sacramental Seal: *Perhaps you will wonder* (he says), *friendly reader, that in the following Treatise I always embrace the stricter opinions, although in other matters I have willingly adhered to more benign opinions for relieving consciences. But I judged that this should deservedly be done. For lax opinions concerning the present matter render the Sacrament of Penance odious and burdensome, which every right reason demands should be rendered easy and light by us. Therefore, in these matters, when two opinions are present, that one must always be chosen which favors the Sacrament, to whose most holy tribunal penitents are to be attracted rather than withdrawn. Add that, although speculatively speaking many of the opinions written below against the sacred seal are probable, nevertheless, as the opposing Doctors themselves concede,*

when they are reduced to practice without sin, one must proceed with such great circumspection that they judge it can scarcely be done without some scandal. Therefore, I rightly think that in this matter Confessors must always hold in favor of the sacred seal.

QUESTION 3. What should a Confessor reply to one asking about things heard in confession or about absolution imparted?

Reply. As regards the first, let him reply, even with an oath interposed if there is need, that he knows nothing or has heard nothing, because he has no communicable knowledge. - Thus all.

As regards the second, let him reply: *I have discharged my office*; or, *Are such questions to be asked?* - St. Ligorius, *Apostolic Man*, no. 148.

Point II. On the Subject of the Seal

651. **Principles.** - I. Every Confessor is primarily bound to the seal, whether true or fictitious and by error believed legitimate, and consequently even a layman who should pretend to be a priest and hear confession. The reason is that whenever someone confesses in order to the Sacrament, whoever hears him contracts by that very fact the obligation of the seal; otherwise hatred of the Sacrament would follow from it. - Thus all.

II. Those are secondarily bound who become participants in the confession, or all those to whom knowledge of the confession comes in any manner, whether from the confession itself or from means ordered to it. It is said, first, *from the confession itself*, for the matter accused comes to their knowledge

on the same occasion; therefore the same cause on account of which the obligation of the seal is given is present, namely, lest hatred of the Sacrament be created. It is said, second, *from the means*, for hatred of the means redounds upon the end itself.

Hence the following are bound to the seal: 1. interpreters employed in making confession [1]; 2. Superiors from whom outside the Sacrament the faculty of absolving, or of receiving absolution from a reserved case, is sought; 3. those who hear the sin while someone confesses, whether deliberately or even inculpably, and likewise if others should perhaps hear it from them; 4. those who write the confession of the uneducated or of those ignorant of the language of the Confessor [2], especially if confession cannot be made in another manner; 5. Doctors consulted by the Confessor with the permission of the penitent; 6. all those to whom the Confessor sacrilegiously or imprudently manifested sins heard in confession. - St. Ligorius, nos. 647 and 648.

[1] Namely, if someone spontaneously wishes to confess through an interpreter; for, as was said elsewhere, no one is ever bound to this.

[2] Of these also that which was said about employing an interpreter avails, namely, that no obligation to use these means is present.

652. **Questions. - QUESTION 1. Is the penitent also obliged by the seal with respect to the Confessor?**

Reply 1. He is not bound to the sacramental seal, because the obligation of the seal is only in favor of the penitent.

Reply 2. But he is bound to natural secrecy concerning those things which he cannot reveal without unjust harm to the Confessor, or contrary to his reasonable will, or without injury and contempt of the Sacrament. - St. Ligorius, no. 647.

QUESTION 2. Can the Confessor speak with the penitent concerning the latter's confession?

Reply 1. He can speak in confession about all past confessions [3].

[3] Understand this if some grave cause requires it. For even within confession, unless a long habit of confessing to the same priest has introduced a certain familiarity between him and the penitent, it is ordinarily burdensome to penitents that the memory of sins which they confessed at other times be renewed. Indeed, it is still less profitable, nor is it pleasing to penitents, that after a long time the Confessor appear mindful of old sins; and, on the contrary, it is profitable that the Confessor, as a minister of God, display in himself what is said of the Lord God himself: *You have cast all my sins behind your back* (Isaiah 38:17); and, *He will cast all our sins into the depths of the sea* (Micah 7:19); and, *I will remember their sins and iniquities no more* (Hebrews 10:17).

Reply 2. He can also speak after absolution before the penitent has departed, or if he afterward returns. The reason is that, although the Sacrament is complete, the judgment nevertheless still morally continues.

Reply 3. Outside the sacred tribunal he cannot speak even one word with him, without the penitent's permission, concerning those things which pertain to his confession. Except the case in which the penitent himself first speaks about his conscience [4]. - St. Ligorius, no. 651.

[4] That is, if he speaks of those things which were the matter of confession; for not every discourse introduced by the penitent about matters of his conscience grants the faculty of speaking about all the things heard from him in confession. Indeed, the Confessor ought not go beyond the matter about which the penitent spoke.

653. ○ **QUESTION 3. Is one who reads a paper on which the penitent wrote his confession bound to the seal?**

Reply 1. No, *per se*. The reason is that this is not a means ordered of itself to confession and therefore does not of itself induce the obligation of the sacramental seal, but only of natural secrecy. Nevertheless, this presses *per se* under grave sin unless the matter concerns the slightest faults. - St. Ligorius, no. 650.

Reply 2. *Per accidens* the obligation of the seal can be present if the paper were or had been a necessary means for confession; for example, if it were written by a mute person or directed to a Superior on account of some reservation [5]; likewise if the paper had already been handed to the priest; but especially if someone were to read it while it is in the hand of the Confessor or in the act of confession, or if it had been lost by the Confessor himself [6], because in these cases it pertains to confession. - St. Ligorius, *ibid.*

[5] It was already observed elsewhere that no one, not even a mute person, is bound to write; and if the Superior who can grant the faculty for reserved cases is absent, it was already said elsewhere that the penitent can confess to another, by whom he may be directly absolved from the non-reserved sins, and thus the reserved sins also be indirectly remitted.

[6] Cardinal De Lugo, from whom these things were taken, does not limit the case to a paper lost by the Confessor himself, but says generally (*On Penance*, disputation 23, no. 48): *Indeed, even if after absolution someone found it in the confessional, it seems probable that he would be bound to the seal, because it seems to be the confession itself remaining.* But it can be left in the confessional also by the penitent, whether he received it back after it had been read by the Confessor, and by the best counsel the Confessor will always return the paper to the penitent, or whether the penitent confessed from the writing. Wherefore it seems that the canon discussed above at no. 650, question 2, must also be employed here.

654. ○ **QUESTION 4. Is a Doctor consulted by the penitent himself bound to the seal of confession?**

Reply. No, at least more probably, if he is consulted concerning a confession to be made to another; but he is bound only to natural secrecy. The reason is that the obligation of the seal arises from sacramental confession alone, in which the penitent manifests sins in order to absolution. - St. Ligorius, no. 549; Suarez, disputation 33, section 4; Billuart, dissertation 8, article 3, against some who therefore affirm it because revelation would render confession odious. But, as St. Ligorius deservedly replies, not confession itself but the consultation would become odious.

I said above, *if he is consulted concerning a confession to be made to another*, because if the penitent consults him concerning a confession to be made to that same man, he is bound by the seal, since this consultation must be held as a confession begun.

Point III. On the Object of the Seal

655. **Principles.** - I. The object of the seal is all sins confessed [1], and all things which pertain to the individual explanation of the sins. The reason is that the reason of the seal presses not only for the sins but also for all those things which assist in explaining them; and, moreover, these constitute one thing with the sins.

[1] *It is certain* (De Lugo says, disputation 23, no. 50) *that all mortal sins, and indeed venial sins also, are matter of the seal, yet with this distinction: mortal sins not only in species but also in genus; but venial sins in species and not in genus. For the Confessor can say: This man*

confessed his venial sins to me. For by the very fact that he confessed, he is supposed to have confessed venial sins; wherefore, just as he can say that the man confessed, so he can say that he confessed venial sins and received penance for them.

II. The object of the seal is also whatever was manifested in confession whose revelation would turn to the burden of the penitent and to hatred of the Sacrament, because the seal was introduced lest the faithful be withdrawn from the Sacrament of Penance by fear of revelation.

656. **Resolutions.** - The following fall under the seal of confession:

1. All circumstances of sins, even those declared after absolution, for they are morally one with the sins already accused; indeed, the same is to be said even if it were doubtful whether the circumstances were declared in order to confession or not.

2. The sins of an accomplice, even if they were revealed together with the sin without necessity, because they were said from the intrinsic occasion of confession.

3. Penance imposed, unless perhaps it is very light or one of those which are customarily imposed for the slightest faults. - St. Ligorius, no. 604 and following.

4. Defects manifested through confession in order to explain the nature of a sin; for example, if a penitent says that he received sacred Orders with an irregularity because he is illegitimate, etc. - St. Ligorius, *ibid.*

657. **Questions. - QUESTION 1. Do the virtues and scruples of a penitent fall under the seal?**

Reply as to the first. No, *per se*, unless a burden to the penitent or to others follows from it [2].

[2] To this also pertain extraordinary gifts of God and charisms. As De Lugo judges (*On Penance*, disputation 23, no. 58), and after him St. Alphonsus (no. 642) with others, they can become matter of the seal at least indirectly when they are manifested in order better to declare the malice of one's own sin on account of ingratitude. Diana, however (volume 1, treatise 8, resolution 19), thinks that this rarely has place; but he agrees with De Lugo that the penitent can bind the Confessor under natural secrecy to conceal these virtues and gifts. For the rest, the reason brought forward why virtues and gifts can become matter of the sacramental seal does not seem to have great force.

** At the final words of this Note the VV. write (p. 643, in the Note): *Nevertheless, Father B. must concede that the same* (reason) *is at least probable and therefore cannot licitly be rejected or neglected by the Confessor.*

Reply. According to all, and also St. Alphonsus, some reason, in order to produce the probability of an opinion, must be grave and solid. Moreover, in the case, although from the revelation of extraordinary gifts someone could conjecture that those gifts were manifested by the penitent not only for the sake of direction but also to declare his own malice and ingratitude, what indeed will you find in this which in some manner pertains to the seal of confession? Let someone conjecture, so be it, that perhaps the penitent on account of those gifts was affected by more intense sorrow for his sins. But since penitents enriched with gifts of this kind are accustomed to conceive the most intense sorrow even for the slightest defects, what at length does that conjecture imply which can be referred to a violation of the sacramental seal?

St. Alphonsus (book 6, no. 641) excepts the case if those gifts are stated in order to explain some defect. But even this reason seems sought from too far away. For will it be against the seal of confession to say that the penitent is either a Religious, or marked with sacred Orders, or married, or a schoolmaster, etc., because the penitent manifested some one of these circumstances in order to manifest some defect?

Therefore, the matter seems to be reduced to those limits which De Lugo proposes thus (disputation 23, no. 58): *Sometimes* (those gifts) *can be stated in order to declare some sin better, for example, ingratitude toward God after these or those gifts and benefits of God; or inconstancy in good after such a firm purpose of procuring perfection, and things of this kind. And then I believe that they pertain to the seal, since they are now, at least indirectly, matter of confession; AND, MOREOVER, IT APPEARS THAT THE PENITENT DOES NOT*

WISH TO MANIFEST THEM OUTSIDE CONFESSION, BUT TO RETAIN THEM UNDER THE MOST STRICT SEAL OF CONFESSION. Why indeed did he add this final condition?

Reply as to the second. Yes, because scrupulosity is in some manner matter of confession, and, moreover, a burden to the penitent would follow from such a manifestation. - St. Ligorius, no. 644; Lacroix, no. 1947; De Lugo, etc. [3].

[3] A scruple is certainly matter of the seal when someone confesses as a sin that which is not such, but which by a false judgment was thought by him to be a sin. Thus De Lugo (*On Penance*, disputation 23, no. 59), who nevertheless judges otherwise concerning scrupulosity, as also concerning other defects of the penitent, which, he says (*ibid.*, no. 60), the Confessor can gather from the very manner of confessing. Concerning these, some seem to suppose that they are contained under the seal and therefore that the Confessor cannot say without violating it that the penitent is scrupulous, spends time on impertinences and trifles, breaks the head of the hearer, is morose, and things of this kind. But I believe more truly that they are not contained, as Navarrus, chapter 8, no. 12, says that it is not against the seal if someone says that such a penitent pounds the head of the Confessor with his minutiae. The reason is that some defects are manifested by the penitent to declare his conscience and sins, and these are contained under the seal. Others are done there by the penitent himself, which the Confessor does not hear from the report of the penitent but himself sees and perceives; and just as these are not spoken secretly, so they are not under the seal.

Hence St. Alphonsus also (no. 644) concedes that the Confessor can flee a penitent who is commonly known to be prolix, restless in confessing, etc., because it clearly appears that the Confessor flees lest he be affected by weariness and an irksome loss of time from his natural prolixity and restlessness. Nevertheless, the same St. Alphonsus, both as regards other defects (no. 643) and as regards scrupulosity (no. 644), says that he does not acquiesce in the opinion of De Lugo and rather adheres to the opinion of Tamburini, who teaches against De Lugo that it is not lawful to reveal them. But it is false that De Lugo concedes that it is lawful to disclose those things about which the question is; for both he himself and Navarrus contend only that this manifestation is not a violation of the sacramental seal. It is one thing for some manifestation not to be a violation of the sacramental seal, and another for that manifestation to be lawful, since it can be against the law of natural secrecy. St. Alphonsus himself had excellently distinguished these two things (no. 642). You have an example of a revelation which can render confession odious and yet is not a violation of the seal below at no. 659.

** The VV. do not approve (p. 642, in the Note), first, Cardinal De Lugo's distinction between defects which are manifested by the penitent to declare his conscience and sins, and other defects which the Confessor does not hear from the report of the penitent but himself sees and perceives. Likewise, second, they do not approve the distinction between a manifestation which is a violation of the sacramental seal and a manifestation which is not licit, as being contrary to the law of natural secrecy, but nevertheless is not a violation of the sacramental seal.

And they reply: *That these things may be answered briefly, it suffices to recall the twofold rule handed down by the holy Doctor on this matter. The first general rule is that the seal is injured whenever he uses confession... to the burden of the penitent* (*Apostolic Man,* treatise 16, no. 157). *The second: It is not lawful to use a probable opinion to the prejudice of a certain right which another possesses; but the penitent possesses the right that he suffer no burden on the occasion of his confession* (book 6, no. 633).

Reply. As regards the second of the aforesaid distinctions which the VV. reprove, surely while writing these things they seem to have forgotten what on the preceding page (641) they themselves had written thus: *The sole question treated here is whether the Confessor breaks the seal, not whether he speaks licitly and sins by no other reason.* But surely they treat of speech which imports manifestation, for the question concerns a Confessor who says that in confession he heard the sin of a Religious of such an Order. Why, therefore, do they not apply to themselves the twofold rule of the holy Doctor which they object against the Note? *Weight and weight; measure and measure!*

As regards the former distinction of Cardinal De Lugo, here also the VV. seem to have forgotten those things which St. Alphonsus (book 6, no. 642) has thus: *It is asked whether a Confessor breaks the seal who divulges the natural defects of his penitent, namely, that he is ignoble, poor, or ignorant, deaf, and things of this kind. It is replied: If the Confessor learned such defects insofar as they were manifested by the penitent in order to explain and more fully to manifest his conscience* (as he says a little afterward), *then they certainly fall under the seal, as is commonly held,* etc., with De Lugo, etc. *But it is otherwise if the Confessor learned those defects insofar as the penitent disclosed them incidentally or impertinently to confession, as is also commonly said.... And this is very probable. The reason is that, since the penitent voluntarily discloses such defects without any order to explaining sins, he seems in no way to subject them* (nor could he subject them) *to the keys of the seal, since they pertain in no way to confession.* And in these words you now have the distinction

of Cardinal De Lugo. Indeed, St. Alphonsus goes still further, for he speaks of defects which the penitent voluntarily discloses, while De Lugo treats not of defects voluntarily disclosed by the penitent, but of those which the Confessor himself sees and perceives, and which he would observe no differently even if he were conversing with the penitent not on the occasion of hearing confession but about a mathematical matter.

QUESTION 2. Do the natural defects of a penitent fall under the seal, for example, that he is deaf, stammers, is poor, ignorant, lame, and so forth?

Reply 1. Yes, if the Confessor learned such defects from the declaration of the penitent, or insofar as they were manifested in order to declare sins [4], because then they have a connection with confession, and their declaration would render the Sacrament odious.

[4] It can scarcely be understood how the fact that the penitent stammers, is lame, deaf, etc., pertains to declaring sins. Moreover, since these defects cannot be hidden from others, they cannot even be matter of natural secrecy. Rather, the fact that someone is ignorant of the office which perhaps he exercises, for example, that of a physician, advocate, pastor, Confessor, teacher, etc., could pertain to declaring sins.

** Here the VV. (p. 643, in the Note) censure Father Gury because he does not report the true doctrine of St. Alphonsus exactly; then they refer to *Apostolic Man* (treatise 16, no. 154), where the holy Doctor, they say, distinguishes among the defects stated indiscriminately by Gury, namely, defects whose manifestation the penitent can of itself bear with difficulty, and defects which are not a source of shame or reproach to him.

Reply. Gury reports the defects indiscriminately, just as St. Alphonsus sets them forth indiscriminately, who has (book 6, no. 642): *That he is ignoble, poor, or ignorant, deaf, and things of this kind.* And again (*ibid.*, no. 643): *That he lisps, is deaf, uncultivated, of dull intelligence*, etc. Indeed, even in the passage which the VV. allege from *Apostolic Man* (treatise 16, no. 154), he has thus: *The natural defects of the penitent also fall under the seal* (as we already intimated), *for example, that he is deaf, stammers, is poor, ignorant, etc., whenever knowledge of them is had from confession..., even if the penitent were to set forth such defects of his without necessity but only for a better explanation of his sins*. Therefore, there was no reason for the VV. to reproach Gury because he reports these defects indiscriminately, etc.; nor likewise was there reason to censure the Note because it says therein that it scarcely appears how the fact that the penitent stammers, is lame, deaf, etc., pertains to declaring sins. For the rest, since among defects of this kind some can pertain to the matter of the seal and others in no way, as we saw in the preceding Note to be admitted even by the VV., but Gury there treats only of the seal and merely expounds the doctrine of St. Alphonsus concerning this, it was not necessary for him to introduce a discourse there concerning other distinctions, since they do not pertain here.

Reply 2. No, however, if the Confessor learned those defects only incidentally. - St. Ligorius, no. 642, and others commonly, against some.

658. ○ **QUESTION 3. Do sins committed in confession itself, for example, impatience or insult toward the Confessor, fall under the seal?**

Reply 1. No, *per se*, because, as is evident, the penitent does not confess those faults.

Reply 2. Yes, nevertheless, in most cases, although only *per accidens*, because, even though those sins are not *per se* matter of the seal, they nevertheless often involve in some manner *per accidens* a danger of revelation; for they furnish a probable judgment that the Confessor either was unwilling to absolve the penitent or rebuked him more severely on account of a graver fault, etc. [5].

[5] Thus De Lugo, who denies that these things are under the seal (*On Penance*, disputation 23, no. 60), and St. Alphonsus, who affirms it (no. 643), are excellently reconciled.

** The VV. also wished to censure this short Note (p. 643, in the Note), saying: *Father Gury has reconciled nothing, nor did he intend to reconcile anything, since he reports the opinion of the holy Doctor in nearly the same words.*

Reply. I altogether deny it. For in Reply 2 Gury added the word IN MOST CASES, which St. Alphonsus has neither in book 6, no. 643, nor in *Apostolic Man*, treatise 16, no. 154. But that word reconciles the holy Doctor, who rightly affirms that these things are under the seal when they involve in some manner a danger of revelation, with Cardinal De Lugo, who rightly denies it whenever they do not involve this danger; for example, if the penitent broke forth into words of grave impatience because the Confessor, having interrupted the confession, ran to assist a man in the church itself who had been seized by a sudden apoplexy.

But a theft committed by the penitent to the harm of the Confessor himself during confession would not fall under the seal. Indeed, if it were established that the thief came to confess so that he might have an occasion for stealing, the sins accused by him would not be matter of confession, since such a confession would not be true but only simulated.

659. ○ **QUESTION 4. Does one violate the seal who says that he heard such a person in confession?**

Reply. No, for the fact that someone approaches confession is known externally or outside confession. Moreover, this is not odious *per se* but rather brings praise. Nevertheless, the Confessor would be bound to natural secrecy if someone had approached confession secretly. For the rest, sometimes a suspicion of grave sin could thus be introduced *per accidens*. - St. Ligorius, no. 638.

QUESTION 5. Does one violate the seal who says that he absolved such a penitent?

Reply. No, *per se*, because in such a case that cannot be burdensome to the penitent. Nevertheless, in some circumstances it could become burdensome to others concerning whom the same cannot be said. - Thus commonly. Therefore parents, teachers, masters, when asking about absolution given to children or subjects, are to be referred to the penitents themselves. Nuns devoted to the care of the sick in hospitals are accustomed to ask similar questions, so that they may know whether they ought to prepare the things necessary for administering Viaticum; they likewise are to be referred to the sick, or it is better that permission be sought from the sick person to admonish the Nuns or others. It will suffice, however, to say to the sick person: *I will give notice*, etc. [6].

[6] Understand this when the sick person is to receive the Holy Eucharist; for when he ought to omit Holy Communion, it will seem less suitable for the Confessor to assume for himself this care of admonishing others about the matter.

660. ○ **QUESTION 6. Can a Confessor who hands a penitent a certificate in testimony of confession declare that he was absolved?**

Reply. Absolutely not. The reason is that a comparison would be made with penitents who could not be declared absolved, and consequently an indirect revelation of confession would follow. - St. Ligorius, no. 639 [7]. The holy Author excepts the case in which the certificates were printed and it was said in them that absolution had been given, because such certificates would be handed to all.

[7] St. Alphonsus in fact has none of these things. But, setting aside the question whether it is ever expedient to testify concerning absolution imparted, it is manifest that the resolution of the Author has place only when that comparison and the consequent inconvenience intervene.

QUESTION 7. How is a certificate of confession to be drawn up?

Reply. It is customarily drawn up thus: *I, the undersigned, testify that I heard the confession of N. on such a day*, etc. The Confessor subscribes his name to this certificate. Or more briefly: *I heard such a person in*

confession on such a day, etc. It can also be said: *I heard a sacramental confession*, because every confession which is made in order to receive absolution is sacramental, whether absolution was given or not.

661. ○ **QUESTION 8. Does a Confessor violate the seal who denies a certificate of confession to an indisposed penitent?**

Reply 1. Yes, whenever he denies the certificate to a penitent asking for it outside confession. The reason is that he uses knowledge from confession for acting externally, and indeed with a great burden to the penitent.

Reply 2. Yes, even if the penitent who was not absolved asks for the certificate within confession and the matter concerns those circumstances in which it is customarily given or is required by the Superiors of the penitent, as often happens at Paschal time for students of colleges, servants, etc. The reason is that from the denial of the certificate it becomes known to others that the penitent was not rightly confessed or absolved, and therefore there will be an indirect violation of the seal. - Thus commonly. - St. Ligorius, no. 639; Elbel, no. 492; Sporer, no. 839, etc.

Reply 3. No, however, if the penitent asks for the certificate in confession outside the aforesaid circumstances, or when it is not customarily given to all or is not required by Superiors. The reason is that then the Confessor, saying nothing, conducts himself merely negatively and does not approve that confession by a positive testimony, to which he is not bound. Moreover, the penitent is not compelled by necessity to declare to others that he was not absolved; hence, if he says this, he himself discloses his indisposition, not the Confessor. - Thus De Lugo, disputation 23, no. 87, with others.

Sometimes, however, the Confessor can give a certificate of confession even to an indisposed penitent on account of various inconveniences which would follow from its denial; nor will he then cooperate in the sacrilege of the penitent, who perhaps will use this testimony of confession in order to receive a Sacrament of the living, for example, the Eucharist or matrimony, in the state of sin. The reason is that the penitent will have to attribute this to his own malice. - Elbel, no. 492.

Reply 4. No, also, whenever the penitent made a simulated confession, for example, to flee punishment, avoid infamy, or seize a certificate, as if a young man confessed thus with matrimony in view: *I did what young men of my condition are accustomed to do; nothing else remains to be said; I do not seek absolution, but a testimony that confession has been made*. For the seal is not broken whether the certificate is denied within or outside confession. The reason is that the seal arises from sacramental confession alone, which is in no manner had here. Nor generally can the Confessor grant such persons a certificate, because without sufficient reason he would cooperate in their future sacrilege. Moreover, he would assert a falsehood, namely, that they had confessed, which is not true. - De Lugo, disputation 23, no. 87; Elbel, no. 494, etc.

662. ○ **QUESTION 9. What should a Confessor do upon discovering that the penitent is deaf?**

Reply 1. If he observes the deafness at the beginning of confession, he ought to enjoin the penitent to return at a suitable time and place.

Reply 2. If he discovers it in the course of confession, he generally cannot enjoin the penitent in a loud voice to return, lest he introduce into others a suspicion that the man confessed grave matter; but let him hear the sins in the best manner he can and, after omitting questions, impart absolution to the penitent absolutely if he judges him disposed, or conditionally if he doubts the disposition; and let him impose a light penance upon him, lest others judge that he sinned gravely. - Thus St. Ligorius, no. 642, with others commonly.

663. ○ **QUESTION 10. Can the Confessor admonish an accomplice, with the permission of the penitent, or another person for correcting the accomplice?**

Reply. Yes. The reason is that an accomplice acquires no right to the sacramental seal from the confession of another accomplice, for this seal was instituted in favor of penitents alone; and therefore the right of secrecy is acquired only by the one who entrusts it. - St. Ligorius, no. 641, and others most commonly.

Ordinarily, however, it is not expedient that the Confessor seek such permission [8]; but it will be better to induce the penitent to disclose this to him outside confession; indeed, it will be still better that the penitent himself report the matter to another who can bring a remedy to the evil. - St. Ligorius, *ibid.*

[8] Recall here the things said above (no. 501) concerning Confessors who seek the name of an accomplice even for correction, and concerning the Constitutions of Benedict XIV on the same matter.

Point IV. On the Various Ways of Violating the Seal

664. ○ The seal can be violated in two ways: 1. directly, by expressly revealing something pertaining to the secrets of Confession, for example, if it is said, *Titius did this*, etc.; 2. indirectly, by saying or doing something from which someone can know or suspect a sin or defect [1] of the penitent known in confession alone, or from which shame, vexation, disgrace, harm, or any burden whatever can arise for the penitent or others, for example, accomplices [2].

[1] Distinguish, however, among defects; for, as was said above at no. 657, the revelation of just any defect does not import a violation of the seal.

[2] Understand these things with the suitable limitations which can be taken from the foregoing. For not every word or deed of a Confessor from which vexation, disgrace, harm, or a burden to the penitent follows pertains to the breaking of the sacramental seal, but only that from which some direct or indirect revelation follows of those things which pertain to the seal. Thus, for example, if the Confessor reveals that someone came also to seek alms, intercession, mediation for entering into peace, etc. Otherwise, the priest indeed will not be free from fault, but he will not sin against the seal.

** The VV. censure this short Note (p. 643, in the Note) because, they say, the distinction between a burden which is or is not against the seal involves a begging of the question.

Reply. The VV. do not seem to have sufficiently examined the first words of the Note, where it is said that the limitations can be taken from the foregoing. For in the foregoing that distinction is sufficiently declared. The VV. have an example in St. Alphonsus (*Apostolic Man*, treatise 16, no. 154), where he writes: *If the penitent were commonly known to be excessively prolix and troublesome in confessing, the Confessor does not break the seal if he were to flee from him..., when that penitent at the same time was commonly held to be of a good conscience.* Behold an act of the Confessor which surely happens to be burdensome to the penitent and nevertheless is not against the seal.

Rule I. The seal is violated indirectly whenever penitents or others can deservedly be offended by things said or done by the Confessor from knowledge had in confession alone [3]. But it is not judged violated if the penitents would regard these things indifferently. The reason for each is sufficiently established from the things said above. - Thus commonly.

[3] Understand this if the Confessor uses knowledge of those things which, according to the foregoing, are matter of the sacramental seal. The second part of this rule must also be rightly understood; for if the matter concerns the seal, the Confessor will sin no less against it even if he believes that perhaps the penitents would not take it ill.

Rule II. In doubt whether in such a manner of speaking or acting there is danger of revelation or offense, one must stand for the safer side, or the one favoring the seal. - Thus commonly; and it is established from the things said above, no. 650.

Rule III. There is no violation of the seal if someone narrates a sin heard in confession in such a manner that the sinners cannot be revealed by any indication. Nevertheless, apart from the utility of instruction or of seeking counsel, one must generally abstain from similar narrations; the reason is that lay hearers, especially the simple, are easily scandalized, suspecting that the seal is violated. And sometimes in these frequent and promiscuous conversations there is danger that someone may be brought into suspicion concerning the penitent, and indeed that revelation may follow.

665. **Resolutions.** - The secrecy of confession is indirectly violated by:

1. One who, praising one above others whom he heard, says that he committed only venial sins, because the others are thereby easily brought under suspicion of mortal fault.

2. One who speaks with others about a sin of the penitent known through confession alone, although they know it from another source, even if the hearers do not notice that it was received from confession.

3. One who says that he did not absolve such a person, that he sent him away until such a time, that he has not yet absolved him, or that the confession has not yet been completed [4]. The reason for the last is that a long confession ordinarily denotes many sins or the indisposition of the penitent, unless it were known to be a general confession or one resumed after a long time, so that the penitent would not take this ill. Likewise, one who says of Titius, known as a thief, that he confessed his thefts to him with great contrition.

[4] It differs from these if the Confessor merely says that someone will return to him, since a penitent can and in fact does return for reasons other than those listed by the Author; and, moreover, it is sometimes necessary to tell someone this so that free access to the Confessor may lie open to the penitent. But what the Author adds, that the penitent would not take this ill, pertains to this case.

4. One who rebukes a penitent in a loud voice or in another manner intelligible to bystanders [5], for this is both grave for the penitent and introduces into others the suspicion that he confessed grave sins; *a fortiori* if by raising his voice excessively he were to repeat the sins of the penitent or question him about their circumstances.

[5] Understand this unless it is established that the penitent is rebuked for another cause, for example, on account of importunities, etc.

5. One who speaks with another Confessor about the sins of some penitent, even if he confessed the same sins to each.

6. One who, after hearing the confessions of a few persons, says that he heard such a sin, although he conceals the person; for each one suffers some suspicion against himself from that revelation. Likewise, one who so narrates sins known from confession that the hearers can by some reason conjecture or suspect who committed them.

7. One who, when narrating the sins of some person which he knew outside confession, adds some circumstance known from confession alone; or one who uses knowledge from confession to determine or confirm the matter more precisely.

666. ○ 8. One who should say that he heard a grave sin in such a monastery, even if he did not name the person, because the individual Religious of that community suffer detriment [6]. *A fortiori*, one would violate the seal who should say that such sins are committed in that community. It is otherwise, however, if he should say that he heard the grave sin of some Religious in general without naming his Order, because this is neither a revelation of the seal nor does it redound to the burden of the penitent or of any Order, since among the various Orders there are not lacking some less good Religious. But scandal to the laity must be carefully guarded against.

[6] If the individual Religious of that house suffer detriment, it is manifest that he who confessed the sin is also a participant in the infamy and burden, since he too is a part of that house; and hence arises the true reason why this turns to the prejudice of the seal.

St. Alphonsus (book 6, no. 654) attributes the opposite opinion, which denies that the seal is violated through this, to Escobar (book 16, no. 752), and, in Escobar, to Nugno, Fagundez, Candido, and Henriquez, whom, however, I know not how, he afterward alleges for the other contrary opinion. Moreover, Henriquez (book 6, chapter 21, no. 6, note e) brings forward for himself Navarrus, Ledesma, Victoria, Mantica, and other more recent authors, as he says; to these, from Diana (volume 1, treatise 8, resolution 12), Malderus can also be added. But two things concerning these occur as needing observation. For, first, most of them discuss not a Monastery or Community but a Religion or Religious Order. Second, they deny that the seal is violated in the strict sense only to this extent, and indeed merely by way of opinion, insofar as such a Confessor can be punished as a revealer of confession, as Nugno says in Diana (volume 1, treatise 8, resolution 11, no. 3), or, as Malderus has it, insofar as he can be punished with the ordinary penalty inflicted against breakers of the seal. For the rest, these Doctors do not deny that one sins more or less gravely according to the quality of the crime. Indeed, Fagundez (*On the Second Precept of the Church*, book 6, chapter 5, no. 12) expressly admits with Suarez that one sins against the seal. Suarez has these things on this argument (*On Penance*, disputation 33, section 3, no. 8): *One must take the greatest care lest the community to which such a person belongs be offended, as if he should designate a RELIGION in particular, because in truth this now redounds to a notable burden of the penitent on account of the injury which is done to the Community. See St. Antoninus and Navarrus, Peter Soto and Ledesma, who says that in the strict sense this is a breaking of the seal. But Navarrus says that in the strict sense it is not against the seal, although it is a sin. But surely it is not just any sin, but one against the Sacrament; therefore it is also against the seal.* And Escobar, after he had said (*loc. cit.*) that a Confessor of this kind sins most gravely while he involves so great a Community in infamy, concludes that a priest speaking so incautiously is indeed worthy to be barred from this most grave ministry, which requires men endowed with prudence.

Since these things are so, and since the aforesaid Authors say these things not of a Monastery or Community but of a Religious Order, or certainly also of a Religious Order, while they themselves acknowledge that they have held a more lax way than others in this matter, the opinion which St. Alphonsus embraced, surely much more lax, concerning one who detracts from some Religious Order from knowledge of confession will with difficulty be admitted. For after he said (*loc. cit.*) that the seal is violated if the Confessor says that a Religious from such a Community confessed a grave sin to him, or

that such sins are committed in that Community, he immediately adds: *Not so, as Father Concina says..., if he merely said that he had heard the sin of a Religious of a certain Order, because this is neither a revelation of the seal nor does it redound to the burden of the penitent, since in every Order there are some bad men; hence neither does scandal arise nor is the Religion defamed, unless that Religion were of stricter observance.* These things are not only against the opinion of all Theologians, and also of those who seemed to hold a more lax opinion about this, but are supported by reasons which no one will easily admit.

And surely who would seriously say that the penitent is not burdened by this? Grant, indeed, that his person is not betrayed; but will it not be grave for the penitent that from his confession an imprudent Confessor takes occasion to defame the whole Order? Indeed, does not the penitent himself, as a member of the same Community, as Suarez also observed above, participate in the infamy? Indeed, this can deservedly appear so grave that no one can call into doubt that a penitent who prudently believes that his sin will thus be revealed by the Confessor can conceal it in confession; for there is a sufficient cause, namely, the danger of infamy both to himself and to his own Order.

But as for what is added, that neither scandal nor infamy to the Religion arises because in every Order there are some bad men, no one will easily admit it. For that there are some bad men in every Order is customarily based partly upon that general reason that not even the College of the Apostles lacked its Judas, and partly upon light conjectures and uncertain and empty rumors. Moreover, the lighter the conjectures of the multitude are, the more atrocious surely becomes the injury of the Confessor who reveals. And even if some religious family did not have a good odor among the people, would not its infamy be notably increased and confirmed by so authentic a testimony of the Confessor? When this report has become widespread, are not the individual persons of some Order customarily despised among the people as though each had perpetrated that crime? Finally, does not a burden far from slight, does not grave scandal, arise even if only the memory of these things is renewed? Add that, in the concrete, the case of a Religious Order scarcely differs from the case of one monastery. For when the Confessor says that he heard this in confession, the matter is surely circumscribed to some monasteries, at most, from which some Religious could have approached him. Add that certain religious families consist of very few monasteries, and indeed an entire Order sometimes consists of not very many men.

To conclude, perhaps one would not wander completely from the truth who should suspect that the opinion which we have reported is owed to a mere slip of the eyes, whereby those things which could be said by some concerning a Religious man generally were transferred to a Religious of a particular Order. For although Suarez, as is evident from the cited words, scarcely distinguishes the two cases with others and judged that one sins against the seal both if by revelation you injure some particular Religious Order and if, with the particular Order kept silent, you speak generally about a Religious man, nevertheless there were not lacking some (see Candidus, disquisition 24, article 50, doubt 8) who judged that in the latter case the aforesaid inconveniences at least in some measure cease; with these the Author also agrees.

** The VV. oppose forty-two columns (pp. 624-645) to this Note. But, as often elsewhere, or better, if ever elsewhere, here surely one must lament the method to which they devote themselves. Otherwise, so enormous a mass does not need a lengthy reply.

The VV. take the first head of accusation (p. 625) from these words of the Note: *Most of them* (the Authors) *discuss not a Monastery or Community but a Religion or Religious Order.* Against these the VV. establish (p. 626): *St. Alphonsus, when speaking of a Community, rightly ascribes to the negative opinion the Authors alleged by him for the same.*

Reply. First, since St. Alphonsus professes as the truer opinion the one which teaches that in the proposed case the seal is broken, it ought indeed to have happened rather pleasingly even to the VV. that even those whom the holy Doctor thought opposed to him, relying upon the words of Escobar from whom he copied those allegations, were shown to agree with the holy Doctor. But the fervor for accusing these poor Notes never fails to prevail among the VV. Second, whatever may be the case concerning this, it had first to be observed that in the Note other Authors besides those alleged by the holy Doctor are brought forward; then, that the Note does not say that all but that most discuss a Religious Order rather than a Monastery. Therefore, there was no reason for the VV. immediately to think that St. Alphonsus, who at length, as we said, had merely copied his allegations from Escobar, was directly attacked by these things. But third, is it true that all the Authors alleged by St. Alphonsus discuss a Community or Monastery? Let this now be conceded to some extent concerning Escobar and Fagundez; but can the same be said of the other three, namely, Nugno, Henriquez, and Candidus?

And the words of Nugno, in Diana, volume 1, treatise 8, resolution 11, no. 3, are: *Some say that he sins by the sin of revelation of the seal who, even if he does not name* the person, nevertheless names the PARTICULAR RELIGIOUS ORDER to which such a penitent belonged; and this is a probable opinion; nevertheless, it does not appear so certain that such a Confessor could be punished as a revealer of Confession.* Therefore, does Nugnus discuss a Monastery, or a particular Religious Order? Why

do the VV. suppress these things and, contrary to the evidence, establish that thesis and, in addition, charge the Note with false accusation?

The same is to be said of Henriquez, who, in that same place (book 6, or *On Penance* 3, chapter 21, no. 6), which Escobar, copied by St. Alphonsus, indicates, has thus: *To narrate sins, even mortal sins, heard in confession, when knowledge of the person can in no way be reached, is not contrary to the seal; nor is it so if he says that in Seville, or in such a place where it is established that he heard the confessions of many, grave crimes are committed...; or if concerning A CERTAIN RELIGIOUS ORDER IN GENERAL he says that offices are sold, or that some other sin is customarily committed.* Where here is there mention of a Monastery?

Vincentius Candidus, however (*Disquisitions* 24, *On Confession*, article 10, doubt 8), does indeed speak of a Monastery; but he goes over to the opinion opposite to that which St. Alphonsus himself, after Escobar, attributes to him. Behold his words: *I say thirteenthly: But if the Confessor speaks of some place not very extensive, or if concerning some Monastery in which he heard Confessions he says that grave crimes are committed in it, he seems to break the seal of confession; for it can happen that a suspicion which is not slight is conceived concerning some particular person, and that some suffer loss of reputation* (thus incorrectly printed *iacturae famam* for *iacturam famae*). *See St. Antoninus and Coninck.* Candidus, namely, uses the same reason which St. Alphonsus also brings forward for his same opinion, saying (book 6, no. 654, doubt 2): *The reason is that then the individual members of that Convent suffer harm. And thus the Confessor will likewise violate the seal if he says that such sins are committed in that Convent.* Far be it from us to accuse the holy Doctor Alphonsus here, since he merely copied these citations from Escobar; nevertheless, when from those five citations we find three wrongly adduced, how do the VV. (l.c.) write with the greatest confidence that St. Alphonsus, when speaking of a Convent, rightly ascribes to the negative opinion the Authors cited by himself for it?

But this also deservedly displeases us: while the VV., as though about to prove their aforesaid thesis, lead their readers about through eleven columns (pp. 626-631), they in some way reserve its proof and the refutation of the Note for the following article, writing (p. 627): *It is not true that most of them* (the Authors whom Father Ballerini enumerates) *discuss not a Monastery or Convent but a Religious Order. Some speak of an Order; others, however, of an Order and a Monastery; but very many, whom we shall allege in Article 2, speak of a Monastery or Convent alone.* Accordingly, anyone reading these things would now believe that in the following second Article the VV. were going to show both that St. Alphonsus rightly ascribes to the negative opinion the Authors cited by himself, and that the Authors enumerated by Ballerini, at least most of them, speak not of a Religious Order but of a Monastery, and indeed incline to the negative opinion. Yet (what otherwise can scarcely seem credible) the reader will finally discover that he is being wonderfully trifled with through these things. For in that entire mass of material in the second article, through seventeen columns, of those three Authors cited by St. Alphonsus only Candidus is mentioned, whom we have already seen above to be falsely alleged. But of the Authors enumerated by Ballerini (wonderful to say!) not even a word in those seventeen columns. And the VV. had indeed brought forward in the first article some texts of Navarrus; but even in these not the least mention occurs either of a Religious Order or of a Monastery or Convent. They bring forward from book 6, chapter 21, no. 6, a text of Henriquez; but Henriquez names a certain religious order, by no means a monastery. What, then, is to be concluded from this? Let it be permissible to conclude thus: This method of disputing concerning theological matters, and of resolving the objections of those who dissent, was never employed by the holy Doctor Alphonsus, nor ever approved by him.

We said above that it must be conceded that Escobar and Fagundez, to whom we shall also add Aversa, denied that one sins against the sacramental seal if someone says that he heard a grave sin in such a monastery, provided, however, that he keeps the person silent. But we added that this must be conceded ONLY TO A CERTAIN EXTENT. Why, then?

The reason, though most briefly, had been indicated in the Note by these words: *Only to this extent do some deny that the seal is violated strictly speaking, insofar as such a Confessor can be punished as a revealer of Confession, as Nugnus says; or, as Malderus has it, insofar as he can be punished by the ordinary penalty inflicted against breakers of the seal.* Namely, the object of the sacramental seal is not understood in the same way by all theologians, and therefore some seem to restrict it more narrowly, while others extend it more broadly. For there are those who repeatedly employ *seal* in the sense in which it is designated in ecclesiastical law; and for that reason, with Navarrus (*Manual*, chapter 8, no. 3), they restrict its object thus: *Christ willed that under this obligation there should be included not only mortal and venial sins, but also their circumstances, necessarily or voluntarily confessed, and any other things whatsoever which, although they are not sins, nevertheless are such that, when they are disclosed, it can be disclosed, directly or indirectly, in general or in particular, that he who confessed had confessed that he committed some mortal sin or some particular venial sin, even if it were most slight.* Therefore, according to these, the seal is not said to be injured properly and strictly unless from the revelation it can be known that someone, for example, Thomas, had confessed some mortal sin or some particular venial sin. Hence the consequence drawn by Navarrus (l.c., no. 16): *The Confessor acted badly, although he is not called a revealer of confession, by speaking thus: In such a place* (the name of the place in which he hears confessions being expressed) *grave crimes are*

perpetrated. And in fact the text of the Law (*Omnis utriusque*) has thus: *But let him* (the priest) *take care altogether lest by word or sign or any other manner whatsoever he in any respect betray the sinner; but if he should need more prudent counsel, let him cautiously seek it without any expression of the person; since we decree that he who shall have presumed to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from the priestly office, but is also to be thrust into a strict monastery to do penance.* From these things it is evident that for an injury of the seal of this kind there is required the revelation both of the sin and of the sinner.

Most commonly, however, the object of the seal is understood according as, once the divine institution of the Sacrament and its obligation are posited, the natural law itself requires the prohibition of any revelation whatsoever which can impede confession and render it odious; so that the Confessor can be guilty of violating the seal even if from his revelation it is not known that, for example, Andrew had confessed a mortal sin or some particular venial sin. To the point is Lucius Ferraris (*Seal of the Sacrament*, no. 22): *Under the sacramental seal fall all sins, both mortal and venial, not only of the penitent himself but also of an accomplice. Likewise, the circumstances of sins and natural defects by the revelation of which infamy or some other inconvenience can befall the penitent, and confession thus be rendered odious; for such circumstances, for example, that someone is illegitimate, is of obscure lineage, and things of this kind, cannot be manifested by the Confessor without breaking the sacramental seal. COMMON. And the reason is that the sacramental seal obliges one to conceal everything which can render confession odious; but through the revelation of the aforesaid and similar things confession is rendered odious, since a burden is thus imposed,* etc. And that the sacramental seal is employed by the holy Doctor Alphonsus in precisely this sense, and that questions are resolved by him according to this sense, is a matter most certain.

With these things premised, let us return to Escobar. Concerning the Confessor who says, *A certain Religious from that Convent confessed a grave sin to me*, he writes (book 16, no. 752): *That Confessor sins most gravely, branding the community with so great an infamy; nevertheless, he is not a violator of the sacred seal.* But St. Alphonsus, on the contrary (book 6, no. 654): *Then the seal is violated; the reason is that, although the person is not then revealed, nevertheless, since the revelation issues in the infamy of the whole community, it also redounds to the burden of the penitent.... And therefore from such a revelation confession would be rendered odious to him.* Each, therefore, asserts that in the case the Confessor sins gravely. Why, however, does one deny and the other affirm that the Confessor is a violator of the seal, unless because one judges concerning the seal according to ecclesiastical law and the other according to divine law? But the mind of Escobar shines forth better from these things (l.c., no. 750): *When the place is not so extensive and the sin or vice is not so public, it does not appear that this can be done without harm to the inhabitants, and sometimes without injury to confession, on account of the occasion which would be furnished for suspicions. I think, nevertheless, that for this reason the penalties of one revealing confession are for the most part not incurred, because the sins of the penitent are not manifested, but those of the town.* Thus he. Moreover, in these words you have Escobar expressly employing violation of the seal according to ecclesiastical law, under which penalties are inflicted. Furthermore, you have him admitting that sin is thus committed with injury to confession. But this, namely, is the sin concerning which Suarez, cited in the Note, said: *But certainly it is not just any sin, but one against the Sacrament; therefore also against the seal.*

But say precisely the same also of Fagundez. For he indeed appears here to prefer the opinion of Navarrus and Henriquez to the opinion of Suarez. But he could not affirm, nor did he affirm, this as regards a Monastery, since neither of them, as we said, makes any mention of a Monastery. He adhered, therefore, to the aforesaid Authors insofar as with them he judged concerning violation of the sacramental seal according to ecclesiastical law. But, no differently from Escobar, he then falls back into the doctrine of Suarez. For (*On the Second Precept of the Church*, book 6, chapter 4, no. 2), where he speaks of Confessors who injure a community or religious family by naming a religious order in particular or a Monastery, he indeed adds: *Ledesma and Suarez think, strictly speaking, that this is a revelation of the seal; but Henriquez and Navarrus, on the contrary, think that, strictly speaking, it is not contrary to the seal.* Nevertheless, with the latter he adds that it can sometimes be a mortal sin of scandal, sometimes one having the malice of infamy to the whole community. But Fagundez himself (*ibid.*, chapter 1, no. 2) derived the malice of violating the seal from this: that it is contrary to two virtues, *first, against the virtue of justice, insofar as it is contrary to the reputation of one's neighbor; second, against the virtue of religion and the reverence due to the Sacrament, toward which it commits irreverence and inflicts the greatest injury... by rendering* (it) *burdensome and fearful to men.* Now, is irreverence and injury of this kind toward the Sacrament absent whenever, through an imprudent revelation of those things which were heard by a priest in confession, a religious family or Monastery is bespattered with infamy? Does the Sacrament of Penance become any less intolerable and odious? Therefore, there remains one sole reason for reconciling Fagundez with Fagundez, namely that which we have stated: that he understands in the stricter sense that violation of the seal which is the object of ecclesiastical law.

But now let us pass to those things which the VV. oppose against the second part of the Note. They prefix to Article 2 this title (p. 631): *The false and rash assertion of Ballerini, that the doctrine of St. Alphonsus is lax and contrary to the opinion of all*

Theologians, is refuted. And concerning the rashness they add these things (p. 632): *Either this assertion of Ballerini is right and to be believed, and then we can scarcely understand why the Holy See, in the solemn declaration, "Nothing is worthy of censure," did not condemn at least this opinion; or the assertion of Father Ballerini is of singular rashness.*

Reply. I deny the supposition, namely, that in the Note the opinion of St. Alphonsus is designated as lax. For it presents an altogether different sense when you call an opinion absolutely lax or strict, and when comparatively, and therefore relatively to another, you call an opinion laxer or stricter. Hence it comes about that you can comparatively call some opinion stricter which, nevertheless, you would wrongly call strict. And an example is at hand in the present question, even as regards St. Alphonsus; for it will be permissible to call his doctrine that a Confessor breaks the seal who says that a grave sin was committed in this or that monastery stricter than the opinion of Escobar or Aversa, who deny this; but it is by no means permissible to call it strict. In like manner, we shall most truly call the common opinion concerning the absolution of recidivists laxer than the opinion of St. Alphonsus, as we saw elsewhere; but someone would badly conclude thence that the common opinion is condemned by us as lax. That the opinion of Concina, adopted by St. Alphonsus, is called laxer in the Note in a comparative sense of this kind is also manifest from the fact that other Authors are there presented admitting that in this matter they held a laxer course than others. For someone would argue entirely badly that those Authors therefore admit that they held lax doctrine. Thus the VV. impose this most grave charge with less consideration, that there the opinion of St. Alphonsus is rashly branded with a censure contrary to the declaration of the Apostolic See to the Theologians: *Nothing is worthy of censure.*

Now the VV. stuff seventeen columns (pp. 631-640) with the texts of authors in order to show that it is falsely affirmed that the doctrine of theologians is contrary to the opinion of Concina adopted by St. Alphonsus, namely, that if a Confessor says that he heard in confession a sin of a Religious of a certain Order, the seal is not broken.

For the sake of clarity and brevity, let us divide this great crowd of Authors into various classes. First, therefore, let seven come forward: Mendo, Mazzotta, Billuart, Leonard Jansen, Gotti, Reuter, and Cuniliati. Their texts, brought forward by the VV., merely say with St. Alphonsus that the seal is violated if the Confessor says that a Religious from such a Convent confessed a grave sin to him. Let the reply be brief: I concede the antecedent; I deny the consequence. For the VV. wish to argue thus: These Authors condemn it if the sin of a Religious from such a convent is revealed; therefore, they do not condemn it if the sin of a Religious from such an Order is revealed. Wrongly indeed. The one true conclusion could at most be this: Therefore, they do not touch upon the other question. But not even this is altogether true. For the reasons which are brought forward for the former case, namely, the burden of the penitent, the odium of confession, the consequent infamy, and scandal, have place also in the latter case. Therefore, tacitly but implicitly, they comprehend the other case also.

Let thirteen others follow: Coninck, Bonacina, Laymann, Palaus, Trullench, Tamburini, Sporer, the Salmanticenses, Gotti, Reuter, Struggl, Cuniliati, and Henricus a S. Ignatio. Their texts, transcribed by the VV., hold that a Confessor who says that grave sins are committed in such a place is to be condemned if the place is not very extensive; otherwise, if the place is extensive, for example, a large city. Reply. I concede the antecedent; I deny the consequence and the parity. For, as is evident, the reason of burden, scandal, and infamy consequent upon a revelation of this kind is not equal in both cases. For can Religious of a certain Order bear this revelation with as tranquil a mind as the citizens of a certain large City? Indeed, the VV. themselves (p. 645) imagine (as we shall see) that St. Alphonsus excuses a Confessor speaking thus concerning a large civil community, but does not excuse one speaking thus concerning a Religious Order, however large, because, namely (they say), a religious Community is more easily defamed and suffers harm.

There follow eight, namely, Valentia, Herincx, Lopez, Jansen, Henricus a S. Ignatio, Antonius Fernandez, Ioannes Corradus, and Aversa, whose texts, as the VV. allege them, merely hold that the sacramental seal is not violated if the person is in no way indicated, although a sin heard in confession is revealed. This assertion proves too much in itself. St. Alphonsus (book 6, no. 654) says: *More truly, the Confessor who says that a Religious from such a convent confessed a grave sin to him breaks the seal.* Do you see the seal violated although the person is not revealed? And again (*ibid.*), to the question, *Does a Confessor violate the seal if he asserts that grave crimes are perpetrated in some place, which he himself heard in confession?* the same holy Doctor replies: *The most common and by far more probable opinion teaches that if the town is small* (suppose it consists of about fewer than three thousand people), *then the seal is violated. The reason is that, ALTHOUGH THE PERSON IS NOT THEN REVEALED, nevertheless, since the revelation issues in the infamy of the whole community, it also redounds to the burden of the penitent, who is a member of that community; and therefore from such a revelation confession would be rendered odious to him. It is otherwise, however, if the town is large and the crimes are public.* Therefore the aforesaid assertion is true if taken positively, by saying: A Confessor who reveals even the person violates the seal; but by no means if taken negatively, by saying: The seal is never broken if the person also is not revealed. Let the reply, therefore, be: I distinguish the antecedent. If no other cause is added on account of which the seal is

broken, let it pass; otherwise, I deny it. But in our case, although the person is not then revealed (as St. Alphonsus teaches), nevertheless, since the revelation issues in the infamy of the whole community, it also redounds to the burden of the penitent, who is a member of that community; and therefore from such a revelation confession would be rendered odious to him. Therefore, I deny the consequence.

Four remain, namely, Candidus, Escobar, Stoz, and Roncaglia. But enough has already been said above concerning Candidus and Escobar. Stoz is brought forward because (*Tribunal of Penance*, part 2, no. 227), unless the offenses are public and notorious, or unless the community is such and so large that all can prudently judge it not to lack weeds of this kind, he does not excuse from the crime of unjustly defaming the community, nor from a sin against charity, indeed not even from violation of the seal on account of the danger lest the persons also become known, especially if the place or body of Regulars... is not extensive and numerous. Hence the VV. seem to wish to conclude that all these inconveniences are absent if the body of Regulars is extensive and numerous. Reply. I distinguish. That Stoz also intermingles a body of Regulars which is not extensive can be admitted as regards the danger of revealing the person: let it pass. That it can also be understood as regards the injury of defaming and, in addition, as regards rendering confession odious: I deny it. For the same Stoz adds with Dicastillo that this is also contrary to the seal for this reason, that *it plainly renders confession odious.* Nor will the VV. deny that confession would become odious even to Regulars, indeed much more to Regulars than to others, if they knew or suspected that from their sacramental confession the Confessor would take occasion to defame their entire Order. Finally, concerning Roncaglia, whose assertion appears to be joined with the assertion of Daniel Concina, there is no need to add anything to those things which were said concerning this opinion in the Note.

Let us conclude, therefore, that that entire jumble of texts of so many Authors, which the VV. gathered with immense labor, contributes absolutely nothing to their purpose, namely, that they confirm the assertion of Concina by the authority of the schools.

Now to the third Article (pp. 640-643), whose title is: *Against the arguments brought forward in the Note, the doctrine of St. Alphonsus is clearly expounded.* To which it is surely easy to reply: Could the doctrine of St. Alphonsus have been expounded more clearly than by citing his words with the greatest exactness? Yet in the Note the opinion of the holy Doctor was expounded integrally, to the letter. Nevertheless, the exposition added by the VV. was not useless, inasmuch as it makes sufficiently evident that there was, in the end, no cause for them to attack our Note with so much heat.

Thus, after transcribing one or another text of Concina, they observe first (p. 641): *The sole question treated here is whether the Confessor breaks the seal, but not whether he speaks licitly.* Reply. The special question here concerns the revelation of a sin which turns to the burden of the penitent, to the odium of confession, and to the infamy of a religious community. But according to St. Alphonsus the seal is broken by this revelation, as is evident from his doctrine brought forward above. Therefore, a discussion of some other illicit speech, such as, for example, a lie, is not to be intermingled here.

They add secondly: *St. Alphonsus, no differently from Concina, supposes a large Religious Order.* Reply 1. The words of the holy Doctor Alphonsus, which are exactly transcribed in the Note, present no distinction between a large and a non-large Religious Order. 2. It was already observed in the Note that, in the concrete, the case of a Religious Order scarcely differs from the case of one monastery; for when the Confessor says that he heard this in confession, the matter is certainly circumscribed to a few monasteries (at most) from which some Religious could have come to him, unless the extraordinary hypothesis is imagined of a Confessor who has traveled through the most remote lands. But the cited text does not restrict the assertion of St. Alphonsus to this extraordinary hypothesis. 3. Even in this extraordinary hypothesis, the burden of the penitent and the odium of his confession are not absent, from which he may suspect that, on account of it, his confreres must be affected with confusion, shame, and sorrow because of the infamy of the Order.

And indeed, the VV. themselves finally confirm our reply when they write (pp. 641-642, no. 30): *If in some diocese or province there exist one or more Monasteries, the Confessor will not be able, with the seal preserved, to name this Religious Order, because certainly some would suspect one or another Monastery of the same Religious Order. The same is to be said if Monasteries do not exist there, but Religious from other Convents are present in this province or diocese, at least while passing through.* Concerning these things let it be permissible to observe two points. The first is that St. Alphonsus does not exclude these cases from his general affirmation. Therefore, the VV. expound their own opinion, not the opinion of St. Alphonsus. The second is that the cause of the violated seal is reduced by them solely to the inconvenience of suspicion concerning some Monastery or some Religious passing through. But even according to the doctrine of St. Alphonsus, it is not necessary that such suspicion arise from the revelation of the Confessor, since for this the infamy of the community, the odium of confession, and the burden of the penitent suffice, as has already been said more than once.

And again, the things which in the Note are objected to the opinion of Concina, admitted by St. Alphonsus, are confirmed by the VV. when they themselves (p. 642, no. 4) admit that, in naming the Religious Order, the Confessor will rarely avoid breaking the seal unless it is established that he exercised the office of Confessor in various lands and dioceses, and he himself expresses this circumstance. Nevertheless, they urge this upon us less suitably, both because the assertion of St. Alphonsus embraces all Confessors, whether they exercised the office of Confessor in various lands or in one land or diocese, and because here again the VV. derive violation of the seal merely from the danger of revealing the penitent. But this supposition, as we have said more than once, is false.

The VV. add (*ibid.*, no. 5) that the holy Doctor excepts: *Unless that Religious Order were of stricter observance.* Therefore (the VV. say), with the seal preserved, a Confessor can name only such a Religious Order in which observance is notoriously relaxed. Reply. The words of the holy Doctor do not present this sense, but he says: *Nor does it redound to the burden of the penitent, since in every Order there are some bad men; whence neither does scandal arise nor is the Religious Order defamed, unless that Religious Order were of stricter observance.* Therefore, according to the holy Doctor, the reason why the seal is not violated is this: because in every Order there are some bad men. To this assertion, nevertheless, he places this limit: *Unless that Religious Order were of stricter observance*; which exception in that context has force thus: Unless the observance is such that in that Order it is not readily supposed that there are some bad men. Moreover, as was already observed in the Note, it is false that even in that hypothesis both the burden of the penitent and the other inconveniences on account of which St. Alphonsus himself affirms that the seal is broken are absent. And surely, does not the holy Doctor himself (book 6, no. 654, doubt 1), in order that violation of the seal be avoided in the case, require in addition that the crimes be public?

Finally, the VV. (*ibid.*, no. 6) observe that neither Concina nor St. Alphonsus speaks of poisonings, adulteries, or other grave crimes, but simply of a sin. First, Concina, whose words the VV. also bring forward, has thus there: *Nor is the Order in any way defamed from the fact that it is known... that someone* (a Religious) *IS CRIMINAL.* Therefore, if the sense of St. Alphonsus there is indeed to be measured from the words of Concina, we shall also interpret the holy Doctor thus, that he speaks of crimes or of a criminal Religious. Second, the words of St. Alphonsus, *If* (the Confessor) *were only to say that he heard the sin of a Religious of a certain Order*, are most general and embrace sins of every genus and species.

And let these things suffice to make it evident that through these expositions of the VV. nothing is detracted from the force of the difficulties which in the Note were objected to the opinion of the holy Doctor.

It will be useful here to note certain things concerning those which the VV. (p. 645) have in the Conclusion of the Question.

Thus they write: *Although* (St. Alphonsus) *excuses a Confessor speaking concerning a large civil Community, nevertheless he does not excuse one speaking concerning a Religious Order, however large, because he has a just and prudent reason for the distinction between the two Communities, insofar as a religious Community is more easily defamed and suffers harm.* Reply. May the Most Illustrious and Most Religious VV. pardon us; but these things are shown to be evidently false from the words of St. Alphonsus, who plainly has the opposite.

For, giving the reason why a Confessor of this kind does not violate the seal, he writes: *Because this is neither a revelation of the seal nor DOES IT REDOUND TO THE BURDEN OF THE PENITENT, since in every Order there are some bad men; whence NEITHER DOES SCANDAL ARISE NOR IS THE RELIGIOUS ORDER DEFAMED.* How, therefore, do the VV. write that St. Alphonsus does not excuse this Confessor because the Religious Order is defamed, while St. Alphonsus says in explicit words that this Confessor is excused because the Religious Order is not defamed?

The VV. add (*ibid.*): *Nevertheless* (St. Alphonsus) *deservedly admits the opinion of Concina, that a Confessor who speaks concerning the sin of only one Religious, naming the Religious Order, does not break the seal, provided that the Religious Order is large and notoriously relaxed, and that the sins are such as customarily occur among the relaxed and have notoriously occurred in this* (Religious Order), *and likewise that every danger of suspicion concerning some monastery in particular is absent.* Reply. These things indeed are most opportune to be appended in a Note to this passage of the holy Doctor when the new Edition of the Work which the VV. are preparing comes forth; for the VV. themselves now admit that without these supports the bare and simple assertion of the holy Doctor of itself conduces to breaking the seal. But it is one thing that it is necessary to fortify the assertion of the holy Doctor with these supports, and another that the assertion can be admitted of itself, as it stands.

Finally, the VV. (*ibid.*) conclude that the doctrine of St. Alphonsus in this matter, and particularly the opinion just expounded, which the holy Doctor judges reasonable and Father Ballerini most sharply attacks, is not only not lax, but

rather more rigorous than that which very many Doctors, even the most rigorous, such as Alexander Natalis and Henricus a S. Ignatio, hold. Reply.

Let it pass that here also, in passing, the VV. renew the accusation, indeed less justly, as we have already seen, as though in the Note the opinion of the holy Doctor were marked as lax. As regards what is now at issue, it certainly does not appear why either the opinion of Alexander Natalis or that of Henricus a S. Ignatio concerning the present question is said by them to be laxer than the opinion of Concina and St. Alphonsus, if indeed this opinion of the holy Doctor is considered as it is expressed by him and inspected in itself, and not clothed with those appendages with which the VV. have adorned it from every side. Whatever may be the case concerning this, since the VV. ascribe to these two Authors, whom they themselves here call the most rigorous, that they hold doctrine laxer than the opinion of St. Alphonsus, which someone might call exceedingly benign, and almost more benign than is right, considering, namely, so many supports and appendages with which they themselves judged it necessary to adorn, sustain, and fortify it; truly, they now have an example of that which elsewhere (p. 659, in the Note) they ask of us, namely, of Authors who are commonly held to be more rigorous and who, otherwise, not rarely inclined to those laxities which no one among the most benign ever admitted. And, for the rest, the VV. will indeed be able to see very many examples of this kind among the Authors where they dissolve the calumny cast upon the benign opinion, as St. Alphonsus himself calls it, concerning the use of a probable opinion, as though this were a wellspring of laxities. For there they place before the eyes of their more rigorous adversaries laxities found among those writers who are customarily vaunted as followers of the more rigorous opinion. But it is not part of the present purpose to linger over these things.

9. He who, after confession, looks upon the penitent with a stern eye, does not address him as he was accustomed to do before, and shows by harsher words, gestures, or his whole manner of acting that he remembers his sins, is thinking about them at that moment, and esteems him less than before.

667. **Questions. - QUESTION 1. Can a Confessor deny Holy Communion to a penitent to whom he previously denied absolution, if the latter approaches the sacred table?**

Reply. No, even if he asks secretly, because the Confessor cannot use knowledge from confession to act externally against the penitent [7]. - St. Ligorius, no. 658, and others, against some.

[7] De Lugo adds an exception (disputation 23, no. 126) if he is a public sinner. *The Confessor could nevertheless* (he says) *repel a prostitute or a public usurer from the Eucharist in public by reason of knowledge which he has outside confession concerning that public sin. But if he says, "Yet I confessed to you," he can reply, "Nevertheless, your amendment must be evident to the Church through public satisfaction, which is not yet evident."*

QUESTION 2. Does he break the seal who says that such a vice reigns in a city or town, or that grave crimes are committed there?

Reply. I distinguish. Yes, if the place is sufficiently small, for example, if it consists of approximately fewer than three thousand persons. Otherwise, if the town is large and public crimes are frequently perpetrated there. - St. Ligorius, no. 654, and others most commonly.

668. ◦ **QUESTION 3. Can preachers use knowledge from confession to speak concerning those things of which they would not have thought unless they had heard confessions?**

Reply. Yes, provided danger of revelation and burden to the penitents are excluded. - Thus commonly with St. Ligorius, no. 654. - Elbel, no. 525.

The reason is: first, because it can be a burden to no one that priests sometimes direct themselves in sermons from knowledge of confession, provided that burden is not present here and now. Therefore,

they can inveigh generally against vices which secretly prevail. Second, because this would be an excessively grave burden for the Confessor; for he would always fear lest in preaching he use knowledge from confession. Nevertheless, let the Confessor beware lest he speak publicly concerning the altogether particular sins of one or another penitent, especially if he gives a sermon before some small community, for example, in a monastery of Nuns, etc.; because then a burden could easily be introduced. - Elbel, *ibid.*

669. ◦ **QUESTION 4. Can a Priest who knows from confession that ambushes are being prepared for him flee, or in some other manner forestall the harm?**

Reply 1. Yes, if by such precaution the sin accused is in no way manifested to others, nor is any burden brought upon the penitent. - Thus St. Ligorius, no. 659. - De Lugo, disputation 23, no. 108, etc.

Reply 2. No, if he cannot flee without in some manner manifesting that some sin was accused by the penitent. The reason is that that flight would be an indirect revelation of the confessed sin; and although the Confessor were to feign flight under some pretext, he would nevertheless always furnish a reasonable suspicion of the sin declared. - St. Ligorius, *ibid.*, and others. De Lugo, disputation 23, no. 110, nevertheless warns that experience shows that even an indirect revelation is never necessary for escaping those dangers, since they can be met either with the permission of the penitent or by other means without breaking the seal.

670. ◦ **QUESTION 5. Can Superiors use knowledge from confession for external government, if it in no way appears that they direct themselves from that knowledge?**

Reply. ALTOGETHER no, with St. Ligorius, no. 656, and others commonly, against some older Theologians who defended the affirmative opinion. - The reason is that this would evidently turn to the burden of penitents; and those who knew that such a doctrine was commonly taught could be withdrawn from confession.

This is also established from various Decrees of the Supreme Pontiffs, especially the Decree of Clement VIII of May 26, 1594, for Regulars, in which it is said: *Both the Superiors existing at the time and the Confessors who afterward shall have been promoted to the rank of superiority are to take THE GREATEST CARE lest they use for external government that knowledge which they had in confession concerning the sins of others.* In St. Ligorius, no. 656. Although this Decree was issued for Regulars, it must be extended to all Superiors, since the same reason which urges for Regulars also has force for seculars.

This is also established from a Decree of the Sacred Congregation of the Inquisition issued by the authority of Innocent XI in the year 1682, by which the following proposition was proscribed: *It is licit to use knowledge acquired from confession, provided that this be done without direct or indirect revelation and burden to the penitent, unless something else much graver should follow from not using it, in comparison with which the former is deservedly held of no account.* The Pontiff adds that Confessors can in no way use such a doctrine, even with any revelation whatsoever excluded.

671. ◦ **QUESTION 6. Can a Confessor at least sometimes use knowledge from confession, or when can he do so?** Reply. According to all Theologians, he can do so in

> the following cases: first, to pray for the penitent, or to act more benignly toward him; second, to consult books or wise men, prudently, nevertheless, with danger of revelation excluded; third, to direct himself through experience acquired from confessions, for example, to temper rigor, and to direct himself from the confession of one in prudently questioning or instructing others, giving no suspicion of the prior confession; fourth, to reform his own morals, to correct his own defects, or to discharge his office better, for example, to cast off sloth, to watch over subjects more vigilantly, with suspicion of revelation excluded, etc.; because everyone is bound to correct his defects as soon as he adverts to them; nor can any penitent reasonably be offended that the Confessor changes his life for the better on account of things heard in confession. - St. Ligorius, no. 637.

Conclusion. In a matter so grave and so dangerous, the Confessor must be exceedingly cautious lest he utter any word, or do or intimate anything, whence there can follow even the least odium of the Sacrament, burden of the penitent, offense or scandal of any others whatsoever. Let him therefore be prudent and discreet not only in speech but in his whole manner of acting. Let him pray frequently with the Psalmist (Psalm 140, verse 3): *Set a watch, O Lord, before my mouth, and a door round about my lips*; or with the Wise Man (Wisdom 9:4): *Give me wisdom, that sitteth by thy throne.*

End of the Treatise on Penance.

Treatise on Extreme Unction

Chapter I. On the Nature and Effects of Extreme Unction

672. ○ I. Extreme Unction is defined as a Sacrament of the new law instituted by Christ for conferring salvation of soul, or even of body, upon a sick person in danger of death, through the anointing with blessed Oil and the prayer of the Priest.

Extreme Unction is a true Sacrament of the new law. This is established, first, because it is a sensible sign, conferring grace, and instituted by the Lord Jesus Christ. For the nature of a sign is sufficiently evident through the anointing and the prayer of the Priest. That it confers grace is established from its effects. But its divine institution is demonstrated by apostolic tradition. It was promulgated especially by St. James in the Catholic Epistle, 5:14-15, where it is said: *Is any man sick among you? Let him bring in the Priests of the Church; and let them pray over him, anointing him with oil...; and the prayer of faith shall save the sick man, and the Lord shall raise him up; and if he be in sins, they shall be forgiven him.*

This is established, second, from the definition of the Council of Trent, session 14, *On Extreme Unction*, where it is thus said: *If anyone says that Extreme Unction is not truly and properly a Sacrament instituted by Christ our Lord and promulgated by the blessed Apostle James, but only a rite received from the Fathers or a human invention, let him be anathema.*

673. ○ II. The effects of the Sacrament of Extreme Unction are: first, sanctifying grace together with the actual graces proper to the Sacrament, which wonderfully assist in reviving the sick person and strengthening him against the temptations of the devil.

Second, remission of all sins not yet remitted, even mortal sins. This is established from the text of St. James cited above: *And if he be in sins, they shall be forgiven him.* Hence the Sacrament of Extreme Unction is indeed primarily a Sacrament of the living, but secondarily a Sacrament of the dead, namely, in the hypothesis of the state of sin. It certainly remits venial sins primarily and *per se*; but more probably it remits mortal sins also in the same manner. - St. Ligorius, no. 731.

Third, the cleansing away of the remnants of sin, which are not only the punishments due to sins but also anxieties of mind, weaknesses, languor toward the good, torpor, fear, and other similar things which are contracted from sins.

But these effects are greater in proportion as the sick person is better disposed in soul. Fourth, restoration of bodily health at times, if it is expedient for the salvation of the soul. This is established from the cited text of St. James and from the Council of Trent, session 14, *On Extreme Unction*, chapter 2. Hence it is evident how shamefully those err who do not receive this Sacrament unless the disease has become so strong that they can no longer be healed without a miracle. - St. Ligorius, no. 731.

Chapter II. On the Matter and Form of Extreme Unction

Article I. On the Matter of This Sacrament

674. **Principles.** - I. The remote matter is Oil blessed by the Bishop. This is established from the Council of Trent, session 14, *On Extreme Unction*, chapter 1, where it is thus said: *The Church understood the matter* (of this Sacrament) *to be Oil blessed by the Bishop; for the anointing most aptly represents the grace of the Holy Spirit, by which the soul of the sick person is invisibly anointed.*

II. The Oil of Extreme Unction, or of the sick, is to be blessed by the diocesan Bishop, or, when the See is vacant, by another neighboring Bishop, on the Supper of the Lord, just as Chrism is, and is to be renewed every year, though not for the validity of the Sacrament. Thus from the precept of Clement VIII in St. Ligorius, no. 708; and the Salmanticenses, chapter 2, no. 10. This is also established from the perpetual practice of the Church and from the Roman Ritual, *On Extreme Unction*, where it is said: *The holy Oil is to be renewed every year on the Supper of the Lord, the old having been burned.*

675. ◦ III. The proximate matter is the anointing of certain parts of the body, which are at least the five senses. For the anointing is to be made: first, on the eyes, or on the eyelids; second, on the ears; third, on the nostrils; fourth, on the mouth, or on the lower lip; fifth, on the hands, on the outside for Priests and on the inside for laymen; sixth, on the feet, or on the tops of the feet; seventh, on the loins; but this last is omitted for women, and also in men if it cannot easily be done, namely, if the sick person cannot be moved. Indeed, today, says Scavini, it is omitted in every case and for everyone.

676. **Questions. - QUESTION 1. Does the precept of renewing the oil bind under grave sin?**

Reply. Yes, as it seems, because the matter appears sufficiently grave. Nevertheless, if new oil cannot be obtained, it is licit to use the old. - St. Ligorius, no. 708.

But if perhaps the blessed Oil is going to run short within the year, and no other can be obtained, other unblessed oil, in a smaller quantity, nevertheless, can be poured into the blessed Oil. - Roman Ritual. And this can be done repeatedly, although little by little a quantity even much greater than that consecrated by the Bishop at the beginning is added, provided, nevertheless, that in each admixture it is smaller than the other part into which it is poured. - St. Ligorius, *ibid.*

QUESTION 2. Must the oil necessarily be from olives?

Reply. Yes. The reason is: first, because by the name *oil*, properly speaking and according to common usage, olive oil is understood. Second, this is established elsewhere from the Decree of Eugene IV for the Armenians, in which it is read concerning Extreme Unction: *Its matter is olive oil.* Third, it is also evident from the whole of tradition and the unanimous consent of the Doctors. - See St. Ligorius, no. 708.

677. ◦ **QUESTION 3. Must this oil necessarily be blessed by the Bishop?**

Reply. Yes. This is established from various Declarations of Paul V and, most recently, of Gregory XVI on September 4, 1842.

QUESTION 4. Must the oil be blessed in relation to Extreme Unction?

Reply. It is disputed. There is a twofold probable opinion, as St. Ligorius says, no. 709. Some deny it, because the Church requires nothing other than that the oil be blessed by the Bishop. Hence (they say) the Oil of the sick and Chrism can validly be employed for making the anointings. Others, however, affirm it, because just as Chrism is deputed by its proper blessing for Confirmation, so also the Oil of the sick for the Sacrament of Extreme Unction. In practice the safer course must altogether be followed, except in a case of necessity, in which this Sacrament is to be administered conditionally with another blessed Oil, and afterward, if the Oil of the sick can be obtained, it is to be repeated. - St. Ligorius, *ibid.*

I said *with another blessed oil*, for a threefold holy Oil is distinguished, which is blessed by the Bishop in the same ceremony on Thursday of the Supper of the Lord, namely, the Oil of the sick, the Oil of catechumens, and holy Chrism, or Oil with balsam mixed into it. First, the Oil of the sick serves only for anointing the sick in danger of death and for the consecration of bells in the external Anointing, for Chrism is employed for the internal one. Second, the Oil of catechumens is deputed for anointing catechumens on the breast and between the shoulder blades before Baptism, for consecrating the hands of newly ordained priests, and likewise for certain other consecrations, for example, of kings, etc. Third, Chrism is employed in the Sacrament of Confirmation, in the ceremonies of Baptism after the Sacrament has already been conferred, and for other consecrations, for example, of a chalice, paten, ciborium, altar, bell (on the inside), etc. - See the Roman Pontifical, especially where it treats of the ceremonies of Thursday of the Supper of the Lord.

678. ○ **QUESTION 5. Is the anointing of the five senses of the necessity of the Sacrament?**

Reply. It appears more probable that it must be affirmed, with the more common opinion of the Theologians, to which the practice of the Church agrees; and this practice is always to be observed, except in a case of necessity. Nevertheless, the negative opinion is called speculatively probable by St. Ligorius, no. 710.

679. ○ **QUESTION 6. Is a double anointing on paired parts required by the necessity of the Sacrament, for example, on both eyes, both ears, etc.?**

Reply. No, because the whole sense is present in one part. Nevertheless, outside a case of necessity the double anointing is to be observed by force of precept. - St. Ligorius, *ibid.*

QUESTION 7. How must the anointings be made?

Reply. The anointings must be made with the right thumb of the Priest, who must utter the form at the same time and anoints the sick person in the manner of a cross. Thus from the Roman Ritual. But these things pertain to liceity, not to validity. On paired members, however, one begins with the right, for example, with the right eye, etc. - Roman Ritual.

680. ○ **QUESTION 8. Must an order among the anointings of the various senses be observed by the necessity of the Sacrament?**

Reply. No. The reason is that an inversion of this kind in no way impedes the signification of the Sacrament. Nevertheless, they commonly say that such an inversion is gravely illicit because it is contrary to the usage of the Church in a notable matter. - St. Ligorius, no. 710, at the end, etc.

QUESTION 9. Can Extreme Unction be conferred upon those who are mute, deaf, or blind from birth?

Reply. Yes; for they can be anointed near the organs which they lack; for although they did not sin externally through them, nevertheless, through the interior powers of the soul to which they correspond they could have sinned [1].

[1] It does not appear necessary to have recourse to this reason. For the Sacraments by their own power effect the infusion of sanctifying grace; and this grace, if a suitable disposition is not lacking in the subject, expels all sins whatsoever, whether they were perpetrated by the external senses or by the internal powers alone.

681. ○ **QUESTION 10. How is a sick person deprived of a hand or foot, etc., to be anointed?**

Reply. The anointing is to be made on the part nearest to the mutilated member; for thus the Roman Ritual speaks: *If anyone is mutilated in some member, let the part nearest to that place be anointed with the same form of words.*

QUESTION 11. Does one drop of oil alone suffice for making the anointings?

Reply. More probably, yes. The reason is that he who anoints with one drop of oil truly anoints; for oil is diffused more than other liquids. - Thus St. Ligorius as more probable, Lacroix, no. 2094, and others more commonly. - But some deny it, because to anoint is to diffuse oil over various parts, which is not done by a single drop of oil. But it is replied that the oil is diffused over various parts when the five senses are anointed, even if the same drop is employed. In practice it is safer, and certainly suffices for the validity of the Sacrament, to dip the extremity of the finger into the oil for each of the particular anointings which are made under the repeated form.

QUESTION 12. In time of plague or of some contagious disease, is it licit to perform the sacred anointings by means of a brush?

Reply. Yes, at least more probably, from Benedict XIV, who brings forward many authors for this opinion. (*On the Synod*, book 13, chapter 19.)

Article II. On the Form of Extreme Unction

682. ○ The form of Extreme Unction is this: *Through this holy anointing and His most tender mercy, may the Lord forgive you whatever you have sinned through sight* (the eye having been anointed, and so concerning the others). This is established from the Council of Trent, session 14, chapter *On Extreme Unction*, and from the Roman Ritual. The form is to be repeated integrally for each part to be anointed, expressing the member which is then anointed, namely, *through sight* when anointing the eyes, *through hearing* in the anointing of the ears, etc.

683. **Questions. - QUESTION 1. For the validity of the Sacrament, is the expression of each sense required, namely, THROUGH SIGHT, THROUGH HEARING, etc.?**

Reply. It is disputed. Some deny it because it is not found in the form of the Greeks, which nevertheless is admitted by the Church as valid. Others affirm it because through one anointing and the form corresponding to it there are remitted not the remnants of sins of every kind, but only of those which were committed through that sense. Since, therefore, the matter is doubtful, the expression of the sense must be employed under grave sin. - Billuart.

QUESTION 2. Which words are essential to the form?

Reply. They are the following: *Through this anointing, may the Lord forgive you whatever you have sinned*, with the word expressing the sense, that is, *through sight*, etc.

QUESTION 3. Does one form suffice for all the senses for validity, if the individual senses are distinctly expressed and anointed?

Reply. It is disputed. Some affirm it because this form is virtually multiple and is equivalent to several particular forms, and thus specially signifies the effect of each particular form. Others, however, deny it, because, since the partial matters, namely, the anointings, are distinct, particular forms must also correspond to each.

Nevertheless, when necessity urges, this general form is to be recommended: *Through this holy anointing and His most tender mercy, may the Lord forgive you whatever you have sinned through the senses: sight, hearing, taste, smell, and touch.* But the senses are to be anointed while they are being expressed. If time remains, however, the anointings are to be repeated conditionally with the form proper to each, and the other omitted prayers are to be added, as prescribed in the Ritual. - St. Ligorius, no. 710.

Chapter III. On the Minister of Extreme Unction

684. ◦ I. The Priest alone is the minister of this Sacrament. This is established: first, from the words of St. James already cited: *Is any man sick among you? Let him bring in the Priests of the Church*, etc.; second, from the definition of the Church. For thus the Council of Trent, session 14, *On Extreme Unction*, canon 4: *If anyone says that the Priests of the Church, whom blessed James exhorts to be brought in for anointing the sick person, are not Priests ordained by a Bishop but elders in age in any community whatsoever, and that for this reason the proper minister of Extreme Unction is not the Priest alone, let him be anathema.*

II. Every Priest can validly minister that Sacrament, because the power of validly conferring it belongs to the Priest by reason of Order itself. Nevertheless, no one can licitly minister it except the Pastor of souls alone, because it pertains to the pastor to feed his sheep. But Religious who presume to minister this Sacrament without the permission of the Pastor incur *ipso facto* an excommunication reserved to the Pope. - Thus from the Clementine *On Privileges* and the Constitution of Pius IX, *Apostolicae Sedis*.

685. **Questions. - QUESTION 1. Can any Priest minister this Sacrament by the probably presumed consent of the Pastor?**

Reply. More probably, yes, because it does not appear that one must proceed with so much rigor where there is question of delegation for mere liceity, and there is no question at all of the validity of the Sacrament itself. Nevertheless, such delegation is not easily to be presumed. - St. Ligorius, no. 722. - The Salmanticenses and others, against others.

Nevertheless, if the Priest to whom administration of this Sacrament belongs is absent, or is bound by excommunication or suspension, any Priest can administer this Sacrament in a case of necessity, and indeed must do so from charity. - Scavini.

QUESTION 2. Is it a mortal sin to omit the prayers prescribed in the Ritual, or to minister without sacred vestments?

Reply to the first. Yes, because the matter is very grave. Except a case of necessity. - St. Ligorius, no. 727, and others commonly.

Reply to the second. Yes, likewise, outside necessity; but in necessity, more probably no. - Thus more commonly with St. Ligorius, no. 726, against some.

686. ◦ **QUESTION 3. Is there an obligation to minister Extreme Unction, or what is it?**

Reply. Unless he is excused by some grave cause, the Pastor is bound by reason of his office, under mortal sin, to minister it to subjects dangerously sick who ask for it. - St. Ligorius, no. 729, etc. Recall what was said concerning the Sacraments in general, no. 213.

QUESTION 4. Is it a sin to minister Extreme Unction without a light, or what kind of sin is it?

Reply. It is not to be excused from venial sin unless necessity urges, both on account of the custom of the Church and on account of the reverence due to the Sacrament. - Nevertheless, it does not exceed venial sin, because a grave injury does not appear to be inflicted upon the Sacrament [1]. - St. Ligorius, no. 728, etc.

[1] Concerning this matter, only the following is contained in the Roman Ritual: *The Priest... is to take care that there be prepared... likewise a wax candle, which, afterward lighted, may furnish light to him while anointing.*

687. ○ **QUESTION 5. When a sick person receives both Viaticum and Extreme Unction, which Sacrament must be administered first?**

Reply. Extreme Unction must be administered after the Eucharist. Thus the Rubric of the Roman Ritual expressly establishes. - In that case the *Confiteor* must be recited twice. - Thus the Sacred Congregation of Indulgences, February 5, 1841.

QUESTION 6. What kind of sin is it to omit the sign of the cross in the anointings?

Reply. It is only venial according to the common opinion, because grave matter is not apprehended there; but in necessity there is no sin. - St. Ligorius, no. 728.

688. ○ **QUESTION 7. Is it a sin to confer this Sacrament without a server assisting, or what kind of sin is it; and can a woman be employed in necessity?**

Reply to the first. It is not a mortal sin to employ no server, and in necessity there is no sin. - Thus the Theologians most commonly. - Indeed, according to several, there is probably no sin even outside a case of necessity. But St. Ligorius, no. 824, calls the opposite more probable.

Reply to the second. A woman is never to be employed for the office of server; and if a Cleric or layman cannot easily be found, let the Priest alone perform all the ceremonies and himself make the responses to the prayers. - Thus St. Ligorius, *ibid.*, and others most commonly.

QUESTION 8. Can the article of death be awaited before conferring this Sacrament?

Reply. No. Indeed, the Theologians commonly teach that Pastors sin gravely who defer it until the sick person is deprived of the use of the senses and of reason: because thus the sick person lacks the more abundant fruit which he would have received if he had received the Sacrament while in possession of reason; moreover, because he is deprived of spiritual strength for resisting the demon and enduring the hardships of the disease; and also because, if the sick person were in mortal sin and had received the Sacrament while still in possession of reason, by the help of attrition he would have obtained grace, of which he is otherwise deprived; finally, because by the power of this Sacrament he could have obtained bodily health if it had been conferred upon him at a suitable time. Hence the Roman Catechism: *They sin most gravely who are accustomed to await that time for anointing the sick person when, all hope of health having already been lost, he begins to be deprived of life and the senses. On Extreme Unction*, no. 18.

The Pastor must remember above all that the care of the sick is not among the last parts of his office. Thus the Roman Ritual, title *On the Visitation and Care of the Sick*. - Wherefore Catalanus rightly says: that the Pastor is bound in justice to assist the sick of his parish, especially in the commendation of the soul, is a certain opinion approved by the unanimous consent of Theologians. And several

Declarations of the Sacred Congregation of the Council, reported in the *Analecta Iuris Pontificii* (July 1861), agree.

Chapter IV. On the Subject of Extreme Unction

689. ◦ The subjects of this Sacrament are all and only sinners who are sick and in danger of death. This is established: first, from the words of St. James: *Is any man sick among you? Let him bring in the Priests of the Church*, etc.; but the Greek word *is sick* signifies a dangerous illness. Second, from the definition of the Church. For thus in the Decree of Union: *This Sacrament ought not to be given except to a sick person concerning whose death there is fear.* The Council of Trent, session 14, chapter 3, agrees.

Hence children before the use of reason and the perpetually insane are not capable of this Sacrament, because they have committed no actual sins.

690. **Questions. - QUESTION 1. Must Extreme Unction be conferred upon delirious sick persons?**

Reply. Yes, if they previously asked for the Sacrament, or would have asked for it if they had thought of this, or showed a sign of sorrow for sins. Indeed, also upon sick persons deprived of the senses, as is established from the Roman Ritual. - Recall what was said concerning the Sacraments in general, no. 230.

QUESTION 2. Can this Sacrament licitly be conferred upon a sick person in doubtful, or probable, danger of death?

Reply. Yes, with the common and true opinion, because for administering this Sacrament validly and licitly, it suffices that the sick person labor under a disease so grave that he is prudently judged to be in danger of death. This is confirmed from the Roman Ritual, where it is thus established: *This Sacrament must be furnished to the sick who labor so gravely that the danger of death appears imminent.* - St. Ligorius, no. 714, etc.

QUESTION 3. Can Extreme Unction be conferred upon children?

Reply. Yes, provided they are possessed of reason and are judged capable of malice and fault. Thus Benedict XIV (*On the Synod*, book 8, chapter 6), who sharply condemns certain synodal Constitutions by which a determinate age was fixed before which children could not be anointed.

691. ◦ **QUESTION 4. Can this Sacrament be repeated, or when can it be repeated?**

Reply 1. It can certainly be repeated whenever a sick person anointed in a dangerous illness recovers and again falls into a dangerous disease. This is established from the Council of Trent, session 14, *On Extreme Unction*, chapter 3, where it is said: *But if the sick, after receiving this anointing, recover, they can again be assisted by the aid of this Sacrament when they fall into another similar danger of life.*

Reply 2. It can also be repeated in the same illness if it has been prolonged and the sick person has notably recovered, so that he appeared to have been rescued from the danger of death, and falls into the same danger again. The reason is that then there is truly a new danger of death. This is

established from the Roman Ritual, where it is said: *In the same illness this Sacrament ought not to be repeated unless it is prolonged, as when the sick person, after having recovered, falls again into danger of death.*

QUESTION 5. Can it be repeated in the same prolonged disease if it is doubted whether the state of the disease has truly changed?

Reply. More probably, yes, if the doubt is truly positive, namely, when it is truly probable that the sick person has passed out of the danger of death; for this repetition in these cases is more conformable to the ancient custom of the Church. - St. Ligorius, no. 715.

692. ○ **QUESTION 6. Is there a grave obligation to receive this Sacrament?**

Reply. There is a twofold probable opinion.

The first OPINION affirms it. First, it is evident (they say) from the words of the Apostle James himself: *Is any man sick among you? Let him bring in the Priests of the Church*, etc. But the word *let him bring in* contains a precept. Therefore, etc. Second, there is added the practice of the Church, which has always taken the greatest care that it be received by all the sick. It also appears to be established from the custom and sense of the faithful. Third, in addition, it is grave and contrary to the charity which each owes to himself to omit a means so efficacious and a most firm protection, as the Council of Trent says, against the attempts of the demon in the final agony. - Thus Roncaglia with others.

The second OPINION denies it. The reason is that neither from Tradition nor from the Decrees of Councils is a precept of receiving this Sacrament established. But what St. James says, *let him bring in the Priests...*, is understood and explained as counsel. Therefore, a grave obligation of receiving Extreme Unction cannot be imposed. - Thus Billuart, article 7, after St. Thomas, part 5, question 65, article 4; Sporer, no. 106, etc.; and St. Ligorius, no. 733, where he calls this opinion common, although he thinks the first altogether to be recommended, chiefly by reason of the charity which each owes to himself: *For in so great a danger*, he says, *he appears to expose himself to succumbing to temptations who neglects to fortify himself with this Sacrament instituted by Christ the Lord as a most firm protection in so great a conflict.*

693. ○ **QUESTION 7. What disposition is required for the reception of this Sacrament?**

Reply 1. Confession of sins, if the sick person is in mortal sin; for this Sacrament is the complement of Penance, and therefore Penance must precede it. - Billuart, article 7, at the end.

Reply 2. But if the sick person cannot confess his sins, it is necessary that at least contrition precede; for this Sacrament of Extreme Unction is primarily a Sacrament of the living and was instituted chiefly for removing the remnants of sins. - Billuart, *ibid.* But in such a case attrition itself seems able to suffice; for it is at the same time a Sacrament of the dead and can remit mortal sins with attrition. - The Salmanticenses, no. 13, and others.

Treatise on Order

We must treat: first, of the nature and division of Order; second, of its matter and form; third, of its Minister; fourth, of the subject of Order.

Chapter I. On the Nature and Division of Order

694. ○ By the name *Order* here is understood a rank of Clerics consecrated for special ecclesiastical Offices. But how great the dignity and excellence of this Sacrament is can scarcely be expressed by a human voice. Concerning this matter the Catechism of the Council of Trent, among many other things, speaks thus: *The power conferred upon it both of consecrating and offering the Body and Blood of our Lord and of remitting sins surpasses human reason and understanding, much less can anything equal and similar to it be found on earth.*

Order is commonly defined as *a certain seal of the Church by which spiritual power is bestowed upon the one ordained.* - St. Ligorius, no. 735, after St. Thomas, etc. According to others, it is also rightly defined as: *A Sacrament of the new law by which spiritual power is handed over and grace is conferred for duly performing ecclesiastical duties.*

695. **Matters to Be Established.** - I. Order is a true and properly so-called Sacrament of the new law.

This is established because all things required for the nature of a Sacrament are found in it, namely: first, a sensible sign, since it is conferred with an exterior sign. Second, divine institution, since Christ instituted the Apostles as Ministers of Order and gave them the power of consecrating, remitting sins, dispensing the sacred Mysteries, governing the Church, and instituting other Ministers. Acts 22. - 1 Corinthians 12. - Galatians 2. - Matthew 28. Third, the conferral of grace, as is established from 1 Timothy 4:24. *Neglect not*, says the Apostle, *the grace that is in thee, which was given thee by prophecy, with imposition of the hands of the priesthood.* And 2 Timothy 1:6: *I admonish thee that thou stir up the grace of God which is in thee by the imposition of my hands.*

It is also gathered from the definition of the Council of Trent, session 23, canon 3, where it is thus read: *If anyone says that Order is not truly and properly a Sacrament instituted by Christ the Lord, let him be anathema.*

696. ○ II. Seven Orders are enumerated, namely, the Priesthood, the Diaconate, Subdiaconate, Acolytate, Exorcistate, Lectorate, and Ostiariate. The first three are called major Orders, the others minor.

This is deduced from several Councils, especially from the Council of Trent, session 23, chapter 2; for after it had said explicitly that Priests and Deacons are spoken of in the sacred Scriptures, it adds: *From the very beginning of the Church, the names of the following Orders and the ministries proper to each of them, namely, Subdeacon, Acolyte, Exorcist, Lector, and Porter, are known to have been in use.* Likewise, canon 2 says: *If anyone says that besides the Priesthood there are not in the Catholic Church other Orders, both major and minor, through which, as though by certain steps, one tends toward the Priesthood, let him be anathema.*

697. **Questions. - QUESTION 1. What is the nature and property of these Orders?**

Reply 1. The Ostiariate is the Order by which there is conferred a special power of opening or closing the door of the Church, admitting the worthy, and excluding the unworthy.

2. The Lectorate is the Order by which there is handed over a special power of reading psalms and lessons from the pulpit in the Church, and of catechizing the people, or instructing them in matters of Faith.

3. The Exorcistate is the Order by which there is conferred upon someone a special power of casting out demons through exorcisms instituted by the Church.

Nevertheless, today the faculty of exorcizing is reserved to Priests alone, who can use it only with the permission of the Ordinary. - Recall what was said, volume 1, no. 317.

4. The Acolytate is the Order by which there is conferred upon someone a special power of serving the Subdeacon during solemn Mass, lighting candles, and preparing and presenting the cruets of wine and water.

5. The Subdiaconate is the Order by which there is conferred upon someone a special power of serving the Deacon at solemn Mass and chanting the Epistle with solemn rite.

6. The Diaconate is the Order by which there is conferred the special power of immediately assisting the Priest at solemn Mass, chanting the Gospel during the solemn rites, preaching, and solemnly baptizing, provided, nevertheless, that a just cause intervenes. Whether a Deacon, in order to preach at some time, needs the special permission of the Bishop, or whether the permission of the Pastor or Rector of the Church suffices, appears to be determined from particular statutes or custom.

7. The Priesthood is the Order by which there is conferred the special power of consecrating the Body and Blood of Christ in the celebration of Mass, absolving from sins, and feeding subjects by deed and doctrine.

To these add the Episcopate and first tonsure, of which the former is the complement of the Priesthood itself, while the latter is not an Order but a disposition toward Orders by which someone is declared a Cleric.

698. ◦ **QUESTION 2. Is the Diaconate a Sacrament?**

Reply. Yes, according to the common and certain opinion, because all things required for a Sacrament are found in it, namely: first, a sensible sign, through the imposition of hands; second, a sign of grace, in the words of the form: *Receive the Holy Spirit*, etc.; third, a sign instituted by God, because God alone can institute signs conferring grace. This is also established from the Council of Trent, session 23, canon 6, where it is thus defined: *If anyone says that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of Bishops, Priests, and Ministers* (namely, Deacons), *let him be anathema.* - See St. Ligorius, no. 737.

699. ◦ **QUESTION 3. Is the Subdiaconate also a Sacrament?**

Reply. It is disputed. The first probable OPINION affirms it. The reason is that the Subdiaconate, just as the Diaconate, possesses all the signs constitutive of a Sacrament; for it is: first, a sensible sign, as is evident; second, a sign of grace, since it is a sacred Order; third, a sign instituted by God, for the Council of Trent defined that in the Church there is a hierarchy instituted by divine ordination, which consists of Bishops, Priests, and Ministers; but Subdeacons, no differently from Deacons themselves, are to be numbered among the Ministers. - Thus Billuart, with many others after St. Thomas, *Supplement*, question 37, article 2.

The second OPINION, likewise probable, indeed perhaps more probable, denies it. For there is doubt both concerning divine institution and consequently concerning the promise of grace. Nor does the Subdiaconate appear to be numbered among the major Orders by divine institution, but only by ecclesiastical institution, since among the Greeks it is not regarded as a sacred Order. - St. Ligorius, no. 737.

But the minor Orders, according to the common opinion, are by no means to be numbered among the Sacraments. - St. Ligorius, *ibid.*

Chapter II. On the Matter and Form of Order

700. ○ The matter and form vary for the various Orders.

I. As regards the minor Orders, with respect to the matter, the Porter is ordained by the handing over of the keys of the Church; the Lector by the handing over of the book of lessons; the Exorcist by the handing over of the book of exorcisms; the Acolyte by the handing over of empty cruets, or at least one, and of a candlestick with an extinguished candle, because it is his office to prepare the light, wine, and water for Mass. The form proper to these Orders is contained in the words which the Bishop uses while handing over the instruments themselves.

II. As regards the Subdiaconate, the imposition of hands is considered the matter among the Greeks. Among the Latins it is disputed. According to some, the handing over of an empty chalice with an empty paten is its sole proximate matter. Others, however, contend that the handing over of the book of Epistles is likewise essential matter of this Order. The form, moreover, is contained in these words: *See whose ministry is handed over to you; and I admonish you so to conduct yourselves that you may be able to please God.*

701. ○ III. As regards the Diaconate, a twofold matter is established, namely, the imposition of the Bishop's right hand and the handing over of the book of the Gospels. It is disputed whether both of these, or only one, are necessary. Some Theologians think that the imposition of hands alone is necessary, others the handing over of the book alone, and still others both. As regards practice, however, this last opinion, as the safer, is to be held. Consequently, there is also a twofold form. That which is added to the former matter is this: *Receive the Holy Spirit for strength and for resisting the devil and his temptations, in the name of the Lord.* That which accompanies the latter matter is of this kind: *Receive the power of reading the Gospel in the Church of God, both for the living and for the dead, in the name of the Lord.*

IV. As regards the Priesthood, among the Greeks its matter is placed in the imposition of hands alone; but among the Latins it is twofold, at least by precept, namely, the imposition of the Bishop's hands and the handing over of the chalice with wine and of the paten with the host placed upon it. It is disputed among Theologians what the essential matter is. More probably it consists in the second imposition of hands alone, which is made by the Bishop with the assisting Priests. - St. Ligorius, no. 749.

The form likewise varies according to the diversity of the matter; therefore it is likewise disputed. Hence the form which corresponds to the handing over of the instruments is this: *Receive the power of offering Sacrifice to God and of celebrating Masses both for the living and for the dead, in the name of the Lord.* But the form proper to the imposition of hands is the prayer itself which the Bishop recites while he imposes hands upon those to be ordained. - See St. Ligorius, no. 739 and following.

702. **Questions. - QUESTION 1. Is physical contact with the instruments required?**

Reply. St. Ligorius, no. 743, says that there are two probable opinions and consequently that the safer one is to be followed in practice. Nevertheless, the negative opinion is to be called safe from the Decisions of the Sacred Congregation of Rites. For when a certain French Religious named Ephrem Chasteau had touched neither the chalice nor the paten by physical contact in his ordination to the Priesthood, being moved by a scruple he proposed the case to the Sacred Congregation of Rites. But the Sacred Congregation replied to this scruple of Brother Ephrem: *He can continue the celebration of the Most Holy Sacrifice without any scruple and with an altogether safe conscience* (December 3, 1661, in a case from France). And the Sacred Congregation again confirmed this Declaration in a Roman case on January 21, 1863 [1].

[1] The Decision of the Sacred Congregation of December 3, 1661, has thus: *To the scruple of Brother Ephrem Chasteau, pro-agent of the Recollects of France, namely, that he did not touch the Chalice by physical contact in his Ordination to the Priesthood, the Sacred Congregation replied: He can continue the celebration of the Most Holy Sacrifice without any scruple and with an altogether safe conscience*. The VV. therefore rightly observe (p. 389) that in this Decision no mention is made of the paten.

The VV. add (*ibid.*) that Father Ballerini subscribed to the opinion of Father Gury, since he added no annotation or correction. Reply. I deny the consequence, because silence of this kind merely indicates that the questions, in the state in which they were left, are permitted to the judgment of the reader.

The VV. add another reason (*ibid.*), because Father Ballerini inserted more briefly into the text another Decision of the Sacred Congregation which Gury had reported in the Note in these words: *The aforesaid Decision was more recently confirmed by the same Congregation* (of Sacred Rites). *For when a similar case had occurred at Rome for a newly ordained Priest of the Roman College of the Society of Jesus, Father Perrone, very well known for his theological works, questioned the Sacred Congregation of Rites concerning it; and it gave precisely the same response from the authentic Declaration already made previously, on the occasion of the scruple of Brother Ephrem, on January 21, 1863*. Reply. The reason for inserting even this annotation of Father Gury into the text was clearly stated in the *Notice to the Reader* in these words: *It seemed good to remove a certain confusion introduced by the twofold series of Notes, of which some had Father Gury as author, while others had first been added in the Roman edition of the year 1866. As regards the former, we took care that all of them, each in its own place, be inserted into the text*. Again, therefore, I deny the consequence.

Finally, after the VV. filled sixteen columns with texts of Authors, they also conclude this (p. 398): *If, therefore, the Sacred Congregation of Rites in the year 1661 had defined that the Ordination, as certainly valid, was not to be repeated, the same Sacred Congregation would not only have rejected the most common opinion of the Doctors but would have declared it to be despised as a mere scruple; which is repugnant to all probability. Moreover, it is not probable that all the Doctors who treated this matter after the year 1661 were ignorant of the aforesaid decision; whence it must be said that at least several held it as a response in a particular case, but not as a general definition.*

Let it be permissible to observe briefly a few things concerning these matters. And first, it was to be wished that while the VV. wrote these things, they had kept in memory what was done concerning the sixteen Decrees of the Holy Inquisition concerning the denunciation of soliciting Confessors, issued in the same year 1661 and indeed solemnly confirmed by Benedict XIV in the Constitution *Sacramentum Poenitentiae*. For in order to excuse St. Alphonsus, who holds conclusions rejected by these Decrees, they themselves strove to show that Decrees of this kind could have been altogether unknown to Authors. Why, therefore, do they now contend that it is not probable that all the Doctors who treated this matter after the year 1661 were ignorant of the aforesaid Decision?

Likewise, what they add, that at least several held it (the Decision) as a response in a particular case but not as a general definition, could be called probable if these several in any manner either reported or at least mentioned that Decision. Yet the VV. themselves (p. 397) allege only Scavini, who made mention of it.

Finally (p. 398), they conclude that the proposed question has not yet been defined. But if here they think it lawful to assert, after the Decision of the Sacred Congregation in the year 1661, and indeed one confirmed by the same Sacred Congregation in the year 1863, that the question has not yet been defined, why, then, on account of a Response of the Sacred Congregation, likewise private to a private person, do they elsewhere in some manner sing a triumph and proclaim the question defined, although against the unanimous opinion of Theologians and Canonists, when elsewhere St. Alphonsus, through responses of this kind, so little judged a question defined that, as we saw elsewhere (see above, Note

(a) to no. 589, p. 542, and p. 486, in the Note), he did not hesitate to hold and teach the opposite? Do not the VV. here also recall to the reader's mind that saying: *Weight and weight, measure and measure?*

Moreover, no reasonable and well-founded scruple can be present in anyone ordained. For in practice Bishops are accustomed so to proceed that in a matter of such importance they always hold the safer way. Moreover, so many Ministers and Officials have the duty of watching over the rite to be observed in Ordination that moral certainty is had that all things were done rightly and validly.

QUESTION 2. Is the handing over of both species necessarily required?

Reply. More probably, yes, because through the handing over of one species the power over the whole Sacrifice is not handed over. - St. Ligorius as more probable, no. 750. - The Salmanticenses, chapter 3, no. 45.

703. ○ **QUESTION 3. Is he validly ordained who touches the host but not the paten; and he who touches the chalice and paten but not the host?**

Reply to the first. Yes, with the common opinion, which appears most probable. The reason is that the host and wine are the substantial matter of Order, by which the power over the Body of Christ is principally signified, while the chalice and paten are employed from the precept of the Church for the sake of fittingness alone. Nevertheless, in practice the safer part is to be followed. - St. Ligorius, no. 751.

Reply to the second. Likewise yes, with the common and truer opinion, says St. Ligorius. The reason is: first, because then the host is touched through the mediation of the paten; but immediate contact with the host is not prescribed by the Church, but only with the paten, as is evident from the Pontifical. Second, because the wine in the chalice is never touched immediately; therefore, neither is it required that the host be touched immediately. Nevertheless, care is to be taken that the one to be ordained touch the chalice, the paten, and the host at the same time, and thus he will free himself from every scruple. - St. Ligorius, no. 752.

Chapter III. On the Minister of the Sacrament of Order

704. **Principles.** - I. The Bishop alone is the ordinary Minister of the Sacrament of Order. This is established: first, from Scripture, which attributes the right of conferring Orders to none other than the Apostles and the Bishops, their successors. - Acts of the Apostles 6:6 and 14:22. - 2 Timothy 1:6.

Second, from perpetual tradition, which innumerable Councils demonstrate, but especially those of Florence and Trent. For thus the Council of Florence in the Decree of Union: *The ordinary Minister of this Sacrament* (of Order) *is the Bishop.* And the Council of Trent, session 23, canon 7: *If anyone says that Bishops are not superior to Priests, or do not have the power of confirming and ordaining, or that the power which they have is common to them with Priests..., let him be anathema.*

II. A simple Priest, by commission of the Supreme Pontiff, can be the extraordinary Minister of tonsure and the four minor Orders.

This is proved from the Councils, especially from the Council of Trent, session 23, chapter 10, *On Reformation*, where it is said: *It is not lawful hereafter for Abbots or any others whatsoever, however exempt and privileged, to confer tonsure or minor Orders upon anyone who is not a Regular subject to them.* Therefore, the Council of Trent supposes that they can confer Orders upon their own Religious. - Thus most commonly. - St. Ligorius, no. 762.

705. ○ III. A Bishop can licitly ordain only his own subjects, but cannot licitly ordain others without the faculty of their Bishop.

This is gathered from the Council of Trent, session 23, chapter 8, *On Reformation*: *Let each one be ordained by his own Bishop; but if anyone asks to be promoted by another, let this in no way be permitted to him unless his probity and morals are commended by the testimony of his own Ordinary.... If it is done otherwise, let the one ordaining be suspended from the conferral of Orders for a year, and the one ordained from the exercise of the Orders received for as long as shall appear expedient to his own Ordinary* [1].

[1] The Constitution of Our Most Holy Lord Pope Pius IX, *Apostolicae Sedis*, October 12, 1869, reserves this *latae sententiae* suspension to the Supreme Pontiff in these words: *Those ordaining the subject of another, even under the pretext of a Benefice to be conferred immediately or already conferred but by no means sufficient, without dimissorial letters of his Bishop, or even their own subject who has remained elsewhere for so long a time that he could have contracted a canonical impediment there, without testimonial letters of the Ordinary of that place, incur by the law itself suspension for a year from the administration of Orders.*

The following suspension is likewise reserved to the Apostolic See: *Secular Clerics from outside, residing in the City for more than four months, ordained by someone other than their own Ordinary without the permission of the Cardinal Vicar of the City, or without a previous examination conducted before him, or even by their own Ordinary after they have been rejected in the aforesaid examination; likewise Clerics belonging to any of the six suburbicarian Episcopal sees, if they are ordained outside their own diocese with the dimissorial letters of their Ordinary directed to someone other than the Cardinal Vicar of the City... incur by the law itself suspension from the Orders thus received at the good pleasure of the Holy See; but the Bishops ordaining them incur suspension from the use of Pontificals for a year.*

706. **Questions. - QUESTION 1. Who is considered the proper Bishop of the one to be ordained?**

Reply. A Bishop can be proper by a threefold title, namely: first, by title of the nativity of the one to be ordained, or when the one to be ordained was born in his diocese, though not by chance; second, by title of domicile, or when the one to be ordained has a true and proper domicile in that diocese, and not merely a quasi-domicile; third, by title of benefice, or when the one to be ordained possesses a benefice in the Bishop's diocese. - Thus Boniface VIII, chapter *Cum nullus ordinandorum*.

To the threefold title which we have mentioned, a fourth is added, namely, the title of familiarity, by force of which a Bishop can ordain his familiar who is not his subject if he has had him with himself for three years and, with all fraud removed, immediately confers a benefice upon him. - Thus the Council of Trent, session 23, chapter 9, *On Reformation*. - St. Ligorius, no. 780.

In France, by general practice, the Bishop of origin alone is accustomed to ordain; nevertheless, such a custom is not considered to have the force of law. Therefore, a Bishop ordaining someone by reason of domicile would not sin. - Bouvier, chapter 4, article 3. - Gousset, no. 648.

707. ○ **QUESTION 2. Who can grant dimissorial letters?**

Reply 1. When the see is not vacant, the Bishop of the one to be ordained alone can give dimissorial letters, either by himself or through his Vicars General, upon whom Bishops ordinarily confer this faculty. For it belongs to the Bishop alone to govern the diocese and by ordinary right to confer Orders. Reply 2. When the See is vacant, the Chapter indeed has the faculty of granting dimissorial letters, but not within one year from the day of the vacancy. - Thus from the Council of Trent, session 7, chapter 10, *On Reformation*.

708. ○ **QUESTION 3. By which Bishop are Regulars to be ordained?**

Reply. Regulars are to be ordained by the Bishop in whose diocese is the monastery where they then reside. - Thus from the chapter *Cum nullus*.

If, however, the Bishop is absent or cannot hold an ordination, the Superior, after delivering dimissorial letters, can send his subjects to any Bishop to be ordained, provided that they show this Bishop the testimony of the Vicar General, chancellor, or secretary of their own Bishop. - See St. Ligorius, no. 788.

In the ordination of Regulars, however, the provision of the Roman Pontifical is to be observed as regards the formula: *Do you promise obedience to your Ordinary?*, etc. - Thus the Sacred Congregation of Rites, July 22, 1848, in a case from Ghent.

QUESTION 4. What Mass is to be said by the Bishop in a general conferral of Orders when some feast occurs on an Ember Saturday or on the Saturday before Passion Sunday, namely, the Mass of the feria or of the feast?

Reply. He must celebrate the Mass of the feria. - Thus the Sacred Congregation of Rites has declared many times. - See *Cases*, no. 821 and following.

Chapter IV. On the Subject of the Sacrament of Order

709. **Principles.** - I. The subject of Order is a baptized male alone.

The reason for the first is that women by divine institution are altogether incapable of any Order. This is established from the sacred Scriptures. The Apostle says in 1 Corinthians 14:34: *Let women keep silence in the churches, for it is not permitted them to speak, but to be subject, as the law also says.* And 1 Timothy 2:11-12: *Let the woman learn in silence with all subjection. But I suffer not a woman to teach, nor to use authority over the man, but to be in silence.* It is also proved from the perpetual practice of the Church and the unanimous consent of the Fathers and all Doctors.

The reason for the second is evident. For no one before receiving Baptism can receive any other Sacrament.

But a baptized little boy not yet possessed of reason would indeed be validly, but illicitly, ordained.

710. ○ II. That someone may rightly receive Orders, the following conditions are required: first, that he be bound by no irregularity, suspension, or excommunication; second, that he have attained the age required by the sacred Canons; third, that he manifest suitable knowledge proved by examination; fourth, that he present dimissorial letters if he is from another diocese; fifth, that he be ordained at the proper time and with the proper intervals interposed; sixth, that probity of life also have divine vocation as its companion.

For ordination to the Subdiaconate, there is required in addition a title of honorable support, whether of patrimony, of benefice, or even of religious poverty. If the title should perish after the Subdiaconate has been received, another title is required for receiving a higher Order. - Council of Trent, session 21, chapter 2, *On Reformation*.

711. **Questions. - QUESTION 1. What knowledge is required in candidates to be promoted to Orders?**

Reply. First, from those to be initiated into minor Orders it is required that they at least understand the Latin language. Second, from those to be initiated into the Subdiaconate and Diaconate it is required that they be instructed in letters and in those things which pertain to exercising the Order. Third, finally, from those to be initiated into the Priesthood it is required that they be found fit to teach the people those things which are necessary to all for salvation and to minister the Sacraments. - Council of Trent, session 23, chapter 4 and following.

QUESTION 2. What age is required for receiving Orders?

Reply. First, for receiving first tonsure it is required that the one to be initiated possess the use of reason, namely, that he be at least seven years old. - Council of Trent, session 23, chapter 4. Second, as regards minor Orders, no age is assigned in Canon law. Third, from Subdeacons the twenty-second year of age begun is required. Fourth, from Deacons the twenty-third. Fifth, from Priests the twenty-fifth. Sixth, for the Episcopate, however, the thirtieth year is required. This is gathered from the

Council of Trent, session 23, chapter 12, *On Reformation*. It suffices, however, that the indicated year have begun, except, nevertheless, for the Episcopate. - St. Ligorius, no. 799. But dispensation as regards age is reserved to the Supreme Pontiff. - St. Ligorius, nos. 799-800.

712. ○ **QUESTION 3. At what time can Orders be conferred?**

Reply 1. First tonsure can be conferred on any day, at any hour and place. - Thus from the Roman Pontifical.

Reply 2. Minor Orders can also be conferred anywhere on each Sunday or double feast of precept, provided they are conferred in the morning. - See the Roman Pontifical. But this is to be understood of an ordination which is not general, since a general ordination must take place on those days on which major Orders can be conferred, unless custom permits this on the Wednesday or Friday before the general ordination. - Scavini.

Reply 3. Major Orders by law are conferred during the celebration of Mass: first, on the Saturday of each of the four Ember seasons; second, on the Saturday before Passion Sunday; third, on Holy Saturday. But by dispensation obtained from the Pope, they can also be conferred outside these times, namely, on other Sundays or feasts of precept (that is, of the rite of a double of the second class) [1]. - Decretals, book 1, title 11, chapter 3, etc. - Moreover, suppressed feasts are regarded as feasts of precept as regards Orders. Sacred Congregation of Rites, November 12, 1831, and March 13, 1833.

[1] Why the Author regards a feast of precept and a feast with the rite of a double of the second class as one and the same I have not yet discovered. If indeed by feasts of precept he understands those which are observed both in choir (as they say) and in the external forum, there will certainly occur double feasts of the second class which are not observed in the external forum; but if by feasts of precept he understands those which are not celebrated *ad libitum* in choir, we shall then have many feasts of this kind which nevertheless are not doubles of the second class.

Nevertheless, it was indeed the opinion of a certain few that the feast days on which, by Apostolic Indult, an ordination can be held outside the times could be understood as any days whatsoever on which a feast of double rite occurs in the ecclesiastical offices, and, in addition, that this has force not only for doubles of precept but also for doubles *ad libitum*. La Croix (book 6, part 2, no. 2293) considered this opinion probable and thought it confirmed by the fact that (he says) *we see it done thus by the best Bishops*.

But that opinion appears now to be called obsolete, especially after so many Declarations of the Sacred Congregations. For I now pass over the fact that when some, as De Lugo relates (*Moral Responses*, book 1, doubt 34), took occasion obstinately to defend that opinion from the words of the Roman Pontifical, where in the title *On Conferring Orders* it was said in the rubric: *But minor Orders can be given on each Sunday and on double feast days*, etc.; for this reason, by command of Urban VIII, in the new revision and correction of the Roman Pontifical, it was expressly added under that title that minor Orders could be conferred on all Sundays and feast days of precept, so that no one (De Lugo adds) could any longer claim that those days which are called feasts in the Breviary were also comprehended there. But the controversy was more clearly defined by Responses of the Sacred Congregation. For, as Fagnanus reports (*On the Chapter De eo*, title *On the Times of Ordinations*, no. 42), these doubts having been proposed:

Presupposing that minor Orders can be conferred on Sundays or other feast days, it is doubted whether under the appellation of a feast day there is comprehended a feast on which an office is celebrated by the Church, or whether it must be a feast observed by the people.

Second: There is the same doubt as regards those to be promoted by force of dispensations for promotion outside the times on feast days.

To the first, the Sacred Congregation of the Council judged that feast days observed by the people are comprehended: throughout the title *On Ferias*. - *On Consecration*, distinction 3, chapter 1. - Chapter 12, session 25, *On Regulars*.

To the second, it replied the same.

That this Declaration, nevertheless, was unknown to most is evident from the fact that neither La Croix (l.c.), nor Schmalzgrueber (book 1, title 11, no. 11), nor Pichler (same title, no. 28), where they touch upon this question, make any mention of it; although Pirhing mentioned it (under this title, no. 78), where he notes that it suffices if the day is a feast in that particular Church.

In addition, we have two more recent Declarations of the Sacred Congregation of Rites. The first was in a case from Clermont, on March 16, 1833, to the following doubt: *Since diverse opinions are circulated in the Council of Clermont concerning these words of the Roman Pontifical: Minor Orders can be conferred on Sundays and double feasts; in order that a certain law be established in the matter, most humble prayers were presented to the Sacred Congregation of Rites that it might deign to declare its opinion.* And the Sacred Congregation replied: *Minor Orders can be conferred on feasts of precept, or on double feasts which were of precept before the reduction.*

The other was in a case from Quebec, on May 23, 1836, to the following doubt: *Since in the Roman Pontifical, in the title On Ordinations, it is stated: Minor Orders can be given on each Sunday and on double feast days; it is asked whether the words double feast days are to be understood of feasts of precept strictly to be observed.* The Sacred Congregation replied: *Affirmatively.*

713. ○ **QUESTION 4. What intervals are to be observed between the individual Orders?**

Reply 1. Certain intervals are to be observed between the minor Orders unless something else appears more expedient to the Bishop. - Thus from the Council of Trent, session 23, chapter 11, *On Reformation*. - The time, however, is not determined. In many places, by custom, the four Orders are conferred on the same day.

Reply 2. As regards major Orders, it was thus established by the Council of Trent, session 23, chapters 11 and 12: one year must intervene between the last of the minor Orders received and the Subdiaconate. Say the same between the Subdiaconate and the Diaconate. The same is also to be said between the Diaconate and the Priesthood, unless the Bishop decrees otherwise. Hence the Bishop has the power of dispensing from the intervals if it appears expedient to him, provided that he confers the Orders at the proper times.

But he would sin gravely who on the same day, in addition to the four minor Orders, also received the Subdiaconate, unless a contrary custom, which must be proved by the Bishop, excuses him. - Ferraris, *Library*, entry *Order*. - St. Ligorius, no. 797.

714. ○ **QUESTION 5. Does a Cleric who, having been initiated into the minor Orders, takes a wife sin?**

Reply. Speaking *per se*, it is certain that he does not sin gravely, indeed not even lightly, if he does this for a just cause, for example, to calm enmities or temptations of the flesh, to assist a poor woman, etc.; otherwise, he will not be excused from venial sin. - St. Ligorius, no. 785. - I said *speaking per se*; for, St. Ligorius says, it is greatly to be feared that one who, being certain of his vocation to the ecclesiastical state, withdraws from it in order to enjoy the world is in a bad state.

QUESTION 6. Is it required that the one to be ordained be confirmed?

Reply. The Council of Trent, session 23, chapter 4, has these words: *Let those who have not received the Sacrament of Confirmation not be initiated with first tonsure.* But it is disputed whether these words are of precept or of counsel only. Commonly, says St. Ligorius, no. 786, they say that Confirmation is not required in the one to be ordained under grave obligation, but is indeed required under light obligation; because although the words of the Council of Trent indicate fittingness rather than precept, nevertheless, to act contrary to this is not excused from at least a light disorder.

715. ○ **QUESTION 7. Does he sin who receives some Order without the intention of ascending to higher Orders?**

Reply 1. He does not sin gravely, even if he receives major Orders and does not intend to receive the Priesthood. - Thus St. Ligorius, no. 785, where he says that this is certain and common.

Reply 2. Nor, probably, does he *per se* sin venially, because it is prescribed by no law that anyone ascend to higher Orders, unless someone accepts a benefice requiring the Priesthood or a sacred Order. - St. Ligorius, *ibid.*

QUESTION 8. Does an ordained man who omits the recitation of the prayers imposed by the Bishop after ordination by way of penance sin, or in what manner does he sin? Reply. The Theologians do not agree concerning this. For some say that he sins gravely because the matter of the precept is grave. Others hold that he does not sin at all because the Bishop does not impose a precept. Finally, others judge that an omission of this kind is indeed not free from fault, but does not exceed venial sin. This opinion appears more probable. - See St. Ligorius, no. 829.

As regards these prayers, the following Declaration of the Sacred Congregation of Rites was given in a case from Granada on August 11, 1860: *Understand the words of the Roman Pontifical, the Nocturn of such a day, of the one Nocturn in the ferial office, or of the first Nocturn of Sunday, as in the Psalter, that is, of twelve Psalms with their antiphons of the season, which the ordaining Bishop can designate, either of the very day on which he holds the ordination or of another according to his judgment. But when the Bishop expresses nothing other than what the words of the Pontifical state, it must be understood as the Nocturn of the feria corresponding to that day on which the ordination took place.*

716. ○ **QUESTION 9. Are newly ordained Priests bound to say the three Masses prescribed by the Bishop, or in what manner?**

Reply 1. They are not bound to apply them for the intention of the Bishop and therefore can receive a stipend for them. - Thus commonly. - St. Ligorius, *ibid.*

Reply 2. Nor does there appear to be a grave obligation of celebrating those Masses; neither must they be said before days free from impediment arrive, since they must be votive Masses. - See St. Ligorius, *ibid.*

QUESTION 10. To what are Priests bound by force of the obedience which they promised to the Bishop in ordination?

Reply. Benedict XIV thus explains it (in the Letter *Ex quo dilectus*): *We acknowledge that, by force of a promise of this kind, a Priest is held bound by this law among others: that he cannot depart from the service of the Church to which he shall have been assigned without the permission of the Bishop.* - St. Ligorius, no. 828.

717. ○ **QUESTION 11. Can Priests, or even Pastors, embrace the religious state when the Bishop is unwilling?**

Reply. Yes. This is established from Canon law, chapter *Duae sunt*, cause 19, question 2, where it is established by Urban II that Priests or Pastors wishing to pass over to some monastery can freely depart, even when the Bishop opposes it. - See St. Ligorius, no. 828, and the cited Letter of Benedict XIV in the preceding Question.

718. ○ **QUESTION 12. Is absolution to be granted to a Cleric habituated to a secret shameful vice who wishes to ascend to sacred Orders without a prior trial of continence?**

Reply. St. Ligorius replies negatively in *On the Sacraments in General*, no. 64, although he has sincerely been converted to the Lord and therefore can immediately be absolved. According to his opinion, therefore, he will not be able to receive sacred Order unless for some time he has devoted effort to uprooting the evil habit. But if he persists in receiving sacred Order, St. Ligorius does not consider him disposed for absolution, because he violates the law of the Church in a grave matter. He excepts only the case in which God gives the penitent an extraordinary grace of compunction which renders him so proved that he can immediately receive sacred Order without being proved by an experience of time. Others, however, think otherwise on this entire question in the same St. Ligorius. - See *Cases*, no. 826 [2].

[2] Concerning a controversy of this kind, it will be useful to have read those things which Cardinal De Lugo (*Moral Responses*, book 1, doubt 28) discusses concerning a Novice who, having entered an observant Religious Order, suffered frequent voluntary lapses of the flesh, which he manifested to the Confessor in confession, and afterward relapsed more frequently. For the Confessor, judging that he was not fit for the Religious Order, frequently advised him to return to the world or to disclose his frailty to the Superior outside confession; indeed, he finally attempted to oblige the penitent to this, indicating that thereafter he would deny him absolution unless he obeyed. It was asked (De Lugo says) whether the Confessor could do this by right, or whether he had transgressed the limits of his power. There is no room here to bring forward those things which the learned Author disputes there. This one thing must not be passed over: according to his opinion, all the reasons which the Confessor is said to have advanced for defending his opinion do not prove the matter.

Appendix. On Clerical Vocation

719. ○ I. The necessity of a divine vocation is demonstrated chiefly from sacred Scripture: *Neither doth any man take the honor to himself, but he that is called by God, as Aaron was*, Hebrews 5:4. - Hence the Apostles, in order that they might substitute another Apostle in the place of Judas the traitor, prayed to God thus: *Thou, Lord, show whom thou hast chosen.* Christ himself said, John 10:1: *He that entereth not by the door into the sheepfold is a thief and a robber; but he that entereth in by the door is the shepherd of the sheep.* - Again, John 15:16: *You have not chosen me, but I have chosen you.* - Again, Luke 10:2: *Pray ye the Lord of the harvest, that he send laborers into his harvest*. Therefore, those who are not called by God intrude themselves, and they are those concerning whom the Lord says through Jeremiah (23:21): *I did not send prophets, yet they ran.* - St. Ligorius, no. 802.

720. ○ II. The principal signs of divine vocation to the ecclesiastical state are the following: suitable knowledge, probity of life, right intention, or the desire of devoting oneself to the divine glory and the salvation of souls. - St. Ligorius, *ibid.*

He who, without a vocation ascertained from such signs, intrudes himself into the sacred ministry cannot be excused from great presumption, and perhaps from grave fault, since he exposes himself to great danger of damnation. But Bishops who promote to sacred Orders those who are not called commit themselves to a greater danger, from the saying of the Apostle, 1 Timothy 5:22: *Impose not hands lightly upon any man, neither be partaker of other men's sins.* Hence in Canon law, chapter *Nullus*, it is prescribed that no one be ordained unless he has been proved.

721. ○ **QUESTION. What must a Bishop do that he may sufficiently prove candidates for sacred Orders?**

Reply. Thus St. Ligorius, *ibid.*: *For this proof to be sought by the Bishop, it does not suffice that he himself knows nothing evil concerning the one to be ordained; but he must be made certain of his positive probity according to the sublimity of the rank to which the latter desires to ascend.... In seeking this proof, Bishops therefore ought not to be content with the simple attestation of Pastors, who, led by human considerations in granting attestations of this kind, easily indulge Clerics lest they draw upon themselves the hatred of them and of their relatives; but in addition, secret information having been obtained from other trustworthy persons, they must be made certain not only that the one to be initiated is not evil... but also that he is positively good, namely, that he leads a spiritual life, is assiduous in Churches, frequents the Sacraments and prayer, lives separated from secular persons, associates with well-behaved companions, devotes himself to study, uses modest clothing*, etc.

See many other things concerning the obligations of Clerics in the Treatise on States, namely, concerning celibacy, no. 40; concerning the wearing of the habit and tonsure, no. 45; concerning the recitation of the Divine Office, no. 49 and following; etc., etc.

End of the Treatise on Order.

Treatise on Matrimony

Matrimony is so called from the office of the mother, as the Theologians commonly hold with St. Thomas, because in this society the principal parts appear to pertain to the mother. Matrimony is also called *conjugium* from the common yoke to which the man and woman are subjected. Likewise, it is called *nuptiae* or *connubium* from the verb *nubere*, because brides were formerly veiled when they were handed over to their husbands. Likewise, it is called a partnership because the man and woman have a common lot.

It is greatly useful to instruct the faithful concerning the excellence and sanctity of matrimony, while nevertheless extolling much more, as is fitting, the virtue of continence.

We must treat: first, of betrothals; second, of the proclamation of banns; third, of the nature and properties of matrimony; fourth, of its matter and form; fifth, of its minister and subject; sixth, of the impediments of matrimony; seventh, of the revalidation of an invalid marriage; eighth, of the conjugal debt.

Chapter I. On Betrothals

First, on the nature of betrothals; second, on their effects; third, on their dissolution.

Article I. On the Nature of Betrothals

722. **Definition.** - Betrothals are a deliberate promise (namely, with deliberation sufficient for mortal sin) [1], mutual [2], and expressed by a sensible sign [3], of future matrimony between capable persons.

[1] Some affirm, and others deny, in Bonacina (*On Matrimony*, question 1, point 4, no. 4) and Sanchez (book 1, disputation 16, no. 15), that deliberation which suffices for sinning mortally is sufficient; and among the latter is St. Thomas (*Supplement*, question 43, article 2, reply to objection 2; or *On the Fourth Book of the Sentences*, distinction 27, question 2, article 2, reply to objection 2). You will reconcile both opinions without difficulty by the same reasoning by which the Doctors, who disagree only in appearance, are reconciled concerning whether deliberation which suffices for mortal sin is sufficient for the validity of a vow. Concerning this, see volume 1, no. 320, with the note.

[2] If the promise is not mutual but belongs only to one party, there will not be a contract of betrothal, which is onerous and binds each side in justice, but a contract of simple promise, which is gratuitous and binds from mere fidelity if the other party accepts the promise. St. Antoninus (part 3, title 1, chapter 18, section 3) gives an example in one who says: *I give my pledge... and I shall wait one or two months or years or for all time, prepared to marry you if you wish.* But the other party can accept the promise and remain free in the meantime, so that, after taking counsel, the betrothal offered to him or her may either be admitted or rejected. I said *the betrothal offered*, for this is a certain promise of contracting betrothal. As Schmalzgrueber observes (book 4, title 1, no. 49), although it obliges one to contract betrothal and appears to be a promise of matrimony, at least mediately, nevertheless it does not merit the name of betrothal and therefore produces neither public decency nor the other effects proper to betrothal, just as a promise of sale is not a sale and does not transfer title to another. - See Sanchez, *On Matrimony*, book 1, disputation 5, no. 7 and following.

[3] It is said, *by a sensible sign*, that is, by any exterior sign by which there is expressed that to which each of the contracting parties consents and what is accepted, and by which the mutual acceptance is made known to the other, so that the contract becomes absolute. Words, therefore, are not necessary, for they could neither be uttered by a mute person nor heard by a deaf person, between whom, nevertheless, both betrothal and matrimony can be contracted, as is established from chapter *Cum apud* 23 and chapter *Tuae* 25, *On Betrothals*. The contrary is to be said, as Sanchez notes (*On Matrimony*, book 1, disputation 8, no. 13), concerning one who is both deaf and blind from birth; for he can neither hear words, since he is deaf, nor perceive other signs, since he is blind, and therefore cannot be taught what matrimony is unless perhaps he can be instructed and taught by some new art.

It is not necessary, however, that consent be signified by the contracting party himself or in his presence, but a contract can be made between absent persons either through an intermediary, or by letter (law *In sponsalibus* 18, Digest, *On Betrothals*), or through a Procurator (chapter *Procurator* 9, *On Procurators*, in the Sixth Book). The Procurator, nevertheless: first, must have a special mandate for contracting betrothal, and indeed with a determinate person; second, must execute the mandate personally unless he has expressly received the faculty of substituting another for himself; third, at the time when the Procurator executes the mandate, it must not have been revoked by the Mandator, for otherwise (which is a prerogative proper to matrimonial contracts) he contracts invalidly, although neither he nor the other party is aware of the revocation.

Moreover, the expression of consent through some sign is so necessary that silence in the face of nuptials offered to oneself in no way suffices. For although matrimony is numbered among favorable causes, in which (rule of law 43, in the Sixth Book) *he who is silent appears to consent*, contracting with a certain person can be harmful. See Schmalzgrueber (book 4, title 1, no. 58) and Sanchez (*On Matrimony*, book 1, disputation 23, no. 7). - Except betrothals which parents contract for their children, whether the children are present or absent; for if, when the matter has become known, they do not contradict it, they are presumed by law to consent tacitly by their very silence. Thus expressly in the sole chapter, section 2, *On the Betrothal of Minors*, in the Sixth Book: *From betrothals which parents very often contract for children who have reached puberty or are*

minors, the children themselves, if they have consented expressly or tacitly, as if they were present and did not contradict, are bound; from them arises the justice of public decency. And it is the same if the children were absent and even ignorant at the time of the betrothal, and afterward, having learned of it, ratified the same betrothal tacitly or expressly. Otherwise, from betrothals contracted by parents for their children, neither are the children themselves bound nor does the justice of public decency arise therefrom. Concerning these things, several observations are to be made.

First, according to the most common opinion (see Sanchez, book 1, disputation 23, no. 7, and St. Alphonsus, book 6, no. 839), under the name of parents come only the father and mother, not a tutor or curator or any other relative by blood or affinity. Schmalzgrueber (book 4, title 1, no. 67) rightly gives the reason, because by natural and divine law the contract of matrimony and betrothal is so personal that no one, not even a father, can stand for a son by that law unless he has a special mandate from him. And therefore, if the consent of the parents joined with the silence of the son makes a presumed betrothal, this is had from the provision and presumption of positive law alone. Moreover, since this provision of positive law restricts natural law, it ought not to be extended beyond the case expressed in the law; but it would be extended if this proceeded also in tutors, curators, brothers, relatives, etc. See also Diana, volume 2, treatise 6, resolution 32.

Second, it does not matter whether the children are legitimate or illegitimate or even emancipated. For a distinction of this kind is not made in the cited text; and although by civil law those who are born from condemned intercourse are not called children, nevertheless, in this matter consideration of nature is more powerful than civil law. But the reason drawn from nature has no less force for illegitimate and emancipated children, since great parental love is presumed even toward them.

Third, what is said in the text, that betrothals contracted by parents for children even when absent are valid if the latter afterward, knowing of them, ratify them expressly or tacitly (which tacit consent or ratification is sufficiently inferred if they did not contradict, as the same text previously says), is to be understood if they did not contradict when the parents themselves, either personally in their presence or through a messenger or letter, made the children more certain concerning the matter. For if others, apart from a mandate of the parents, report it to the children, there is no reason why, if perhaps they wish to object, they must express their dissent; for they are not bound to disclose their mind to everyone, and therefore silence then in no way indicates consent.

Fourth, finally, St. Alphonsus (book 6, no. 838) rightly warns that the silence of children in the aforesaid circumstances is equivalent to consent only as regards the external forum, since consent of this kind is merely presumed; but for betrothal there is required consent not merely presumed, but true and natural. Hence, if it in fact happens that the child is then silent either because of reverential fear or for some other cause, but inwardly dissents or even merely holds himself negatively, in the internal forum, in which one speaking both against himself and for himself is believed, the exterior presumption has no effect. Therefore the betrothal is null, and the Confessor can tell a penitent of this kind that he is in no way bound by that betrothal. Indeed, neither will it have force in the external forum if, for example, a girl proves her dissent; this can be done by other conjectures or presumptions or, in their absence, by an oath. See Schmalzgrueber (book 4, title 1, no. 63).

Division

Betrothals are distinguished:

1. As ecclesiastical or solemn, and private, according as they are celebrated in the presence of the Church, that is, before the Pastor [4] and witnesses, or are completed privately by the consent alone of the contracting parties, or before the parents in the midst of the family.

[4] The Pastor is indeed accustomed, before proceeding to the proclamations, to investigate the will or consent of the contracting parties concerning the future matrimony. But he is accustomed prudently to take care that he question each of them separately, and he does not then customarily employ witnesses. The reason for this prudent precaution is lest, if the betrothed stand together before the Pastor, even with witnesses, what would otherwise be a betrothal concerning future matrimony should instead become a betrothal in the present.

2. As absolute and conditional, according as they are made without any condition or with some condition attached.

723. **Principles.** - I. For the validity of betrothals, all the conditions contained in the definition are required, so that if one of them is lacking, the betrothal contract is to be regarded as null [5]. The reason is evident from what was said concerning the nature of a contract, volume 1, nos. 754 and 772.

[5] Since the Author adds nothing concerning the last condition, which requires capable persons, it is useful to append some things concerning it.

Thus those persons are capable by law of betrothal who can contract matrimony both validly and licitly; and therefore, on the contrary, those will be called incapable who cannot contract either validly or at least licitly. This can be the case in two ways: either because they are generally incapable of a human act, or because they are incapable of this particular promise. The latter occurs when there intervenes either a diriment impediment or even a merely impeding one; these will be treated below in their place. But incapacity for a human act in general can arise either from defect of age or from want of judgment. Concerning these, some things are now to be said.

Since, therefore, for the validity of a contract it is necessary that each contracting party be master of himself and have the use of reason, if either is insane, the betrothal will be null. This is confirmed from chapter *Dilectus* 24, *On Betrothals*. Under the name of insane persons, however, there do not here come certain more stupid persons, nor certain half-witted persons in whom the right use of reason is lacking only as regards certain things but by no means as regards others. Namely, the general rule is to be applied: those are capable of this contract who have as much use of reason as suffices for sinning mortally. Compare Sanchez (*On Matrimony*, book 1, disputation 8, no. 15 and following), who in addition supplies a suitable reason for judging concerning those demented persons who have lucid intervals. What has been said concerning the insane has equal force concerning one who contracts while intoxicated, for an intoxicated person lacks free consent and due deliberation. Nor does it suffice that the intoxicated person previously had the will of contracting betrothal or matrimony while he was of sound mind. For the contract itself must be a human act; in addition, since the contracting parties are the ministers of the Sacrament of Matrimony, this requires the present use of reason.

As regards capacity by reason of age, the common opinion of the Theologians and Canonists is that, regularly and speaking *per se*, seven completed years are required and suffice for betrothal. For that perfect deliberation which an onerous contract of this kind requires is not ordinarily and regularly present before this time, but is usually present when seven years have been completed. This is confirmed from Canon law, chapter *Litteras* 4, chapter *Accessit* 5, chapter *Ad dissolvendum* 13, *On the Betrothal of Minors*, and the sole chapter under the same title in the Sixth Book.

It was said *regularly and speaking per se*, for according to the common opinion of the Theologians and Canonists (see Ferraris, *Library*, entry *Betrothals*, no. 15), betrothal will be contracted validly even before the age of seven if malice and prudence supply for age, namely, if a sufficient use of reason for deliberating is evident and at the same time the contracting parties sufficiently understand what is being done. See Sanchez (*On Matrimony*, book 1, disputation 16, no. 9 and following). On the contrary, even when the age of seven is completed, the betrothal will be invalid if due use of reason is not yet present. Hence St. Thomas (*Supplement*, question 43, article 2, reply to objection 7): *It is better that it be determined according to the condition of the contracting parties, because in some the use of reason is accelerated more than in another.* Therefore, the age of seven years is prescribed by the laws merely for prudently presuming from those things which commonly happen, so that, unless the contrary appears, betrothals contracted before the age of seven are not considered valid, nor those celebrated after the completion of seven years invalid. Therefore, betrothals before seven years are not to be held valid unless the contracting parties are proved capable of malice; but after seven years have been completed, they are to be held valid unless it is proved that they were not yet capable of malice. Accordingly, in doubt one must stand by what the law prescribes.

Nevertheless, although betrothals of children who have attained the perfect use of reason are held valid by the sacred Canons and therefore induce the impediment which is called the justice of public decency, nevertheless, in order that provision be made for the weakness of age, the Church specially decreed certain things concerning them (see chapter *De illis* 7, *On the Betrothal of Minors*), namely: first, if each contracting party is indeed older than seven but is a minor, neither can withdraw before puberty, but can object or dissent only after attaining puberty. This was most wisely provided. For, as Covarruvias observes (*Epitome*, book 3, *Decretals*, chapter 5, section 1, no. 1), minors, because of the fragile constancy of their age, would frequently contract and frequently dissent from contracts.... But from that inconstancy... the impediment of public decency would be multiplied without end according to the number of betrothals. Second, even if the contract was between one who had reached puberty and a minor, the latter, when he comes to puberty, can withdraw. Third,

nevertheless, he who was already of puberty cannot withdraw. (This opinion of the Canonical text is rendered backwards by the one who inscribed the rubric upon the cited Chapter in these words: *He who first reaches puberty shall await the other.* This is false, for according to the common opinion, whichever contracting party first reaches puberty can object immediately and is not bound to await the puberty of the other. See Covarruvias, l.c.) Fourth, if the one who first reaches puberty does not object but awaits the other, the latter nevertheless, when he also reaches puberty, can object and dissent.

These provisions of Law have equal force whether they expressly wished to contract betrothal alone or contracted betrothal only virtually. Namely, by provision of Law (see chapter *Tuae nobis*, at the end, *On the Betrothal of Minors*, and the sole chapter, section 1, under the same title in the Sixth Book), when either two minors in whom malice does not supply for age, or a minor with one who has reached puberty, contract a betrothal not concerning the future but concerning the present, this contract has force not as matrimony, for which they are incapable, but, by interpretation of law, only as betrothal concerning the future (unless perhaps they expressly intended only to bind themselves by the bond of matrimony, as Sanchez observes, book 1, disputation 21, no. 3). Whatever things have been said concerning the right of withdrawing from express betrothals when puberty is reached have precisely the same force in this latter mode of betrothal also. And here take special notice that this ancient law concerning clandestine matrimony contracted by minors, according to which it passes over into betrothal, was not corrected or abrogated by the Tridentine decree concerning clandestine marriages. Concerning this, Sanchez (*On Matrimony*, book 1, disputation 21, no. 5) mentions a Declaration of the Cardinals from the report of Peter De Ledesma. Pignatelli (*Consultations*, volume 9, consultation 133, no. 46) reports it thus (unless perhaps it is another): *It was asked whether a matrimony contracted clandestinely by words concerning the present between one who had reached puberty and a minor, the form handed down by the Council not having been observed, is resolved into betrothal; this pleased some Doctors consulted concerning the matter from the Response of Boniface VIII in the sole chapter, section 1, On the Betrothal of Minors, in the Sixth Book. The Sacred Congregation declared this opinion true, so that clandestinity does not prevent the matrimony contracted by words concerning the present between one who has reached puberty and a minor from having force. But because the law is interpretative, such matrimony contracted by words concerning the present is only betrothal by words concerning the future* (the aforesaid section 1). *Therefore, just as clandestinity would not harm the validity of betrothals contracted by persons who had reached puberty, as the Sacred Congregation has already declared, and there is no doubt concerning this, so neither will it prevent the validity of these betrothals contracted between one who has reached puberty and a minor.*

II. Betrothals have force in the same manner whether they are solemn or ecclesiastical, or private or clandestine, because the consent of two persons suffices for a true contract; nor has the Church ever invalidated private betrothals. Indeed, now in most places solemn betrothals have fallen into desuetude.

III. Betrothals entered into under a condition concerning the present are valid here and now if the condition is verified; but if they are contracted under a condition concerning the future, they will have force as soon as the condition is fulfilled, without new consent of the contracting parties, provided neither has revoked the consent previously given. In the meantime, however, the contracting parties are bound to await the fulfillment of the condition if it is honorable.

IV. When words or signs are doubtful, in the forum of conscience one must stand by the intention of the contracting parties if it is established; but in the external forum, by the common understanding and sense of the words. - St. Ligorius, book 6, no. 840 [6].

[6] You have rules for determining the sense of words in Schmalzgrueber (book 4, title 1, no. 50). Moreover, when the words or signs still remain doubtful and equivocal, according to the common opinion of the Theologians even the betrothal must be held doubtful. In this case St. Alphonsus (book 6, no. 840), having cited the opinion of those who think one must incline in favor of matrimony, more probably judges with Viva that one must incline in favor of liberty. But in reality the Doctors here disagree only in appearance, for some speak of betrothal concerning the present, while others speak of betrothal concerning the future. Hence Diana (volume 2, treatise 6, resolution 135, no. 4) thus composes the matter according to the sense of each side: *I would think that a distinction must be made between betrothal and matrimony, so that when in equal doubt they doubt whether matrimony was contracted, the contracting parties should be compelled in both forums, lest perhaps injury be done to the Sacrament through the dissolution of matrimony; but when it is doubted whether the betrothal is valid, they should be judged free*

in both forums, because if someone were then compelled against his will, injury would be done to him through the despoiling of the liberty which he possesses.

724. **Questions. - QUESTION 1. Are betrothals contracted from grave fear valid?**

Reply. More probably, no. The reason is that matrimony contracted from grave fear is null, as is established from Canon law and will be explained below, no. 747. Therefore, by that very fact, betrothals entered into from such fear must also be null. - St. Ligorius, no. 844 [7].

[7] The question must be understood as asking whether these betrothals are valid by natural law. For the two opinions differ in this: one opinion (also certainly more probable to St. Alphonsus) says that the contract is invalid by natural law; but the other says that it is valid, though rescindable by him who suffered the fear. Therefore, this latter opinion must also necessarily admit that the impediment of public decency arises therefrom, which the former consequently more probably denies is incurred.

QUESTION 2. Are betrothals entered into from light fear valid?

Reply. Yes. The reason is that one who instills light fear is not considered to inflict a grave injury upon another, since the latter can easily despise such fear and consequently is considered to have willed voluntarily to suffer the injury. Recall what was said concerning Human Acts, volume 1, no. 10. - St. Ligorius, *ibid.* - Lacroix, no. 105, etc. Some nevertheless deny it, because no one is bound to suffer an injury and therefore cannot be obligated through an injury [8].

[8] St. Alphonsus (book 6, no. 844, question 2) does not deny that this latter opinion also is probable; nor without merit will others hold it as more probable. For the matter always comes back to this: that the other is compelled through injury toward one of two alternatives, namely, either certainly to undergo some evil, whatever it may be, or to admit a contract which he otherwise would not wish to admit.

But this is repugnant to natural law, which requires both that the right of each person be preserved intact and that, if perhaps it has been injured, it be restored anew in its integrity. Nor is the reason of the opposite opinion firm; for it is false that an injury is voluntarily admitted when someone is unjustly compelled necessarily to undergo one or the other injury.

The reason by which St. Alphonsus (l.c., question 3), with the more common and more probable opinion of the Doctors, proves that even one who suffered light fear can rescind the contract supports the same opinion: namely, *just as he* (that is, the one instilling unjust fear) *is bound to release the pledge unjustly extorted through such fear, so the one who suffered the fear can revoke the pledge given.* And surely, unless we wish to abuse words, a contract which produces no obligation can never be called valid; but no obligation is in fact to be said to exist which someone, as in the present case, can cast off at will. Therefore, the contract is rightly to be called invalid by natural law itself.

Nor should it appear to anyone to be the same whether you call these betrothals invalid by the law itself or valid but rescindable at the judgment of the one who suffered the fear. For this distinction of the greatest importance intervenes: in the latter opinion the impediment of public decency arises from the contract, but in the former not at all. Since the latter cannot be denied its probability, it will therefore be altogether probable that no impediment arises from that contract and consequently that matrimony is validly and licitly contracted, according to the general rule which we shall see below to be handed down by the common opinion of the Doctors in a case of a doubtful impediment introduced by ecclesiastical law.

** The VV. object first against this Note (p. 792): *Father Ballerini does not rightly assert that St. Alphonsus does not deny that this latter opinion is probable.* Reply. Then let the VV. show, I ask, where the holy Doctor denies that it is probable.

The VV. reply (*ibid.*): *St. Alphonsus reports authorities favoring this opinion without pronouncing any judgment concerning its probability.* Reply 1. Let the antecedent pass; I deny the consequence. The reason is evident, because one who pronounces no judgment neither affirms nor denies. Therefore, it is most true that the holy Doctor does not deny it. But why the antecedent has been allowed to pass will be evident from the things to be said.

Second, against the argument of the Note that the other is compelled through injury toward one of two alternatives, the VV. (p. 791) object these things: *Here you have a mere sophism. For where there is only light fear, there is not considered* (as St. Alphonsus

observes) *to be a true injury.* Reply. I certainly do not know how the VV. say that St. Alphonsus observed that there is no injury. For are not these the words of St. Alphonsus (book 6, no. 844, question 3), cited by the VV. themselves (p. 789): *Just as he is bound to release the pledge UNJUSTLY extorted through such fear, so the one who suffered the fear can revoke the pledge given?* But is not a pledge unjustly extorted a true injury? Indeed, do not the VV. themselves (*ibid.*) write a little below: *He who suffered light fear... since he suffered an injury, although not a grave one*, etc.?

Third, the VV. add (*ibid.*): *Nor is the one who suffered fear properly said to be compelled, since he can easily repel fear of this kind.* Reply. I distinguish. If by *repel* the VV. understand *avoid*, I concede it; but this is apart from, indeed contrary to, the present hypothesis, in which it is established that someone must necessarily undergo one or the other inconvenience; therefore, I deny the supposition. But if by *repel* they understand *tolerate*, I deny that he is not compelled; for he is truly compelled upon whom, though unwilling, the necessity of tolerating or suffering one or the other is imposed, no differently than the unavoidable necessity of suffering the loss either of money or of life is imposed by a robber upon a traveler.

Fourth, the VV. insist (*ibid.*): *Father Ballerini supposes as undoubted and admitted by all precisely that which is denied, namely, that in the case THERE IS TRUE COACTION.* Reply. Do the VV. here wish (indeed less opportunely) to play with words for a while? We shall put an end to the play with St. Thomas (*On the Fourth Book of the Sentences*, distinction 29, question 1, article 1). St. Thomas therefore says: *Coaction is twofold. One which causes absolute necessity, and such a violent thing is called simply violent by the Philosopher, as when someone bodily drives another to motion. The other causes conditional necessity; and this the Philosopher calls mixed violence.... And because this coaction arises from the fact that some imminent danger is feared, therefore THIS FORCE IS THE SAME AS FEAR, which in some manner COMPELS the will.* Moreover, since fear is in question in the case, it is certainly easily understood in what sense the word *coaction* is employed in the Note.

Fifth, against the other argument of the Note, the VV. (*ibid.*) write: *Father Ballerini abuses words not slightly. For by the very fact that a contract is rescindable it is not invalid, since no one rescinds that which does not exist. Certainly, a contract which produces no obligation can never be called valid; but it cannot be said of a rescindable contract that it produces no obligation; rather, as is established from the things said above, it produces a true and natural obligation in each contracting party.*

Reply. I would think there to be neither a slight nor a non-slight abuse of words in these things which De Lugo writes (*On Justice and Right*, disputation 22, no. 75): *I suppose the definition of an onerous contract... which, namely, produces a mutual obligation on each side; but if it obliges only the one party, it already falls short on that side of the true nature of a contract and is valid on one side alone. For it is valid insofar as it obliges; therefore, if it does not oblige on both sides, it is not valid on both sides.* Moreover, in the present matter there is no question whether he who extorted the pledge from the other through fear is obligated; for the Doctors agree that he is obligated. Thus collapses the reason of those who therefore contended that contracts extorted by fear are valid, lest he who had instilled the fear or deceived the other be free from obligation. The question, therefore, concerns him whose consent to the contract was extorted through fear. Is he obligated to contract matrimony in the case?

An obligation is a bond of law by which we are bound by necessity to discharge something. Thus the *Institutes*, book 3, title 14. Therefore, is he bound by necessity to contract matrimony? And if even St. Alphonsus, as the VV. themselves allege him, denies this, how do they themselves say that a contract of this kind produces a true and natural obligation in each contracting party? The VV. write: *as is established from the things said above.* But from the things said above the opposite is rather established. Moreover, as De Lugo says, a contract is valid insofar as it obliges.

Sixth, they say, *By the very fact that a contract is rescindable, it is not invalid, since no one rescinds that which does not exist.* Reply. Rescission of the contract in the case does not mean removal of an obligation which exists. For how could someone in the forum of conscience rescind a contract with a safe conscience if there existed some obligation by which he was bound? Therefore, rescission of the contract in the forum of conscience merely means a declaration of the will rejecting an obligation by which the natural law does not bind him by force of that contract.

And thus Molina rightly replies to the argument which those who defend the validity of these contracts employed, because, namely, the law prescribes that they are to be rescinded (*On Justice and Right*, tract 2, disputation 326, no. 14), that it is not necessary for the laws to be understood as speaking of rescinding a contract valid in itself, but rather as declaring their invalidity. And surely, as the same Molina observes, ownership is so little considered to have been transferred through a contract of this kind that in the law (law 9, section 5, Digest, *What Is Done Because of Fear*) it is expressly said that an action *in rem* is granted to the injured party and that the thing itself is among his goods, so that an action is granted against any persons whatsoever to whom that thing has come. See also Voet, book 4, title 2, no. 4. And indeed, when judges decree that a contract is to be rescinded, do they remove any obligation imposed by natural law, or do they not rather declare that no obligation of this kind exists?

Moreover, the reason why the laws speak in this way concerning these contracts, as though they are to be rescinded, is easily apparent. Namely, by a fiction of law, as the same Molina notes, ownership of a thing handed over by force of fear is considered transferred; or, to speak better, a contract is always presumed valid. Therefore, the burden of proving the fear instilled is cast upon him who suffered the fear, and deservedly indeed, because fear is not presumed. But a presumption concludes nothing of itself and in the end always yields to truth.

Seventh, the reason must now be given why at the beginning the response to the first difficulty of the VV. was, *Let the antecedent pass.* For it has already been said that rescission of a contract supposes that no obligation in fact arose by force of that contract in the one who suffered fear; and from this it must be repeated that he can rescind the contract at his judgment. Therefore one must conclude with De Lugo: *Therefore, the contract is not valid. For a contract is valid insofar as it obliges.*

Moreover, St. Alphonsus, asking (book 3, no. 718) whether a contract entered into from light fear is rescindable at the judgment of the one who suffered fear, expressly says (which part of the response the VV. do not rightly cut short) that the first opinion *probably affirms it*. Indeed, although in that place he follows as more probable the negative opinion, nevertheless, with the Salmanticenses he excepts the contract of betrothal. In addition, in book 6, no. 844, question 3, asking, *Can one who contracted betrothal from light fear which gave cause to the contract rescind it in conscience?,* he says that the affirmative opinion appears more probable to him. Therefore, according to the opinion approved by the holy Doctor, no obligation is supposed to have arisen on the part of the one who suffered fear. But if no obligation arises, the contract cannot be called valid on that side, because the whole validity or force of a contract resides in this: that it imposes a necessary bond upon the contracting party, or produces an obligation. Therefore, the opinion of St. Alphonsus ultimately leads to this, that these betrothals can be called invalid on the part of the one who suffered fear. Therefore, that Antecedent, where it was said that St. Alphonsus pronounces no judgment concerning that opinion, ought rather to have been allowed to pass than conceded.

Eighth, for a certain greater clarity of the matter, it will be useful to inspect the reasons which the holy Doctor employs to prove the greater probability of each of his aforesaid opinions. Thus, in order to demonstrate that betrothals can more probably be rescinded in conscience if someone contracted them from fear, he reasons thus (book 6, no. 844, question 3): *The reason is that, since fear gave cause to the contract, so that otherwise it would not have been entered into, the one instilling the fear is bound to rescind the contract. Hence, just as he is bound to release the pledge unjustly extorted through such fear, so the one who suffered the fear can revoke the pledge given.* These things indeed manifestly argue that the one who suffered fear contracted no obligation, that the contract has no force as regards him, and consequently is invalid; for we call invalid that which lacks the force of obliging.

But where he wishes to demonstrate that contracts entered into from light fear generally cannot more probably be rescinded at the judgment of the one who suffered fear, a conclusion which can appear opposed to the preceding, he reasons thus (book 3, no. 718): *The reason is that he who knew the fear to be light is not presumed to have consented from fear, but truly voluntarily.* Moreover, here the holy Doctor does not so much prove his thesis as deny the hypothesis, which, namely, supposes that fear in the case gave cause to the contract. For in that hypothesis, as we have just seen, he establishes by a most solid reason that one who in fact consented because of fear is bound by no obligation and therefore that the contract has no force. Nor, again, does a presumption, which here is not indeed a presumption *iuris et de iure*, furnish sufficient foundation for asserting this other thesis of St. Alphonsus, namely, that a contract entered into from light fear cannot be rescinded either in the external or the internal forum. Let it now pass that presumptions are in no way attended to in the internal forum of conscience, but only the truth, of which each person is certainly conscious within himself. But even if there is question of the external forum, in a case of this kind an action will indeed generally be denied by provision of positive law, especially if it is established that the fear appeared to the contracting party only as light; although St. Alphonsus, with the Salmanticenses, excepts the contract of betrothal from this general rule. Nevertheless, it must finally be admitted that presumptions of this kind can of themselves produce only this one effect: that, as Cuiacius writes (rubric of the Digest, *On Proofs and Presumptions*), they transfer the entire burden of proof to him against whom they operate; for otherwise proof of the truth is rightly opposed to a presumption. Therefore, this latter thesis is not in fact opposed to the former, and consequently the argument brought forward by St. Alphonsus for the former, where betrothals are treated, has the same force in any contract whatsoever, provided that the consent of either party was truly extorted through fear, even light fear.

Ninth, after the VV. persuaded themselves that they had now shown the first of the arguments brought forward in the Note to be a mere sophism, but the other to confound two altogether diverse things, and therefore those arguments to be of no

force, they conclude (pp. 791-792) that the consequence deduced in the Note also collapses, namely, that it is probable that no impediment arises from these betrothals.

Not every uncertain probability or one asserted only by some is sufficient (they say); *but it is required that an opinion of this kind be universally received by the Authors, or at least received as probable.* They take these last words from St. Alphonsus (book 6, no. 901).

Reply 1. Unless the VV. bring forward something more solid, it is sufficiently evident from what has been said that nothing is detracted by their arguments from the most solid firmness of the reasons brought forward in the Note. Second, does not the holy Doctor Alphonsus regard as more probable the opinion which gives to the one who suffered fear the full faculty of rescinding betrothals of this kind in the forum of conscience? But this is the same, as we have seen, as declaring those betrothals invalid. Therefore, according to St. Alphonsus, it is more probable that those betrothals are not valid. Reply 3. For what the VV., after St. Alphonsus, require, namely, that the opinion for the absence of the impediment be universally received by the Authors, or at least as probable, the doctrine such as is exhibited by the Doctors cited there by St. Alphonsus can be sufficient for us. Suarez being omitted, therefore, who in part 3, *On the Sacraments*, question 67, article 8, final doubt (as St. Alphonsus cites him) has nothing which pertains to the matter, Sanchez (book 8, disputation 6, no. 18) writes thus: *If the matter is altogether doubtful, whether an impediment intervenes or not, no dispensation is necessary.... When the matter is not truly doubtful, but there are opinions, some asserting that it is an impediment, while others deny it, if the negative opinion is truly probable, although the affirmative were more probable, one following the probable opinion could enter that matrimony without any dispensation.*

And Palaus (treatise 28, point 4, section 9, no. 4): *If you have an opinion or doubt that an impediment is present, and after diligence has been made for investigating the truth you cannot overcome the doubt, you are not impeded from contracting matrimony, because while it is not established for you that an impediment introduced by human law exists, you ought to regard yourself as free by reason of possession of innate liberty.*

Likewise Viva (*On Proposition 4 of Innocent XI*, no. 20): *If the probability concerns the law,*

that is, when on each side the Doctors probably judge that something is or is not an impediment,... the custom and practice of the Church is that a matrimony thus contracted is regarded as valid; and therefore the Church does not wish it to be dissolved by an impediment which probably is not an impediment.

Finally, La Croix (book 6, part 1, no. 117): *Whenever there is a probable opinion for the absence of an impediment, the most common opinion is... that the Church then also dispenses, when she can, if perhaps the impediment is present.* But that probability of this kind is not lacking in the present question has been shown sufficiently and more than sufficiently.

725. ○ QUESTION 3. Are betrothals under the condition, if the Pope shall dispense, valid between those who have a diriment impediment?

Reply. According to St. Ligorius, no. 859, and not a few others, although the betrothal does not have force before the condition is fulfilled, nevertheless, the condition having been verified, they have force without new consent. But the negative opinion is to be held from a Decision of the Sacred Roman Rota in Clericati, *On Matrimony*, decision 17, no. 41, where he testifies that this was the perpetual opinion of the Sacred Rota. This is also established from a Declaration of the Sacred Congregation of the Council in a case from Genoa, December 12, 1733 [9].

[9] From this Declaration of the Sacred Congregation, nothing can in fact be concluded against the aforesaid doctrine of St. Alphonsus and of several very grave Theologians. For they contend that even without new consent these betrothals have force after the condition has already been fulfilled, that is, when the impediment has already been removed through dispensation. But in that Declaration, on the contrary, the Sacred Congregation defines that the betrothals do not subsist when, as is evident from the case proposed to the Sacred Congregation (*Thesaurus of Resolutions*, volume 6, p. 205), the condition had not yet been fulfilled and the impediment had not yet been removed through execution of the Apostolic Letters. In this case neither St. Alphonsus nor anyone else ever said that the betrothals have force or subsist. Since, therefore, an altogether diverse case is treated on each side, one opinion is wrongly objected against the other as though contrary. And precisely the same is to be said concerning the other Declarations of the Sacred Congregations which are

brought forward with empty labor for the same purpose, as in the case from Brugneto, January 20, 1709; the case from Siponto, May 2, 1857; the case from Mileto, March 29, 1862; and the case from ..., February 22, 1862. (See *Acta*, etc., Rome, Press of the Propagation of the Faith, volume 1, pp. 79-81.) For these also certainly establish that betrothals contracted under the condition of seeking a dispensation from an impediment are not to be upheld; but they always pronounce judgment in favor of the one who withdrew from the contract before the condition was fulfilled. Hence whoever from a judgment of this kind contends to conclude also to the case of a condition already fulfilled, namely, that for valid betrothals to exist it is necessary that they be confirmed by the contracting parties even after the dispensation has been effectively obtained, by which the canonical impediment was actually removed, draws a conclusion by a logical fault which is broader than the premises.

Here we pass over certain little arguments which Jurists employ for the same conclusion, which indeed tend to this: that these persons are considered incapable even of contracting conditionally. For they are also commonly found dissolved among the Theologians (see also St. Alphonsus, book 3, no. 650), and, if pressed, they easily lead to absurd consequences repugnant to common sense. Nevertheless, I shall not pass over this one point, that some also urge this reason: that it appears ignominious to put into a pact that which depends upon the power of the Prince. In this you surely have an equivocation which I would almost call ignominious. Grant, indeed, that it is disgraceful to promise by pact that a dispensation is to be granted by the Prince. But do those who contract conditionally promise the condition itself (which now is the dispensation)? They promise, namely, the future matrimony and obligate themselves hypothetically to it, and so bind the obligation to the condition of dispensation that, if the latter fails, the obligation also fails. What ignominy is here? Unless perhaps, by parity, you think it ignominious also to promise by vow, under the same condition, your labor in caring for the spiritual salvation of the sick in hospitals, namely, if through dispensation it should fall to you to be initiated into sacred Orders.

Although they find ignominy in the case for another reason, namely, because a dispensation (as they say), as an alteration of law, always strikes at public law, by which society is governed. But where a condition cannot by law be fulfilled, the stipulation is of no moment, etc., as is contained in law 137, Digest, section 6, *On Verbal Obligations*. - But these things (besides the fact that they would prove, contrary to common sense, that every petition for dispensation is ignominious) savor of a complete forgetfulness of the purpose for which the power and use of dispensing flourishes in society. Let us recall, I ask, the first principle concerning this matter, which St. Thomas (I-II, question 96, article 6) thus declares: *Because the legislator cannot consider all singular cases, he proposes a law according to those things which happen in the greater number of cases, directing his intention toward the common utility.... And if the legislator could* (he continues there, reply to objection 3) *consider all cases, it would not be necessary that he express all of them, in order to avoid confusion; but he ought to make the law according to those things which happen in the greater number of cases. But it happens* (he adds there, question 97, article 4) *that some precept which is advantageous to the multitude in the greater number of cases is not suitable to this person or in this case, because through this either a greater good would be impeded or some evil would even be introduced.... But it would be dangerous that this be committed to the judgment of anyone whatsoever, except perhaps because of an evident and sudden danger.... And therefore he who has the governance of the multitude has the power of dispensing in a human law which rests upon his authority, so that, namely, in persons or cases in which the law is deficient, he may grant permission that the precept of the law not be observed.* From these things it is manifest that by the same natural law and order of things it is required both that society be governed by laws and that dispensation be made opportunely in laws; and consequently the use of dispensations, rather than striking public law, is indeed demanded by a certain higher law. But the cited law, which speaks concerning a stipulation under this condition: *If Titius shall sell a sacred or religious thing, or a forum or basilica, and things of this kind which have been left perpetually for public uses*, etc., as is evident, does not pertain to the matter.

QUESTION 4. Must promises which are customarily made concerning entering matrimony always be regarded as true betrothals?

Reply. It appears that it must be denied; for often those promises bear the appearance of a proposal rather than of a true promise. In practice, therefore, one must attend to the particular intention of those promising. - See *Cases*, no. 836 and following.

Article II. On the Obligation and Effects of Betrothals

726. **Principles.** - I. Betrothals bind in justice under grave sin to enter matrimony at the determinate time, if one has been determined; but if no time has been fixed, as soon as one party reasonably requires it. The reason is that where there are true betrothals, there is a true contract in a grave matter, and thence a grave obligation follows [1]. - St. Ligorius, no. 845.

[1] This obligation urges both in the forum of conscience and in the external forum. Therefore, one who withdraws can be compelled by the judge to matrimony, even through censures (chapter *Ex litteris* 10, *On Betrothals*); although exhortations and admonitions must first precede (chapter *Requisivit* 17, under the same title), and coercion must also be abstained from if at any time, after inspecting the circumstances, the judge prudently judges that grave evils and scandals are to be feared from unwilling nuptials, for example, perpetual quarrels, the departure of the husband from the wife, or even conjugal murder. For it is expedient that the lesser evil be permitted in order to guard against a graver one, and thus favor is also bestowed upon the Plaintiff by the judge. See Sanchez (book 1, disputation 23, no. 4) and Schmalzgrueber (book 4, title 1, nos. 94-95).

II. Betrothals induce an impeding impediment to matrimony, or one prohibiting matrimony from being licitly contracted with another person unless the prior betrothals have been legitimately dissolved. The reason is that, from what has been said, betrothals produce an obligation of justice. - See what is to be said below, no. 778.

III. Betrothals also induce the impediment which in law is called public decency, by which, namely, one of the betrothed becomes incapable of contracting matrimony with blood relatives of the other in the first degree. - See what is to be said below, no. 815.

727. **Questions. - QUESTION 1. If someone contracted betrothals with two women and sinned with the second, which one must he marry?**

Reply 1. Matrimony is certainly to be contracted with the first if, when he was contracting with the second, she was aware of the prior betrothal. The reason is that then the second was not deceived but wished to be deceived.

Reply 2. More probably, matrimony is also to be contracted with the first even if the second was not aware of the promise made to the other. The reason is that the promise made to the second is always null, as being concerning an illicit matter, nor does an injury inflicted upon the other take away the right of the first; and this has force even if the second promise was confirmed by an oath. - St. Ligorius, no. 848.

QUESTION 2. Must the first betrothed woman then yield her right if the other would suffer grave harm from the loss of virginity?

Reply. Probably no. The reason is that the second betrothed woman must impute harm of this kind to her own weakness. - St. Ligorius, *ibid.* Nevertheless, the first should be persuaded to renounce her right voluntarily unless perhaps she also would incur notable harm therefrom. - St. Ligorius, *ibid.*

728. ◦ **QUESTION 3. Are earnest pledges licit in betrothals?**

Reply. Yes. The reason is that they are neither prohibited by Canon law nor opposed to natural law. - St. Ligorius, no. 852.

QUESTION 4. Must the bride return gifts [2] received from the bridegroom if matrimony does not follow?

[2] Betrothal gifts or donations differ from earnest pledges because the latter are given as a pledge or security for fulfilling the thing promised; and therefore he who has given them recovers them when that concerning which agreement had been made is fulfilled. On the contrary, whatever is given by way of betrothal largesse cannot be reclaimed once the nuptials have followed, but ownership of it passes fully to the person to whom it was given, or rather the donation is confirmed and becomes absolute.

Reply 1. No, if the betrothal is dissolved through the fault of the bridegroom, because he, by culpably withdrawing from the promise, is deservedly considered to accept the loss of these gifts. Thus common practice.

Reply 2. Yes, speaking *per se*, if the betrothal is dissolved without the fault of the bridegroom, and *a fortiori* if through the fault of the bride; for the bride cannot retain them without injustice, since they were bestowed only in view of matrimony. The same would have to be said if one of the betrothed who received gifts or earnest pledges from the other were overtaken by death before the matrimony was entered; for according to what has just been said, the parents of the deceased are bound to restore everything to the surviving betrothed.

I said *speaking per se*, because if, considering the condition of the bridegroom, the gifts are of small importance and he does not object, he is considered to remit them.

729. ○ **QUESTION 5. Must one who promised matrimony to a girl on the condition that he sin with her marry her?**

Reply. Yes, with the common opinion, according to what was said concerning Justice, volume 1, nos. 729 and 760 [3]. - See St. Ligorius, book 3, no. 642, where he says that this opinion must altogether be held.

[3] In the notes which you will find appended to these places, it was shown that the opposite opinion is strengthened merely by the deceptive coloring of fallacious citations.

730. ○ **QUESTION 6. Can a merely civil marriage, as it is made in France before a magistrate, be regarded as equivalent to betrothal?**

Reply 1. It appears that it must be affirmed if the contracting parties have the intention of afterward having recourse to the Church and contracting before the Pastor, and manifest this intention by an external sign [4]. The reason is that then they do not contract matrimony but only satisfy the prescription of civil law and at the same time bind themselves, at least implicitly, to contract true matrimony before the Church.

[4] This question ought to appear nearly useless. For it must not be thought that those who approach the magistrate for this reason had not previously agreed among themselves concerning the matrimony to be contracted or had not expressly given mutual pledges. It must therefore be supposed that true betrothals have already preceded. As regards the obligation of betrothal and the consequent impediment of public decency arising therefrom, it appears useless to inquire whether a ceremony of this kind before the civil magistrate contributes anything to these.

Reply 2. If they do not have such an intention, the civil contract cannot be regarded as a betrothal contract. The reason is that there is no promise of matrimony [5], but only a clandestine matrimony here and now, which in no way has the force of betrothal, as the Sacred Congregation of the Council of Trent declared [6]. - Carriere, no. 565. - See *Cases*, no. 847.

[5] Where the intention of celebrating matrimony before the Church is absent, not only in this civil contract (if it merits the name of contract), but not even in the preceding pledge concerning future nuptials, which must be supposed to have been mutually given, will there be any true promise of matrimony or any nature of true betrothal. The reason is evident, because if that intention is absent, matrimony, which does not exist among Christians apart from the Sacrament of Matrimony, is no longer promised; but under the name of matrimony a merely concubinous union is promised.

[6] That a clandestine matrimony, even with intercourse subsequently occurring, is not resolved into betrothal concerning the future is reported in a twofold declaration by Benedict XIV (*Canonical Questions* 291, near the end), and you also have it in the *Thesaurus of Resolutions of the Congregation of the Council* (volume 2, pp. 239-244). Therefore, Cabassutius (*Theory of Canon Law*, etc., book 3, chapter 24), Coninck (*On the Sacraments*, disputation 32, no. 78), De Rhodes (*Scholastic Theology*, Treatise on the Last Five Sacraments, section 5, section 7), Schram (*Institutions of Theology*, *On Matrimony*, no. 1230), and any others who, for precisely this reason, taught that the impediment of public decency arises therefrom only to the first degree, are not to be heard. Nevertheless, an exception must be made with Sanchez (book 2, disputation 20, no. 6) unless those contracting the clandestine matrimony had the intention of binding themselves in the manner in which they could; for since they could bind themselves through betrothal, they will remain thus bound, not indeed by force of the contract concerning the present, which is null, but from betrothals contained implicitly in the same contract according to their intention.

A graver question is debated whether that impediment of public decency arises from a clandestine matrimony, not insofar as it passes over into betrothal, but insofar as, according to the ancient Law (which St. Pius V, in the Constitution *Ad Romanum*, July 1, 1568, declared to be in no way changed as regards this), an impediment of this kind, and indeed to the fourth degree, arises from any ratified matrimony, even invalid, provided it was not invalid because of defect of consent. This question can indeed also regard those who perhaps had the intention of contracting betrothal concerning the present before a civil magistrate.

Moreover, several, and indeed grave Authors, taught that the impediment is incurred, such as Gonzalez, Pontius, Wiestner, Guttierez, Laurenius, Fagnanus, etc. They appear to have been led chiefly to this opinion by certain Declarations of the Sacred Congregation of the Council which were circulated, the principal and better known of which can be seen in this same place in the preceding edition of this work. Nevertheless, others, neither fewer in number nor less venerable in authority, such as Navarrus, Sanchez, Lessius, Tanner, Pirhing, Engel, Barbosa, Cardinal De Laurea, Emmanuel Sa, etc., went over to the opposite opinion and therefore deny that any impediment follows from a matrimony invalid because of the defect of clandestinity. They dispose without difficulty of the Declarations which the patrons of the first opinion allege, and show that some are apocryphal and others do not pertain to the matter. In this diversity of opinions, therefore, there remains place for that general canon which will be stated below for cases of a doubtful ecclesiastical impediment.

Article III. On the Dissolution of Betrothals

According to the opinion of all, betrothals can be dissolved for just causes. The principal causes are: mutual consent; a supervening impediment [1]; the choice of a more perfect state, for example, religious profession, etc.; a grave crime of the other party, for example, fornication; a notable change of status, namely, a circumstance which, had it been known or foreseen, would, in the judgment of prudent persons, have deterred one from the betrothal; [2]. Betrothals can also be dissolved through an excessive delay of matrimony, especially if a time for contracting matrimony had been determined.

[1] Understand a diriment impediment, and indeed one by natural law. For if the impediment is diriment only by ecclesiastical law, although the obligation ceases on the part of the innocent party, it does not likewise cease on the part of the one who by his own fault placed the cause of the impediment, but is only suspended; so that the latter (unless he would thereby incur harm much graver than the injured party would incur from omission of the nuptials) is bound to seek a dispensation from the impediment and, when it has been removed, if the injured party still wishes, to fulfill the pledge given to that party. Nor do the Doctors in fact disagree concerning this matter. For the discrepancy which someone might suspect from those things which St. Alphonsus (book 6, nos. 857-858) reports is owed entirely to the drowsiness and negligence of the Salmanticenses (*On Matrimony*, chapter 2, from no. 70) in describing the opinions of the Doctors.

** The VV. turn the excuse of St. Alphonsus which the final words of this brief Note present into a reproach against me, and therefore do not hesitate to write these things (p. 794): *The reproach of inexcusable drowsiness and negligence redounds upon Father Ballerini rather than upon the Salmanticenses; in reviewing the cited texts he appears not only to have dozed but to have slept.* Since,

therefore, as is evident, no texts are cited in the Note except those of St. Alphonsus and the Salmanticenses, let us inquire concerning these.

St. Alphonsus (book 6, no. 857) has these things: *It is doubtful whether the betrothals are then dissolved on the part of the guilty party. Dicastillus affirms it, and the Salmanticenses think it probable, because, such an impediment being supposed, matrimony has now been rendered impossible. But Sanchez and Palaus, with Coninck and Guttierez, more commonly and more probably deny it; they say that the obligation of the betrothal is then suspended until the impediment is removed, because it is not equitable that the delinquent should derive advantage from his crime.* In these words, as is manifest, the more common opinion of Sanchez with others is opposed by St. Alphonsus to the assertion of Dicastillus. Let us therefore inquire whether the assertion of Dicastillus truly disagrees with the more common opinion of the others there expounded, or whether, as is said in the Note, they can be reconciled; and thence it will be evident whether a discrepancy of this kind must be derived from elsewhere than from opinions of the Doctors not rightly described.

The text of Dicastillus (*On the Sacraments*, treatise 10, disputation 1, no. 554), cited by the Salmanticenses, has thus: *It can be proved by a general reason that neither of them* (namely, the contracting parties), *once an impediment has been introduced either culpably or inculpably, remains obligated IMMEDIATELY AND PROXIMATELY to matrimony; for no one can be obligated to that which cannot be done.* Thus the VV. also report the text of Dicastillus (p. 794).

And here indeed it could be asked how it can be called merely probable that, after a diriment impediment has been introduced, the contracting parties are not proximately and immediately obligated to matrimony, when to contract it is then unlawful for them and, in addition, matrimony entered into with a diriment impediment would now be invalid. Is not a matter of this kind rather evident and clear in itself? Nevertheless, St. Alphonsus, as is evident from his words cited above, writes: *Dicastillus affirms it, and the Salmanticenses think it PROBABLE,* and adds the same reason as Dicastillus: *because, such an impediment being supposed, matrimony has now been rendered impossible.* And in fact the Salmanticenses also have it thus, adding the same reason (*On Matrimony*, chapter 2, no. 70): *Dicastillus PROBABLY adds.... And the reason is that no one is bound to that which he cannot do, and, such an impediment being supposed, matrimony has now been rendered impossible on the part of each!*

But this being omitted, let us now ask whether anyone rightly opposes Sanchez, Palaus, etc., and the more common opinion to the cited assertion of Dicastillus. For there is reason to doubt, because Sanchez also (book 1, disputation 56, no. 1), to the Question, *Are betrothals dissolved because of a supervening impediment of law?*, replies no differently from Dicastillus: *When the impediment is diriment, ALL ADMIT that the betrothals are dissolved..., because matrimony can no longer subsist between them.* Since, therefore, according to Sanchez, all Theologians unanimously profess this doctrine, and indeed for the same reason, that matrimony is then impossible, why is it that St. Alphonsus presents Sanchez, Palaus..., and the more common opinion as opposed to Dicastillus and at the same time to Sanchez and the unanimous opinion of the Doctors? Whence this, unless from the opinion of Dicastillus having been wrongly described or proposed by the Salmanticenses?

But again, Sanchez, although with Dicastillus, indeed with all Theologians, he established that in the case betrothals are dissolved because matrimony has now been rendered impossible, nevertheless (l.c., no. 4) adds the question: *Is he through whose fault the diriment impediment is contracted bound to obtain a dispensation in order that he may fulfill the betrothal?* And then he resolves this question, establishing when he is to be said to be bound to this and when not. Therefore, unless someone wishes gratuitously to contend that Sanchez speaks contradictory things, it must be concluded that that suspension of the betrothals for which St. Alphonsus, as we saw above, cites Sanchez is in no way repugnant to the general doctrine both of Sanchez, Dicastillus, and all Theologians, namely, that because of the induced diriment impediment the betrothals are dissolved, or, as Dicastillus says, neither contracting party remains immediately and proximately obligated to matrimony. It must therefore be said again that the discrepancy which is imagined between the two doctrines is due solely to an inexact exposition of the opinions.

But neither is this enough. For Dicastillus himself (l.c., no. 555), in support of his opinion which we presented above, cites Sanchez, Guttierez, and, besides others, even Coninck, namely, those whom St. Alphonsus, as we have seen, opposes to him as adversaries. Whence is this, unless from the opinions of the Doctors having been proposed less exactly? For we have already seen that Sanchez agrees with Dicastillus in that general assertion.

But again, Dicastillus (l.c., no. 556) adds: *I said that he does not remain immediately and proximately obligated; for, as regards the obligation of asking for or procuring a dispensation from the impediment, there is controversy among the Authors whether at least he who gave cause to the impediment is bound to ask for and procure the dispensation.* He himself also resolves this question by determining when the man is bound to this and when not. Therefore Dicastillus, no differently from Sanchez, so holds that the obligation of betrothal is dissolved by the introduced impediment that, nevertheless, the obligation of procuring a

dispensation remains for him who placed the cause of the impediment. But this is what St. Alphonsus, citing Sanchez, calls the obligation of betrothal being suspended. What, then, causes the Holy Doctor to oppose to Dicastillus Sanchez, Palaus, and Coninck, who with the more common opinion say that the obligation of betrothal is suspended, unless the opinions of the Doctors are not presented exactly?

The VV. object (p. 795): *Dicastillus derives the obligation of sometimes asking for a dispensation, not from the betrothals, whose obligation he considers entirely extinguished on both sides, but solely from the harm inflicted.*

Reply. The VV. do not report the opinion of Dicastillus here with sufficient exactness, or certainly not with sufficient clarity. The words of Dicastillus (l.c., no. 559) are these: *He is not bound FORMALLY from the betrothal promise, but from the harm inflicted, or arising from the impediment freely placed.* Attention, therefore, must be given to that word, *FORMALLY*; but Dicastillus himself had already sufficiently explained what a betrothal promise formally imports according to him when he said (*ibid.*, no. 554) that neither remains obligated *IMMEDIATELY AND PROXIMATELY* to matrimony. And since the terms *mediately and remotely* correspond on the opposite side to the terms *immediately and proximately*, by that very fact they do not exclude that someone may remain obligated to matrimony mediately and remotely by force of the promise, that is, to remove (unless something prevents it) the impediment which he freely placed against the matrimony. Therefore, this obligation of asking for a dispensation indeed arises proximately from the harm unjustly inflicted; but why is the harm held to have been inflicted unjustly? Because the harm arises, namely, from the violation of a right acquired by the other through the former promise. Therefore, that promise is ultimately the root of why he is bound to repair the harm and, consequently, unless something prevents it, to procure the dispensation.

Otherwise, do others give a reason for this obligation different from that of Dicastillus? Behold Sanchez giving the same reason (l.c., no. 4) thus: *The bridegroom who has unjustly created the impediment is bound in justice to remove the impediment in a manner possible to him.* And Palaus (treatise 28, disputation 1, point 26, no. 4): *He who voluntarily places an impediment against contracting matrimony violates the right of the other party; therefore he is bound to repair it. But no other mode of reparation is more apt than that he remove the impediment; therefore he is bound to remove it if he can.* Indeed, see in Palaus (*ibid.*, no. 5) the opinion of Dicastillus repeated nearly word for word. *I reply* (he says) *that by the law of betrothals no one is obligated to procure a dispensation from a diriment impediment; nevertheless, he is so obligated from the unjust and inequitable placement of the impediment against the other party, for whom a dispensation is not an extraordinary means, but one ordinary and* required *per se*. Therefore, since even those Authors whom St. Alphonsus opposes to Dicastillus give the same reason for the obligation as he does, the VV. here too seek in vain a discrepancy between the opinions of those whom the Holy Doctor presents as disagreeing.

Again the VV. object (p. 795) that Dicastillus, if the harm can be sufficiently compensated in another way, exempts the bridegroom from asking for a dispensation; by this they wish to confirm that Dicastillus derives the obligation of asking for a dispensation solely from the harm inflicted.

Reply. Herincx explains the opinion of Dicastillus better; the VV. themselves (l.c.) report his words thus: *It can nevertheless happen that one who deliberately placed an impediment of this kind is obligated to ask for a dispensation or otherwise to repair the harm inflicted upon the bride. See Dicastillus.*

Moreover, in order that the reason for this doctrine may be understood, it must be carefully observed that those Authors whom St. Alphonsus adduces for his opinion also do not always and in every case obligate the bridegroom to ask for a dispensation from an impediment introduced by him. Hence, in the texts just cited Sanchez and Palaus add a limitation: the former, *in a manner possible to him*; the latter, *if he can*. Hence Sanchez (l.c.) exempts him from an obligation of this kind if (in the absence of some graver reason) the dispensation requires great expense and a long delay; for a promise is understood while things remain in the same state. Indeed, St. Alphonsus (book 6, no. 858) writes: *Others say more probably that he is indeed bound* (to ask for a dispensation), *even apart from harm inflicted, if the dispensation could easily be obtained; otherwise, if great expenses and a long delay were required for it, because the obligation arising from the betrothals urges the bridegroom to employ only ordinary and easy means, not difficult and extraordinary ones. Sporer, however, with Tamburini, excepts the case in which harm from the loss of virginity or of reputation must be repaired, as above; because then he would be bound even to expend a great sum, but not so great that he would be compelled to fall from his state.*

Again, it must be observed that St. Alphonsus (book 6, no. 857), with all Theologians, writes thus concerning the innocent party: *If the impediment is diriment, it is certain among all that* (the betrothals) *are dissolved on the part of the innocent party, so that the latter is not bound to admit the dispensation.*

From this, however, another question arises: whether in such a case the injured bride is given the choice that, if she does not wish to use or admit the dispensation, she may choose to be compensated in another way. This question also has its place in the preceding hypothesis, namely, when either the dispensation can in no way be obtained, or at least its procurement would impose upon the bridegroom an inconvenience or harm much graver than that which the bride would suffer from the want of the nuptials. Therefore, there was a proper and grave reason why Dicastillus should treat this further question, concerning which he writes (l.c., no. 561): *I do not remember having read anything in the Authors.* And since he determines that the bridegroom does not remain exempt from every obligation, both when the dispensation cannot be obtained, when its procurement would impose a graver burden upon him, and when the bride is unwilling to admit the offered dispensation, he consequently concludes with reason (l.c., no. 559) that the aforesaid bridegroom is bound either to ask for a dispensation or otherwise to compensate for the harm.

Dicastillus himself applies this conclusion to a twofold hypothesis, namely: 1. when the harm inflicted is nothing other than the harm of the impediment culpably introduced, and consequently of the promise not faithfully kept, by which he was obligated to fulfill it and therefore not to place an impediment; 2. when the bride suffers some other grave harm in addition.

And concerning the first hypothesis he writes (l.c., no. 561): *He will then be bound to compensate or satisfy the bride only to the extent to which, in the judgment of a prudent person,*

it was in her interest that the betrothals should have continued in their rigor and should have been fulfilled at the proper time; if this compensation CAN BE MADE APART FROM MATRIMONY, the bridegroom cannot be compelled to matrimony. This conclusion discloses the meaning of the words which thus precede it: *Nor is the bridegroom himself bound by the obligation of betrothal..., and therefore he cannot be compelled by it PRECISELY because of that obligation, but he will only be bound to repair the harm inflicted.* For the condition is then added, *IF* the compensation *CAN BE MADE APART FROM MATRIMONY*. Therefore, the matter is not left to the free choice of the bridegroom, but the question remains to be decided from the general principles commonly handed down concerning restitution for harm inflicted.

Concerning the other hypothesis, however, Dicastillus holds (l.c., no. 562): *If the bride suffers grave harm which can be repaired in two ways, namely, either by marrying her or by satisfying her in another way, the bridegroom must satisfy her in another way if she so wishes.... Wherefore, if the harm which she would suffer to her own reputation or in contracting another SIMILAR matrimony can be repaired by the bridegroom through the establishment of a fitting dowry, AND SHE HAS CHOSEN THIS, it appears that she can compel the bridegroom to this and reject those nuptials; for it is not equitable that, in order to repair the harm received, she should be compelled to unite herself to and marry the man from whom she received so great a harm of disgrace and infamy, if not now inflicted upon herself* (for this is compensated through matrimony), *at least upon her sister and family, and by participation also upon herself in her sister.*

Therefore the doctrine of Dicastillus is by no means singular or repugnant to the common doctrine of the others. But if other authors in this place scarcely, or scarcely at all, touch upon this latter question, namely, concerning satisfaction or reparation of harm to be made otherwise when the dispensation from the impediment appears to be set aside, either because a burden graver than is equitable would thus be imposed upon the bridegroom, or because the bride has just cause for refusing the dispensation and the nuptials, and they leave the solution of this question to be sought from the general principles handed down in the Treatise on Restitution, this by no means brings about a discrepancy or disagreement among the Doctors.

Moreover, the merely apparent discrepancy among the Doctors, concerning which the Note speaks, does not concern merely the opinion of Dicastillus. But since the VV. raised difficulties concerning this one point alone, we too refrain from speaking of the others.

[2] St. Alphonsus (book 6, no. 865) explains this rule, thus divided into two parts: *For supervening causes, that one suffices which, if it had been foreseen, would have prevented the betrothals from being contracted.... But for prior yet unknown causes, that one suffices which, if it supervened, would already suffice for rescinding the betrothals, or even one which would have deterred from contracting if it had previously been known.* And indeed, according to Sanchez (*On Matrimony*, book 1, disputation 62, no. 6), Pirhing (book 4, title 1, no. 63), and Schmalzgrueber (same title, no. 188), one who asserts that he would not have contracted betrothals if such a circumstance had existed from the beginning or had been known must be believed not only in the forum of conscience but also in the external forum, if, in the judgment of prudent persons and after the circumstances have been considered, it appears likely that he would by no means have made the promise had he forethought that cause. The reason is that things which consist in the mind, such as ignorance, knowledge, intention, etc., since they cannot become known to men, cannot

be proved by witnesses, and therefore one must stand by each person's oath if nothing to the contrary can be proved from elsewhere.

731. Questions. - QUESTION 1. Is the arrival of a rich inheritance to the bridegroom a sufficient cause for dissolving betrothals?

Reply. It is disputed [3]. Some deny it, because absolutely nothing on the part of the bride has changed. Others, however, affirm it, because between the two betrothed persons there no longer exists the same condition of things; and if the bridegroom had foreseen this change of fortune, he would in no way have wished to contract with such a person. This opinion St. Ligorius, no. 876, appears sufficiently to approve.

[3] Since this opinion is sufficiently probable, as even those who prefer the opposite opinion concede, the Confessor therefore cannot obligate the man to matrimony. It seems that it must be attributed to a typographical error that in St. Alphonsus (book 6, no. 876) the first opinion is called the most common, since several can be adduced also for the second.

** These four lines furnished the VV. an argument for writing eight columns (pp. 798-800)! Behold their first objection (pp. 799-800): *Even if the affirmative opinion, that the betrothals can be dissolved, is truly probable, nevertheless, if a cause of this kind were treated in the external forum, could the judge pronounce in favor of the bridegroom, who has a doubtful right? The Holy Doctor, book 1, no. 47, writes: The judge is bound to judge according to the more probable opinion.... Therefore, if the judge cannot pronounce judgment in favor of the bridegroom, how could the Confessor do so in the internal forum? Is he not himself also a judge?*

Reply. St. Alphonsus (book 6, no. 604) had already replied to this difficulty. For he writes thus: *You will say: A judge of the external forum ought to judge according to the more probable opinion of one party, although the other party has a probable opinion in his favor; therefore the Confessor cannot absolve a penitent who wishes to follow a probable opinion against his own more probable opinion.* Is this not the objection of the VV.? The Holy Doctor then continues: *Reply. The reasoning of the external and sacramental forum is far different; for in the external forum, since the truth of the matter is treated, namely, whether the field belongs to one party or the other, the judge, who is bound to render to each his right, ought indeed to adjudge the thing to the one who has the more probable right, and certainly cannot adjudge it to the other, who has the less probable opinion in his favor; for the probability of the latter cannot make the thing not more probably belong to him who has the more probable right, and consequently the judge would act unjustly if he did not adjudge the thing to him. But the Confessor, WHENEVER HIS OPINION IS NOT EVIDENTLY CERTAIN, cannot obligate the penitent to follow it; hence he then not only can, but is bound to absolve him, PERMITTING HIM TO FOLLOW HIS OWN OPINION.* Therefore, if the Confessor must permit the penitent to follow a probable opinion, even according to St. Alphonsus in the present case he cannot (as is said in the Note) obligate him to matrimony.

The VV. press the point by asking: *Is not he* (the Confessor) *also a judge?* Behold the reply of St. Alphonsus (l.c.) to a question of this kind: *Reply. The Confessor is not the judge of the opinions which the penitent is bound to follow, but only of the disposition of his penitent.... As regards other opinions which concern the obligation of the penitent, namely, those things which the penitent must do or avoid, the Confessor is not a judge, nor can he obligate a penitent who wishes to follow the contrary opinion to follow his own.... Hence, when... the Confessor does not have evident certainty of the falsity of that* (opinion), *he can, indeed is bound, to permit the penitent to follow his own opinion..., because the Confessor is not the judge of controversies.* Therefore, since the Confessor is bound to permit the penitent to follow a probable opinion in things to be done or avoided, and since it is probable that in the present case the bridegroom can withdraw from the betrothals, it is manifest, also from the doctrine of St. Alphonsus, that the Confessor cannot obligate the penitent to matrimony.

2. The VV. object (p. 800): *From a special Declaration of the Sacred Penitentiary, all Confessors in the practice of the sacred tribunal of Penance can safely follow all the opinions of St. Alphonsus without having to weigh the grounds and reasons upon which the various opinions rest. Therefore, this opinion* (namely, what is said in the Note, that the Confessor cannot in the case obligate the man to matrimony) *must be altogether rejected; for by force of the cited Declaration the Confessor can follow the opposite opinion of St. Alphonsus, who holds that the bridegroom*

cannot in the case withdraw from the betrothals and therefore can be obligated to matrimony.

Reply. St. Alphonsus, as is evident from the words cited above, expressly affirms that the Confessor is bound to permit the penitent to follow his own opinion. Therefore, according to St. Alphonsus, in the present case the Confessor cannot

obligate the man to matrimony. How, then, because of the Declaration of the Sacred Penitentiary, will the Confessor be able with St. Alphonsus to obligate him to matrimony, if according to St. Alphonsus himself he is bound not to obligate him?

Again, the Sacred Penitentiary adds in the Declaration itself: *Without, however, those being considered reprehensible who follow opinions handed down by other approved Authors.* Therefore, from the Declaration of the Sacred Penitentiary, one may follow approved Authors who teach that in the present case the bridegroom is not obligated to matrimony. And if this is permitted by the Declaration of the Sacred Penitentiary, how do the VV. contend that this opinion must be altogether rejected by force of this Declaration? Moreover, when the Confessor knows that the penitent may licitly use an opinion which exempts him from an obligation, according to the opinion of all, including St. Alphonsus, he cannot impose the obligation. Therefore, even according to the Declaration of the Sacred Penitentiary, the Confessor cannot in the present case obligate the man to matrimony. Again, therefore, one may ask: how, by force of the Declaration of the Sacred Penitentiary, as the VV. contend, can the Confessor in the present case obligate the man to matrimony with St. Alphonsus?

Therefore, in order to avoid consequences of this kind which conflict with one another, one must keep wholly before one's eyes those things which are learnedly noted concerning these judgments of the Apostolic Penitentiary in the *Acts Extracted from Those Things Which Are Done at the Holy See*, etc., volume 1, appendix 17, pp. 497-501. *Some appear to attribute to this judgment of the Holy See* (thus there, p. 498) *much more than the judgment itself bears. For they appear to think that the Holy See judged all the opinions of St. Alphonsus to be true, or they even appear to infer from the judgment of the Holy See that anyone acts prudently if he accommodates himself to any opinion of St. Alphonsus whatsoever, even if he knows, whether from his own knowledge or from competent authority, that the opinion which he follows is evidently false.*

The learned Author of the Appendix then speaks thus concerning these things (p. 500): *This judgment in no way concerns opinions which enjoy some probability and which are disputed, or can be disputed, among the Doctors.* Hence he infers: *What can be inferred from this judgment of the Holy See is this, namely, that every Catholic WHO IS UNABLE TO INQUIRE FURTHER INTO THE TRUTH OF THE OPINIONS can prudently follow that master and doctor who wrote nothing worthy of that censure which would have stood in the way of the Acts of Canonization.* And below (p. 501): *From the response by which St. Alphonsus was declared to be one of the approved Authors, whose opinions one who follows acts SAFELY, one would not rightly infer from the particle SAFELY expressed in the proposed doubt that all the opinions and judgments of the Holy Prelate were declared true; this is recognized from the other part of the Response, according to which those who follow opinions handed down by other approved Authors are not to be reprehended. For no one is ignorant that Authors approved in the Church and received by usage sometimes hand down diverse and contrary opinions, which, since they enjoy probability, no one who follows them is worthy of reproach.*

And below: *The Response of the Sacred Penitentiary does not rest upon a principle of knowledge, as though whatever St. Alphonsus taught were true; but it rests upon other extrinsic prudential reasons, because of which one who follows his opinions acts prudently, and therefore safely. These reasons are those which we indicated shortly above and which are substituted in the absence of knowledge; namely, anyone acts prudently, and therefore safely, if he makes his own a doctrine received by usage in the Church which a learned and prudent man, especially if he is recent and resplendent in sanctity, has taught. But since this principle of prudence*

is substituted for the absence of knowledge, it must be said to admit an exception whenever it is evidently established for us that some opinion of the author whom we follow is false and enjoys no probability.

Therefore, to conclude: since it is a common principle, and one also handed down as certain by the Holy Doctor Alphonsus, that a Confessor cannot impose an obligation upon a penitent when, according to the opinion of approved Doctors, it is probable that such an obligation does not exist; and since in the present case it is probable that the bridegroom is not obligated to matrimony; it plainly follows that the opinion of St. Alphonsus, where he denies that the bridegroom can withdraw in the present case, is indeed among those opinions which one who follows in the absence of knowledge and relying merely upon the aforesaid judgment of prudence cannot be reproached for following; but by no means can it be inferred from the Declaration of the Sacred Penitentiary that this opinion can safely be employed in practice by a Confessor endowed with some knowledge who sufficiently recognizes those two premises, namely, both that it is probable that the bridegroom can in the case withdraw from the betrothals, and that the Confessor cannot licitly impose an obligation when it is probable that the obligation does not exist.

3. But the VV. (p. 799) appear also to have wished to cast doubt upon whether it is truly probable that the bridegroom can withdraw in the present case. For they write: *From the foregoing it is evident that this probability rests upon only a weaker foundation.*

Reply. If by this obscure phrase the VV. wish merely to signify that, in their judgment, this opinion possesses less probability than the opposite, which they consider more probable, someone will reply: Let the Antecedent pass; and I deny

the Consequent. For even lesser probability (as St. Alphonsus says) *serves to show... that the law in that case, since it is doubtful, does not bind.* (See several texts of the Holy Doctor Alphonsus on this matter in volume 1, pp. 60 and 65.) It therefore remains that in the present case the Confessor cannot obligate the bridegroom to matrimony.

But if by that phrase they wish to infer that the probability of this opinion is doubtful, I indeed do not see what they have brought forward in the foregoing (as they say) from which this is evident. And first, among the foregoing things I find no reason adduced by them for the thesis of St. Alphonsus, just as the Holy Doctor (book 6, no. 876) had adduced no reason. Did they themselves perhaps perceive that the reasons which patrons of that opinion are accustomed to advance are such that it is especially useful for their cause to suppress them altogether in silence? They indeed employed in what followed those two reasons related above, the one drawn from the office of the Confessor as judge, the other from the Declaration of the Sacred Penitentiary. But we have already sufficiently seen whether these have any force.

4. Therefore, in the foregoing the VV. merely heap up many names of Authors; by this heap they endeavor at the same time to prove that St. Alphonsus rightly called his opinion the most common. Nevertheless, let that now have force which they themselves observe (p. 798), that Authors are to be weighed rather than counted; and we shall add that weighing must also, and indeed especially, be employed concerning the arguments which perhaps are adduced by them for the thesis.

This opinion (says Diana, volume 2, treatise 6, resolution 18, no. 3) *previously had Sanchez alone as its author.* But I ask: what reason did Sanchez (book 1, disputation 39, no. 7) adduce? *Because*, he says, *the other has not been rendered of a worse condition, just as if I promised to sell a horse at a price which was then just, the greatly increased value at the time of delivery will cause no difficulty.* But this reasoning is neither always firm, nor does the alleged parity have any force. First, the reasoning is not generally firm, because if, for example, the bridegroom should afterward lose his office or for some other cause become unequal to bearing the burdens of matrimony, he can withdraw from the betrothals even though the condition of the bride has not been made worse. *A promise of matrimony*, says Palaus (*On Betrothals*, disputation 1, point 28, no. 3), *is implicitly made under that state of riches; hence, if he falls from it, the obligation*

ceases. Second, the alleged parity has no force and, moreover, labors under an equivocation. For those words of Sanchez, *If I promised to sell*, signify either a mere promise to sell or a completed sale. If it was a mere promise to sell, even at some fixed price, it is denied that the promisor is bound to that price if the prior state of things is changed into another far different one; for, as the same Sanchez says (*ibid.*, no. 4), a promise is understood while things remain in the same state. Accordingly, if that promise, for example, concerned grapes to be sold at a fixed price at a time when the vineyards promised a most abundant vintage, and hail afterward dreadfully devastated all the vineyards of the province, surely the promisor would not be bound to sell the grapes at that price. But if the discussion concerns a sale and not merely a promise to sell, the parity, as is evident, must altogether be denied; for the conditions inherent in a contract of promise cannot be transferred to a contract of sale. Do the other Authors, then, adduce any arguments besides these petty reasons of Sanchez, which are truly of no weight?

5. But let us consider further what can be concluded from the heap of names which the VV., as we have said, collected.

Sporer, as the VV. (p. 799) acknowledge, repeats in as many words (*On Matrimony*, no. 282) what Tamburini (book 8, chapter 5, section 8, no. 15) had copied literally from Gobat (treatise 10, no. 340), namely: *Concerning these opinions, let one wiser than I interpose his judgment.* Therefore, if the judgment of these three is considered, the Confessor cannot obligate the man to matrimony, for they leave the obligation uncertain. But an uncertain obligation is not an obligation and cannot be prescribed by the Confessor as a true obligation. Therefore. And here one is moved to ask: why do the VV. (p. 798) reckon Sporer among those who with St. Alphonsus deny that the bridegroom can withdraw?

6. The VV. mention (p. 799) how Sporer (l.c.) reports, while Ferraris (entry *Betrothals*, no. 117) praises, the distinction of Martin Perez, who says (Ferraris says) *that one can withdraw if, in entering the betrothals, he had regard to the equality of riches or goods* (read better, *honors*); *and, on the contrary, that he cannot withdraw if he contracted without regard to the aforesaid because of another cause which persists, for example, because of special beauty.* Therefore Ferraris, however less exactly he may report the opinion of Perez, nevertheless denies that the bridegroom is bound to matrimony unless perhaps he contracted the betrothals merely because of the beauty of the bride. Moreover, by this very thing he overthrows both the thesis and the petty reasons of Sanchez. Why, therefore, do the VV. (p. 798) number him also among those who defend the doctrine of Sanchez and St. Alphonsus?

I said that Ferraris reports the opinion of Perez less exactly. For the latter (*On Betrothals*, disputation 9, section 11, nos. 10-11) has it thus: *Sanchez... and others hold that a very rich man is bound to stand by the betrothals, because he himself has not been rendered*

of a worse condition, nor is he said to have been deceived concerning the condition of the bride or to have erred concerning the condition of the bride, but concerning his own condition, toward which consent is not directed. Thus Perez, who in these words actually proposes all the petty reasons of this opinion. He then continues thus: *I prove the opposite more with Hurtado, because that change thus made is notably graver, so that if it had been foreseen at the time of the betrothals by him who became richer, he would not have contracted them; this is the principal and efficacious reason for which betrothals can be dissolved in the other aforesaid cases.* Since Perez therefore manifestly departs from the opinion of Sanchez, why do the VV. (p. 798) sell this man also as a patron of that same opinion of Sanchez?

Perez then resolves the petty reasons of the opposite opinion thus (*ibid.*, no. 11): *To the opposite argument I say that the other has been rendered of a worse condition as related to the present state of this one, just as if the latter had ascended to a higher grade of dignity, that of Count, Marquis, or Duke.* Oberrauch (treatise 20, no. 2373) expresses this reply more clearly thus: *I judge that it pertains here*

(namely, that the betrothals can be dissolved) if the condition of one party is greatly increased by nobility or wealth; for the other party is rendered much worse, not indeed in herself, but with respect to the fortunate bridegroom, and the matter is brought to that case in which the betrothals would never have been entered. Does not that petty reason, that the bride was not rendered of an inferior condition, fall by these words?

Behold, finally, the words of Perez (l.c.) from which Ferraris and Sporer argued that Perez speaks with a distinction: *I understand the aforesaid doctrine morally and regularly speaking; for if someone had contracted betrothals ON ACCOUNT OF NOBILITY OR BEAUTY ALONE, a vast abundance of riches would not make their fulfillment notably graver for him after he had become richer, nor would it, had it existed from the beginning, have deterred him from the betrothals in that event.* Perez therefore merely excepts the case in which a foreseen increase of fortune would not have deterred one from contracting those betrothals. But this exception of a singular case can in no way be drawn into a general rule.

7. But let us return to the names heaped up by the VV. in favor of the opinion of St. Alphonsus. Therefore, besides Sporer, Ferraris, and Perez, vainly cited by them, there occur there the names of Struggl, Leonardelli, Schmalzgrueber, and the Salmanticenses. Moreover, the VV. themselves (p. 799) acknowledge that these authors, either in express words or equivalently, also admit the opposite opinion as probable. But if this is so, these authors can certainly be cited effectively for denying the obligation, but by no means for urging the obligation in practice. And the reason is manifest, because, from the principle so greatly inculcated by the Holy Doctor Alphonsus, the probability of the negative opinion suffices for denying the obligation, while the probability of the affirmative opinion does not suffice for producing an obligation, which is none if it is uncertain. Therefore these too must be said to stand rather against the conclusion of St. Alphonsus. Why, then, do the VV. thrust in those authors also, from whom the opposite is concluded, in order to increase the number of names?

8. The VV. add (l.c.) that the opinion rejected by the Holy Doctor is also held probable by Concina. Therefore, even according to Concina, otherwise a rigorist, the bridegroom cannot be obligated to matrimony by the Confessor, although St. Alphonsus cites him on his own behalf.

And the VV. would surely have deserved more abundant praise for fidelity if they had added that Escobar also, whom the Holy Doctor adduces for himself, called the opposite opinion probable. Therefore, he too could deservedly have seemed fit to be deleted from that catalogue of names, since he already overthrows the conclusion of the Holy Doctor.

But, further, the same fidelity demanded of the VV. that, since they were expounding the state of the question solely by the support of authority, they should not have suppressed in silence that Leander also (treatise 9, disputation 2, question 47), in the Salmanticenses (treatise 9, chapter 2, no. 77), called the negative opinion probable. With Leander could be associated Giribaldi (treatise 10, chapter 2, no. 78), Voit (volume 2, no. 1166), Croix (book 6, part 3, no. 173), and Maschat (book 4, title 1, no. 29), who report the same opinion in such a way that they at least by no means reject it.

To these must be added Baumgartner, who writes (book 4, title 1, conclusion 14): *Whether one party can withdraw if, for example, he has become notably richer from an unexpected inheritance, the Authors dispute probably on both sides.*

Likewise Scarpazza (*Decisions of Cases of Conscience*, Betrothals, case 14, volume 9, p. 50): *Between the two opposite opinions, the one affirmative and the other negative, it appears to me that, speaking generally, the negative should be preferred as more probable.* By these words he surely admits both to be probable.

9. Therefore we now have eighteen Authors from whose suffrage the Confessor cannot obligate the bridegroom to matrimony. But others must be added to these; for, as Voit says (l.c.), many hold that a party who has become notably richer or more noble can licitly withdraw from the other party, who is now unequal.

Therefore, to indicate some who have come to our attention, besides Ochagavia and Trullench, whom all, and even St. Alphonsus, cite for this opinion, and besides Oberrauch, related above, already in Schmalzgrueber (book 4, title 1, no. 192) Schmier and Wes hold this opinion.

Likewise Anthony of St. Joseph (treatise 34, no. 42) teaches that betrothals can be dissolved if one of the betrothed, together with riches, should unexpectedly be elevated to a higher state or rank.

To this pertains what Wagemann has thus (part 3, treatise 3, no. 123): *Between the two opinions I use a distinction: if the riches and nobility should introduce an enormous disparity between the betrothed persons, they dissolve the betrothals; otherwise not.* Hence all the petty reasons are exploded which, after Sanchez, are customarily brought forward to the contrary.

And Viva (*On Matrimony*, question 2, article 6, no. 2): *If very great riches should come to one party after the betrothals, I also judge with Hurtado, against Sanchez and Bonacina, that he can likewise withdraw; since this is a notable change, which, had it been foreseen, would have prevented him from consenting, even though it be true that he was not deceived concerning the condition of the other party.* These last words set forth the petty reason employed by most of the adversaries.

And in fact Hurtado speaks thus (disputation 2, *On Matrimony*, disputation 14, no. 25): *We consider the opinion of Sanchez and Coninck difficult, because the aforesaid change is so notable that of itself it renders fulfillment notably burdensome after the bridegroom has become richer, and, had it existed from the beginning, it would also have deterred a prudent man from the betrothals.*

To these must be added Babenstuber, who writes thus concerning this controversy (treatise 8, part 7, disputation 1, article 4, no. 37): *The affirmative opinion* (that the bridegroom can withdraw from the betrothals) *pleases me, which Illsung and the great Schmier hold.... The reason is that, in the judgment of prudent persons, the bridegroom not only could but also would have provided for himself a far more excellent matrimony if he had foreseen this change of his state. Although the bride... is not made worse, nevertheless she is rendered of a notably inferior condition, and consequently worse; by which the argument for the opposite is resolved.*

And on the same matter Illsung, cited by Babenstuber, reasons well thus (treatise 6, disputation 9, question 1, no. 29): *A contract so difficult, namely, of entering a matrimony which can never again be dissolved, according to the common rule reported in Palaus, by its nature excepts all notably prejudicial changes upon knowledge of which the betrothals would not have been contracted. Hence Amicus, disputation 32, from no. 66, also infers that not only is a right of renouncing the betrothals given from a supervening... deterioration of the other contracting party, but by equal reasoning he can withdraw to whom, from supervening nobility or great riches, for example, a rich inheritance, a notably better state has come, so that, in the judgment of prudent persons, he would be considered able and willing to enter a far more excellent matrimony if he had foreseen that state; and thus the other contracting party, through the elevation of the one, is rendered notably inferior and comparatively worse.*

Dicastillus also touches this question excellently thus (treatise 10, disputation 1, no. 599): *This doctrine* (of Sanchez, Reginald, etc.) *appears to me not a little difficult. For that change on the part of him who has become rich appears sufficient to render the contract of matrimony far more difficult on his part; because by the very fact that he has greatly increased in riches, the considerable proportion between the two contracting parties, who previously contracted with each other after account had been taken of the goods and condition of each, is removed. But by the very fact that there is so great an excess on the part of one, the proportion which was previously considered is removed; and therefore, although no change has been made on the part of the other, the alteration of the goods on the part of one suffices for that notable excess*

to introduce a change of proportion; if he who became rich had known this, he would not at the beginning have contracted with a woman whose dowry is not proportionate to him. From this doctrine the foundation of the opposite opinion collapses, and she is of a worse condition, not by a change of herself, but of the other. Hurtado also approves this, and Perez after him.

No less clear are the things by which Francis Amicus (*On Matrimony*, disputation 32, section 11, nos. 66-67) confirms the same doctrine. *When things have been notably changed, the betrothed persons are not bound to fulfill the betrothals; nor understand this only of a change of the other betrothed person for the worse, but also of one's own change to a notably better condition: both because the Doctors pronounce it without limitation, and although they give examples concerning a change of the other to a worse state, they do so because this is regular and examples are customarily given only concerning cases which regularly occur; and because that same notable change for the better on the part of one places the other in a state of notably worse condition with respect to the former, for the more the state of one is elevated, the more the state of the other is comparatively lowered in relation to him; for these things are correlative, one of which is varied without a change of itself through the change of the other alone; and from that common rule: Whenever some new cause emerges after betrothals have been contracted which, if it had been present from the beginning, would have prevented the betrothals from being contracted, it furnishes a just occasion for dissolving the betrothals. But who will deny that if from the beginning there had been so great an abundance of riches that through it his state would have been elevated so notably that he could have entered another far more noble marriage, he would not*

have contracted these betrothals which he in fact contracted? Finally, if the bridegroom or bride were asked what he or she would have done in that case, who will deny that the answer would be that he or she would have contracted other betrothals than those in fact contracted, by which his or her state would have been elevated? But Sanchez says, disputation 62, no. 6, that a bridegroom or bride asserting that he or she would by no means have promised if such a cause had been present from the beginning must be believed in both forums if, in the judgment of a prudent person and after the circumstances have been weighed, it is likely that the person would not have promised. The reason: since in this contract, which is special above the rest, regard is had not so much to the utility of the contracting parties as to the indissoluble union of their minds, any cause whatsoever which can notably change the minds of the contracting parties in regard to contracting matrimony suffices for dissolving the betrothals, lest the matrimony have an unhappy outcome.

10. Let the conclusion therefore be this: even if the matter is to be decided by considering only the weight of authority, nevertheless, since we have nearly thirty Authors from whose suffrage the obligation of standing by the betrothals must be called uncertain, and since it is a certain principle to be held by all that an obligation cannot be imposed by a Confessor where it is uncertain, it is manifest that in the present case the Confessor cannot obligate the man to matrimony.

But this is much more evident if the intrinsic reasons are weighed. For Amicus spoke most truly in the text cited, that IT IS A COMMON RULE: *whenever some new cause emerges which, if it had been present from the beginning, would have prevented the betrothals from being contracted, it furnishes a just occasion for dissolving the betrothals.*

Let Laymann be heard in place of all (book 5, treatise 10, part 1, chapter 2, no. 18): *Betrothals are dissolved if a notable change occurs, or if some grave thing supervenes which, had it existed from the beginning, would deservedly have deterred one from the contract of betrothal, as Abbas, Angelus, Sylvester, Navarrus, etc., commonly teach, and as is gathered from chapter Quemadmodum, On Oaths. The reason is that the intention of the one promising is not presumed to have extended itself to such a very difficult case, which would have deterred any prudent man from a promise of matrimony. Moreover, to know whether the intention of the one promising, at least virtually, extended itself to such a case or not, the bridegroom must be examined,*

for example, whether, if at the time when he had promised the bride someone had proposed to him: But what if such a thing should afterward happen? he would have replied that it was not his mind to extend his obligation to this case. His assertion must be believed even in the external forum, especially if sworn, if, after the circumstances and the principal nature of the thing promised have been considered, probable credibility can be given to him, as Navarrus, Sanchez, etc., teach. What force, then, can the petty reasons of the opposite opinion now have against this principle received by all, which are ultimately reduced to these: 1. that the bride has not been rendered of a worse condition; 2. that the bridegroom was not deceived concerning the condition of the bride in giving consent?

11. Finally, I shall not omit that it is by no means certain concerning the opinion of the Holy Doctor Alphonsus whether in fact he fully adhered to that opinion which denies that the betrothals can be dissolved in the present case. Indeed, he calls this opinion the most common; in what sense this can be accepted may be gathered from the foregoing; nevertheless, he in fact interposes no judgment of his own.

Moreover, he himself also adopts the common rule which we have stated thus (*Apostolic Man*, treatise 18, chapter 1, no. 19): *In order to judge what cause avails to dissolve betrothals, these two rules must be considered. The first is that, for causes supervening upon the betrothals, that one suffices which, if it had been foreseen, would certainly have prevented them from being contracted; hence the party immune from such a defect then remains free, who is presumed always to have contracted under the condition that there should not be such a change of things which, had it been foreseen, would have removed that party from contracting. The second rule is this*, etc.

On the other hand, the Holy Doctor does not appear to have attributed very much to the reasons customarily brought forward for that opinion which he called the most common. He himself (l.c.) sets forth the question thus: *It is asked whether, when a rich inheritance supervenes to either of the betrothed persons, that person can withdraw from the betrothals. Hurtado, Trullench, Leander, etc., affirm it, saying that then the condition of the betrothed persons is notably changed. But others most commonly... deny it, because that person is then not deceived concerning the condition of the other party, in which no change has occurred.*

What he himself thinks concerning this argument is gathered without difficulty from the special question which he adds. For he writes (both l.c. and book 3, no. 876): *According to this opinion Croix says that if someone contracted with one woman and afterward a marriage with another richer woman is offered to him, he cannot leave the first, because no change has then been made in her.* But what does the Holy Doctor say to these things? Behold his judgment: *If the quality of the second bride were exceedingly better, I would not dare altogether to condemn the bridegroom if he wished to contract with her.* But (I say) this man was not deceived concerning the condition of the first bride, nor did any change occur in her; and this is the very argument which the Holy Doctor himself reports for the most common opinion, as he says. Therefore the Holy Doctor manifestly sets little value upon this argument.

And the things which the Holy Doctor soon adds thus confirm this: *For although in this case the state of the bride, or of the betrothals, is not changed, nevertheless, as the Doctors commonly say, betrothals do not bind unless things remain in the same state; hence, just as the bridegroom would not be bound to fulfill them with great harm to himself, so it could appear to someone that he is not bound with the loss of great gain; for such a loss is equated with grave harm from the sole law, Code, On a Judgment Rendered for Him*, etc., according to what was said in book 3, no. 301. In these words you may see that argument rejected for the same reason used by the Authors whom we have seen not acquiescing in that opinion.

But it is also plainly worthy of notice that by this judgment the Holy Doctor shows not only that the reason upon which the opinion of Sanchez rests appeared plainly weak to him, but he also overthrows another argument by which others endeavored to confirm the same opinion. There were some, namely, who, in order to prove that someone cannot withdraw from betrothals even if a notable change of status has supervened for him, draw an argument from the fact that someone cannot do so in the hypothesis of a far richer marriage offered to him. And indeed Schmalzgrueber (book 4, title 1, no. 192), against those asserting that betrothals can be dissolved if unexpected riches, nobility, dignity, etc., should supervene to one party, urges this reason also: *because otherwise, whenever richer betrothals were offered, less rich betrothals could be dissolved, which must not be said.* Likewise Catalani (part 3, question 10, chapter 7, no. 14): *Otherwise, when richer betrothals were obtained, a broad faculty of withdrawing from less rich ones already celebrated would be given, which is absurd.* And, to omit others, Reiffenstuel also (*Canon Law*, book 4, title 1, no. 262) reasons in the same manner thus: *Nor is a suddenly supervening fortune an obstacle; both because otherwise someone could also dissolve betrothals because another far more beautiful or richer woman wished to marry him, which is against the most common opinion of the Doctors.* Therefore St. Alphonsus, when he says concerning this hypothesis, *I would not dare to condemn the bridegroom*, etc., already destroys this argument of theirs also. Moreover, since an argument of this kind appears to be drawn *a fortiori* rather than from parity, because he who does not yet have a better state and seeks it by breaking the betrothals appears altogether to have less cause for withdrawing from the prior betrothals than one who, through an unexpected fortune acquired, has already attained a far better state and therefore seeks, as by a certain right of his own, betrothals more fitting to himself and his new state, it is now sufficiently evident that the Holy Doctor Alphonsus, who does not dare to condemn a bridegroom because he withdraws from the betrothals if marriage with a richer woman is offered to him, *a fortiori* does not condemn him who, since he has already changed his state, seeks another matrimony fitting for himself.

And indeed the Holy Doctor (book 6, no. 876) concludes: *And thus I find in the Life of St. John of Capistrano that several Theologians thought in a case of this kind* (namely, of a richer marriage offered), *although St. John himself was of the contrary opinion, from which I truly would not dare to depart nor ever to counsel departure.* But here the matter concerns mere counsel; and the Holy Doctor omits these words in his other work (*Apostolic Man*, l.c.) and merely writes: *And thus I find that many Theologians said in the Life of St. John of Capistrano.* And let these things suffice concerning this special question; from them the VV. could also gather why Father Gury wrote: *St. Alphonsus appears sufficiently to approve this opinion*, namely, that betrothals can be dissolved if an unexpected inheritance comes to the bridegroom.

QUESTION 2. Are betrothals dissolved by a vow of chastity or a vow of receiving sacred Orders?

Reply 1. If the vow precedes the betrothals, it is certain that they are invalid. The reason is that the promise of matrimony concerns an illicit thing and therefore does not bind. - Thus commonly.

Reply 2. If the vow follows the betrothals, the betrothals are likewise more probably dissolved. The reason is that the promise of betrothal is always considered to have been made under the tacit condition, unless a better state is chosen. - St. Ligorius, no. 873 [4].

[4] A judge is accustomed to compel one who withdraws from betrothals because of a vow of chastity made either to keep faith with the betrothal or to enter some Religion. For since the internal will of the one vowing is not known to the judge, while the obligation of the betrothal is otherwise certainly known, he does not unjustly require this sign of a more perfect choice, all the more because it can deservedly appear necessary for preventing the frauds of those who, in order to exempt themselves from an inconvenient obligation of betrothal, could easily feign these vows.

732. ○ **QUESTION 3. Is the dissent of parents a sufficient cause for withdrawing from betrothals [5]?**

[5] Take care not to confuse this question, with some persons (see the Salmanticenses, *On Matrimony*, chapter 6, no. 19 and following, and St. Alphonsus, book 6, no. 849), with the other question whether children who contract without the knowledge of their parents sin. For although children may thus offend their parents more or less gravely according to varying circumstances and according to the varying manner of conducting the matter, nevertheless this of itself does not necessarily infer that the contract is also of such a kind in its substance that the parents can rightly oppose it, and consequently that the promise is invalid. And indeed, in general it must be determined with the common opinion that for the validity of betrothals not only the consent, but not even the knowledge, of the parents is necessary *per se*.

Reply. No, if the parents dissent unjustly, because the right of the children would be injured [6]. But it is otherwise if the dissent of the parents is just, for example, if the other party is not fitting for the family by reason of condition, honor, etc. - St. Ligorius, no. 877.

[6] Sometimes, however, even the unjust dissent of the parents can furnish a sufficient cause for withdrawing from the betrothals, not because the child then sins by not obeying the unjust will of the parents, but because this dissent for many causes can carry with it such grave consequences, inconveniences, and troubles that they deservedly excuse from fulfilling the obligation.

QUESTION 4. Is a party laboring under a hidden defect bound to disclose it before the betrothals, or, after they have been contracted, before matrimony?

Reply 1. Yes, if that defect would be pernicious or injurious to the other party; for example, if the girl is pregnant, if the bridegroom labors under venereal disease, or is burdened by debt, etc. The reason is that, just as one sins against justice who sells harmful goods to one who believes that he is buying good goods, so *a fortiori* does one who wishes to contract matrimony with a pernicious defect. Therefore, if he is unwilling to disclose the defect, he must abstain from contracting. - St. Ligorius, no. 864.

Reply 2. No, however, if the defect does not render the nuptials harmful but only less desirable; for example, if a girl who is believed to be a virgin has been corrupted. The reason is that it has been received by custom that no one is bound to manifest defects of this kind to the other party. Furthermore, no one is bound to manifest his own defect with his own infamy when the defect does not injure a grave right of the other. - St. Ligorius, *ibid.*, and others commonly.

733. ○ **QUESTION 5. Are betrothals dissolved by a subsequent matrimony, so that when the matrimony has been dissolved they do not revive?**

Reply. No, with the more common opinion. - St. Ligorius, no. 875. The reason is that it is proved by no law that betrothals are altogether dissolved by a subsequent matrimony; hence only the obligation of the betrothals appears to be suspended during such matrimony, as happens in one who contracts matrimony with a vow of chastity. Several nevertheless contradict this, relying upon reasons not to be despised [7]. Moreover, in practice the bridegroom unjustly deserted will rarely seek such an unfaithful person, nor could a happy outcome of a matrimony of this kind be expected.

[7] In this question both Theologians and Canonists, even of great name, both older and more recent, disagree; and each party, as is easily understood, holds its own opinion and calls it more probable, while many also concede that the opposite is probable. See Sanchez (book 1, disputation 48, no. 2) and the Salmanticenses (*On Matrimony*, chapter 2, no. 38). Therefore, the Confessor can neither compel the widower to fulfill that former promise nor prevent the other party from pursuing and urging his or her right before a judge, whose judgment each will be bound to accept.

As regards the force of the reasons, it is easily evident that the example of one contracting with a vow of chastity is not to the point; and, on the contrary, there can be urged the example of one vowing religion or chastity, whom the Doctors so release from the obligation of preceding betrothals that they deny it revives even if the one who vowed afterward obtains a

dispensation from the vow, as may be seen in St. Alphonsus (book 6, no. 873, at the end). This resolution is altogether consonant with the general principle which Cujacius, with others, derives from law *Si stipulantem* 83, section 5, Digest, *On Verbal Obligations* (commentary on this law), namely, that when a thing previously subject to servitude or obligation passes into another state which does not have an excuse from accidental impossibility but by its own nature is repugnant to that obligation or servitude, the latter is not suspended but altogether extinguished. *It must be denied* (says Cujacius) *that the obligation* (for example, a usufruct) *is extinguished when a ship is taken apart with the intention that it be repaired; it ceases rather than is extinguished, because the same ship can be restored with the same timbers and does not appear to have altogether perished.... If, however, the ship is taken apart with the intention that it be converted to other uses, it appears to have been extinguished; and therefore, even if it is afterward put together from the same timbers, it appears to be another ship, and an obligation once extinguished is not restored....* The obligation from a promise *is extinguished in perpetuity when a slave has been manumitted, because he is manumitted with the intention that he be free perpetually.... This is the sum: the obligation is extinguished when the thing is consecrated or made public, or the slave manumitted, or the ship taken apart, provided it was taken apart with the intention that it be converted to other uses.* Moreover, the reasoning of matrimony is altogether the same; for the contract is indissoluble by its nature, and through it a spouse hands himself or herself over in perpetuity to the power of the other. Therefore, just as a slave who has obtained liberty is not subjected to an obligation which bound him in servitude (because, for example, he had been promised by his master to someone), even if he falls back into servitude, nor is a ship bound by its former obligation, for example, of usufruct, if it was destroyed with the intention that it not be repaired, even if afterward it happens to be restored *per accidens*; so too must it be determined concerning the accidental liberty which a spouse acquires through the death of the other spouse.

** The VV. object to two things here (p. 946, note 3). First, against the former part of the Note they write: *From the diversity of opinions Father Ballerini infers that there is no obligation by which a widower must return to the prior betrothals. But from the rules of probabilism the contrary conclusion should rather be drawn. For here an obligation was certainly contracted which was only doubtfully extinguished. Therefore it always urges.*

Reply. I deny the Minor and the proof added to it. The reason is that, as St. Alphonsus says (book 3, no. 112), here we are not dealing with a doubt but with a probable opinion. Cardinal De Lugo writes aptly concerning that maxim, IN DOUBT THE CONDITION OF THE POSSESSOR IS BETTER (*On Justice and Right*, disputation 23, no. 110): *The Doctors rightly observe that this proceeds when there is a merely negative doubt; for if there were a positive doubt and probable reasons for each side, then the rules which are commonly given concerning a probable conscience would have to be observed, and regularly the debtor can embrace the probable judgment.* St. Alphonsus on the same matter (l.c.): *When it is probable that... the law has been abrogated, then the presumption in favor of the law ceases and liberty possesses.* Therefore, the Consequent also is denied, namely, that the obligation still urges in the present case; for an uncertain obligation, which it is probable does not exist, cannot urge.

The VV. then attack the argument which in the Note is drawn both from the example of vows, either of religion or of chastity, by which betrothals are dissolved in perpetuity, and from the nature of matrimony, which is a contract indissoluble by its nature and through which a spouse hands himself or herself over in perpetuity to the power of the other; and they rejoin: *These things do not pertain to the matter. For matrimony is not a bond of itself perpetual, as is a vow of religion or of perpetual chastity, but it is essentially temporal according to that saying of the Apostle: A woman is bound to the law as long as her husband lives.*

Reply. The force of the argument does not reside in this, that the bond of matrimony is so perpetual that it cannot cease *per accidens*, namely, by the death of the other spouse; but in this, that since through a contract indissoluble by its own nature a spouse hands himself or herself over, so far as concerns the spouse, perpetually to the power of the other, from which it is not in the spouse's power to exempt himself or herself, by that very fact the spouse passes into a state which is repugnant, not from accidental impossibility but by its nature, to that obligation and servitude to which the spouse was previously subject. But the Note concludes through the citation of the law, to which the VV. reply nothing, that then the obligation is not merely suspended but altogether extinguished.

For the law cited in the Note speaks thus: *I stipulate uselessly for a sacred or religious thing, or a thing left IN PERPETUITY for public uses, such as a forum or basilica, or a free man, although a sacred thing can be made profane, and things left for public uses can revert to private uses, and from a free man a slave can be made.* Behold, then, first, in what sense a certain thing is said to be obligated in perpetuity, namely, from the nature of its state, although *per accidens* it can pass into another state. But from the fact that someone stipulates for it uselessly, this consequence is there deduced: *For even when someone has promised to give a profane thing or Stichus, HE IS FREED if, without his act, the thing begins to be sacred or Stichus attains liberty.* What force the word *is freed* has is manifest from the things which follow: *Nor are they recalled into obligation if by some law the sacred thing again begins to be profane and Stichus, from being free, is made a slave.* But why are they not recalled into obligation unless because the obligation contracted by the former promise had not merely been suspended but altogether extinguished? But why had it been

extinguished unless because the thing had passed into that state to which the former servitude or obligation is repugnant, not from accidental impossibility but from its nature? And again, why is this state by its nature repugnant to servitude or an obligation of this kind, unless because, as is premised there, *I stipulate uselessly for a thing existing in that state?* Cujacius (l.c. in the Note) therefore rightly refers to this that rule: *Those things which stood at the beginning are afterward extinguished if they fall into that case from which they could not have begun.*

And indeed, the same law most clearly excludes from this the hypothesis of accidental impossibility, because of which an obligation remains suspended but is not extinguished and consequently revives and urges when the ability returns; it rejects this as absurd, namely, as though one and the same cause both freed and obligated, namely, that a thing either cannot be given or can be given.

And from these things a reason is aptly given why a vow either of chastity or of Religion, made after betrothals, so extinguishes the obligation of those betrothals that, although the obligation of the vow afterward ceases through dispensation, the obligation of those betrothals nevertheless does not revive. The reason is that through a vow of this kind the one vowing transfers himself into a state which by its own nature is repugnant to the obligation and servitude of the betrothals. And again, a reason is given why matrimony contracted after a vow of chastity has been made suspends the obligation of that same vow but does not altogether extinguish it. The reason is that the state of matrimony is not so repugnant to the obligation of preserving chastity that it altogether destroys it, although it impedes it to some extent.

From the things said thus far it is also gathered what must be replied to the following words of St. Alphonsus (book 6, no. 875, at the end), which the VV. object: *Only the condition of the subsequent bond must be considered* (says the Holy Doctor): *if it is perpetual, the first obligation is certainly extinguished; but if it is temporal, the first obligation is suspended until it can be fulfilled when the bond ceases, just as if someone sold a horse to one person and afterward sold and delivered it to another, in the event that the horse returned into his ownership, he would certainly be bound to deliver it to the first buyer, as is gathered from law 15, Code, On Vindication of a Thing.* We shall add this one thing here: from the cited law of the Code it is indeed gathered that the horse remains the property of him who through delivery

possesses the horse; but it is by no means gathered that the horse must be delivered to the first buyer if it falls back into the ownership of the seller, for not even a word concerning this is found in that text. Behold the words of the cited law (Code, book 3, title 32, law 15): *Whenever an estate is lawfully sold in its entirety to two persons, it is manifest law that he to whom it was first delivered is stronger in retaining ownership. Therefore, if you prove before the Governor of the Province that at an earlier time you bought the possession and paid the price, he will not permit you to be expelled from the possession on the pretext that the instruments were not given. It will indeed be within your choice to recover the price which you gave, with interest, yet so that account be taken of fruits received and expenses; since even if each of you claims ownership of the thing by reason of donation, it is fitting that he to whom sole possession was first delivered be held the stronger.*

QUESTION 6. Can the bridegroom withdraw if the bride was forcibly violated after the betrothals?

Reply. Yes, with the common opinion. The reason is that the bride, through such oppression, although without her fault, is rendered notably less worthy; hence the condition of things is notably changed [8]. - St. Ligorius, no. 861, etc. - The same must be said even if she was deflowered by force before the betrothals and only afterward was that defect discovered. - Thus commonly. - See *Cases*, no. 859.

[8] *A fortiori*, this must be said concerning the fornication of the bride, whether it preceded the betrothals or followed them; in the latter case the bride sins doubly, namely, by the added injustice by which she so corrupts a thing promised to another that she unjustly compels the bridegroom either to omit the matrimony promised to him or to receive a notably corrupted thing. But, from the common opinion, it must be determined otherwise concerning the fornication of the bridegroom. For although this, if it follows the betrothals, furnishes a just cause for the bride to withdraw, it does not do so if it preceded them. The reason is that through this the bridegroom is not rendered notably less worthy in the common estimation, nor is the bride affected by any grave stain because she marries him. Except, with the Doctors (see St. Alphonsus, book 6, no. 861): 1. if the fornication was frequent, so that the bride deservedly doubts the inclination of the bridegroom toward other women and his future inconstancy in preserving the fidelity of the marriage bed; 2. if the bridegroom has begotten offspring from the preceding fornication, for this also is deservedly accustomed to be both a disgrace and a grief to the bride; 3. some also except the case in which the bride, who is a virgin of great honor, would never have consented if she had known the

bridegroom to be a fornicator. In this case the Confessor appears unable to obligate her, if she refuses, to the nuptials. See Schmalzgrueber (book 4, title 1, no. 176).

Chapter II. On the Proclamation of Banns

Bannum is a German word which signifies the same thing as a public proclamation. Banns, therefore, are public notifications by which the faithful are admonished concerning matrimony to be contracted between certain persons.

We must treat: first, of the necessity of banns; second, of their circumstances; third, of dispensation from them; fourth, of the revelation of impediments.

Article I. On the Necessity of Banns

734. **Principles.** - I. From the precept of the Church there is a grave obligation of proclaiming the banns. The existence of the precept is established: first, from the Fourth Lateran Council, and from the Council of Trent, session 24, chapter 1. The existence of a grave obligation is established, secondly, because a general discipline prescribed by two General Councils and resting upon grave motives produces a grave obligation [1].

[1] The gravity of the precept is also argued from the gravity of the penalties. For the Tridentine Synod (session 24, chapter 5, *On the Reformation of Matrimony*) decrees that, if an impediment is afterward discovered, the spouses are to be separated with every hope of obtaining a dispensation removed; whence you conclude that those who by privilege can grant dispensations, for example, by a rescript of the Sacred Penitentiary, cannot dispense with these persons. Furthermore (chapter *Cum inhibitio* 3, section 1, *On Clandestine Betrothals*), if any offspring has been conceived, it is held illegitimate, even if the spouses were so ignorant of the impediment that they could be considered in good faith. See Schmalzgrueber (book 4, title 3, nos. 73-74).

II. The proclamation of the banns is not required by necessity of the Sacrament. The reason is that neither the Council of Trent nor the Lateran Council, which had previously prescribed the same thing, adds any invalidating clause. Nor can any other law be cited from which it is established that the proclamation is required for the validity of matrimony.

735. **Questions. - QUESTION 1. Are all who are to contract subject to the law of proclamation?**

Reply. Yes, because the law is altogether general. Nevertheless, Princes are excepted by usage because their family is sufficiently known and their marriages are ordinarily sufficiently public. Except also a case of necessity; for example, if one near death wished to marry his concubine in order to legitimate offspring and there were danger in delay. - See Ferraris, *Library*, under the entry *Denunciations of Matrimony*.

QUESTION 2. Does a Pastor sin gravely by omitting the denunciation if he knows that no impediment is present?

Reply. Yes. The reason is: first, because the Pastor can with difficulty be altogether certain that no impediment to matrimony is present; second, because even if no impediment appears before the proclamation of the banns, it can happen that some impediment supervenes after they have been proclaimed. - St. Ligorius, no. 990 [2].

[2] Apply the principle that a law obliges even if its reason ceases in a particular case, especially since a most grave danger would be imminent if this matter were left to the judgment of Pastors, as is evident from the things said in the preceding

note. Therefore, when the matter is urgent and, after diligent inquiry, it is established that no impediment is present, a dispensation must be sought; the denunciation must not be omitted at the discretion of the Pastor.

QUESTION 3. Does a Pastor sin gravely if, without a dispensation, he omits only one proclamation?

Reply. It is disputed. Some affirm it because one proclamation out of three must be regarded as a grave part of the whole precept. Others, however, deny it; St. Ligorius, no. 991, calls their opinion probable. It is more probable, however, that the omission of two denunciations is a mortal sin. - St. Ligorius, *ibid.* - See *Cases*, no. 873.

Article II. On the Circumstances of the Banns

A threefold circumstance is to be considered here, namely: first, of time; second, of place; third, of persons.

I. Circumstance of Time

736. ○ The proclamations must be made on consecutive feast days of precept during the solemnities of Mass. - Council of Trent, session 24, chapter 1, *On Reformation*.

It is said: first, *on feast days*, that is, on feast days of precept [1], at least in the place of the proclamations; second, *consecutive*, that is, with no feast day omitted from the first proclamation to the last [2]. Whether the proclamations can be made on feast days immediately succeeding one another, if these occur, is disputed; there are two probable opinions [3]. Third, *during the solemnities of Mass*, that is, in the parochial or conventual Mass, from a Decree of the Sacred Congregation of the Council. - St. Ligorius, no. 991 [4]. The proclamations cannot be made at private Masses or at Vespers. - Roman Ritual.

[1] Several teach with Schmalzgrueber (book 4, title 1, no. 24) and St. Alphonsus (book 6, no. 992) that the denunciation can be made even on a weekday if, for some cause, a great concourse of people comes to the church, because in this way also the end of the Council is sufficiently attained.

[2] St. Alphonsus (no. 992) considers it probable, and several others hold (in Schmalzgrueber, book 4, title 1, no. 23), that there is no grave sin if the feast days are not consecutive, one or another intervening, especially if feast days other than Sunday are in question. The reason is that there is slight danger that the people will forget, and the transgression is considered light matter.

[3] In order that the affirmative opinion be probable, it appears necessary that every suspicion of an impediment truly be absent, because in so brief an interval neither can a report easily be spread sufficiently nor can doubts be dispelled.

[4] The Doctors probably add, as St. Alphonsus says (no. 991), that the proclamations can be made at a sermon or on the occasion of a procession when the people are assembled.

If, however, the Pastor has forgotten to make the final proclamation at Mass, and the nuptials are urgent, he can supply it at Vespers. This is permitted by a Decision of the Sacred Congregation of the Council, October 25, 1586. - Ferraris.

If, after the proclamations have been made, the matrimony is not celebrated within two months, the proclamations must more probably be repeated, unless it seems otherwise to the Bishop [5].

[5] From the Council of Ravenna it was approved and decreed in the Congregation that if any persons do not contract within four months after the denunciations have been completed, they cannot contract unless the denunciations have again been

completed. Gallemart (note 3 on chapter 1, *On the Reformation of Matrimony*, session 24, Council of Trent). The same Declaration is reported by Rebellus (at the end of book 4, part 2, section 8, no. 8) and Busembaum (book 6, treatise 6, chapter 3, doubt 1, resolution 1). But what the Author says concerning the elapse of two months agrees with the Roman Ritual.

Although the form of the Tridentine precept does not appear to be violated if matrimony is contracted on the same day immediately after the final proclamation, nevertheless, if there should perhaps be insufficient time for reporting impediments, the law appears to be evaded. Hence Croix (book 6, part 3, no. 480) records that the Council of Cologne requires an interval of at least one day, so that, namely, if some impediment is present, it can be reported before the matrimony.

II. Circumstance of Place

737. ○ From the Council of Trent, the proclamations of the banns must be made in a church, that is, in the parochial church of the contracting parties; but not in chapels, whether public or private [6], unless they hold the place of a parish and the parochial Mass is celebrated there. By parish, however, there is not to be understood the parish in which someone was born, or the parish of origin, but the parish of actual domicile, if the one to be proclaimed has remained there for a notable time.

[6] Denunciations in chapels would not attain, as is evident, the end of the Council. Moreover, if the Pastor makes the denunciations in another church of the same parish in which perhaps solemnities are celebrated, the law of the Council appears to have been sufficiently fulfilled. Indeed, several Doctors in St. Alphonsus (book 6, no. 991) say that they can be made outside the church in a place of great concourse because thus the end of the Council is attained.

Hence: first, if the betrothed persons live in different parishes, the proclamation must be made in each. Second, if one or both have a roughly equal domicile in two places, the banns must also be proclaimed in each. But if one of the two domiciles is the principal or properly so called, a double proclamation is not thereby required. If someone, however, besides a domicile has a quasi-domicile elsewhere, the proclamations must also be made in the quasi-domicile. Third, if the contracting parties have recently fixed their domicile in the present parish, the banns must also be published in the parish where they previously lived; six months, however, is a sufficient time, says St. Ligorius, no. 991 [7].

[7] St. Alphonsus by no means determines a period of six months in the cited place, but writes thus: *A doubt arises concerning where the denunciations must be made if one of the betrothed persons stays for a short time in some place. Pontius thinks it sufficient if they are made in the place where that person actually resides. But Sanchez, etc., far more probably say from a Declaration of the Sacred Congregation that they must altogether be made in the parish from which the person departed; because the denunciations are therefore made that impediments may be manifested, and consequently they must be made where the betrothed persons have remained for a longer time.*

Moreover, Father Gury perhaps indicates a period of six months as a sufficient cause why the denunciations must also be made in the present parish. For otherwise, as Schmalzgrueber has it (book 4, title 3, no. 14), it is not necessary that they be made in the place where the matrimony is contracted if, for example, after the denunciations have been made in the city, with permission for a just cause they wish to celebrate in the country, or migrate to another place. For, in general, the Tridentine Decree is satisfied if marriages are announced where those who are to contract matrimony are parishioners at the time of the denunciations.

But what Gury adds after St. Alphonsus, that the banns must also be published in the parish where they previously lived, must be understood unless they departed from there a long time previously, for example, ten, eight, or even five years, as is sufficiently gathered from Declarations of the Sacred Congregation. See *Thesaurus of Resolutions of the Sacred Congregation of the Council*, volume 6, pp. 272, 274. For in this case it would have been sufficient to seek testimony concerning free status.

III. Circumstance of Persons, Namely, Minors, Soldiers, Wanderers, and Servants

738. ○ 1. Minors. The banns of minors must not be proclaimed except with the express consent of their parents or tutors [8]. The proclamation must be made both in the domicile of fact and in the domicile of law, that is, both in the place where the minors live here and now and in the place where their parents or tutors reside. Males are held to be minors until the age of twenty-five years, and females until the twenty-first year. A male deprived of ascendants, however, becomes a major as soon as he has completed his twenty-first year.

[8] No ecclesiastical law requires this consent of parents or tutors as regards minors, but the Author admonishes these things according to the prescriptions of the civil laws in France.

2. Soldiers. The banns of soldiers must be proclaimed: first, in the place where they are in garrison; second, in addition, in the domicile of their parents if they are minors [9]; but if they are majors, in the place where they resided before entering military service, because they have not acquired another domicile of law. - Thus commonly.

[9] See the preceding note.

3. Wanderers and foreigners. According to the common opinion, their banns must be published in their domicile of fact and in their place of origin if they have not obtained a true domicile elsewhere, or at least in the place in which they remained for a longer time. Furthermore, an authentic testimony concerning their free status must be obtained, and they must not be joined in matrimony without the permission of the Ordinary, as the Council of Trent has it, session 24, chapter 7, *On the Reformation of Matrimony*.

Article III. On Dispensation from the Banns

739. **Principles.** - I. For a just cause, dispensation can be made from the law of the banns. - Council of Trent, session 24, chapter 1, *On the Reformation of Matrimony*. Dispensation is more easily made from one or another proclamation than from all.

II. Dispensation from the banns pertains to the Ordinary, or to the Bishop. This is likewise derived from the Council of Trent (l.c.), where the faculty of dispensing is said to be left to the prudence and judgment of the Ordinary.

III. The legitimate causes [1] of dispensation are: first, lest a matrimony be maliciously impeded; second, grave harm, infamy, or scandal imminent from the delay of matrimony; third, fear lest the man abandon the girl whom he has violated; fourth, if, after matrimony has already been contracted civilly, the bridegroom is unwilling to consent to the three proclamations; and other similar causes. - St. Ligorius, no. 1005.

[1] St. Alphonsus (book 6, no. 1006) rightly distinguishes causes because of which a dispensation not only can but also must be given, and causes because of which dispensation can be made although the Superior is not bound to dispense. To the first class of causes are referred the heads enumerated by the Author; to these add the case in which an impediment is discovered after the matrimony has already been celebrated and therefore the matrimony itself must be convalidated through a renewal of consent. Some add the case in which the betrothed persons would be exposed through the

denunciations to the shame and mockery of men; this generally occurs when they are very old, or when an old man is to be joined with a young woman, or a noble with a commoner, etc.; for a certain irreverence is done to the Sacrament when the contracting parties are mocked. See Sanchez (book 3, disputation 9) and Schmalzgrueber (book 4, title 3, from no. 33). But dispensation can be made from mere favor when the marriages of princes or magnates are treated, and generally when, with no suspicion of an impediment, all the inconveniences for avoiding which the denunciations are made are absent. See Schmalzgrueber (l.c., no. 35), who observes (*ibid.*, no. 40) that extrajudicial knowledge suffices for dispensing, with the order of law omitted; the reason is that the Synod leaves the whole matter to the judgment and conscience of the Ordinary.

740. **Questions. - QUESTION 1. When the betrothed persons are from different dioceses, must a dispensation be obtained from each Bishop?**

Reply. Yes, as it appears. The reason is that there is no connection between the dispensation of the one and the dispensation of the other. Moreover, only the Ordinary of the place can know the cause of dispensation; for there can be reasons for dispensing for one party without their being present for the other, and if impediments are not detected on one side, it does not follow that they cannot be detected on the other.

QUESTION 2. Is a dispensation from the banns required for joining concubinarians already civilly united if one of them is at the point of death?

Reply. No, if there is a grave cause for joining them, for example, for the sake of legitimating offspring or for greater security of conscience, because that case appears altogether to be excepted from the law. - Schmalzgrueber, book 4, title 3, no. 74.

QUESTION 3. Can the Vicar General dispense from the proclamations of the banns?

Reply. More probably, yes, provided the Bishop has not reserved this to himself or does not contradict it. The reason is that the Synod grants this faculty to the Ordinary; and under the name of the Ordinary, if the matter belongs to his office and he is not expressly excluded, there also comes the Vicar General, since he constitutes one tribunal with the Bishop [2]. - St. Ligorius, no. 1007.

[2] The contrary Declaration of the Sacred Congregation which is customarily brought forward is regarded as suspect by most, since, although sought, it could never be found; and granting that it existed, the Vicar could still do this by force of custom, which the Synod of Trent did not revoke, for declarations of the Congregation do not abolish custom.

Further, take care to observe three things here:

1. Both the Bishop and the Vicar General can subdelegate to others the faculty of dispensing from the denunciations. See St. Alphonsus (*On Privileges*, no. 58), Sanchez (book 3, disputation 7, no. 21), and Schmalzgrueber (book 4, title 3, nos. 30-32).

2. If at any time, because of some urgent necessity, the celebration of matrimony precedes the denunciations to be made afterward, the matrimony, as the Synod of Trent observes (session 24, chapter 1, *On the Reformation of Matrimony*), must not be consummated before the denunciations have been made. Although Sanchez (book 3, disputation 11, no. 3) holds this precept to be grave, nevertheless, according to others with Diana (volume 2, treatise 6, resolution 63, no. 3), it binds lightly if there is no suspicion of an impediment; in this case the Holy Synod itself (l.c.) adds that the denunciations can be remitted by the Ordinary.

3. What several dispute on each side (see St. Alphonsus, book 6, no. 1007, doubt 2), namely, whether even the Pastor can dispense from the denunciations (which, if the words are accepted in their proper sense, must be denied, because the Pastor does not have jurisdiction in the external forum), is easily reconciled if the question is more properly made whether a Pastor can sometimes assist at a matrimony, the denunciations having been omitted, without a dispensation obtained from the Ordinary. It must be denied both when the matrimony can be deferred while the Bishop or his Vicar is approached, and when the dispensation is not owed but is granted from mere favor; in these cases neither is it permitted to use *epikeia*, which has place only in necessity. Sanchez (book 3, disputation 10, no. 30); Reiffenstuel (book 4, title 3, no.

40); Schmalzgrueber (*ibid.*, no. 45). But it must be affirmed when there is danger in delay and the Ordinary cannot be approached. St. Alphonsus (l.c.); Sanchez (l.c., no. 27); Schmalzgrueber (l.c., no. 42). Or even when, with that danger pressing, the Ordinary unjustly denies a dispensation which he is bound to grant and the Superior of the Ordinary himself cannot be approached. St. Alphonsus (l.c.); Sanchez (l.c., no. 29). Although Reiffenstuel (book 4, title 3, no. 46) rightly observes that this is scarcely to be advised, because not the Pastor but the Ordinary is the judge in the external forum, and it is committed to the judgment of the Ordinary, not of the Pastor, whether the alleged cause is of such a kind that dispensation is owed. Hence, as Schmalzgrueber warns (book 4, title 3, no. 44), the Pastor can be punished even though perhaps he did not sin in the internal forum.

Article IV. On the Revelation of Impediments

741. **Principles.** - I. There is *per se* a grave obligation to reveal impediments to matrimony, however occult. The reason is derived from the motive of Religion and charity, and also from the precept of the banns itself.

II. The obligation generally pertains to all the faithful of whatever sex, age, parish, or diocese, etc., and also to blood relatives and friends. The reason is that this law is enacted in the name of the Church, to which all Christians are subject, and rests upon the natural precept of Religion and charity, which pertains to all. Indeed, although after the matrimony has been celebrated the positive law of denunciation ceases, nevertheless the law of charity can, according to the circumstances, require the aforesaid revelation. - Scavini.

III. That obligation must be fulfilled as soon as morally possible, because if the betrothed persons should perhaps obtain a dispensation from one or another proclamation and contract sooner, time will not remain for making the revelation, etc.

742. **Questions. - QUESTION 1. Must impediments learned even under an entrusted secret be revealed?**

Reply. Yes, even if an oath not to reveal them was added. The reason is that a natural secret, even one entrusted and sworn, does not bind when grave harm threatens the community or a third person. - St. Ligorius, no. 994.

Except, more probably, a secret of counsel, or a secret entrusted for the sake of seeking counsel to a man exercising a public office, for example, a physician, advocate, Pastor, etc., provided this is done by reason of their profession. For the common good thus appears to require it. - Collet, chapter 5. - Bouvier, chapter 3, article 4. - Carriere, no. 409, and others against others. But those who know an impediment under a secret of this kind must at least warn the betrothed persons to desist from matrimony.

QUESTION 2. Are you bound to reveal an impediment with grave inconvenience or detriment to yourself?

Reply. No, speaking generally, because the law of the Church and charity do not bind with so great an inconvenience [1]. - Thus commonly. - St. Ligorius, no. 995.

[1] The Doctors commonly excuse also in these other cases, namely: 1. when someone has merely heard of the impediment but does not know from whom; 2. if he prudently believes that he will accomplish nothing by revealing it, or even much more if he judges that the revelation will harm those contracting in good faith; 3. if he probably thinks that the revelation will produce grave scandal among others; 4. if he knows that the contracting parties have obtained an occult dispensation

for the forum of conscience. St. Alphonsus (book 6, no. 994) excepts the case in which the report of the impediment is public; but in a notorious matter there can scarcely be need of a denunciation unless perhaps someone thinks that proofs of the impediment are known to him alone.

743. ◦ **QUESTION 3. Are you bound to reveal an impediment if you alone know it and cannot prove it?**

Reply. Yes. The reason is that in the present matter the testimony of one can suffice. - Thus the most common and truer opinion, says St. Ligorius, no. 995.

QUESTION 4. Are the contracting parties themselves bound to reveal the impediment?

Reply. Yes. The reason is that here there is no question of inflicting a penalty, but of avoiding sin; therefore they must either abstain from matrimony or disclose the impediments. - See *Cases*, no. 848.

Chapter III. On the Nature and Properties of Matrimony

Article I. On the Nature of Matrimony

744. **Definition.** - Matrimony can be considered in two ways, namely, as a contract and as a Sacrament.

1. Matrimony as a contract is an agreement by which a man and a woman legitimately hand over to each other dominion over their bodies in relation to acts of themselves apt for the generation of offspring, and they obligate themselves to an undivided partnership of life.

2. Matrimony as a Sacrament is defined as a Sacrament of the New Law conferring grace for sanctifying the legitimate union of a man and a woman and for piously receiving and holily educating offspring.

745. **Division.** - Matrimony can be considered both as regards the union of man and woman and as regards the bond which arises from it; hence it is called:

1. *In fieri* or *in facto esse*. Matrimony *in fieri* is called the actual contract itself which is perfected by the mutual consent of the man and woman. Matrimony *in facto esse* is called the marriage persevering in the bond which proceeds from the matrimonial contract.

2. Legitimate, ratified, and consummated. A legitimate matrimony is said to be that which is contracted according to the norm of natural and civil law but does not have the ratification of the Church or the nature of a Sacrament, such as was formerly entered under the law of nature and the Mosaic law and is now also entered among Jews and gentiles. A ratified matrimony is one contracted between Christians bound by no impediment, between whom, however, conjugal intercourse has not yet occurred after the contract. It is called ratified because not only nature and civil law but also the Church approves and ratifies it. A consummated matrimony is said to be that which has been completed by the intercourse of the spouses; this must be understood not only of a ratified but also of a merely legitimate matrimony [1].

[1] This distinction of matrimony into legitimate, ratified, and consummated must be carefully retained as being of the greatest importance, as will appear below.

Meanwhile, observe that two things are required in order that a matrimony can be called consummated: 1. that the carnal union be perfect and sufficient for generation, so that (as is contained in chapter *Verum* 2, *On the Conversion of Married Persons*) the spouses have together been made one flesh. Therefore, that union would not suffice by which, although the integrity of bodily virginity had been taken from the woman, nevertheless generation could not follow because a suitable emission of male seed was lacking; 2. that a legitimate consent or ratified matrimony preceded a union of this kind. Therefore, intercourse had before the matrimonial contract does not cause the matrimony afterward contracted to be considered consummated, and consequently will produce neither indissolubility nor the other effects of a consummated matrimony. Whence you conclude that one who, bound by a vow of religion, has violated a woman can marry her and afterward (unless another cause prevents it) enter the religion vowed, if after he married her he did not know her again. - See Schmalzgrueber, book 4, title 1, nos. 227-228.

Of no small importance for the use of Theologians is another distinction of matrimony into true, presumed, and putative.

That is called true which was in fact and validly contracted and is proved as such by any of those arguments by which other matters are customarily proved, such as the testimony of the Pastor or others, the register of marriages, the confession of the spouses, the prolonged cohabitation of an honorable woman, etc. Concerning these, see Schmalzgrueber (book 4, title 1, no. 233), with whom observe that lighter proofs suffice when there is question of sustaining a matrimony than when the matter concerns dissolving it.

That is called presumed which is presumed by law; this legal presumption has place especially in three cases. First, when, in places where the Tridentine decree concerning the form of matrimony does not have force, after betrothals entered absolutely between two capable persons, carnal intercourse followed between them; for then consent concerning the future is presumed to have passed into consent concerning the present, and the intercourse is presumed to have been admitted with a conjugal affection. Concerning this most grave question, see Schmalzgrueber (book 4, title 1, from no. 115), Pirhing (same title, no. 27), and especially Barbosa (on chapter *Is qui*, same title, no. 3 and following). Second, when, after betrothals entered under a condition and before the occurrence of the condition, carnal intercourse intervened between the betrothed persons; for the Church (we speak while abstracting from the aforesaid Tridentine Decree concerning form, etc.) then presumes that the betrothed persons withdrew from the condition and therefore wished to contract matrimony purely and absolutely. This is evident from chapter *Per tuas* 6, *On Conditions Apposed*. Third, when, after a betrothal concerning the present invalidly contracted by minors before puberty (in whom malice does not supply for age), signs of ratified consent intervene between the same persons when they have attained puberty; signs of this kind are not only carnal intercourse but also kisses, embraces, cohabitation, etc. This is evident from the sole chapter, section *Idem quoque, On the Betrothal of Minors*, in the Sixth Book. This case, however, also can have place only where the aforesaid Tridentine Decree does not have force. - See Schmalzgrueber, book 4, title 1, no. 234.

Finally, a matrimony is called putative which is considered legitimately contracted although, in reality, it is null because of some latent impediment. The Doctors therefore inquire concerning it in order that it may be established when it has the force of legitimating offspring conceived therefrom and the other effects of law. Two things are required for this: first, that it was contracted in good faith by at least one of the spouses, who was ignorant of the impediment. Thus in chapter *Ex tenore* 14, title *Who Are Legitimate Children*. Neither an error of law nor a doubt concerning the validity of the matrimony excludes this good faith, as Covarruvias proves (*On Betrothals*, part 2, chapter 8, section 1, no. 9); but in doubt this good faith is presumed. Second, that the matrimony was contracted publicly and in the face of the Church, that is, before the Pastor and witnesses, with the denunciations having been premised or at least dispensed from. See the final chapter, *On Clandestine Betrothals*, section 1.

Another distinction of matrimony into canonical, political or civil, and of conscience must also be remembered.

They call that canonical in which all things concur which are prescribed for matrimony by the sacred Canons.

They call that political or civil in which those things also concur which are required by civil law, namely, certain solemnities, dotal agreements, etc.; without these, a matrimony is indeed canonically valid but is regarded as illegitimate civilly and therefore lacks civil effects.

Finally, a matrimony of conscience, or morganatic matrimony, is called a legitimate union of a man with a woman of inferior condition entered with this agreement: that the wife and children born therefrom are content with the nuptial gift or another fixed portion appointed at the time of the betrothals and abstain from the other ancestral and paternal goods, together with titles, dignities, and insignia. Concerning this, Jurists must be consulted. - See Schmalzgrueber, book 4, title 1, from no. 236.

746. **Principles.** - I. Matrimony of Christians celebrated by the legitimate rite is a true and properly so-called Sacrament of the New Law. This is proved: first, from the Epistle of St. Paul to the Ephesians, chapter 5, verse 32, where he says: *This is a great Sacrament, but I speak in Christ and in the Church.* Second, from the Council of Trent, session 24, canon 1: *If anyone shall say that matrimony is not truly and properly one of the seven Sacraments of the evangelical law instituted by Christ the Lord, but was invented by men in the Church, and that it does not confer grace, let him be anathema.* From St. Augustine (*On the Good of Marriage*, chapter 18): *In the nuptials of Christians, the sanctity of the Sacrament has more force than the fecundity of the womb.*

II. True consent on the part of each contracting party is required for the validity of matrimony, because matrimony, as a contract, is an agreement between a man and a woman; but consent constitutes the essence of an agreement.

747. ◦ III. Consent, however, must be:

1. Mutual, for it consists in a contract which is essentially the consent of two persons, or mutual consent. Hence, if it is lacking on one side, the matrimony will be null.

2. Concerning the present, because by a promise concerning the future only betrothals, not matrimony, are made. This is also deduced from chapter *Si inter* 31, *On Betrothals and Matrimony*.

3. Deliberate and voluntary, because it is a contract concerning a grave matter and therefore induces a grave obligation; but no one is considered to impose a grave obligation upon himself unless he consents freely and fully. This is established from Canon law, which invalidates marriages contracted from grave fear, as will be said below concerning impediments.

4. Manifested by external signs, because every agreement among men must be made known by some external sign; for an agreement necessarily supposes mutual acceptance among the contracting parties.

748. **Questions. - QUESTION 1. Must consent be expressed in words?**

Reply 1. No, as regards validity, because by natural law it suffices in a contract that consent be expressed by some certain sign. - St. Ligorius, no. 887.

Reply 2. Yes, as regards liceity, because otherwise the rubric and the custom of the Church would be acted against. Nevertheless, it does not appear to exceed a venial sin if words are not employed; indeed, modesty or another reasonable cause would excuse from all fault [2]. - St. Ligorius, no. 888.

[2] Certainly, if there is question of mute or deaf persons, it is manifest that signs other than words must be used.

749. ◦ **QUESTION 2. Does consent through a procurator suffice?**

Reply 1. As regards validity, yes, provided the required conditions are present, because matrimony has the whole nature of a natural contract. But any contract can be made through a procurator.

The conditions for contracting matrimony in that manner are: first, that the procurator execute the mandate personally; second, that the mandator has not revoked the mandate; third, that the procurator appear with the other party before the Pastor and two witnesses [3].

[3] Compare what we said above (note on no. 722) concerning betrothals contracted through a procurator.

Reply 2. As regards liceity, no, unless a very grave cause urges. The reason is that this manner of contracting is contrary to the ordinary practice of the Church, and marriages are scarcely made in this way among any others than Princes and Magnates. Hence the Pastor must not bless marriages of this kind by his own authority, as is established from the practice of the Church and the Rituals. - St. Ligorius, no. 888.

750. ◦ **QUESTION 3. Is a matrimony entered UNDER A CONDITION valid?**

Reply 1. It is certain that it is valid if the condition concerns the past or the present and is verified. The reason is that this conditioned consent immediately passes into absolute consent, and therefore nothing is lacking to the validity of the Sacrament [4]. - See St. Ligorius, no. 890.

[4] This has force even if the contracting parties are ignorant that the condition is fulfilled. The reason is that they bound their consent not to knowledge of the condition but to its existence; nevertheless, they cannot use the matrimony before receiving notice that the condition exists, since otherwise they would place themselves in danger of fornication. Concerning this, see the history narrated by Fagnanus (on the final chapter, *On Conditions Apposed*, no. 13) and Schmalzgrueber (book 4, title 5, no. 40).

Reply 2. If an honorable and possible condition concerning the future is added, I say, first: the matrimony is not perfected until the condition is fulfilled, because the contract must transfer a mutual right over the bodies concerning the present, as was said above. I say, second: when the condition has been fulfilled, the matrimony is valid; for a conditioned contract, when the condition has been fulfilled, passes into an absolute contract and by that very fact is valid by reason of the Sacrament, because among Christians the contract of matrimony cannot be separated from the Sacrament [5].

[5] That a conditional matrimony immediately becomes perfect without new consent when the condition is fulfilled is the most received opinion of the Canonists. Thus Fagnanus (on chapter *Super eo*, *On Conditions Apposed*, no. 3), who adds that this opinion of the Canonists is observed in the Curia even after the Council of Trent and therefore must in no way be departed from in counseling and judging.

751. ○ **QUESTION 4. Is it licit to contract with conditioned consent?**

Reply. No. Such a manner of contracting is illicit, especially if the condition concerns the future, unless perhaps, as St. Ligorius has it, no. 892, a most urgent cause is present. The reason is that many and grave inconveniences can easily follow from such a manner of contracting, namely, scandal, quarrels, perplexities, difficulties, etc. - Thus the Theologians commonly.

752. ○ **QUESTION 5. Is a matrimony entered under a base condition valid?**

Reply 1. No, if this condition is repugnant to the substance or essence of matrimony, namely, to its threefold good, that is: first, the good of the Sacrament; second, the good of Fidelity; third, the good of offspring. This would happen if the betrothed persons, in contracting matrimony, excluded the generation of offspring [6], fidelity in the marriage, or perpetuity in matrimony. But for this it is required that a condition of this kind be expressly apposed and that the betrothed persons intend in mind to obligate themselves in no other way. The matrimony will be valid, however, if this condition is concomitant and therefore is not the motive why the matrimony is contracted, and there is otherwise some general will of contracting validly [7].

[6] The question has been raised whether a condition which indeed excludes the good of offspring but is not base, rather honorable, is an obstacle to the validity of matrimony; for example, when someone adds to the contract the condition: *if you live with me in chastity or perpetual continence*.

And there were some who denied that matrimony is thus valid. See Gonzalez on chapter *Si conditiones* 7, *On Conditions Apposed*, no. 8 and following. They were led especially by this reason: that the contract of matrimony essentially denotes consent to the handing over of the body for conjugal use; but since this handing over imports the obligation of rendering the debt, that is, of furnishing the use of one's own body to the other, with whom by force of the contract the power over that same body remains, surely either there will be no contract, or certainly the one contracting must consent to conjugal use.

But a purpose of continence plainly excludes consent of this kind; and *a fortiori* this must be said of one who contracts with a firm will of keeping a vow of chastity which perhaps he made, since he does not have that consent otherwise essential to the matrimonial contract, nor can he have it without sin if he wishes to use the period of two months granted for deliberating. Finally, *a fortiori*, there will be no contract of matrimony if this very thing is reduced to an agreement or condition. And from this arises a difficulty also concerning the matrimony of the Virgin Mother of God with St. Joseph, and of others concerning whom ecclesiastical history speaks; for example, St. Pulcheria, who chose Marcian Augustus as her spouse with the virginity which she had vowed to God preserved.

But it is shown without difficulty that the apposition of that condition is no obstacle to matrimony being validly contracted, and therefore to a right over one's own body being truly handed over to the other and at the same time the obligation proper to matrimony concerning the rendering of the debt being undertaken.

And indeed it is certain that the purpose of not consummating matrimony is no obstacle to the validity of matrimony as regards one who has the intention either of passing over to Religion and professing in it or at least of suspending the execution of the conjugal obligation if he wishes to use the period of two months granted for deliberating concerning that matter. And now it does not pertain to the matter to dispute when this is licit or illicit; meanwhile, it must be held certain that a matrimony of this kind is valid and therefore that the handing over and power over one's own body which constitute the substance of matrimony are given to the other.

You will perhaps say that in this case the substance of matrimony is preserved, and the right granted is therefore by no means injured, because the nature of the contract itself bears this, which implicitly has this condition inserted; but no one is considered to obligate himself beyond what the nature of the contract bears, and consequently no further right is acquired by the other party.

But I say that this is not the sole reason for which, with the right of the other preserved, the obligation of rendering the debt can be suspended. I now omit that the bond of matrimony, with that obligation remaining suspended, endures not only through the two months granted for deliberating but throughout the whole period of religious novitiate. But to touch the matter more closely, can that which the laws of the Church grant not equally be furnished by the voluntary concession of him to whom the right over the body of the other belongs? What prevents the contracting parties themselves from agreeing by common consent upon not only two months but years in which they may deliberate? Why could they not suspend by agreement the execution of their own right also for another cause, for example, until the husband has obtained an office sufficient for supporting offspring? Why could they not agree upon a matrimony not to be consummated except after the fortieth or fiftieth year? And if this, why not also throughout the whole of life?

In a matrimony which is made with an agreement of continence, namely, a twofold contract manifestly intervenes: the one proper to matrimony, by which power over one's own body is mutually handed over to the other; the other, by which the spouses mutually yield the use or exercise of this right. Nor does it matter that they agree concerning the exercise or use of their own right before rather than after the matrimony has been entered. For there is no reason why that cannot first be promised which I can afterward licitly furnish. But, as we all acknowledge, after matrimony has been entered the spouses can licitly yield the use of matrimony; therefore they can also promise this beforehand.

I said *promise*, because in reality before the contract of matrimony they do not renounce the right over the body of the other; for renunciation or abdication of use has place only after the power of using has been acquired. Therefore, they promise only that they will renounce it, or, if you prefer, they promise that they will so contract matrimony that at the same time they abdicate its use. But these things do not conflict with each other, since, if an abdication of this kind can be made after the contract, it can also be made in the contract itself. Thus one who buys a house can indeed in the very act of contracting yield the use of that house to the seller.

Nor can it be said that a contract of this kind so lacks every effect that it is in some way deprived of the nature and force of a contract. For: first, one who contracts in this way remains incapable, by force of the matrimonial bond, of contracting with another person; second, if the spouses themselves afterward change their purpose and wish to be united, they will not be fornicators; third, likewise, if the husband who, for example, by agreement permitted his wife the condition of chastity, inflicts force upon her, he will indeed sin against justice because he violates the agreement, or at least will violate the virtue of fidelity because he broke his promise, but he cannot be called a fornicator; fourth, if each spouse not only grants continence to the other but both also vow it to God and afterward do not keep the vow, they will sin against the virtue of religion but not against the virtue of chastity; fifth, if either makes his or her body available to an outsider, that spouse is guilty of violated matrimonial fidelity and consequently is held to be an adulterer; sixth, finally (which it is strange is little

observed by those who treat this question), when someone consents in contracting to a condition of chastity, does that person not use the matrimonial right especially? Just as one who buys a house exercises his right over it no less if he uses it by inhabiting it himself than if, unwilling to use it himself, he grants its use to another either for a time or in perpetuity; so surely, when someone voluntarily yields the use of his right over the body of the other, by this very fact he must be considered to have the right and power and to exercise it. For no one legitimately yields anything except that which he has in his power, and by yielding its use he evidently exercises that power. Therefore, it is false that through a condition of preserving chastity apposed to and accepted in matrimony, a contract is entered which has no force and no effect and therefore casts off the nature of a contract.

You have both older and more recent Doctors cited for this doctrine in Rebellus (part 2, book 2, question 10, section 3, no. 19), Clericatus (*On Matrimony*, decision 3, no. 21, and decision 20, no. 21), Schmalzgrueber (book 4, title 5, no. 119), and Benedict XIV (*On the Diocesan Synod*, book 13, chapter 22, no. 11), who nevertheless adds that it is altogether necessary for the patrons of this doctrine to inquire diligently concerning the strength and subsistence of this opinion, as though a Herculean labor were required to defend it, or as though no one had yet brought forward anything solid for it! He himself merely opposes the citation of Schmalzgrueber, who otherwise concedes that the same opinion is probable. Moreover, the whole armory which Schmalzgrueber himself opposes (l.c., no. 121) consists in this: that through the apposition of such a condition, the contracting parties exclude the right of the other over their own bodies and the implicit consent to rendering conjugal acts, since by force of it they are obligated neither to demand nor render intercourse. The whole force of this argument, as is evident, is situated in the fallacy by which a right is confused with the exercise of the right, and therefore the renunciation of use with the nonexistence of the right. Are not spouses equally obligated neither to demand nor render the debt if both bind themselves to a religious Order by solemn vow? And if this obligation excluded the right over the body of the other, why is either of them who has intercourse with an outside person an adulterer and why does that person sin against justice? Again, if the obligation neither to demand nor render intercourse excludes the right over the body of the other, how will a matrimony be valid when two persons bound by a simple vow of chastity contract? Let us conclude: a contracting party indeed cannot agree concerning those things which by the order of nature cannot be absent from the contract and by force of the contract are inalienable, such as the right over the body of the other; but in those things whose use is indeed licit but neither commanded nor inalienable, it is false that the contracting parties cannot agree upon abdication.

[7] That saying of Horace has surely happened to the Author in this place: *While I labor to be brief, I become obscure*. Therefore, a distinction must be made between an express condition apposed to the contract and a merely internal intention.

When an intention or condition contrary to the substance of matrimony is expressly apposed or reduced to an agreement, it is certain from the final chapter, *On Conditions Apposed*, that the matrimony is invalid in both forums; and the Apostolic See has declared this several times, as will appear below. Nor is that which the Author adds then required, namely, that the betrothed persons intend to obligate themselves in no other manner. For, as Lugo observes (*On the Sacraments*, disputation 8, no. 128), a matrimony cannot be valid unless someone sufficiently expresses internal consent externally by words or other signs. But in the aforesaid case (namely, an express condition contrary to the essential goods of matrimony), consent in no way appears to be expressed externally when rather the opposite is signified. Therefore, a valid matrimony cannot be had. Except, however, from the common opinion, the case in which that condition is added by only one of the betrothed persons while the other contradicts it, because if the former proceeds to the contract notwithstanding the contradiction of the latter, the former is presumed, in favor of matrimony, to have withdrawn from that condition. Indeed, there are some who think the same must be said when the other is silent at the apposition of a condition of this kind. For in this case also the silent party is presumed, in favor of matrimony, to contradict. - Schmalzgrueber, book 4, title 5, no. 116.

But if there is question of a merely internal bad intention, this can be understood in two ways: either the contracting party is so disposed in mind that he is altogether unwilling to undertake one of those obligations which pertain to the substance of matrimony; or he indeed has the intention of truly contracting matrimony and therefore of undertaking all the obligations proper to matrimony, although he is not prepared to fulfill them, for example, by breaking off an impure friendship with another woman.

If it is accepted in this latter sense, the matrimony is valid according to the opinion of all, and that for both forums. Although one will easily observe that the obligation which concerns the good of the Sacrament, that is, the indissolubility of matrimony, is scarcely, or scarcely at all, capable of the aforesaid distinction, so that it can be undertaken together with an intention of not observing it, unless perhaps we think that the case pertains here of one who intends to leave his wife after some time and secretly to marry another elsewhere while conscious and certain that the prior bond remains.

But if the matter is understood in the former sense, then even if the bad intention is not reduced to an agreement, nevertheless it *per se* invalidates the contract as regards the forum of conscience. The reason is evident, because the contract of matrimony from its essence requires consent to those obligations. Therefore, whoever has an intention excluding any one of those obligations by that very fact excludes the essence of matrimony, and consequently the matrimony is null. See Sanchez (*On Matrimony*, book 2, disputation 29, no. 12), who after St. Thomas clearly explains this doctrine, afterward received by all.

I said *per se*, for another distinction also has place here which the Author also indicates somewhat obscurely: whether this intention is concomitant with or antecedent to the contract. This distinction must be considered diligently because of consequences of the gravest importance as regards practice. And indeed, since, for example, the indissolubility of the bond pertains to the essence of matrimony, what must be said of those who contract with the intention of establishing a divorce not only as regards bed but also as regards the bond, or of giving the wife a bill of repudiation, as the Jews are accustomed to do according to the Mosaic law? A case of this kind is certainly so far from being imaginary that there is a most frequent occasion of this question, because the opinion of the dissolubility of matrimony also flourishes among the schismatic Greeks because of adultery, and the same custom has prevailed among several Protestant heretics; and finally, the same faculty is given to spouses in many places by civil law, to say nothing now of infidels, whether Jews, Mohammedans, or idolaters. Therefore, it ought not to be surprising if those who contract matrimony in these circumstances at the same time have the intention of dissolving the matrimony because of the aforesaid causes and circumstances.

Cardinal De Lugo proposes the resolution of the question according to the twofold case of the distinction from the common doctrine thus (*On the Sacraments*, disputation 8, nos. 131-132): *If the spouses know that repudiation is permitted in their republic, but at the time of the contract have not added this limitation, that they obligate themselves only under this respect, then, if that knowledge which they had concerning the use of repudiation was antecedent, that is, if they therefore contracted because they knew repudiation to be permitted and otherwise would not have contracted, they now appear to have been unwilling to obligate themselves simply to perpetuity. And therefore judgment must incline to the nullity of the matrimony.... But if the contracting parties were altogether ignorant whether the bond would be perpetual, or if they believed it even to be dissoluble but did not limit their intention at the time of the contract to that estimation, but had a general will of contracting a valid matrimony so that that ignorance or estimation was concomitant, since they would equally contract even without it, then the matrimony appears valid and is to be observed.* And the things which the same Author discusses at length (l.c., from no. 120 to no. 130) are plainly worthy of being read, so that he may explain how a twofold contrary will can concur and which, as the more efficacious, must be said to prevail. There he also explains what that will is which is more general than the other (which the Author also indicates) and which is therefore more efficacious. You have the counterparts of these things also in Schmalzgrueber (book 4, title 1, nos. 302-304), where he asks whether the matrimony of a baptized person who wishes to celebrate it under the nature of a contract but not under the nature of a Sacrament, and therefore contracts with an intention excluding the Sacrament, must be called valid; and much more extensively (book 4, title 19, nos. 164-176), where he inquires into the case of Lugo itself.

These things, however, as was premised, have force for the forum of conscience; for in the external forum it is always presumed that that more general will of contracting legitimate matrimony was present, and therefore that any error adverse to the substance of matrimony was merely concomitant, until the contrary is proved. Benedict XIV reports from the consensus of the Doctors the general doctrine upon which this practice of the external forum rests thus (*On the Diocesan Synod*, book 13, chapter 22, no. 7): *If that express condition concerning matrimony to be dissolved because of adultery was by no means apposed, however much the contracting parties were in this error, that the bond of matrimony could be dissolved through adultery, nevertheless there is place for the presumption that, when they wished to enter matrimony as it was instituted by Christ, they wished to contract it altogether perpetual and indissoluble even upon the intervention of adultery; namely, the general will which we have stated, concerning entering matrimony according to the institution of Christ, prevails and in some way absorbs that private error. Hence it happens that the matrimony so contracted remains valid and firm. But where the contracting parties in the matrimonial contract itself apposed an express condition concerning dissolving the matrimony as regards the bond in the case of adultery, it can no longer happen that the particular error remains absorbed by the general will of contracting matrimony as it was instituted by Christ the Lord; but rather a general will of this kind is extinguished and suffocated by the particular error which manifestly prevails and dominates. And hence arises the nullity of the matrimony in contracting which there was apposed*

a condition contrary to its very substance. He soon confirms this doctrine in each sense by cited Declarations of the Sacred Congregations.

We find it proposed no less clearly in the Letters which Pius VI gave to the Archbishop of Prague on July 11, 1789: *If a legal condition* (he says) *of dissolving the conjugal bond for the cited causes is apposed to matrimony through an express agreement, the*

matrimony must be called null and invalid from the beginning, nor could a conjugal bond have arisen therefrom; but an altogether illicit union was agreed upon, which each party, especially the Catholic party, is altogether bound to abandon by the law of Christ. But if no express condition of this kind repugnant to the substance of matrimony was apposed, although the contracting parties generally intend to contract according to the decrees of a sect or law granting the dissolution of the conjugal bond, nevertheless the matrimony must be considered validly contracted, and therefore a perpetual conjugal bond arose which can be dissolved by no civil law and no authority of non-Catholic consistories; and consequently the faculty of passing to other nuptials can be granted neither to the parties and much less to the Catholic party.

Pius VI gives the reason for the resolution, no differently from Benedict XIV, thus: *Nor is there lacking an intrinsic reason why the intention of contracting according to the decrees of a sect asserting, or of a law permitting, the dissolution of matrimony does not impede its validity, provided it is not reduced to an agreement. For from this very fact that non-Catholics, deceived by a vain error, judge that the dissolution of matrimony for those causes is by no means repugnant to the law of Christ, it comes about that in their mind, because of that false estimation, the intention of contracting according to laws of this kind or the decrees of a sect by no means excludes the primary intention of contracting according to the divine law confirmed by Christ. Therefore this will remains in the act of contracting, and from it flows and is determined the nature of the consent which is actually furnished. Moreover, consent furnished according to the law of Christ is apt and sufficient for the validity of matrimony unless another canonical impediment stands in the way.*

These things, however (as Benedict XIV has it in the text cited above), must always be referred to the presumption by which the practice of the external forum is governed. For by these things the Pontiff did not intend to define that true consent cannot be lacking even when that condition is not reduced to an agreement, just as, namely, the case of feigned consent is not excluded when the indissolubility of a marriage contracted between Catholics is determined generally. Therefore, as regards the forum of conscience, it always remains to be examined whether that bad intention is antecedent to the contract or only concomitant. For if the contracting parties so enter matrimony that they bind their intention to the error concerning the dissolubility of marriage alone and are altogether unwilling to contract except under the condition of dissolubility, the matrimony is null even if the condition is not reduced to an agreement, because they are unwilling to contract otherwise than dissolubly. Schmalzgrueber (book 4, title 19, no. 70) shows that this doctrine is common to the Theologians and Canonists. Indeed, if it were established from the confession of both spouses that they did not have the intention of contracting in another manner, this would suffice for the matrimony to be declared null even in the external forum, unless there were a presumption of collusion. And if this intention was present in only one of the spouses, it will suffice for that spouse in the external forum; indeed, it will also suffice for the other party if reasons of such a kind concur which prudently persuade that the former is not lying. See Sanchez (book 2, disputation 45, nos. 4-12, and book 5, disputation 12, no. 5) and Lugo (*On the Sacraments*, disputation 8, no. 130).

But in doubt whether someone had that general and efficacious will of making the matrimony altogether valid, judgment must be made in favor of the contract, that it be valid.

The reason is that everyone is presumed to wish to execute a valid contract unless the contrary is proved, according to the common doctrine of the Jurists; and this will have place *a fortiori* in the case of matrimony, which is more favorable. Thus Lugo (*On the Sacraments*, disputation 8, no. 136).

Reply 2. But if the base condition is not repugnant to the substance of matrimony, distinguish: first, it is considered valid in the external forum because there the condition is held as not added; second, it is disputed as regards the forum of conscience, as in other contracts. Ordinarily, however, it is not considered a condition *sine qua non*, but a mere purpose or promise independent of the matrimonial contract, and therefore the consent is not judged suspended under a base condition unless this is altogether established, as was said in the first reply. - St. Ligorius, no. 891 [8].

[8] The base condition of which the Author now speaks, like an impossible condition, is in reality held as not added only when it is doubtful whether the contracting parties added it seriously or in jest. For since in doubt judgment must be made, according to the norm of law, in favor of the validity of the matrimony, deservedly in this doubt also the Church presumes in favor of matrimony that the condition was not seriously added; deservedly, I say, lest perhaps those who are legitimately united be separated and be joined to others through illegitimate marriages. Nevertheless, since this presumption is only one of law, and not also *de iure*, it can therefore be overcome by reasons brought forward to the contrary. - Schmalzgrueber, book 4, title 5, no. 64.

It is not held as not added, however: first, if the contracting parties regard it as honorable; second, if it is otherwise established that the condition was seriously added by the contracting parties, and therefore that consent was not furnished except under its occurrence; for the presumption then yields to the truth, and therefore, if the condition does not occur, there will be no matrimony because of the defect of consent, which the Church certainly cannot supply; third, if both contracting parties, or at least one of them, were ignorant of the Constitution which holds conditions of this kind as not added; for it cannot then be said that, because they knew this condition to be rejected by the Church, they therefore contracted absolutely, since they wished to receive the Sacraments according to the intention of the Church. This has force only when the contracting parties know both that the condition is base and that it is not admitted by the Church.

But insofar as the Author adds that, as regards the forum of conscience, it is disputed whether the matrimony, once the base condition is fulfilled, must be held valid, just as in other contracts concerning base matter, see what we said at no. 760 of volume I, where we showed that the opinion denying the validity of these contracts is supported only by the coloring of false citations.

753. ○ QUESTION 6. What must be done if someone says that he consented fictitiously?

Reply 1. As regards the external forum, credence is not given to him unless it is evident from the circumstances that he was either deceived by fraud or induced to contract by grave fear; for it cannot be supposed that one who freely entered matrimony consented fictitiously.

Reply 2. As regards the internal forum, one who asserts that he consented fictitiously must be obliged: first, to abstain from demanding and rendering the debt until he has truly consented; second, ordinarily also to furnish true consent, so that he may thus repair the injury inflicted upon the other party. I say *ordinarily*, because if the other party consents to separation, or if he himself was compelled to contract, he is not bound to supply consent [9]. - Decretals, book 4, title *On Conditions*, final chapter.

[9] The deceiver is not bound to marry the deceived woman also in the following cases. First, if the deceiver has already entered matrimony with another; for although he cannot prove to the judge the fiction as regards the other matrimony, and therefore the judge compels him, even under threatened excommunication, to cohabit with the woman believed to be his spouse, he must rather endure this censure, which would not bind the soul, than mingle carnally with the first betrothed woman, as is evident from chapter *Inquisitioni tuae* 44, *On the Sentence of Excommunication*. Second, if fraud intervened also on the other side, for example, if she falsely boasted that she was a virgin; for the deception is then compensated by deception. Yet La Croix (book 6, part 3, no. 258), and after him St. Alphonsus (book 6, no. 887), without reason refers the declaration of the Sacred Congregation of the Council to this case. See *Thesaurus Resolutionum S. Congregationis Concilii*, volume 3, pages 161-165. Third, if no harm came to the deceived party; or if the deceived party, once the deception is known, admits another compensation; or even if the harm inflicted can be compensated in another manner. Fourth, if the contracting party gave manifest indications of fictitious consent; for then the other party ought to attribute the deception rather to himself than to the other. The Doctors refer here the case in which the deceiver is of a much higher condition and state; for from this an indication of deception can become evident to the other party, although this is admitted with difficulty where the contract is celebrated before the Pastor. But an immense disparity can also excuse the deceiver for another reason, namely, because of the unhappy outcome, scandals, and other inconveniences which are rightly feared from such a marriage.

Moreover, the most grave obligation of entering matrimony with true consent easily manifests itself, not only because otherwise there is grave sin against the reverence due to the Sacrament, but because through the injury most grave harm is inflicted upon the other party. For since the fiction can be proved only with the greatest difficulty in the external forum, other nuptials are not permitted to the deceived party, and therefore this alone remains to her: either to enter Religion or to remain unmarried in the world.

Moreover, the spouse who furnished true assent is not bound to believe the other asserting that he consented fictitiously, unless he confirmed it by oath; and therefore the spouse could licitly demand the debt until the defect of consent were evidently proved. - Sacred Congregation of the Council, February 24, 1720.

754. ○ **QUESTION 7. Is the consent of parents required for the validity or liceity of the matrimonial contract?**

Reply 1. As regards validity, altogether no, because the consent of parents is required neither by natural nor by positive law. First, not by natural law, because the contracting parties have power over their own bodies, while parents do not have power over the bodies of their children in relation to matrimony; otherwise they could invalidate their marriages, whether justly or unjustly, which is altogether repugnant and opposed to the common sense of men. Second, neither by positive law; for the Council of Trent, session 24, chapter 1, struck with anathema those who falsely affirm that marriages contracted by children of a family without the consent of their parents are invalid and that parents can make them ratified or invalid. But if civil law requires the consent of parents for the validity of matrimony, its force extends only to merely civil effects. - Thus commonly all Catholic Theologians.

Reply 2. As regards liceity, yes, speaking generally. This is established: first, from natural law, because children owe honor, reverence, and obedience to their parents, especially in those things which concern the whole family, such as matrimony, upon which the honor and peace of families very often depend, etc.; second, from the Council of Trent (ibid.), where it is said: *The holy Church of God has always detested and prohibited those marriages* (entered without parental consent) [10].

[10] These words of the Council of Trent refer rather to clandestine marriages, in which there is never lacking a reason why they should be prohibited.

755. ○ **QUESTION 8. Can children ever contract matrimony against the will of their parents?**

Reply. Yes, if the parents unjustly refuse consent. But since in this matter children of a family easily deceive themselves, before celebrating the nuptials they ought to consult prudent men and especially Confessors, lest in so grave a matter, full of such great dangers, they act imprudently while trusting their own judgment.

756. ○ **QUESTION 9. What must a Confessor or Pastor do when children of a family wish to enter matrimony against the will of their parents?**

Reply 1. As regards the Confessor, speaking generally, he ought to defend the part of the parents to the best of his ability; for generally the presumption is considered to favor them. Nevertheless, if the children, moved by a grave reason and with the legal conditions observed, persist in entering matrimony, they do not appear to be disturbed. - Thus commonly with Gousset.

Reply 2. As regards the Pastor, he ought not to assist at the matrimony unless the conditions prescribed by civil law have been fulfilled, because they are not opposed to the Church. - Gousset, no. 839.

Article II. On the Properties of Matrimony, Namely, its Unity and Firmness

I. On the Unity of Matrimony

757. ◦ The unity of matrimony is situated in this: that matrimony is the union of one man with one woman.

1. It is certain that polyandry is opposed to the natural law, because it is opposed to the principal ends of matrimony, namely, the generation of offspring and their good education. - Thus all.

2. It is certain that simultaneous polygamy is prohibited in every case, at least by the divine positive law of the New Law, as is evident from Luke 16:18: *Everyone who dismisses his wife and marries another commits adultery.* It is likewise established from the Council of Trent, session 24, canon 2.

3. It is certain that second and further marriages are licit both for a man and for a woman, even under the evangelical law. This is established from the authority and practice of the Church, as well as from Sacred Scripture, 1 Corinthians 7:39: *A woman is bound by the law as long as her husband lives; but if her husband has fallen asleep, she is free: let her marry whom she wishes, only in the Lord.*

II. On the Firmness of Matrimony

A twofold firmness of matrimony is distinguished: the one regards the bond, the other the bed.

Point I. On the Firmness of Matrimony Insofar as It Regards the Bond

758. ◦ Matrimony is indissoluble, that is, once matrimony has been contracted, divorce as regards the bond cannot take place, at least by divine positive law. This is *de fide*. It is proved: first, from the words of Christ, Matthew 19:6: *Therefore they are now not two, but one flesh. What therefore God has joined together, let no man separate.* Second, from the words of St. Paul, 1 Corinthians 7:10-11: *But to those who are joined in matrimony I command, not I, but the Lord, that the wife not depart from her husband; but if she has departed, that she remain unmarried or be reconciled to her husband. And let not the husband dismiss his wife.* Third, from the Council of Trent, session 24, canon 7.

759. ◦ Nevertheless, three cases must be excepted, for:

1. A ratified and non-consummated matrimony of Christians [1] can be dissolved for a grave cause through a dispensation of the Pope [2], from a power divinely granted to him. This is evident from the fact that the Supreme Pontiffs have already used this power many times, as St. Gregory VII, Paul III, etc.

[1] Above (note to no. 745) we said that matrimony cannot be called consummated unless the act is of itself apt for the effect of generation. Indeed, St. Alphonsus (book 6, no. 1036), after St. Thomas (*In IV Sentences*, distinction 41, question 1, article 1, question 4, reply to objection 2), further requires an act perfect on the part of each spouse, which doctrine can contribute to the solution of grave questions.

Moreover, observe two things. The first is that this has force not only as regards the first matrimony which anyone contracts, but also as regards the second, third, etc. Hence, if widowed persons marry, even persons who have offspring from a preceding marriage, the law has force also with them; and therefore, if either makes profession in Religion before the present matrimony is consummated, the bond will be dissolved. The second is that a wife who, within two months while deliberating about embracing Religion, has been known by her husband through force can nevertheless, according to the

more common and more probable opinion of Theologians and Canonists, enter Religion even against the will of her husband; and he ought therefore to impute it to himself that, since profession in the case does not dissolve the bond, he must remain without hope of marriage until the death of his wife. The Doctors except the case in which the wife has conceived offspring who could not easily be educated without the mother. See Sanchez, book 2, disputation 22, no. 7, and Pirhing, book 3, title 32, no. 56.

[2] There is no dispute in the forum and in practice concerning the power of the Supreme Pontiff to dispense in a ratified and non-consummated matrimony, and the sole controversy is accustomed to be reduced to the cause, namely, whether a cause sufficient for granting such a dispensation is present. Thus Benedict XIV (*Canonical Question* 24). See also his *Canonical Questions* 108 and 479, in which he says that this doctrine is notoriously common among Theologians and Canonists. Therefore what St. Alphonsus says (book 6, no. 959), that there are two probable opinions concerning this question, must be held among obsolete opinions. You have several examples of these dispensations in Schmalzgrueber (book 4, title 19, no. 46) and Pignatelli (volume 1, consultation 148, no. 5), and later examples down to Pius VII, Gregory XVI, and Pius IX in Perrone (*On Matrimony*, volume 3, pages 509-510, Roman edition).

This faculty must also be extended to marriages consummated in infidelity if, after baptism, by which the marriage becomes ratified, the spouses have not yet consummated it again. And this is most clearly confirmed from the Letters of Gregory XIII of January 25, 1585, which you have in Clericatus (*On Matrimony*, decision 11, no. 28), in which he first establishes this faculty in these words: *Therefore, considering that marriages of this kind contracted among infidels are indeed true, yet are not considered so ratified that, when necessity urges, they cannot be dissolved*, etc. Hence he concludes that by force of the dispensation those marriages are valid which spouses converted to the faith contracted with others, even though the prior spouse also then already existed as converted to the faith. These marriages, even if it afterward became known that the former infidel spouses, being justly impeded, could not declare their will, and that they also had been converted to the faith at the time the second matrimony was contracted, nevertheless must never be rescinded but are valid and firm. Nor did Gregory XIII alone, but also Urban VIII, in Letters given October 20, 1624, and again September 17, 1627, declare this very thing, namely, that for a grave cause the Apostolic See can sometimes dissolve marriages of infidels, as Cardinal de Lugo testifies in the supplicatory libellus which he offered to Urban VIII and which you have in Cardenas (*Theological Crisis*, part 4, dissertation 2, no. 552). But as for the attempt of Pontius (book 7, chapter 48, no. 22, and book 9, chapter 2, no. 17), and after him Lambertinius (*On the Synod*, book 13, chapter 21, nos. 4-6), to twist the Letters of Gregory into a mere dispensation from interpellating the spouse, it must all but be rejected among absurdities, as plainly repugnant to the text brought forward.

Concerning the aforesaid text of Benedict XIV, the VV. object (page 805) that the words, *There is no dispute in the forum and in practice*, indicate that a speculative controversy still subsists in the schools and among theologians.

Reply. The VV. show (ibid.) that they surely are not ignorant of what is read thus in *Canonical Question* 479 of the same Benedict XIV: *The second point is that no question can any longer be raised concerning the power of the Supreme Pontiff in that which pertains to dispensing in a ratified and non-consummated matrimony, since today the affirmative opinion is common among Theologians and Canonists and is received in practice, as is notorious*. How, then, do the VV. assert that the words of Benedict XIV indicate that a controversy STILL subsists in the schools and among theologians, when the same Benedict establishes as a principle that no controversy can any longer be raised concerning this power of the Supreme Pontiff, because TODAY the affirmative opinion is common among Theologians and Canonists? Do these two things not mutually conflict: the controversy still subsists, and no controversy can any longer be raised?

The VV. reply (ibid.) that in question 479 Benedict speaks of a more recent time.

Reply 1. When the VV. say that according to Benedict XIV the controversy STILL subsists, do they affirm this concerning theologians who had written two centuries before, and not rather concerning the age of Benedict himself? Reply 2. Does not the same Benedict, in question 108, which is also cited in the Note, report from letter 180 of Cardinal d'Ossat that even under Clement VIII there was no controversy in the Sacred Congregation concerning this power of the Pontiff, although fourteen men had been summoned by the Supreme Pontiff for consultation, namely, eight Cardinals, four Auditors of the Rota, and two Penitentiaries of the Vatican Basilica? Reply 3. And if in the Roman Congregation there was already no controversy from the age of Clement VIII, and Benedict XIV in question 479, namely, a century and a half before us (for that cause was treated in January 1726), wrote that no question could any longer be raised concerning this power of the Supreme Pontiff, while from that age down to us ever greater light has shone upon this controversy, why finally will it be held unlawful to say that the opinion which denied this power to the Roman Pontiffs is now obsolete?

The VV. add (ibid.) that Benedict XIV (*On Beatification and Canonization*, book 4, chapter 42, no. 13) has the following: *Concessions of this kind are sometimes made, yet from them it is not deduced that it is certain de fide that Pontiffs can release men from a ratified but non-consummated matrimony and from a vow of continence annexed to monastic profession.*

Reply. Let it pass; for it is not contended in the Note that it must be held *de fide* that the Roman Pontiffs possess this power, so that whoever contradicts it must be considered a heretic. Moreover, who does not know that the Church has not been accustomed to arrive at definitions of this kind, namely, that something must be held *de fide*, unless a grave cause demanded it? Benedict brings forward those examples to show how the Apostolic See permits the cult of the Blessed, and yet that it must not therefore be held *de fide* that they are participants in heavenly glory. But he had premised (ibid., no. 9) that although it appears probable that the judgment of the Supreme Pontiff in equipollent Beatification is not infallible and does not pertain to the faith, nevertheless *it is also certain* (he says) *that he will not be free from the note of temerity who contends that he erred and who reproves the cult which the Pontiff himself approved*.

And indeed James Pignatelli judged no differently concerning the opinion which denies to the Roman Pontiffs the faculty of dispensing in a merely ratified matrimony (*Canonical Consultations*, book 1, consultation 148, no. 6), writing: *Therefore, by the judgment of all Canonists and very many Theologians, and by the examples of the Supreme Pontiffs down to our times, this has been so confirmed that it would be temerarious to assert the contrary.* Nor did George Gobat judge otherwise (tract 10, no. 691): *Nor do I think that the opinion of Pontius can now be defended without insult to the Apostolic See, since Diana named seven Pontiffs who easily dispensed in thirty such cases, and most recently Innocent X, after such long and sharp disputes among the Theologians concerning this power, used it toward a common laborer, supported by no favor at all, and indeed without a cause concerning the public good, as I most faithfully related above* (no. 678). Hence also Elbel (*On Matrimony*, conference 15, no. 360): *It cannot be said without the note of temerity that the Pontiffs erred in dispensing.*

Moreover, whatever anyone judges must be thought concerning these judgments, not even the VV. will be able to call into doubt that the affirmation of the Holy Doctor concerning this question, *There are two probable opinions*, leads to very grave inconveniences, even with their own principles considered. And indeed it now follows that the Roman Pontiffs therefore acted in this matter relying upon an opinion which can be false, indeed which is probably false. Yet, first, the right of a third party is also at issue here, for it is known that dispensations of this kind were also granted against the will of the other party. And if the dispensation must be called merely probably valid, did not the VV. elsewhere contend (page 799) that probability avails nothing against a right certainly existing beforehand? But is it not otherwise certain that a right had already been acquired by the other party through the contract of matrimony? Would it not therefore have to be said that the Roman Pontiffs acted unjustly toward the other party? Does not Pontius (book 9, chapter 3, no. 8) bring forward this argument for denying this power to the Pontiff, because *it appears difficult for the Pontiff to make a law against a right of justice acquired by a third party, or to dissolve a matrimony, which we see clearly in lesser contracts?*

Furthermore, no one calls into doubt that through the rescission of matrimony a most grave injury is inflicted upon the Sacrament itself unless the matrimony was legitimately dissolved. But according to the principles of the VV. and of the Holy Doctor Alphonsus, is it licit to act with a merely probable opinion and at the same time with a probable and grave irreverence toward the Sacrament? Is it not evident that there is danger of this grave irreverence if a marriage is said to have been dissolved by pontifical dispensation only probably?

Moreover, since through a pontifical dispensation of this kind the faculty of passing to other nuptials is given to each spouse, could the spouses licitly proceed to these other, probably adulterous, nuptials? Could the Church consent that one be admitted to the Sacrament of matrimony who is still probably bound by the bond of a prior marriage and would probably remain in an adulterous union?

Deservedly, therefore, the Salmanticenses (tract 9, chapter 4, no. 59) say: *Very often the Supreme Pontiffs have dispensed so that a ratified matrimony might be dissolved; but it must not be believed that the Pontiffs erred in a matter so grave and one which pertains especially to morals, because in matters pertaining to morals IT APPEARS IMPIOUS TO ASSERT that the Supreme Pontiffs err.* And yet, if the affirmation of St. Alphonsus is admitted, would it not probably have to be said that the Supreme Pontiffs probably erred in a grave matter pertaining to morals?

Nor does Diana, whom the VV. otherwise sometimes exhibit as too benign, judge differently (volume 3, tract 1, resolution 94, no. 4): *It is in no way likely that the Pontiffs err in a matter of such importance, since their error would gravely harm the Churches. For it would not only be in fact but would redound into doctrine pernicious to the Church, because by their deed they implicitly teach*, etc. And a little later (no. 5): *Their error would concern one of the principal heads of our Religion, which would indeed be intolerable.* And, meeting an evasion, he adds: *You will say that the error is only speculative, in which they are excused because they follow a probable opinion of*

various Doctors. The reply is that this does not satisfy, since even a speculative error in moral doctrine, or in a deed from which error in moral doctrine would follow, and especially in the Sacraments, would be most pernicious to the Church. Then he admirably adds (no. 12): *And certainly it ought to suffice for any Christian, however learned, that the Roman Pontiffs, and especially Pius V, otherwise a most holy man and an eminent theologian, frequently dispensed in the aforesaid marriages.... It ought also to suffice that the same Roman Pontiffs declared that it was not in the mind of Christ in Matthew 5 and 19 to include the aforesaid matrimony, to which interpretation the greatest faith must be given, chapter Haec est fides, cause 24, question 1.*

In support of the affirmation of St. Alphonsus, the VV. cite (pages 802-803) certain Authors whom they say were contemporaries of the Holy Doctor. Two things can be displeasing in this. The first is that from Cardinal Gotti, as though he denied this power to the Pontiff, they bring forth the general thesis concerning the indissolubility of matrimony and concerning its dissolubility on the occasion of conversion from infidelity or of Religious Profession; but they then suppress in silence the fact that he plainly proves the power of the Pontiff concerning dispensing in a ratified matrimony (question 8, doubt 3, section 1, no. 15). The second is that they likewise report from Antoine (chapter 2, question 8) what he states generally thus (reply 1): *Every matrimony contracted absolutely is and always has been indissoluble without a special permission of God*; and then suppress what is read thus (ibid., reply 4): *A ratified but non-consummated matrimony of baptized persons is dissolved in two cases: first, through solemn Profession in an approved Religion; second, according to very many Canonists and Theologians, it is dissolved by the authority of the Pope.* He then defends this thesis with several arguments.

Whatever may be the truth concerning this (as also concerning the fact that the VV. add on page 802 that Arriaga, S.J., was cited by the Salmanticenses, although these certainly mention Aragon but nowhere Arriaga), no one is ignorant that several others, especially somewhat more ancient Authors, could have been cited for the opinion which either denies or calls into doubt that power of the Roman Pontiff of which we speak. But this cannot or ought not move anything. We discern in this controversy what we have known to have occurred also concerning others: when they began to be debated in the Schools, there existed the greatest and afterward the sharpest disagreement of the Doctors; but in the course of time, both by the aid of maturer discussion and especially by that light which manifests itself from the Roman Apostolic See, even apart from any definition, through deeds or other reasons, the disagreement gradually diminished and finally vanished altogether.

In this matter the most prudent economy and long-suffering patience of the Apostolic See indeed showed itself admirable: while, at the time when by deeds or another reason it sufficiently indicated toward which side it inclined and where its sense tended, nevertheless, where no grave danger threatened, it did not prevent its children, otherwise prepared to obey, from meanwhile disputing among themselves, and sometimes in disputing from arriving at the point where they perhaps appeared to fall short of the reverence and honor due to so great a Mother.

In a not dissimilar manner, the same Apostolic See, while vindicating to itself by the deeds themselves the right of dispensing in a ratified matrimony, nevertheless patiently endured that, for example, Soto (*In IV Sentences*, distinction 27, question 1, article 4, section *His tamen nihil obstantibus*) should write concerning this doctrine: *Nevertheless, to confess the weakness of my intellect, always saving the censure of the Church, it represents to me no appearance of probability.* The Apostolic See further patiently endured that someone should say it to be free from sin while it dispenses concerning solemn vows and a ratified matrimony only because invincible ignorance excuses it. Thus Martin Wigandt (*Tribunal of Confession*, tract 2, proem, examination 3, no. 7): *If, however, an opinion less probable in itself appears more probable to someone, he does not sin by following it in practice, because invincible ignorance excuses; and thus it can happen in dispensations of the Pope concerning solemn vows and a ratified matrimony.* Therefore, according to this opinion, lest we ascribe to the depravity of the Roman Pontiffs acts of the Apostolic See of this kind, which we see frequently repeated through several centuries down to our days, we must evidently impute them to their ignorance! And hence Charmes, as the VV. themselves report (page 804), excused the Roman Pontiffs because THEY HAD BEEN DECEIVED! What wonder, then, that an opinion which necessarily leads to consequences of this kind became obsolete in the course of time?

The VV. observe (page 801) that St. Alphonsus, when he calls probable the opinion which denies that the Pope can dispense in a ratified matrimony, speaks only of speculative probability, as do the other Doctors.

Reply. What those mean who use a phrase of this kind in this controversy (for St. Alphonsus does not have it thus) can scarcely be understood, and one would rightly say that they labor under an equivocation. The controversy is whether the Pontiff has the power of dissolving a merely ratified matrimony, and therefore whether the dissolution of a matrimony through pontifical dispensation is valid or not. Does their opinion, then, reduce to this: speculatively, the Pontiff probably does not have this power, but practically he has this power absolutely? And again: the dissolution of a matrimony of this

kind is probably not valid speculatively, but in practice it is absolutely valid? Such an opinion plainly savors of something most absurd.

But, as I said, these appear to labor under an equivocation. For when they ask whether the Pontiff can dispense in a ratified matrimony and reply that, speculatively speaking, he probably cannot, they understand that *can* concerning power necessary for the validity of the act. But when they speak of practice, they understand that *can*, not likewise concerning power for the validity of the act, but concerning the liceity or honesty of the act, which they finally derive either implicitly or explicitly from the invincible and therefore inculpable ignorance of the agent. But if, once the equivocation is removed, the question is asked whether the Apostolic See can licitly dispense in a ratified matrimony, will they dare to reply: speculatively speaking, it is probably illicit, but practically it is altogether licit? For if you set aside the excuse of invincible ignorance, do any circumstances arise in practice which dissolve the reasons for which the action is speculatively probably illicit?

In brief: if the power of the Pontiff necessary for the validity of the act must really be called doubtful, in practice there can by no means be avoided those inconveniences which we touched upon above, and especially this one: that those who are probably still bound by the bond of a preceding matrimony are admitted to other nuptials.

And indeed whatever may finally be added concerning invincible ignorance which excuses the dispensing Pontiff from sin must deservedly be called most empty. For all the Doctors now agree on what is deduced from the propositions condemned by the Apostolic See: that in conferring Sacraments it is illicit to follow a probable opinion concerning the validity of the Sacrament. And therefore it manifestly follows that in the present case it is illicit to admit to the Sacrament of matrimony where the consent of the contracting parties is probably invalid. Moreover, if this is illicit in practice, it must also be called illicit speculatively. Cardinal de Lugo writes excellently to the point (*On Justice and Right*, disputation 10, no. 189): *If these inconveniences follow of themselves from that opinion, it certainly will not be probable even speculatively; for even for the speculative probability of a moral matter, the matter must be such that in human circumstances it does not bring inconveniences which render it illicit; but if of itself it brings inconveniences of this kind, by that very fact it is intrinsically illicit even speculatively speaking*. Since, therefore, to conclude at last, this reason for excusing acts of the Apostolic See, repeated so often through several centuries down to us, as though through mere ignorance the Roman Pontiffs had used so doubtful a power as to give occasion to those gravest inconveniences on account of which they themselves condemned the use of probability in the subject matter, must be called most empty and altogether unworthy of a Theologian, it ought not appear surprising that Theologians finally judged empty the arguments which cast doubt upon this power of the Apostolic See, and that in the course of time the matter was brought to the point that the opinion became obsolete and must be called outmoded.

2. A ratified and non-consummated matrimony can be dissolved through the solemn religious profession of one of the spouses, and this by a special privilege granted by Christ and declared by the Church. For thus the Council of Trent, session 24, canon 6: *If anyone shall say that a matrimony ratified but not consummated is not dissolved through the solemn religious profession of one of the spouses, let him be anathema* [3]. But in order that the spouses may deliberate about the use of this privilege, they have two months after the nuptials granted to them by the law itself [4], during which time they are not bound to render the debt. - St. Ligorius, nos. 870, 958. Indeed, even after that period of two months, if the matrimony has not been consummated, even through an illicit refusal of the debt, this privilege remains. Ferraris [5]. Nor is it impeded by fornication had between the betrothed persons before the celebration of the matrimony [6]. - Scavini.

[3] It must be added here, which the Author omits, that before the convert to the faith binds himself in a second marriage, it is necessary to interpellate the spouse who is still an infidel, so that it may be established whether that spouse is willing to cohabit peacefully with the convert, etc., or, according to the different circumstances, whether that spouse is also willing to embrace the faith, etc. The reason is evident, because just as, in doubt concerning the death of a prior spouse, it is necessary before entering a second marriage to inquire whether the former is in fact dead, so in this case it is necessary to inquire whether the infidel spouse, according to the Pauline phrase, in fact departs.

Cardinal Brancatius, whom Clericatus afterward copied (*On Matrimony*, decision 11, no. 21), indeed judged (*In IV Sentences*, disputation 16, no. 198) that this interpellation is so necessary that a matrimony contracted without the will of the prior infidel spouse having been ascertained must be held invalid. He brings forward this reason (ibid., no. 199): that the

Privilege does not have its force unless the conditions required by the legislator are observed. But the chief condition, he says, is that the infidel depart. Yet for the argument to conclude, the minor would have to be this: But the condition necessary for the validity of the matrimony is that the faithful party first investigate and know that the infidel wishes to depart. He himself does not prove this, nor, I think, will anyone easily prove it. And it is equally certain that a second marriage is not valid before the death of the prior spouse. But anyone who, confusing the occurrence of the condition with knowledge of that occurrence, reasoned thus would argue badly: Therefore, in doubt concerning the death of a spouse, another matrimony contracted without the doubt whether the spouse is in fact dead having been removed is invalid. The correct conclusion is that one sins who contracts another matrimony without certain knowledge of the death of the prior spouse, but that matrimony is valid or invalid according as the prior spouse was living or dead at the time when the new marriage was contracted. By parity you will conclude in our case that the faithful party indeed sins who, without consulting the infidel spouse and therefore in ignorance whether that spouse wishes to depart, contracts new nuptials; nevertheless, these nuptials are valid or invalid according as the condition of that departure exists or does not exist. But the argument which some, especially Missionaries, thought could be taken in favor of the opinion of Brancatius from a Declaration of the Sacred Congregation for the Propagation of the Faith in 1816 fails for several reasons. For other reasons were available on account of which the second marriage of a certain Tullius with Martha was judged invalid, as is easily evident to one inspecting the genuine Acts of the Sacred Congregation. See Sanchez (book 7, disputation 74, nos. 13-18), where he discusses both the necessity and manner of interpellation and the delays to be granted to the infidel.

The greater difficulty is what must be done when the convert cannot interpellate the other. This can happen especially for two reasons: either because the infidel cannot be approached, or because it is not established which of several persons must be interpellated, for example, when it is unknown which of several women whom a man has or has had is his legitimate wife.

As regards the first case, let the question now be omitted concerning an infidel who has maliciously fled or lies hidden so as not to be interpellated.

For, as the Doctors observe (see Clericatus, *On Matrimony*, decision 11, no. 26), it is then sufficiently established that the infidel is unwilling to be converted or to cohabit, and therefore the faithful party will be able freely to enter another matrimony. The question is when the infidel cannot be interpellated because it is unknown where the infidel is, or because the infidel is so far away that an admonition is considered impossible.

Many, whom Benedict XIV acknowledges to have been the greater number (*On the Synod*, book 6, chapter 4, no. 3), taught that in this case there is no need of interpellation because it is then morally certain that the infidel is unwilling to be converted and to leave his own people in order to cohabit legitimately with the convert; and no admonition is needed when there is moral certainty concerning the infidel's obstinacy. See Sanchez (book 7, disputation 74, no. 14) and Clericatus (*On Matrimony*, decision 11, no. 26). But perhaps one will admit this with difficulty. For the reason of distance and ignorance of the place to which one's own spouse was carried, for example, if a husband were seized and carried away from Africa and transported to the Americas, will indeed perhaps remove from the wife left in central Africa the hope of recovering him; but whence is it certainly proved that she is also obstinately unwilling either to be converted or to cohabit with him if perhaps found? Indeed, experience not rarely shows the contrary, and sometimes it has been discovered that the spouse first left behind came to the Christian faith before the abducted spouse did.

Pontius (*On Matrimony*, book 7, chapter 48, no. 22), whom Benedict XIV afterward copied (*On the Synod*, book 6, chapter 4, no. 3), contends that the faithful party cannot marry unless a dispensation of the Pontiff intervenes by which that admonition is supplied, namely, as Benedict XIV explains (l.c.), so that a new matrimony can be entered with the interpellation of the other infidel spouse omitted, when it is established that the spouse cannot legitimately be interpellated. But if these things are understood so that the sole effect of the dispensation is to release the faithful party from the obligation of inquiring whether the spouse wishes to depart or not depart, this opinion can deservedly appear more intolerable than the preceding opinion of Sanchez. For the latter at least supposes there to be moral and therefore sufficient certainty of the departure of the infidel spouse, and consequently supposes that essential condition to be present which, from the doctrine of the Apostle Paul, is both necessary and sufficient for the faithful party to pass to other nuptials once the bond of the prior marriage has been dissolved. The later opinion of Pontius, on the contrary, taking no account of the existence or nonexistence of that necessary condition, thinks that sufficient provision is made for the matter if, by means of a dispensation, someone makes no further inquiry into the will of the infidel, whether the infidel wishes to depart or not; just as if, in doubt concerning the death of a prior spouse, someone should think it sufficient for validly contracting another matrimony that it be authoritatively declared by the magistrate that an inquiry concerning the life or death of the

spouse is very difficult or even morally impossible! For to this they finally reduce the whole force of the pontifical dispensation in this question. In this matter they also reserve for pontifical power parts which I would almost call ridiculous, namely, that it dispense from the interpellation of a spouse whom it is established cannot legitimately be interpellated! Yet if the condition required by the Apostle is perhaps in reality lacking, and the spouse left, for example, in Africa has a firm intention of preserving fidelity to his or her spouse for all time rather than departing, how will the bond of this legitimate and consummated matrimony cease? What if this spouse left behind has already received the Christian faith and baptism when the spouse abducted into slavery comes to baptism, or at least when the abducted spouse thinks about new nuptials, so that the former marriage has now become ratified and the nature of a Sacrament has accrued to it? Whence, I ask, will we derive, in the opinion of Pontius, the dissolution of this bond which is certainly essentially required beforehand for entering a new matrimony?

Therefore this difficulty, which clear facts testified was not imaginary, had to be provided for in another manner. For what even now occurs in the markets of Egypt, that both men and women carried away into slavery from the Mediterranean regions of Africa are sold although they are joined in matrimony, we know was also commonly done in past centuries so that colonists might be obtained for the immense deserts of America. When the Christian charity of the Missionaries had led these persons to the faith, there pressed the grave difficulty of how provision might be made for those whom it was not easy either to keep continent or to assist with matrimony, since they were bound by former marriages. The use of the faculty which the Apostle grants to those converted to the faith was impeded not only because the spouses left in barbarous places could not be interpellated but also because it had been learned by experience that not rarely the spouses left in Africa also had already been converted to the faith by the aid of Missionaries and cleansed by baptism. Therefore a remedy was needed by whose aid those wretched persons, whether carried abroad into slavery or left in their homeland without a spouse, would not lack matrimony even when perhaps there was no longer any place for the faculty of marrying granted by the Apostle; and since a new matrimony cannot be contracted while the bond of the prior matrimony remains, a remedy was needed by which the bond of the prior matrimony would certainly be dissolved even when the departure of the former spouse furnished no access to this dissolution.

And this indeed is the remedy which Gregory XIII, and afterward Urban VIII, judged should be applied in the Letters which we mentioned in the preceding Note. For in them there appears most expressly even the case in which there can be no place for the faculty given by the Apostle on the occasion of the departing infidel spouse: namely, when this departure is not only unknown but is supposed to be lacking, because the other spouse is also presented in the same Letters as already converted to the faith at the time when the former contracted new nuptials. *These marriages*, says Gregory, *even if it afterward became known that the former infidel spouses, being justly impeded, could not declare their will* - namely, the will of adhering to their spouses, for otherwise a will of this kind would have been of no importance - *and that they had also been converted to the faith at the time the second matrimony was contracted, nevertheless must never be rescinded but are valid and firm.* But how can the second marriages be valid and firm unless the preceding bonds have been dissolved? These could not have been held dissolved by force of the Pauline concession, as is evident, because the necessary condition, namely, the departure of the prior infidel spouse, is lacking. Therefore, the removal of the prior bond must be ascribed to apostolic power, which, by force of that granted dispensation, possesses the authority of dissolving marriages of infidels not yet consummated after conversion to the faith but still merely ratified, and in fact dissolves them. And for precisely this reason Gregory XIII and afterward Urban VIII, when about to grant this dispensation, make express mention in the same Letters of this power, through these words: *Therefore We, considering that marriages of this kind contracted among infidels are indeed true, yet are not considered so ratified that, when necessity urges, they cannot be dissolved*, etc. This observation would have been inserted altogether without purpose in the same Letters unless the exercise or use of this apostolic power intervened in the dispensation granted there.

That Pontius, having these Letters before his eyes, could affirm (l.c.) that it is not gathered from them that the Pontiff dissolved those marriages, but only declared that the case in which the infidel does not wish to cohabit with the faithful party is then verified, since, he says, *for so long a time the faithful party is not sought by the infidel* - words altogether ridiculous, since in the hypothesis interpellation is supposed impossible, and the Pontiff, as is evident from his own words, supposes that the infidel, being justly impeded, could not declare his will - this, I say, can be explained only by one who knows that Pontius, carried away by a blind passion for contradicting Sanchez, for Sanchez had affirmed that the Pontiff wished through those Letters to dissolve the marriages where necessary, not only in this place but very often and everywhere throughout the course of his work turned aside into paradoxes and absurd opinions. And it must plainly be regretted that this paradox of Pontius also crept into Cardinal Lambertinius's work *On the Diocesan Synod* (book 6, chapter 4, no. 3, and book 13, chapter 21, nos. 3-4). Hence it happened that this question, otherwise sufficiently simple, rather than being flooded there with

some new light, as often occurs with other questions, was wrapped in denser darkness and entangled in inextricable difficulties. This happened also as regards the other case proposed above, to which we now proceed.

Another difficulty, therefore, occurs when interpellation of the infidel spouse becomes nearly impossible because it is unknown which of several wives whom a man actually has or formerly had is to be interpellated as legitimate. For although after the promulgation of the evangelical law only the first wife is legitimate by law, it sometimes becomes uncertain among barbarians, who readily repudiate wives, which is truly the first wife. For it happens that someone's first wife had previously married another man and was repudiated by him; yet the doubt does not thereby cease, since it is uncertain whether she was the legitimate spouse of the prior man, who perhaps had previously repudiated another wife. And for the same reason it is again not established whether the first wife of that former man was legitimate, since she herself had previously been repudiated by another husband, concerning whom it is doubtful for the same reasons whether she was his legitimate wife. And thus one must proceed almost to infinity without it being possible to establish anything certain.

This condition of affairs had for a long time kept the Bishops, Pastors, Missionaries, etc., of those regions very anxious. For when those who were converted to the faith were commanded to choose for themselves only one wife from those whom they either had or had had, they generally desired one who herself would embrace the faith, although she was not the first. Hence a twofold rock. First, to find the first wife who could be interpellated sometimes appeared not merely difficult but nearly impossible; and even if she could have been found, it was hard for the neophytes to dismiss the one whom they preferred, and therefore many were deterred from embracing the faith. On the other hand, how could the bond of a prior matrimony, if one existed, be believed dissolved, since either the former wife, who was unknown, could not be interpellated, or even though interpellated and consenting to cohabitation, she was rejected by the man as hated? Therefore, in neither case did the permission given by Paul to pass to other nuptials, and thus the dissolution of the prior bond, have place: not in the latter case, because there plainly lacked a cause for dismissing the first and legitimate wife, who would rather have wished to remain with her spouse; not in the former, because the departure of the first wife could not be established, and therefore it was no more licit to deliberate about new nuptials than when nothing can be learned concerning the life or death of a prior spouse.

When these things had been reported to the Apostolic See, St. Pius V, applying by Letters given August 2, 1571, a remedy not unlike that which Gregory XIII afterward applied, decreed that the converts could remain with that wife among the several whom they had married who was baptized together with the husband, even if she had been neither the first nor legitimate. *Since therefore*, he says, *as We have learned, several wives are permitted to Indians while they remain in their infidelity, whom they repudiate even for the lightest causes, hence it has happened that those receiving baptism have been permitted to remain with that wife who is baptized together with the husband; and because it very often happens that she is not the first, whence both the ministers and the Bishops are tormented by most grave scruples, judging that this is not a true matrimony; but because it would be most harsh to separate them from the wives with whom those Indians received baptism, especially because it would be most difficult to find the first wife, therefore We, wishing with paternal affection to provide for the condition of the aforesaid Indians and to free the Bishops and ministers themselves from scruples of this kind, by Our own motion and from Our certain knowledge and from the plenitude of apostolic power, declare by apostolic authority through the tenor of the present Letters that the Indians thus baptized, as premised, and to be baptized in the future, are to remain with the wife who was and is baptized with them as with a legitimate wife, the others having been dismissed, and that a matrimony of this kind legitimately subsists between them*, etc. Moreover, since these marriages could not legitimately subsist unless the bond of the prior marriage had been dissolved, and since the dissolution of the bond in the case cannot be attributed to the faculty granted by the Apostle Paul on account of the departure of the prior infidel wife, it is manifest, unless someone should prefer to say that St. Pius V dispensed so that the Indians could have two legitimate wives at the same time, that the Roman Pontiff, from the plenitude of power, wished to dissolve and remove that first bond, if any existed.

But behold, here also Pontius, for whom discourse concerning the Roman Pontiff dissolving these marriages by extraordinary power was like a dreadful apparition, and after Pontius Lambertinius (*On the Synod*, book 13, chapter 21, no. 4), twist this Constitution of St. Pius also into a mere dispensation, so that extrajudicial knowledge of the impossibility of interpellating the infidel spouse might be substituted for juridical interpellation. Thus they again introduce a ridiculous scene of a Pontiff who by apostolic authority dispenses from interpellating a spouse who cannot be interpellated, and who substitutes ignorance of whether that spouse wishes to depart for the spouse's departure required by the Apostle, as though these were one and the same thing; just as though, in relation to celebrating new nuptials, it were one and the same thing that a prior spouse is dead and that it is unknown whether the spouse is dead or still lives! The same is repeated in Lambertinius's *Canonical Question* 546, no. 37, where it is held to be one and the same that it is most difficult to find the first wife and that, according to the words of the Apostle, she departs although she was not interpellated!

In the latter place Lambertinius also adds an argument of this kind: *In order that a dispensation concerning the consummated matrimony of infidels might be argued from the Brief of St. Pius V, it would have to be shown that the same Supreme Pontiff supposed that the first wife had been found, and, notwithstanding this, that the same Pontiff declared the validity of the matrimony with the second or third wife converted to the faith. But others will very easily deny this, since it is shown to be false without any difficulty.* For, in order that a dispensation as regards the bond in preceding marriages of infidels may be argued, it suffices that these two things were established: first, that St. Pius decreed that the matrimony afterward contracted with another should be held legitimate by all and always; second, that it could nevertheless sometimes happen that the dissolution of the preceding conjugal bond could not be ascribed to the departure of the prior spouse according to the phrase of the Apostle.

But the first point is manifestly clear from the words of the Supreme Pontiff. As regards the second, who, I ask, or for what reason, would say it impossible that the first wife, if she should perhaps be found - St. Pius says this is most difficult, not impossible - would wish to adhere to her legitimate spouse, especially if she herself had already been converted to the faith or was prepared to be converted? Since these things are sufficiently manifest, we shall refrain from adding the several other things which could be brought forward upon the same matter.

It is useful to add only this concerning the present matter: it is to be desired that the little work of the Most Reverend Father Camillus Tarquini, Professor of Canon Law in this Roman College, should come forth into public light. In it, solidly according to his custom and most learnedly, he treats the question whether the Pauline privilege of which we spoke also has force when someone receives himself through baptism from infidelity into a Christian Communion which is nevertheless separated from the Catholic Church. For I do not doubt that, after considering the reasons brought forward by him, everyone will concede to his opinion, which holds the affirmative part.

[4] This time, however, can be restricted or prolonged at the discretion of the judge, although one ought not readily to depart from that period. See Sanchez (book 2, disputation 24, no. 12) and Schmalzgrueber (book 3, title 32, no. 1). According to the truer and more common opinion, however, the two months must be computed not from the day of the nuptials but from the day on which the judge fixes the term. Sanchez (ibid., no. 21) and Schmalzgrueber (ibid., no. 3).

[5] A profession is called solemn when it is made in a Religion approved by the Apostolic See, as distinguished from Congregations in which only simple vows are emitted. These simple vows, far from having the force of dissolving a preceding matrimony, do not even render a subsequent one invalid, as will be said below where merely impeding impediments are treated. Therefore Pontius wrote erroneously (*On Matrimony*, book 9, chapter 6) that a ratified matrimony is dissolved through the profession of the simple vows which are emitted after two years of novitiate in the Society of Jesus; and Vincent de Justis also copied this error from Pontius (*On Dispensations*, book 2, chapter 14, no. 106). For indeed, by a singular Privilege granted to the Society of Jesus by Gregory XIII, those simple vows constitute a diriment impediment, and therefore certainly render those bound by them incapable of contracting matrimony validly; but that they also dissolve a matrimony already contracted, the Society of Jesus itself has never known or imagined. See Suarez (*On Religion*, tract 10, book 4, chapter 2), Vasquez (*In I-II*, disputation 165, chapter 10), Sanchez (*On Matrimony*, book 1, disputation 18, no. 6), Croix (book 6, part 3, no. 413), Schmalzgrueber (book 3, title 31, no. 210, and book 4, title 6, nos. 61-64), etc. There is added the Resolution of the Sacred Congregation which Barbosa reports (*Collection of Apostolic Decisions*, collection 465, under MATRIMONY, no. 30).

[6] Except when it is necessary to remain in the matrimony in order to legitimate offspring, repair scandal, or repair the honor of the bride. - St. Alphonsus, book 6, no. 958.

Nevertheless, one sins who contracts matrimony with the intention of entering Religion without warning the other party. - St. Ligorius, ibid.

3. Even a consummated matrimony of infidels can be dissolved by divine concession when either spouse is converted to the Christian Faith [7], and the other refuses to cohabit peacefully with the converted spouse, or does not cohabit except with injury to the Creator and contempt of the Christian Religion, or attempts to pervert the faithful party [8]. This is deduced from the Declaration of Innocent III cited by St. Ligorius, no. 956, etc. This divine concession is drawn from the words of the Apostle, 1 Corinthians 7:12, where he says: *If any brother has an unbelieving wife and she consents to dwell with him, let him not dismiss her.... But if the unbeliever departs, let the*

unbeliever depart; for a brother or sister is not subject to servitude in such cases: but God has called us in peace. Innocent III explains the same more fully in chapter *Quanto* 7, *On Divorce*. - See more in case no. 903 and following [9].

[7] Understand conversion through the reception of baptism. Through baptism, however, the conjugal bond with the infidel is not yet dissolved, but only when the convert, upon the refusal of the other to cohabit peacefully and without insult to the Creator, contracts other nuptials. Benedict XIV (*Canonical Question* 546, no. 6) acknowledges this doctrine to be common, indeed most common, among Theologians and Canonists. Hence, unless we suppose a typographical error, it can scarcely be understood why elsewhere (*On the Synod*, book 6, chapter 4, no. 4), although he again acknowledges it to be almost commonly received and defined by the Sacred Congregation of the Council in 1679 and 1680, he nevertheless says that MOST of the Doctors hold the contrary.

Hence two consequences. First, if the spouse who remained an infidel afterward comes to the faith and baptism before the other has entered a new matrimony, the latter is bound to receive the former and can be compelled to cohabit. Thus chapter *Gaudemus* 8, *On Divorce*; and Benedict XIV reports that this was again confirmed by the Sacred Congregation with the approval of the Pontiff on July 1, 1679, and April 13, 1680 (cited *Canonical Question*, no. 6). The reason is that the marriage, not yet dissolved, becomes ratified through the baptism of the other; indeed, it fully assumes the nature of a Sacrament, which, as has now been defined, cannot in Christian marriages be separated from the nature of a contract, just as when marriages are sanated in the root. Second, if the former marriage has already been dissolved through the new nuptials of the convert, it will be open also to the other party, for the bond of matrimony is indivisible, to enter other nuptials not only validly but also licitly, both if that party is converted to the faith and, as the more common opinion holds, even if the party perseveres in infidelity. - See Schmalzgrueber, book 4, title 19, nos. 32-33.

Since the opinion of the Doctors agrees that the converted spouse, if the other infidel refuses to cohabit, etc., can either make profession in Religion or receive sacred Orders, the marriage is restored anew in neither hypothesis even if the other is afterward converted, unless perhaps the former is still a novice or received only minor Orders. The reason is that through religious profession, and likewise through sacred Orders, a state incompatible with matrimony is assumed. Schmalzgrueber, book 4, title 19, no. 37; Sanchez, book 7, disputation 76, no. 6; De Justis, book 2, chapter 15, no. 40. Sanchez (l.c.) thinks that the same must be held if the convert emitted a vow of absolute chastity. And in the hypothesis of religious profession having been emitted, St. Bonaventure, Sanchez, etc., more truly affirm, as Maschat says (*Institutes of Canon Law*, book 4, title 19, no. 9), that the matrimony is dissolved; and the common opinion of the Theologians, as Sanchez says (l.c., no. 9), deduces this by similarity as follows. For if such force was granted by Christ to profession in Religion that it dissolves the bond of a ratified matrimony between the faithful, much more will it dissolve a matrimony consummated during infidelity, which is not ratified, from chapter *Quanto* 7, *On Divorce*. But in the hypothesis of only sacred Order having been received, or of a vow of absolute chastity having been emitted, since the bond of matrimony is not dissolved according to the common opinion, and since otherwise the spouse bound by these bonds cannot be restored without dispensation to the other spouse who may have converted, then, if the spouse first converted would not willingly admit dispensations and the other could live in the state of continence only with difficulty, it would be expedient to have recourse to a dispensation by which the Pontiff, as was said above, would break the bond of the prior matrimony.

[8] If, however, the party who entered Religion delays profession beyond what is reasonable, wandering from one Religion to another within the period of novitiate, the judge can assign a peremptory time so that the party either remain in some Religion and, after completing the novitiate there, make profession, or return to the spouse and consummate the matrimony. - Sanchez, book 2, disputation 24, no. 9.

[9] The danger of perversion has caused it to be the case that, although the infidel party consents to dwell peacefully with the faithful party, the infidel party is nevertheless sometimes not admitted to cohabitation unless also converted to the faith. In this matter Benedict XIV (*On the Synod*, book 13, chapter 21, no. 1) praises the opinion of Cabassutius, who, after Sanchez, concludes (*Practice of Canon Law*, part 3, chapter 23, no. 11) that the question must be determined from the circumstances of the cases and the customs of the regions.

Moreover, practice bears that in regions of infidels, for example, among the Chinese, Indians, etc., converts are permitted to cohabit with an infidel and also to pass to other nuptials according to the doctrine of Paul if the infidel either refuses to cohabit or does not consent to cohabit except with injury to the Creator. To this pertains chapter *Gaudemus* of Innocent III and the Declaration cited by Benedict XIV (l.c.). Among Christian nations, however, the practice has prevailed that

cohabitation is not permitted with a party who obstinately adheres to an infidel sect, for example, the Jewish, although that party protests a willingness to cohabit peacefully. See Sanchez (book 7, disputation 73, no. 12), who rightly observes that in this case also those circumstances have place on account of which the Apostle taught that the convert can dismiss the infidel party and pass to other nuptials and is not to be obliged to lead a celibate life; for this, since it could be a grave yoke, could remove the convert from embracing the faith, indeed, contrary to the mind of the Apostle, would subject the convert to servitude under a matrimony contracted in infidelity. Concerning this Cabassutius (l.c.) writes of Jews living under pontifical dominion: *Liberty is granted both to the converted spouse and to the obstinate spouse to bind themselves in other nuptials, but to the obstinate spouse not before the converted spouse has contracted another marriage.*

The diversity of practice according to the diversity of places and circumstances is seen in the Decree of the Council of Lima (act 2, chapter 10), which Sixtus V confirmed by apostolic authority (in Pignatelli, *Canonical Consultations*, volume 4, consultation 189, final proposition). It reads thus: *Concerning those who, joined in matrimony, are converted to the faith while the spouse still remains an infidel, provision was prudently made in the preceding Council that if the infidel shows a ready hope of conversion, the Christian should in no way pass to other nuptials, as is defined in the sacred Canons, but should await the gain of the spouse in Christ. But if the infidel delays conversion, yet is not pernicious to the baptized spouse by turning that spouse away from the faith or drawing that spouse into mortal sin, then the infidel is still to be awaited for a period of six months, being assiduously admonished meanwhile concerning conversion. But since both the danger to the recent convert must be guarded against, lest, if the infidel remains long in the bed, the convert perhaps lose the faith of Christ, and provision must be made for the convert's liberty, lest the convert be compelled to live celibate, therefore we decree that, after the space of six months has elapsed, the matter be referred to the Bishop, who, after the cause has been well examined, is to declare to the faithful party that there is the faculty of entering another matrimony.... But if he sees that there is no danger in cohabitation, he is to command the faithful party to await*

the infidel, or even to counsel cohabitation if he understands it to be profitable, according to the counsel of the Apostle Paul. For the same law cannot be fixed for all converts, since various circumstances certainly occur and the condition of all infidels is not the same.

Point II. On the Firmness of Matrimony Insofar as It Regards the Bed, and on Divorce from the Bed

760. **Principles.** - I. Spouses, by reason of the matrimonial bond, are bound to cohabit together and lead a common life. The reason is drawn from the very definition of matrimony.

II. Divorce, however, or separation from bed or habitation can take place for just causes while the conjugal bond nevertheless remains, so that neither party can enter another matrimony before the death of the other. This is declared by the Council of Trent, session 24, canon 8: *If anyone shall say that the Church errs when, on account of many causes, she decrees that separation between spouses as regards the bed or habitation can take place for a determinate or indeterminate time, let him be anathema.*

761. ∘ III. The causes which render a divorce of this kind honorable are: mutual consent, grave danger to the soul or body, and the adultery of either party. You will understand these causes for practice thus.

1. Mutual consent: namely, each spouse together can renounce the right proper to each as regards the bed, either for a time or in perpetuity, provided danger of incontinence is absent [1]. Likewise, they can be separated also as regards habitation, either temporarily for reasons of business, or perpetually because of a desire for a more perfect life [2].

[1] Laymann speaks well concerning this matter: *On account of the danger of incontinence, it is not advisable for spouses to vow continence unless mature deliberation and long experience that both can easily be continent have been premised; and after the vow they ought to be separated as regards the bed* (book 5, tract 10, part 3, chapter 7, nos. 1-2).

[2] This can happen in two ways: first, through the entrance of either or both spouses into Religion; second, through the reception of sacred Order by one and either religious profession or at least a vow of continence by the other.

As regards the first, if either spouse, with the consent of the other, embraces Religion - and for this to be done licitly the consent of the Bishop is required from chapter *Si vir* 23, cause 27, question 2 - the spouse left behind, if young or suspected of incontinence, must also enter Religion; but if old and in no way suspected of incontinence, that spouse must at least emit a vow of continence in the world, and can be compelled by the Bishop in a suitable manner to live honestly if perhaps the promises voluntarily made are not observed. But if either spouse makes profession in Religion against the will or without the knowledge of the other, the profession is invalid, even if they had perhaps previously emitted a vow of continence by common consent, and the professed spouse will be restored to the spouse left behind (chapter *Quidem* 3 and chapter *Placet* 12, *On the Conversion of Spouses*). Furthermore, unless perhaps in making profession that spouse was unwilling to vow continence except dependently upon the validity of the profession, the spouse will be bound by that law, cited chapter *Quidem*, which holds the profession at least as a vow of continence; hence that spouse can neither demand the debt nor pass to other nuptials after the death of the other spouse. See Schmalzgrueber, book 3, title 32, nos. 24-28.

As regards the second, a wife by whose consent the husband receives sacred Orders is bound by the same laws as a spouse left behind when the other professes religious vows, namely, either she also must enter Religion or, if advanced in age, etc., at least emit a vow of continence. Nevertheless, she would have to assume a religious habit, even if she were an old woman and every danger or suspicion of incontinence were absent, if the husband initiated into sacred Orders were perhaps assumed to the Episcopate, as chapter *Sane* 6, *On the Conversion of Spouses*, expressly has it. See Schmalzgrueber, book 4, title 6, no. 38.

Although the vow of continence which wives left in the world emit in the aforesaid case is simple, and insofar as it is simple appears by its nature not to be a diriment impediment of matrimony, nevertheless it is certain among the Doctors, and expressly sanctioned in Canon law, that these women cannot validly enter another matrimony even after the death of the spouse initiated into sacred Orders; indeed, they teach that the same must be held even if the woman had not vowed continence when she gave her husband permission to receive sacred Orders. See Sanchez (book 7, disputation 40) and Schmalzgrueber (book 4, title 6, nos. 40-42). I said *after the death of the spouse initiated into sacred Orders*, because if the husband, without having received sacred Orders, had merely made profession in Religion, the wife, notwithstanding the vow of continence, would marry another after his death illicitly indeed, but not invalidly.

2. Grave danger to the soul, if danger of perversion is present in one spouse because of the other; and grave danger to the body, if danger of life or mutilation threatens, or if cohabitation on the part of one toward the other becomes so burdensome that it is rendered morally impossible. This would happen if a spouse were compelled to suffer enormous or frequent cruelties.

3. The adultery of either party, namely, such that it is: first, certain [3]; second, voluntary, and not perpetrated through inflicted violence; third, not condoned either expressly or implicitly, for example, through the conjugal act [4]; fourth, not mutual, because compensation would then exist. This is evident from the words of Christ, Matthew 5:32: *Whoever shall dismiss his wife, except for the cause of fornication, makes her commit adultery*, etc. But if this is licit for the husband, by the same reason it must also be licit for the wife [5].

[3] Only moral certainty is required, as St. Alphonsus holds from the common opinion of the Doctors (book 6, no. 961). For the Doctors commonly observe that since carnal offenses are difficult to prove, witnesses are therefore not to be required for proving adultery, but conjectures are to be employed, and presumptions which they call violent suffice, by which a certain moral certainty is induced, namely, by which it can prudently be believed that the crime was perpetrated. Alexander III enumerates these presumptions in chapter *Litteris* 12, *On Presumptions*. Concerning these see, among others, Schmalzgrueber (book 4, title 19, nos. 116-117).

[4] Understand this if the spouse knowingly and willingly exhibited services and signs of conjugal affection to the other spouse. For where only suspicion of adultery was present, the use of matrimony does not prejudice the innocent party; likewise, if while the suit is pending the judge commands that meanwhile the wife render the debt, or if the guilty husband compels the wife by grave fear to the use of matrimony.

[5] Observe that, according to the common opinion of the Doctors, under the name of adultery here comes every division of the flesh, although it does not have the nature of adultery properly so called, such as sodomy and bestiality. I said *according to the common opinion*, for through a mere typographical error in St. Alphonsus (book 6, no. 960), Sanchez and Filliucius are exhibited as holding the contrary; and Pontius himself (*On Matrimony*, book 9, chapter 16, no. 5), although for a display of ingenuity he brought forward in opposition a petty argument which everyone despised, concluded that in practice one must not depart from the prior opinion, which, he says, is common among the Doctors.

The VV. observe here (page 806) that the typographical error spoken of in the Note is found not in the text of St. Alphonsus but in that of Hermann Busembaum; and this is most true. And indeed this error is seen not only in St. Alphonsus, that is, in the text of Hermann copied by St. Alphonsus (book 6, no. 960; in the preceding edition, by an erroneous transposition, no. 690), but also in Croix (book 6, part 3, no. 401) and in most editions of Hermann Busembaum, which commonly have: *Bonacina against Filliucius, Sanchez, Perez*, when it ought rather to have been written: *Bonacina, Filliucius, Sanchez against Perez*, who in fact allowed himself to be carried away by the inept petty argument of Pontius (*On Matrimony*, disputation 56, section 2, nos. 3-4). Moreover, if the VV. desire anything to be corrected also in the text of St. Alphonsus (l.c., no. 962), in most editions they have Sanchez, book 16, disputation 4, no. 2, cited, when book 10, etc., ought to be written. Again, since St. Alphonsus, for the opinion denying, cites also Abulensis after Sanchez, it would not be useless to add from the same Sanchez (ibid., no. 3) that Abulensis, previously contrary to himself, passed once and again to the affirmative opinion.

The VV. add (l.c.): *Father Ballerini testifies that Pontius, for a display of ingenuity, brings forward a petty argument which everyone despised.* But St. Alphonsus himself, who relates and approves the same petty argument, must be excepted from this *everyone*; and although Father Ballerini judges that opinion of the Holy Doctor to be altogether despised, perhaps it may have some weight with others.

Reply. I deny that St. Alphonsus relates or approves the petty argument of Pontius. The reason according to Pontius (book 9, chapter 16, no. 5) is that, since division of the flesh among several persons is said in law to be a cause of divorce, this must be understood of that division which is according to natural use; and this is established because by that division bigamy and irregularity are induced in law. But no base union outside natural use induces bigamy and the irregularity arising from bigamy. Perez (l.c.) indeed copied this petty argument, but St. Alphonsus does not have even a word concerning it; and therefore he too despised it. And deservedly the Holy Doctor despised that reasoning, as though the reason and nature of division of the flesh were generally to be sought from bigamy which induces irregularity. For if a spouse commits adultery, as Pontius acknowledges, the spouse divides the flesh, yet does not thereby become a bigamist and irregular. Say the same of one who sins with two or even several women, who certainly divided the flesh and is not thereby held a bigamist. On the contrary, if someone marries a widow, he does not thereby divide his flesh, and yet is considered a bigamist and irregular, just as also if he marries a woman who has been corrupted. Therefore the division of the flesh from which the irregularity of bigamy arises is neither the sole division of the flesh nor every division of the flesh, but a certain manner of division of the flesh; and therefore it is a foul sophism to deduce the absence of division of the flesh from the absence of bigamy.

Moreover, Pontius himself suggests that these things appear to have been brought forward by him for mere display, when he concludes: *But although, speculatively speaking, what I said appears so to me, nevertheless in practice I judge that one must not depart from the prior opinion, which is common among the Doctors.* Hence it happened that others numbered him among the defenders of the common opinion, for example, Schmalzgrueber (book 4, title 19, no. 103).

762. **Questions. - QUESTION 1. Is a husband, upon learning of his wife's adultery, bound to dismiss her?**

Reply 1. It is certain that he is not bound by reason of the adultery, because divorce was conceded in favor of the innocent party, not as a punishment of that party. - Thus commonly the Theologians. - St. Ligorius, no. 965.

Reply 2. Sometimes the husband can be bound to dismiss an adulterous wife by reason of fraternal correction or of avoiding scandal [6]; but this case is rare, both because other means can be employed to correct the wife or avoid scandal, and because grave scandal to be feared from the separation can

excuse [7]. Moreover, the wife, if cast out, would be exposed to greater danger, at least for the most part. - St. Ligorius, ibid.

[6] Namely, lest the innocent spouse appear to consent, or at least connive, at the crime of the other. Nevertheless, other means are available also for avoiding this scandal.

[7] A grave inconvenience can also excuse, for example, if the family would thereby be deprived of support, or the offspring of care and education, etc. If these things have force concerning the husband, *a fortiori* they have force concerning the wife, as St. Alphonsus observes with others (book 6, no. 964).

763. ○ **QUESTION 2. Once divorce has taken place, can the innocent spouse compel the other to return?**

Reply 1. Yes, if there is question of a non-juridical separation, because this is not confirmed by a sentence of the judge.

Reply 2. More probably, yes, even in the case itself of juridical separation. The reason is that a sentence of juridical separation is rendered in favor of the innocent party and therefore does not remove the right of recalling the other; nor is a new sentence of the judge needed for this [8]. Nevertheless, an adulterous woman is not to be compelled to return whenever she can reasonably fear that she will be treated harshly, bitterly, or even cruelly. - St. Ligorius, ibid., etc.

[8] It must be observed that although, according to common doctrine, the innocent party after juridical divorce has taken place can enter Religion or receive sacred Orders even against the will of the adulterous party, nevertheless this is not conceded to the adulterer who has been dismissed. Therefore the latter can neither enter Religion nor be initiated into sacred Orders unless the innocent party consents either tacitly or expressly or has already undertaken an irrevocable state; and if the adulterer should enter Religion, the adulterer could be recalled by the innocent party even after profession. Sanchez, book 10, disputation 10, nos. 12-13. St. Alphonsus, however, observes with Sanchez (l.c., no. 14) that even tacit consent suffices for this, namely, if the innocent party knows this and does not contradict when able; yet in that case the innocent party is bound neither to enter Religion nor to bind himself or herself by a vow of chastity. See Schmalzgrueber, book 4, title 19, nos. 124-126. St. Alphonsus (l.c.), after Sanchez (l.c., no. 16), concedes the same to the guilty party when the innocent party, having been asked, was unwilling to admit reconciliation, or even if the innocent party has not recalled the guilty party after two years have already elapsed.

QUESTION 3. After juridical separation because of adultery has taken place, is the innocent spouse bound to return to the other party recalling him if he himself afterward fell?

Reply. More probably, no. The reason is that the first adulterer was already altogether despoiled by the sentence of the judge of every right toward the innocent party. - St. Ligorius, no. 967 [9].

[9] Although St. Alphonsus calls this opinion much more probable, others, especially Canonists, such as Fagnanus, Reiffenstuel, Gonzalez, Schmalzgrueber, etc., and with them Barbosa, Koning, etc., hold the opposite opinion to be truer. Nor must it be omitted that St. Thomas (*In IV Sentences*, distinction 35, question 1, article 6, reply to objection 4), although he says that the man previously innocent ought not, according to the rigor of law, to be compelled to receive the adulterous woman, adds nevertheless that, according to the equity of law, the judge by virtue of his office ought to compel him so that he may guard against danger to his own soul and scandal to others.

764. ○ **QUESTION 4. Can divorce take place by private authority?**

Reply 1. Yes, as regards the bed, if a just cause is present, as was said above, and especially by reason of adultery, because the rights of matrimony can be denied perpetually to the unfaithful spouse [10].

[10] This has force although the crime is occult; and even if, because proofs were lacking, the innocent party were compelled by an ecclesiastical judge to render the debt, nevertheless that party would not be bound to obey a sentence of this kind,

which rested upon a false hypothesis. See Sanchez (*On Matrimony*, book 10, disputation 12, no. 34).

Reply 2. As regards habitation: first, yes, by reason of adultery, even if the crime is occult, at least more probably, because Christ, in permitting divorce for this cause, did not distinguish between public and private adultery. But for this it is required that the crime be certain and that no scandal arise from the separation which cannot otherwise be repaired [11]. - Thus commonly. - St. Ligorius, no. 969. Several nevertheless say that divorce on account of occult adultery is not licit, because it is not licit to expose the reputation of the adulterer. Second, yes, also by reason of danger either to the soul or to the body, provided that danger is very grave. But in practice it is expedient that the counsel of a prudent man, especially a Confessor, be sought. The Confessor, however, must proceed very cautiously in this matter. Let him beware lest he too readily believe the complaints of wives against their husbands; and let him endeavor to restrain them and, insofar as it can be done, turn them away from divorce.

[11] But scandal of this kind can scarcely be absent unless the marriage itself is occult; and therefore, outside this case, on account of scandal he could not dismiss the spouse even in the forum of conscience. And if he dismisses the spouse while proofs are lacking, he would have to be compelled to receive the spouse, lest an occasion be given to the malice of men to vex a perhaps innocent spouse by a dismissal of this kind.

Chapter IV. On the Matter and Form of Matrimony

765. ○ I. The remote matter of the Sacrament of Matrimony is the bodies of the spouses to be mutually handed over in the matrimonial contract.

The proximate matter, however, is the handing over itself of the bodies, which is perfected through words or signs expressing consent. - Thus commonly the Theologians.

There are some who constituted the proximate matter in the imposition of the hands of the Priest; but this opinion is altogether without foundation and must be rejected as obsolete [1].

[1] This question has now been defined. For after it is established that there is no matrimony among Christians which is not a Sacrament, and that marriages which may be celebrated without a priest in places where the Tridentine Decree concerning the form of matrimony does not have force must be held valid, it is manifest that neither the imposition of hands nor anything else furnished by the priest pertains in any way to the matter of the Sacrament. Therefore that opinion also is altogether obsolete which placed the form of matrimony in words pronounced by the Priest. See below, no. 768.

766. ○ II. The form consists in the mutual acceptance of the contracting parties expressed in words or signs. - Thus likewise more commonly.

But in what manner does the consent, or contract, of the contracting parties expressed in words or signs constitute the form of the Sacrament, since it is also found in the matter? It must be said that the contract, or consent, of the spouses is found both in the matter and in the form of the Sacrament of Matrimony, but under a different respect. It is in the matter insofar as it expresses the mutual handing over of the power of one to the other; but it is in the form insofar as it signifies acceptance of this handing over. Or, as others explain, the words and signs of the spouses in contracting are at once matter and form: they are matter insofar as they express the handing over of the bodies; they are form insofar as they exhibit acceptance of the handing over. - Thus commonly.

Whatever may be the case, in practice no inconvenience is to be feared, provided that in celebrating the contract the form prescribed by the Church is observed. - See what is to be said in the following chapter concerning the minister of the Sacrament of Matrimony.

Chapter V. On the Minister and Subject of Matrimony

Article I. On the Minister

767. ○ I. It is certain that for the validity of matrimony the presence of the Pastor or his delegate is required wherever the Decree of the Council of Trent concerning clandestine marriages has been promulgated. - See what is to be said concerning the impediment of clandestinity, no. 836.

II. Even if this Tridentine Decree was not promulgated somewhere, nevertheless it is certain: first, that the Church always wished a Priest deputed for this to assist at the marriages of the faithful; second, that the Pastor cannot omit his assistance at the nuptials of the faithful and is bound to impart the blessing according to the rite received in the proper place; third, that the faithful who enter matrimony clandestinely sin gravely. This is proved from the Council of Trent, session 24, *On the Reformation of Matrimony*, chapter 1, etc.

768. ○ III. Today, whatever some previously said according to an obsolete opinion, it is also certain that the ministers of matrimony are the contracting parties themselves. The reasons upon which this doctrine rests are: first, because Eugene IV, wishing to hand down sound doctrine concerning the Sacraments in the Decree to the Armenians, established thus: *The efficient cause of matrimony regularly is mutual consent expressed by words concerning the present*. Nor must it be doubted that those words, *the efficient cause of matrimony*, regard Matrimony as a Sacrament, since the seven Sacraments are explained expressly in that Decree. Second, because the Council of Trent, session 24, *On Reformation*, chapter 1, declares that clandestine marriages were true and ratified, by which words Theologians and Canonists then expressed Sacraments in the strict sense. Third, because from the recent Declaration of Pius IX, to be reported at nos. 792 and 793, it is established that matrimony can never exist among the faithful without the Sacrament. Hence thus: clandestine marriages, according to the Council of Trent, are valid in places where the Decree by which they are invalidated was not promulgated; but otherwise they cannot be valid without the Sacrament; therefore the Sacrament of Matrimony is given even if it is not conferred by a Priest; therefore the Priest is not the minister of the Sacrament. - See St. Ligorius, no. 897.

769. **Questions. - QUESTION 1. Can the Pastor assist at the matrimony of those who are public sinners?**

Reply 1. St. Ligorius, book 6, no. 54, with others, denies it. The reason is: first, because by natural law no one without a grave and proportionate cause can cooperate in the sin of another, even materially, although the other has already consummated the sin internally; second, because the publicly unworthy are not to be admitted to the Sacraments.

Others, however, affirm more correctly, although the Pastor ought to endeavor that they contract worthily. The reason is that the Pastor is not the minister of the Sacrament, nor does he confer it, but

only assists as a witness or public notary, whose office is not to examine the merits of the contracting parties, but to make faith and testify to the things which he sees. - Lugo, *On the Sacraments*, disputation 8, no. 216 and following. - Thus commonly, as St. Ligorius himself acknowledges, no. 54.

Reply 2. Even according to the first opinion, he can sometimes assist at such a matrimony, namely, where a very grave reason urges which is in some way proportionate to the evil permitted in the profanation of the Sacrament, etc.; for example, if the Pastor were compelled by fear of death or of an almost equal evil [1], or if grave evils threatened the community, or if the spouses were already united civilly, as commonly happens in France, when civil matrimony must precede ecclesiastical matrimony. For a greater evil and greater scandal would follow from fornicatory cohabitation. - St. Ligorius, Bouvier, etc. - The difficulty would be less if one of the spouses were innocent or changed to a better life, because the Pastor could then assist at the matrimony in favor of the innocent party. Indeed, no difficulty would remain if the spouses were living in concubinage, for then both the scandal and the occasion of sin would be removed through the matrimony.

[1] The Authors of this opinion appear to require too much. For the obligation which could be conceived of preventing the sin of the contracting parties, since it is an obligation of charity, does not require so grave an inconvenience for someone to be excused from it. Lugo well observes (*On the Sacraments*, disputation 8, no. 219) that the cooperation is very material and inculpable for a Pastor who cannot deny his assistance, which he owes as a public minister; just as neither a public notary nor a judge can deny the authority of his office to any legitimate contract, although the contracting parties sin in the contract itself from a depraved intention; and just as a wife does not sin by rendering the conjugal debt to a husband seeking it contrary to the vow of chastity which he has, so neither does the Pastor sin by assisting, because he renders that which he owes from his office and which he cannot deny without grave inconvenience.

And these things are most validly confirmed from what the Doctors hand down where they ask: whether the spouse himself, insofar as minister of the Sacrament, sins mortally by contracting matrimony with a sinner. For, as the same Lugo says (ibid., no. 226): *No one has yet cast such a scruple upon Catholic persons, that they cannot freely contract matrimony with sinners, nor does any Theologian oblige a woman to repel a suitor and deny matrimonial consent so long as he is in the state of sin; but each is bound to place himself in grace and leaves the other party to that party's own conscience, as is evident from the use of all the faithful.* See other proofs in the same de Lugo (ibid., nos. 227-229), who nevertheless observes (ibid., no. 219) that if the Pastor could easily admonish the petitioner and remove him from that unworthy reception of the Sacrament, he ought indeed to do so by the law of charity; but he cannot withdraw the assistance owed from one who persists and wishes to contract matrimony.

The VV. observe (page 947 in the Notes) that St. Alphonsus does not acknowledge the affirmative opinion to be common, as is attributed to him in the text of Gury. For the Holy Doctor said this of those who were unworthy by reason of an occult sin or censure. Reply. This is true; nevertheless, it will not prevent that opinion from being called more common with Croix (book 6, part 1, no. 147), and from being admitted in practice not only because of the authority of the Doctors but also because the reasons brought forward in St. Alphonsus against it plainly do not establish the matter.

770. ○ **QUESTION 2. Can the nuptial blessing be separated from the celebration of Mass?**

Reply. It must be denied. For the Sacred Congregation of Rites was asked: *Whether it is licit to retain the custom prevailing in several places of celebrating matrimony in the afternoon and at the same time thus giving the nuptial blessing outside Mass, even in a prohibited time with permission of the Ordinary, since there is scarcely any hope of compelling the faithful either to change the time of the celebration of matrimony or to supply the blessing?* The reply was: *Let the Roman Ritual be observed* (September 7, 1850, in *Rupellen.*, reply 6). Moreover, according to the Roman Ritual, the conjugal blessing cannot take place except during the celebration of Mass. This is confirmed by another Decision of the Sacred Congregation of Rites on June 23, 1853, in *Limburg.* Nevertheless, the Priest is not bound to apply the Mass for the spouses unless he receives

an alms from them. Sacred Congregation of the Inquisition, September 1, 1841. But the Mass assigned for nuptials is to be said even if it is not applied for the spouses.

Moreover, the nuptial Mass is to be said on all days except Sundays, feasts of precept, Doubles of the first or second class, and the Vigil of Pentecost, but without the *Gloria* and *Credo*. On the days, however, on which the Mass *For the Bridegroom and Bride* cannot be said, a Commemoration from that Mass is to be added. - Sacred Congregation of Rites, March 3, 1818, and April 20, 1822.

But when nuptials are celebrated in the season of Advent or Lent, no commemoration for the spouses is to be made in the Mass through the Collect, Secret, and Postcommunion; nor is it licit to recite the Prayers placed in the Missal after the Lord's Prayer and *Ite, Missa est*; nor are the same Prayers to be recited outside Mass after the prohibited time has elapsed. - Sacred Congregation of Rites, August 31, 1839.

Furthermore, if the woman is a widow, not only must the nuptial blessing be omitted but also the proper Mass for the bridegroom and bride. - Sacred Congregation of Rites, March 3, 1761.

Finally, the custom of extending a white veil over the spouses is prohibited and reproved. - Sacred Congregation of Rites, September 7, 1850, in *Rupellen.*

771. ◦ **QUESTION 3. What must the Pastor do if the spouses are already in the Church to contract matrimony and he discovers from their confession that an impediment is present?**

Reply 1. If the nuptials cannot be deferred without danger of infamy or other most grave inconveniences, and the penitent is in invincible ignorance of the impediment, the admonition must be omitted and the celebration of the matrimony permitted until a dispensation is obtained. - St. Ligorius, no. 613. Reply 2. If the penitent is in vincible ignorance, or if he openly knows the impediment, and the matrimony cannot be deferred without infamy or scandal, not even for obtaining a dispensation from the Bishop, then the difficulty is very great. According to St. Ligorius, ibid., and others, the Confessor or Pastor could declare that the law of the Church concerning impediments does not bind in such great straits and proceed to the celebration of the matrimony. Nevertheless, as soon as possible, at least as a precaution, he ought to seek a dispensation. According to others, a simulation of the matrimonial contract could be permitted, with the purpose of seeking a dispensation from the impediment as soon as possible. But the impediment cannot, they say, cease naturally; for an invalidating law never ceases because of a particular inconvenience, whatever it may be. Whenever the Bishop can be approached, however, he must be approached, because according to the common opinion he can dispense from ecclesiastical impediments in that case. - St. Ligorius, no. 613.

Every difficulty would cease in practice if the Bishop obtained from the Holy See the faculty of delegating Priests laboring in the care of souls, so that they might be able to dispense in extraordinary and urgent cases of this kind.

Article II. On the Subject of Matrimony

772. **Principles.** - I. The subject of the Sacrament of Matrimony is every baptized person laboring under no impediment, whether natural, divine, or canonical.

I said, first, *every baptized person*, for unbaptized persons are not capable of the Sacraments of the Church, as is evident. I said, second, *laboring under no impediment*, for although of himself every baptized person is a subject capable of the Sacrament of Matrimony, nevertheless, *per accidens*, many are prevented from contracting matrimony validly because of various impediments of natural, divine, or ecclesiastical law, as will be said below in its proper place, no. 794.

Hence, first, the matrimony of infidels, although it can be valid under the nature of a contract, nevertheless is not a Sacrament. Indeed, a faithful person contracting matrimony with an infidel, even with a dispensation of the Pope, according to the common opinion against a few [1], will not receive the Sacrament. For the sign of the union of Christ with the Church, which confers sacramental grace, consists neither in the union of the man nor in the union of the woman, but in the union of both.

[1] Let the studious reader choose the opinion more pleasing to him, since eminent Theologians and Doctors fight for each. Thus Clericatus (*On Matrimony*, decision 4, no. 25). For the affirmative opinion, that it becomes a Sacrament for the faithful party, among others are Andrew Vega, a Tridentine theologian, and Ferraris, who (*Canonical Library*, word *Matrimony*, article 1, no. 19) diligently defends it and cites others for it. But the reason added by the Author for the negative opinion is of little weight, both because the essence of a Sacrament is that it signify the grace which it confers, and because from the most frequent doctrine of the Fathers the signification of the union of Christ with the Church was found even in matrimony before the evangelical law. But these things contribute little to practice.

Second, heretics and schismatics who, in entering matrimony, accurately and completely observe the laws [2] of the Church contract validly and are fortified by the Sacrament, since there is nothing which can obstruct the validity of this Sacrament. The practice of the Church itself confirms this, for she in no way compels them either to renew consent or to receive the nuptial blessing if, returning to their senses, they return to the unity of the Catholic Church. - Thus all.

[2] Understand the laws which pertain to the substance of the matter, among which is not the nuptial blessing which the Author soon mentions.

773. ◦ II. Spouses contracting matrimony ought to be in the state of grace, because matrimony is a Sacrament of the living. Those who contract while defiled by mortal sin become guilty of sacrilege and do not receive the sacramental graces necessary to spouses. Probably, however, those graces are only suspended and, when the obstacle or mortal sin is removed, are applied to the soul, as we said when treating the Sacraments in general, no. 232. For practice, if no fruit is hoped from an admonition, it will almost be better not to admonish the unworthy person concerning the sacrilege of approaching unworthily, so that at least in this way he may sin less; and he should rather be induced at least to approach confession as soon as possible.

774. **Questions. - QUESTION 1. Ought the Pastor to require that confession precede matrimony, or that a certificate of confession be exhibited by the spouses?**

Reply 1. He cannot require this absolutely of himself unless a law or precept of the Bishop establishes it. The reason is that although the state of grace is required for receiving this Sacrament, confession is nevertheless not necessarily required, since contrition can absolutely suffice even for those who are in the state of mortal sin. Moreover, it is generally not known to the Pastor that the spouses are not in the state of grace.

Reply 2. Where a particular law exists, as in many places, the Pastor must require confession or at least testimony of it. Nevertheless, cases can sometimes occur in which this law appears to admit an exception, as if the matrimony has already been contracted civilly and one party exhibits the required testimony of confession, etc. Moreover, if the spouse is not a public sinner and his unworthiness is not established, even less grave reasons can suffice. But for circumstances of this kind, it is more advisable that the Pastor learn from the Bishop himself how he ought generally to conduct himself.

775. ◦ **QUESTION 2. Is it licit to enter matrimony with a public sinner?**

Reply. Yes, if the person cannot withdraw from the matrimony without inconvenience. - Thus more commonly. For although the contracting parties confect the Sacrament, they nevertheless are not ministers deputed to this.

For the same reason, a Catholic woman who has grave reasons, for example, because of the circumstances of families or other motives of great weight, for entering matrimony with a heretic does not sin by contracting it, although she in some way supplies matter of sin to the other; but a dispensation must first be sought, as will be said below.

See many other things concerning the subject of matrimony in the following chapter, where the impediments of matrimony are treated.

Chapter VI. On the Impediments of Matrimony

Laws establishing impediments of matrimony are of two kinds: some are only prohibiting, while others are invalidating. Impediments of the former kind merely render matrimony illicit; the latter also render it invalid. For these directly and primarily affect the matrimonial contract itself and render it null and invalid because of the absence of a condition absolutely required for valid contracting. - Hence there is a twofold article.

Article I. On Impediments Impeding Matrimony

776. ○ Formerly six impediments merely impeding matrimony were enumerated and contained in these verses:

> The prohibition of the Church, and also the time of holy days, And catechism, crime, betrothals, vow.

But the impediments of catechism and crime are now held as obsolete by the consensus of all Theologians and Canonists. The impediment of catechism was contracted by one who answered for an infant when the ceremonies were supplied after baptism conferred in necessity. For from the old law there arose from this a certain spiritual relationship, no differently than for a baptismal sponsor, which constituted an impeding impediment in the same degrees as with the sponsor of Baptism and Confirmation. But according to the common opinion - see Schmalzgrueber, book 4, title 11, no. 67; Giraldi on chapter 5 of the same title; Barbosa, *Collections* on chapter *Contracto* 5, *On Spiritual Relationship*, no. 3, etc. - it passed into desuetude. Indeed, Gonzalez, on chapter *Contracto* 5, *On Spiritual Relationship*, brings forward two Declarations of the Sacred Congregation concerning this matter.

The impediment of crime, however, was a certain penalty imposed by the old law for certain graver crimes, by which the guilty party was prohibited from contracting any matrimony with any person, either altogether if celibate, or after the death of the spouse if married. Crimes of this kind were: first, incest [1]; second, the abduction of another's betrothed woman in order to disturb another's marriage, and also the consent of the betrothed woman to the same abduction; third, the killing of one's wife perpetrated unjustly and by private authority; fourth, presbytericide, that is, the unjust killing of a priest; fifth, the malicious receiving of one's own offspring from baptism, namely, in order to impede the rendering of the debt; sixth, public penance for as long as it continued; seventh, an attempted matrimony with a nun; > Incest, abduction of a betrothed woman, death of a woman [or: womanly death],

> The receiving of one's own offspring, priestly death, Or if one does solemn penance, or takes a nun, These prohibit a marriage from being joined.

[1] The other matters having been passed over, it will not be useless, indeed it will be altogether advantageous, to add some things concerning the impediment of incest, the forgetfulness of which appears to have poured no small darkness upon certain questions of grave importance among more recent writers.

First, the Doctors do not agree how far the signification of incest extends when there is question of the penalty inflicted upon incestuous persons by the sacred Canons, namely, the impediment to marrying. I now pass over that most, against others, establish that intercourse which occurred between persons joined only by legal or spiritual relationship is not comprehended by this law. But it is further disputed whether this penalty also affects incest committed with a person related by consanguinity, or only with a person related by affinity. Schmalzgrueber (book 4, title 13, nos. 27-29), with St. Thomas, St. Antoninus, Turrecremata, Sanchez, Laymann, etc., maintains that the opinion which denies that the penalty extends to incest with one's own blood relative is to be preferred. The reason, he says, is that incestuous persons of this kind are nowhere expressly prevented from contracting marriages. For the texts alleged to the contrary speak only either of incest with a blood relative of one's wife or betrothed, or indeed of incest committed with one's own blood relative, but from whose company the delinquent, having been admonished to desist, did not obey ecclesiastical power. Hence, since those laws are penal, the incapacity for contracting matrimony with another established by those laws as a punishment for delinquents of this kind ought not be extended to incest committed with one's own blood relative without contumacy and contempt of ecclesiastical power. You will find the same defended by Pirhing (book 4, title 13, no. 7), Engel (book 4, title 13, no. 3), and Bonacina (*On Matrimony*, question 3, point 14, no. 10), who also cite several others.

It is likewise disputed among the Doctors what degree the incest must reach for the aforesaid penalty to be incurred. Thesaurus indeed (*On Ecclesiastical Penalties*, part 2, word *Penalties of Incest*, nos. 5-6), although he acknowledges that several Doctors held otherwise, nevertheless contends according to the more probable opinion that the penalty extends to every incestuous intercourse even without the appearance of matrimony. For this matter he does not hesitate to cite chapter 5, *On the Reformation of Matrimony*, session 24 of the Council of Trent, which in fact pertains nothing to this; just as he also invokes Sanchez with Gutierrez and Garcia, who have nothing of this kind in the places indicated by him. Indeed Garcia (*On Benefices*, part 8, chapter 3, no. 34) openly hands down the opposite. Moreover, Schmalzgrueber (l.c., nos. 8-9), bringing forward a lengthy catalogue of Canonists, establishes to the contrary that the penalty is incurred no further than the first or second degree. Indeed, Pichler (book 4, title 1, no. 92) attributes this effect only to incest in the first degree, so that thereafter no matrimony can be contracted licitly.

But what is especially important to observe here is that from this the true origin and reason are disclosed to us for the practice which prescribes that the circumstance of incest must not be left unmentioned whenever a dispensation is sought for contracting matrimony between persons related by affinity or consanguinity. From this it will also manifestly be evident why this dispensation was held subreptitious if that circumstance had been suppressed in silence.

Let us now omit certain few more recent writers who, appearing altogether ignorant of the reason for this controversy, seek the reason why incest must necessarily be expressed in the fact that this circumstance renders the Pontiff more difficult in dispensing and brings with it a greater composition. Vincent de Justis excellently replies to them (*On Dispensations*, book 1, chapter 4, no. 322) that so far is the Pontiff from being rendered more difficult in dispensing by the expression of intercourse of this kind, when it was had not from fraud but from human frailty, that it should rather be said that by the aforesaid expression he is more easily moved, in view of the probable and almost certain consequence of scandals which, because of the aforesaid preceding intercourse, could probably arise from denial of the dispensation, as Pontius, Cevallos, Escobar, Rodriguez, Diana, etc., well observe. And thus we see that in the nearer degrees, namely, within the second, in which the causes of narrowness of place, defect of dowry, and other similar causes are regularly not admitted, nevertheless in those nearer degrees - although in them the Council of Trent prohibits dispensation except among great princes and for a public cause - if intercourse is expressed together with the defamation of the woman and the consequent danger that she will remain unmarried and that grave scandals can probably arise unless matrimony is contracted between the petitioners themselves, the Pope dispenses not only with illustrious persons and princes, but also with others of the lowest condition. Indeed, it is singular that when intercourse is expressed every other cause ceases, as Pyrrhus Corradus observes (book 8, chapter 5, no. 58), where he testifies that this is observed according to the style of the Curia.

Others think the reason is found in the fact that where the circumstance of incest is expressed, a greater composition is imposed. Hence Father de Carboneano writes truly childishly (*Appendix I* to chapter 3, *On Matrimony*, Antoine): *The Pope never intends to dispense with prejudice to a third party; but if the intercourse is not expressed, prejudice is done to a third party, namely, to officials of the Curia, who by its suppression are defrauded of the fee to which they have a right*. The same de Justis had already replied to this absurd reason (l.c., no. 326): *Although the expression of intercourse is the cause why a greater composition is required, nevertheless this does not pertain to the motive cause, but is imposed as a punishment for the incestuous intercourse, the absolution of which is accustomed to be committed to the delegate together with the dispensation concerning the impediment. For although incest is not an impediment reserved to the Pontiff, nevertheless, because the petitioners state that they committed it and seek absolution from him, the Pope as*

a punishment of the incest afflicts the petitioners with greater expense and penances, because incest is truly a most grave crime and worthy of a grave punishment.

Nor do certain others explain the reason for this practice more aptly, who sing this one thing in unison, that the expression of that circumstance is demanded by the style of the Curia. For even if it be granted, which several deny, that this is in fact required by the style of the Curia in such a way as to produce an obligation, nevertheless no one is ignorant that the style of the Curia and the forms to be observed both in petitioning for and granting dispensations were introduced by some law which governs either the special subject matter or the general nature of dispensations. Therefore, in reality, these men say nothing; for the reason why a practice of this kind was introduced into the style of the Curia still remains to be sought.

Nor is it difficult to find this reason, if it is sought among Theologians and Canonists rather than in compendia of doctrine or of daily practice, especially the more recent. You will find that the truest, manifest reason founded in law for the necessity of expressing intercourse is taken from the fact that incest is an impediment of matrimony, although not diriment but merely impeding. But the defect of subreption which renders invalid a dispensation concerning an impediment of affinity or consanguinity arises from that general principle that, where several impediments intervene, a dispensation is held subreptitious if one of them is suppressed in silence in the petition. Therefore, the dispensation is invalid if the circumstance of incest is kept silent.

Thus, therefore, to touch upon those who are cited by Barbosa for this doctrine (*Canonical Votes*, book 2, volume 17, no. 57), Friar Sarmiento gives the reason in Barbosa:

Because an incestuous person is prohibited from contracting matrimony. Peter Ochagavia (*On Matrimony*, tract 4, question 11, no. 4): *The survivor, namely, the incestuous person, cannot pass to another matrimony.* Peter de Ledesma (*On Matrimony*, question 56, article 4, doubt 2, difficulty 2): *Because there are two impediments.* John Gutierrez (*Canonical Questions*, book 1, chapter 15, no. 5): *There appear to be two impediments, the one of consanguinity, the other of incest.* Sanchez (*On Matrimony*, book 8, disputation 23, no. 7): *I said that it is necessary for each impediment to be declared.* Nicholas Garcias (*On Benefices*, part 8, chapter 3, no. 54): *The unmentioned impediment increases the expressed one; it is necessary to make mention of each.* Paul Comitulus (*Moral Responses*, book 1, question 104, no. 2): *A double impediment is much greater than one which is simple.* Reginaldus (*Practice of the Forum of Penance*, book 31, no. 200): *If there are several impediments, all must be narrated*; and thence he concludes that they ought to express their incest. Filliucius (tract 10, no. 337) denies that several acts of intercourse must be expressed in the case, because from all incestuous acts only one impediment arises. And Bonacina says to the same matter (*On Law*, disputation 1, question 2, point 5, no. 4): *Because a new impediment, namely, besides the same one already expressed, is not induced through subsequent intercourse.* Anthony Sanctarellus (*Various Resolutions*, question 52, no. 2): *It is prohibited in law that incestuous persons contract matrimony; therefore it was introduced with the best right into the style of the Curia that those wishing to contract ought to make mention of the intercourse.* Rodriguez (*Summa*, chapter 238, conclusion 7): *Mention must be made in the supplication of both impediments, namely, consanguinity or affinity, and incest.* The *Salmanticenses Compendium* (tract 34, no. 299): *The intercourse must be disclosed, like the other occult offenses which induce some impediment.* Verani (*Canon Law*, book 4, title 1, part 5, section 16, no. 89): *Because incest is an impediment, it must therefore be expressed.* He had premised, however (ibid., no. 4), that a dispensation is subreptitious even when one impediment is diriment and the other only impeding; for the dispensation is also subreptitious unless each impediment is expressed. To these let Marcus Paulus Leo be added, who published a work at Rome in 1644 with the title *Practice Concerning the Letters of the Major Penitentiary and the Office of the Sacred Apostolic Penitentiary*. For he writes (part 2, page 310): *The reason appears to be that when two impediments coincide, the unmentioned impediment increases the expressed one concerning which dispensation is granted, and therefore it is necessary to make mention of each; otherwise the dispensation is null.*

Finally, lest by empty labor we gather other witnesses here, it will suffice to heap upon the testimonies cited a Declaration of the Sacred Congregation of the Council which nearly all either transcribe from Rebellus or certainly cite, and which is read thus in Garcia (*Canonical Questions*, part 8, chapter 3, no. 66) and Pyrrhus Corradus (*Apostolic Dispensations*, book 8, chapter 1, no. 38): *The Congregation of Cardinals judged a dispensation subreptitious if carnal intercourse had preceded between blood relatives or relatives by affinity, of which they made no mention in the supplication, because such blood relatives or relatives by affinity were rendered incapable of contracting matrimony through this carnal intercourse, from the fact that they are said to have committed incest, which impedes incestuous persons from contracting matrimony; therefore, for the validity of the dispensation concerning a prohibited degree, the expression of carnal intercourse is necessary by law, as the style of the Curia observes.* From this declaration, as is evident, three things are clearly confirmed for our matter: first, that the expression of the intercourse was held necessary for this reason, that since incest was an impediment of matrimony, a dispensation was needed to contract it licitly; second, that for this reason the dispensation was held subreptitious and therefore null, when mention of the committed incest was not made in its petition, eighth, finally, the killing of one's own offspring. We read that these impediments were expressed in the following

verses: because, when two impediments to contracting matrimony intervened, only one was expressed while the other was left unmentioned; third, that the style of the Curia, when it requires the expression of incest and holds a dispensation subreptitious if mention of it was omitted, rests altogether upon these principles and laws.

But if the matter stands thus, how could it have happened that very many and most weighty Authors, a list of whom can be seen in de Justis (*On Matrimonial Dispensations*, book 1, chapter 4, no. 279), and to whom others can easily be added, denied the necessity of expressing this circumstance and therefore defended the dispensation as valid even if the same circumstance had been omitted in silence from the petition? Again, how could it happen that although the opinion handed down above is supported by such certain and manifest law, it is nevertheless proposed even by its patrons almost only as more probable, truer, or safer?

The solution of this doubt is not difficult, first if those things are observed which Navarrus has in his *Manual*, chapter 22, no. 74: *Because*, he says, *there was a great dispute in the sacred tribunal of the Penitentiary concerning the impediment of incest, when the most illustrious Cardinal Alciatus presided over it as Supreme Penitentiary with the greatest prudence and marvelous dexterity, and was most renowned for his encyclopedic knowledge of all disciplines, whether every incest produced this impediment, I substitute for the things which I said elsewhere here: First, nearly all experts of divine and human law strictly and properly call only intercourse with a blood relative or relative by affinity in a prohibited degree incest.... Second, all agree that from every incest there arises an impeding and diriment impediment of affinity. Third, all also agree that from incest committed with a relative by affinity during matrimony there arises an impediment impeding the contracting of matrimony with any other person.... Fourth, nearly all theologians hold that from incest with a blood relative there indeed arises an impediment of affinity, but no other impediment, whether it is committed before or after matrimony has been contracted; among these are St. Thomas, Soto, St. Antoninus, Sylvester, whom Covarruvias also follows.* Therefore, if nearly all Theologians taught that this impeding impediment of incest did not arise except from incest with a relative by affinity during matrimony, what wonder if in other cases of incest they denied that a dispensation had to be sought, and therefore denied that the circumstance of incest had to be expressed in seeking a dispensation concerning an impediment of consanguinity?

But there is added a point of greater importance, which Navarrus himself also has (*Consultations*, IX, *On Consanguinity and Affinity*, no. 5), namely, that *an impediment of this kind, according to Paludanus, whom St. Antoninus follows, appears to have been abrogated by custom, whom we believe.* For if the impediment of incest can in fact be held as abrogated by custom, while the reason for expressing the circumstance of incest in the petition for dispensation flowed solely, as we showed, from the fact that incest induced another impediment, it is manifest that by that very fact the necessity of expressing this circumstance also altogether ceases. And again, when this impediment has been abrogated, there no longer stand two impediments - namely, consanguinity or affinity, and incest - against a matrimony to be contracted between incestuous blood relatives or relatives by affinity, but only the first of these. By that very fact, therefore, the reason collapses on account of which, as we have

Therefore the whole controversy is finally reduced to whether this impediment must in fact be considered abrogated. Moreover, no one can deny that in this matter there is now a unanimous and certain opinion of Theologians and Canonists that those two among the merely impeding impediments, namely, catechism and crime, have altogether ceased through custom. To take account only of more recent Authors, thus Babenstuber (tract 8, part 7, disputation 3, article 1, no. 5): *All these impediments of crime have been abrogated through non-use, as the Authors most commonly teach and the practice of the Churches proves.*

Billuart (*On Matrimony*, dissertation 6, article 1): *Several impeding impediments formerly arose from crime, but these, like Catechism, have been abrogated by desuetude.*

Cardinal Gotti (*On Matrimony*, question 8, doubt 1, no. 11): *Several of the aforesaid impediments no longer have force, but have been removed by contrary custom.*

Roncaglia (tract 21, chapter 2, question 1): *From long-standing custom, very many crimes concerning which one reads everywhere among the Theologians are no longer considered as impeding matrimony.*

Wigandt (tract 16, examination 5, no. 53): *These impediments, according to the more common opinion, are no longer in use.*

Marcus Struggl (tract 12, question 3, article 1, no. 6): *These impediments of crime, like the impediment of Catechism, were long ago abrogated by non-use and the contrary practice of the Church.*

Viva (*On Matrimony*, question 5, article 11, no. 2): *Sanchez, Laymann, Ledesma, etc., teach that the impediment of crime has already been removed through non-use.*

The Salmanticenses (tract 9, chapter 15, no. 15): *Excepting interdict, vow, and betrothals, the remaining impediments are no longer in use but have been removed by custom.*

Ferraris (word *Impediment*, no. 10): *Of the six assigned impediments, since two no longer have force, namely, the impediment of crime having already been abrogated by long desuetude, hence there are four*, etc.

Sporer (*Sacramental Theology*, part 4, chapter 1, no. 146): *But all these impediments of crime have been removed by long desuetude according to the most common opinion of the Doctors and the practice of all the Churches.*

Giribaldi (tract 10, chapter 17, no. 18): *The Doctors commonly testify that these impediments which arise from crime no longer bind but have passed into desuetude; and Navarrus, in the Manual which he dedicated to Gregory XIII when already ninety years old, says that he had never heard that a dispensation concerning such an impediment of crime had been sought.*

Holzmann (*On Matrimony*, no. 499): *Crime, or altogether all impeding impediments of crime, have been abrogated by universal custom.*

Mansi (*Moral Theology*, book 5, tract 10, part 4, chapter 15): *Soto, Corduba, Navarrus, and Coninck testify that these impediments of crimes have been altogether removed by long custom.*

Catalanus (part 3, *On Matrimony*, question 15, chapter 2, no. 15): *In fact, through custom, all other impeding impediments except these four have been removed.*

Ysambert (*On Matrimony*, disputation 9, article 2): *A custom has prevailed that new marriages are entered without a dispensation from these impediments.*

Mazzotta (tract 7, disputation 1, question 2, chapter 15): *Formerly twelve impeding impediments were enumerated, but now partly by the Council of Trent and partly by custom they have been reduced to five* (he adds, namely, the defect of proclamations).

Tamburini (book 8, *On Matrimony*, tract 1, chapter 16): *These were formerly twelve.... Now, partly by the Council of Trent and partly by custom legitimately received, they have been reduced to four.*

Potestas (volume 1, part 4, no. 3982): *The common opinion is that they have been removed through non-use and therefore do not need a dispensation.*

Elbel (*On Matrimony*, conference 3, no. 64): *Formerly, indeed, under the old law various impeding impediments were enumerated. Under the new law, in fact, only four are commonly enumerated.*

Bouvier (*On Matrimony*, chapter 4, article 3): *Eight others are found in Canon law; but since they have altogether ceased, concerning the four still remaining*, etc.

Concina (*On Matrimony*, book 2, dissertation 3, chapter 3, no. 15): *The Authors observe that, except for interdict, vow, and betrothals, the other impediments have become obsolete.*

Edmund Voit (volume 2, no. 1234), after enumerating the impediments arising from crime as they were set forth above, adds: *The Authors everywhere testify that these have now been removed through non-use.*

Indeed, all who now enumerate only four, or five (with the omission of the proclamations added), impeding impediments implicitly say the same thing. Thus Cuniliati (tract 14, section 14, no. 2): *The impeding impediments at the present time are contained in this hexameter*, etc. And Amort (tract 15, section 3, question 2): *After the Council of Trent only four impediments*, etc. And Antoine (*On Matrimony*, chapter 3, question 1): *There are four which now certainly have force, contained in this verse*, etc. And Reuter (part 4, no. 526): *Those which now have force are four*, etc. And Wagemann (part 3, tract 3, chapter 9, no. 135): *Today the impediments are four, contained in this verse*, etc. Tournely (*On Matrimony*, question 8, article 2): *Formerly, under the old law, twelve were enumerated, which have been recalled and restricted to five.* And Friar Antonius of Goritia (table 187): *The impediments are four*, etc. And Oberrauch (tract 20, chapter 5, section 2386): *In antiquity the merely impeding impediments were more numerous; in the modern age only five obtain.* Thus also Antonius of St. Joseph (*Compendium of the Salmanticenses*, tract 34, chapter 3, part 1, no. 165), Segna (*On Matrimony*, chapter 5, no. 390), Piselli (*On Matrimony*, part 2, chapter 4), Scavini, etc.

From the Canonists, however, it will suffice to bring forward what Giraldi, Engel, Reiffenstuel, Maschat, Schmalzgrueber, Pirhing, Pichler, and Krimer have.

Giraldi (*Exposition of Pontifical Law*, book 2, title 23, chapter 12, section 269): *This Decretal, establishing that the crime of incest induces an impediment impeding matrimony to be contracted with any person, has been abrogated by contrary custom. For today there are only four impeding impediments, namely*, etc.

Engel (book 4, title 13, no. 2): *But this penalty of incest, like the other impediments, appears to have passed into desuetude.*

Reiffenstuel (book 4, title 1, no. 352): *The impeding impediments of crimes, however, are so held to have been abrogated that they are no longer in use.*

Maschat (book 4, title 13, no. 4): *The other impediment, lest the accomplices in incest be able to enter matrimony with any other person, has been abrogated by contrary custom.*

Schmalzgrueber (book 4, title 13, no. 7): *The impediment by which an incestuous person and his accomplice are prohibited from contracting matrimony with any other person has more probably been removed through non-use or contrary custom, as Navarrus, Perez, Wiestner, etc., rightly observe.*

Pirhing (book 4, title 16, no. 12): *All these impediments introduced by ecclesiastical law (except betrothals and a vow, and except a special interdict of a Superior) have today been altogether removed by long-standing custom,*

according to which those thus impeded everywhere enter marriages without seeking any dispensation.

Pichler (book 4, title 1, no. 92): *With Navarrus, Sanchez, Henriquez, and Coninck, Laymann, Pontius, Lessius, Illsung, and other Doctors everywhere observe that all the impeding impediments of crime, or those arising from an offense, have been removed by universal custom.*

Krimer (book 4, title 13, no. 1174), to this objection: *Incest furnishes a perpetual impediment to matrimony; therefore it is manifest that the incest must be disclosed,* replies: *This impediment long ago receded from use; hence by general custom it now happens that there is no fault in contracting matrimony with this impediment; and therefore no dispensation is sought from the Pope or Bishop on account of any incest.*

What perhaps may appear surprising is that even the Holy Doctor Alphonsus judged that the same thing as the Doctors cited above must be defined concerning the cessation of this impediment as obsolete. Nor did he assert it in only one place, but several times plainly confirmed it by his vote. Indeed, from the first edition of his *Moral Work* in the year 1748, to these words of Busembaum (book 6, tract 6, chapter 3, doubt 1), *But these impediments (namely, incest, the abduction of a betrothed woman, etc.) have been removed through non-use,* the Holy Doctor had added his approval, adding (note f): *as the Salmanticenses say with Sanchez and the common opinion.* Elsewhere more explicitly (*The Apostolic Man*, tract 18, no. 53), where he enumerates the impeding impediments, he judges the same thing concerning incest, although perhaps he less aptly substitutes incest with one's own mother for incest with the blood relatives of one's spouse, that is, committed with a person related by affinity, as the text of the Decretal Constitution which imposed this penalty actually requires. Whatever may be said of this, behold the explicit words of the Holy Doctor: *Under this name (CRIME) were formerly comprehended certain offenses, namely, incest with one's own mother, the abduction of another's betrothed woman, etc.; but this impediment also BECAME OBSOLETE BY DESUETUDE.* And again, in the place to which he there refers the reader (book 6, no. 905), at the words of Busembaum reported above, namely, that the impediments of incest and of other crimes have been removed through non-use, the Holy Doctor adds: *Thus also Concina and the Salmanticenses with Sanchez and the common opinion.* And he repeats this even more explicitly (book 6, no. 857), where he further adds that this impediment has been so removed that it needs no dispensation. Thus the Holy Doctor, to the question whether betrothals are dissolved through a supervening impediment: *If the impediment is impeding, Sanchez, Palaus, Escobar, etc., most commonly and more probably deny that the betrothals are dissolved, unless it arises from a vow of Religion, and very probably also from a vow of chastity. The reason is that the other impediments HAVE NO FORCE TODAY, NOR DO THEY NEED A DISPENSATION.* Thus St. Alphonsus; whence also the abbreviators of the Holy Doctor, Neyraguet (*On Matrimony*, chapter 3, article 1, no. 4) and Galani (book 6, tract 6, no. 65), after enumerating the impeding impediments of crime, repeat: *But these have been removed through non-use.*

I said that this perhaps might appear surprising. And indeed it is known that St. Alphonsus elsewhere, against the most common opinion of the Doctors, as we shall see in its place, contended as though indubitable that the crime of incest necessarily had to be disclosed whenever a dispensation for contracting matrimony was sought from the Apostolic See on account of another impediment. But, as we have already seen above, not only from the authority of the Doctors, and especially from the testimony of Marcus Paulus Leo, who wrote expressly concerning the practice of the Sacred Penitentiary, but also from the explicit Declaration of the Sacred Congregation of the Council, the true reason why the crime of incest had to be expressed in seeking a dispensation for some other impediment, if perhaps it had intervened, rested in this: that the crime of incest of itself induced an impediment impeding matrimony, so that unless both impediments were expressed, the dispensation would labor under the defect of subreption. Therefore, can it not appear surprising that St. Alphonsus on the one hand contends as certain that in the case the crime of incest must necessarily be expressed, but on the other

contends that the impediment of the crime of incest has no force today, but has been removed through non-use and in no way needs a dispensation? How will a dispensation necessarily have to be sought for an impediment which, by the admission of the Holy Doctor himself, needs no dispensation?

But, you will say, does not the same style of the Curia persist in this entire business of dispensations, which otherwise ought to be as a law? The reply to this question appears not difficult. For it must be conceded that the style of the Curia, whenever it is certainly established and the law by which that style itself was introduced and upon which it rests still has force, possesses the force of law. But at the same time it must not be denied that the force of custom, which itself assumes the nature of law, is such that it can abrogate both all human laws and also the laws upon which the style of the Curia rests, and consequently remove from that style every force of obliging. This remains true even though, just as Synodal and Pontifical Constitutions otherwise already abrogated by contrary usage remain unmoved in the Corpus of Law, so also the forms of style remain unmoved in the Curia, although their force has been abrogated by contrary custom and the laws upon which they rested have otherwise altogether perished. Nor are examples lacking which make this plain. Thus, in Marcus Paulus Leo, who describes the practice of the Office of the Sacred Penitentiary, you will find the form (*Practice*, etc., part 2, page 329) of absolution from incest with a dispensation, not indeed for contracting with the accomplice in that incest, but that, notwithstanding the said incest, *you may mercifully dispense in the forum of conscience so that he may contract matrimony, with the form of the Council of Trent observed, with SOME OTHER WOMAN otherwise prohibited to him by no law*, etc. Nevertheless, behold Martin Navarrus, already from that age solemnly testifying (*Manual*, chapter 22, no. 75, and *Consultations*, 9, no. 5) that in his whole life he had never read or heard that a dispensation concerning this sole impediment had been obtained, or that any incestuous person sought a dispensation from the Pope or Bishop. Concerning this matter Sanchez also says (*On Matrimony*, book 7, disputation 17, no. 8): *That custom long ago prevailed whereby one affected by any of these impediments* - and he expressly treats also of incest - *enters matrimony without seeking any dispensation. This is established from the fact that ancient and more recent Doctors, and indeed eminent ones, who wrote and were occupied in diverse parts of the world, testify that this custom has been legitimately prescribed..., and especially Navarrus, who traveled through various regions and completed the hundredth year of his life, always being most intensely occupied with studies and consulted from every quarter concerning questions of conscience, and finally remaining a long time at Rome, to which these questions to be resolved are brought from all parts of the world, and nevertheless, speaking of incest, affirms... that at so great an age he had neither seen nor heard of a dispensation being sought; and thus that custom prescribed that a dispensation should not be necessary.* But neither do we need the testimonies of others. For even now it certainly enters no one's mind that the incest of which someone is guilty induces a necessity of either seeking a dispensation if he wishes to contract with a woman otherwise prohibited to him by no law, or of expressing this circumstance in a supplication if a dispensation is necessary for marrying a woman prohibited for another cause of consanguinity or affinity; although in the latter case the same reason of nullity from the style of the Curia ought to have force, because, when two impediments concur, one of them would be suppressed. This can also be confirmed from the Acts of the Sacred Penitentiary. For it is not established that even after the age of Navarrus and Sanchez any dispensation was ever sought in the aforesaid circumstances, although the crime of which we speak certainly has not been absent from this world throughout those centuries. But from this also what we said above is confirmed: that forms of style are preserved in the Curia even if contrary custom possessing the force of law has taken all force from them.

Hence Cajetan Giraldi (*Exposition of Pontifical Law*, on book 4, title 13, chapter 1, section 714), when treating the interdict by which an incestuous spouse is thereafter prohibited from contracting matrimony with anyone - namely, the impediment of which we are speaking here - certainly recalls the style of the Penitentiary which enjoins this penalty in a dispensation for seeking the debt; he also recalls the style of the Dataria, which imposes the same penalty in a dispensation concerning consanguinity up to the fourth degree. Nevertheless, he does not hesitate to observe that this impediment appears to have been removed by custom, so that it is not necessary to seek a dispensation. And in fact we now perceive that the Sacred Penitentiary itself has at last begun to remove this style of the Curia, which rested upon an altogether antiquated impediment. For in dispensations which are granted to an incestuous spouse for seeking the debt, that aforesaid formula hitherto added according to the style of the Curia, *If he survives his wife, let him remain without hope of marriage*, has now begun to be omitted. To this may also be referred what we read in canonical question 183 of Benedict XIV. For he proposes to himself this objection from the style of the Curia: *The distinguished Officials of the Dataria, after examining the Registers from the time of St. Pius V to the present,... endeavored to prove that marriages contracted between persons joined in the third and fourth degree, with a prior dispensation concerning the fourth but without declaratory letters obtained concerning the third, had always been held null and invalid.* To these he replies: *Just as it pertains to the distinguished Officials of the Dataria to defend the OPINIONS and rights of the Dataria, so it pertains to my littleness to defend the judgments of this Sacred Congregation, of which I am secretary.* And in fact he defended his position against the alleged style of the Dataria in such a way that the Sacred Congregation of the Council

rendered a definitive judgment for the validity of those marriages. From these things we are also taught that the style of the Curia must be judged in one way when there is question of a controversy already defined by certain laws, but in another when the judgment of the Curia follows an OPINION concerning which there is free disputation on either side in the Catholic schools. For in the latter case Benedict XIV, and indeed also the judgment of the Sacred Congregation rendered at the same time, manifestly establish that no force for defining theoretical questions is to be attributed to the style and judgment of the Curia, even if the validity or invalidity of matrimony is at issue. See also what we shall say in the note to no. 867.

Now, therefore, only four impeding impediments are enumerated, namely: first, a prohibition made by the Church for various causes; second, likewise a prohibition of the Church that at a certain determined time the solemnities of matrimony not be celebrated; third, a contract of betrothals already entered with another person and not legitimately dissolved.

seen, the dispensation was considered subreptitious, namely, as though, when two impediments concurred, only one had been expressed while the other was left unmentioned. Fourth, a vow which by its nature cannot be observed in the matrimonial contract or society.

These four are comprehended in the following little verse:

The prohibition of the Church, time, betrothals, vow.

It will suffice to add a few things concerning each.

I. The Prohibition of the Church

777. ○ It is a prohibition, either particular or general, made by the Church or by some ecclesiastical Superior, lest a certain matrimony be celebrated.

1. A general prohibition exists especially in three cases, namely: first, that matrimony not be contracted between a heretic and a Catholic woman, and conversely; second, that it not be contracted without the proclamation of the banns; third, that it not be contracted without the duly required consent of the parents. The banns were already treated above, no. 734 and following; likewise the consent of parents, no. 754. But we shall speak below concerning disparity of worship, no. 824 and following.

2. A particular prohibition exists when, for a just and special cause, matrimony is forbidden to someone either by the Pastor or by the Bishop; for example, because a suspicion of a diriment impediment has arisen [2].

[2] Three principal just causes for which, according to the common opinion of the Doctors, matrimony can be forbidden are enumerated: first, a complaint concerning betrothals by which one of the betrothed parties had previously bound himself to another person; second, a not groundless suspicion of a latent impediment between them, either diriment or even merely impeding; third, a not groundless fear that grave quarrels, enmities, scandals, or other inconveniences may follow from that matrimony. See Pirhing (book 4, title 16, no. 1).

II. Time

778. ○ It is a certain determined time during the course of the year which is called a holy season and during which the Church forbids the solemnities of nuptials. Council of Trent, session 24, chapter 10. Such a time now [3] is that which runs from the first Sunday

of Advent through Epiphany inclusively, and from Ash Wednesday through the Octave of Easter likewise inclusively.

[3] It is said *now*, for before the Council of Trent the holy season was: first, from the first Sunday of Advent through Epiphany; second, from Septuagesima Sunday to the Octave of Easter; third, from the second day of the Rogations through the Octave of Pentecost; fourth, for two or three weeks before the Nativity of St. John the Baptist. - See Schmalzgrueber, book 4, title 16, no. 27.

Moreover, the Council of Trent prohibits only the solemnities of nuptials during the aforesaid time, namely, blessing the spouses, leading the bride home with festivity, and arranging more solemn nuptial banquets. It does not, however, prohibit the Pastor from privately joining the spouses, although in various places this also is prohibited because of custom [4]. - Thus commonly.

[4] Namely, the custom of certain places has it, not indeed that the proclamations not be made, or that the contract of matrimony not be celebrated, or that it not be consummated during holy seasons, but that nuptials not be celebrated unless either some necessity urges or permission of the Ordinary has been obtained, even in a case of necessity if this can be done; and it is fitting that Pastors accommodate themselves to this custom. Thus Reiffenstuel (book 4, title 16, no. 12), Schmalzgrueber (same title, no. 34), Wiestner (same title, no. 34), Konig (same title, no. 3), Schambogen (same title, no. 2), Schmier (part 3, *On Matrimony*, chapter 1, no. 105), Marchant, Gobat, Laymann, Sanchez, etc. Therefore it was not necessary for Lambertini (instruction 80, no. 14) to present this very thing to the Pastors of his Diocese of Bologna as a new and foreign piece of wisdom from the condemned Van Espen.

In the same instruction 80, no. 20, Lambertini again brings forward Van Espen also reproaching the Canonists as though they, too devoted to the rigorous expressions of the ancient Canons, had reduced abstinence from the consummation of matrimony during the holy season to a precept, when it was rather a matter of mere counsel, as St. Alphonsus also relates from Lambertini (book 6, no. 984). But even this reply to the ancient canons objected is false. The true reply is - see Schmalzgrueber, book 4, title 16, nos. 31-41 - that those canons speak only of the solemn leading of the bride, not of the consummation of matrimony; and thus it is not necessary to explain them as concerning mere counsel and not a precept, for that solemn leading is in fact forbidden by precept. But if the canons add that spouses who have solemnly celebrated nuptials contrary to the precept of the Church are to be separated, this would be a penalty to be undergone not for a counsel but for a precept. From these things we are certainly taught that the hope of those who, thinking that treasures of wisdom lie hidden in condemned works, strive to fish out foreign things from these putrid fountains rather than draw doctrine from the storehouses of the sincere Catholic school, is vain.

III. Betrothals

779. ○ All betrothals, whether ecclesiastical or private, seriously contracted, unless they have been legitimately dissolved either by the mutual consent of the contracting parties or for another just cause, are an impediment impeding matrimony. This is evident from natural law, for there exists a grave obligation of justice to observe a pact arising from an onerous contract. But if someone, notwithstanding that impediment, contracts nuptials, the matrimony will indeed be valid, since this impediment is only impeding, but not licit.

IV. Vow

A fourfold vow impeding matrimony is distinguished, namely: first, a vow of chastity; second, a vow not to marry; third, a vow of entering Religion; fourth, a vow of receiving sacred Orders.

780. **I. A Vow of Chastity.** - 1. One who has emitted such a vow sins gravely by entering matrimony with the intention of consummating it, because he breaks the vow.

2. Even apart from this intention, he sins gravely because he exposes himself to the danger of violating either the vow or the right of the other spouse.

3. Once matrimony has been contracted, during the first two months he can neither seek nor render the debt, because by a divine privilege the spouses are exempt during this time from the obligation of the conjugal debt, according to what was said above, no. 759. But after this time has elapsed, he can indeed render the debt and satisfy the right of the other, but he cannot seek it without a dispensation from the vow, or without a suspension or indirect invalidation of the vow effected by the other spouse.

4. He must altogether abstain if the other consents or has lost the right of seeking, for example, because of adultery or incest. But if he can abstain only with difficulty, he must seek a dispensation as soon as possible or seek the aforesaid invalidation from the other spouse.

5. If the other spouse dies, he cannot pass to new nuptials unless he has obtained a dispensation from his vow also for this effect. - Lacroix, book 3, no. 564.

781. **II. A Vow Not to Marry, or a Vow of Virginity.** - 1. One who contracts matrimony after emitting this vow sins gravely, as is manifest.

2. Once matrimony has been contracted, he can render and also seek the debt, because observance of the vow has already become impossible.

3. For the same reason, after the spouse has died he can at least probably contract a new matrimony.

In practice it is sometimes doubtful whether someone vowed virginity or celibacy, or rather chastity. The penitent must be asked whether he was led by the intention of freeing himself from the burdens of matrimony and serving God more holily, or solely by the love and affection of purity. In the first case he must be judged to have vowed celibacy and virginity, but in the second true chastity. - Lacroix, no. 357.

782. **III. A Vow of Entering Religion.** - 1. One who has emitted such a vow sins gravely by entering matrimony, both because he deceives the other and because he exposes himself to the danger of violating the vow.

2. Before the consummation of the matrimony he is bound to enter Religion; and therefore he sins mortally when, whether by seeking or rendering the debt for the first time, he consummates the matrimony, because he must fulfill the vow when he can. But he can fulfill it by not consummating the matrimony in the first two months, since then by a divine privilege either party can enter Religion, and, when the spouse solemnly professes, the other party is freed from the bond of matrimony, according to what was said above, no. 759.

3. After the matrimony has been consummated, he can seek and render the debt, because execution of the vow has become impossible, and the seeking of the conjugal act is not contrary to his vow, since he vowed not chastity but Religion.

4. Even after the matrimony has been consummated, he is of himself bound to enter Religion whenever he can do so without injury to the right of the other party; for example, if the other consents, or loses the right of seeking the debt perpetually, or if the matrimony is dissolved by death, because the obligation of the vow always remains. In practice, however, in these cases it is more expedient to have recourse to a dispensation [5].

[5] In practice the circumstances may have been so changed by reason of age, offspring perhaps born of the matrimony, the state of fortunes, and also fitness for religious duties that, because of the change of matter, the obligation of the vow almost ceases of itself and there is no need of a dispensation.

783. **IV. A Vow of Receiving Orders.** - 1. One who has emitted that vow sins gravely by entering matrimony, as is evident.

2. He is bound to receive Orders if he can, for example, if he obtains the consent of the other. According to many, he is bound to enter Religion before the consummation of the matrimony, even against the will of the other, so that he may be able to fulfill the vow. But others more probably deny this.

3. Once matrimony has been entered, he can consummate it if he can no longer fulfill the vow.

784. **Questions. - QUESTION 1. Who can dispense in impeding impediments?**

Reply 1. No one, not even the Supreme Pontiff, can dispense from an impediment arising from valid betrothals, since in this matter there is question of a strict debt of justice. The same must be said of the necessity of parental consent, which is derived from natural law; this, however, naturally ceases if the parents dissent unjustly.

Reply 2. Bishops, or Ordinaries who are Pastors of souls and enjoy full jurisdiction in the external forum, can dispense: first, in the obligation of the banns; second, as regards contracting during a holy season where custom also forbids this; third, in a vow of temporary chastity and of virginity or not marrying.

But they cannot dispense: first, as regards a vow of perpetual chastity [6]; second, as regards a vow of entering Religion; third, as regards the impediment of disparity of worship between Catholics and heretics. For this threefold impediment is reserved to the Pope.

[6] Understand this before matrimony has been contracted; for after matrimony has been contracted, the Bishop can dispense for seeking the debt. See St. Alphonsus, book 6, no. 987. Say the same of a vow of continence by which either spouse bound himself after matrimony had been contracted. For since by force of this vow he is indeed prohibited from demanding the debt, but can and indeed must render it, it is not a vow of perfect chastity and therefore is not reserved to the Supreme Pontiff. The opposite must be said if each spouse, by common consent, had vowed perpetual continence. See St. Alphonsus, ibid., no. 986.

Reply 3. By their privileges Regulars can dispense, merely for the internal forum, in a vow of virginity or of not marrying [7]. - Recall what was said concerning the privileges of Regulars in the Treatise on States, no. 175.

[7] From the general principle that by force of their privileges mendicant Regulars can dispense in all those vows in which Bishops can dispense by ordinary law, St. Alphonsus (book 6, no. 987) rightly infers that the same Regulars can dispense not only in a vow of not marrying, as the Author has it, but also in a vow of temporary chastity or in one not perfect for any other cause, for demanding the debt after matrimony has been entered. Indeed, since there is a sufficiently probable

opinion, as the Author intimates a little later in question 2, that it pertains to the ordinary right of a Bishop, even in a vow of perfect chastity, to grant a dispensation for contracting matrimony if necessity urges, by force of the aforesaid principle this also belongs to mendicants, as several Doctors in fact concede. See St. Alphonsus, book 6, no. 1128.

QUESTION 2. Can a Bishop, when necessity urges, namely, when there is danger in delay, dispense from a vow of chastity for contracting matrimony?

Reply. Yes, provided that the danger is truly present and access to the Pontiff is not readily available. - St. Ligorius, no. 987. - Suarez, Sanchez, Navarrus, etc.

Article II. On Diriment Impediments

We must treat: first, diriment impediments in general; second, diriment impediments in species; third, dispensation from these impediments.

§ I. On Diriment Impediments in General

Proposition I

The Church has the power to constitute impediments not only impeding but also diriment of matrimony. It is of faith.

785. ◦ It is clear, first, from the definition of the Council of Trent, session 24, canon 4: *If anyone shall say that the Church could not constitute impediments diriment of matrimony, or that she erred in constituting them, let him be anathema.*

It is confirmed, second, from theological reason. For the Church received from Christ every power necessary or even useful for rightly governing the Christian commonwealth; but the power of constituting impediments of matrimony is very useful, indeed even necessary, so that matrimony may be treated by the faithful with the honor and decency owed to the Sacraments; therefore, etc.

Proposition II

The Church alone can constitute diriment impediments of matrimony, and consequently SECULAR Princes with respect to Christian subjects cannot CONSTITUTE IMPEDIMENTS except for merely civil effects.

786. ◦ 1. It is proved from the Council of Tours in the year 1583, specially approved by Gregory XIII, chapter 19, *On Jurisdiction*, section 6, where it is said thus: *Since it is most certain law that matrimonial causes belong to the ecclesiastical forum, and therefore that the knowledge and decision of them have been altogether forbidden to lay judges by the sacred Canons, under penalty of anathema we prohibit all except Bishops and their Officials from taking cognizance of and deciding concerning them and their appendages and circumstances, as, for example, if there is a question of conjugal adherence. - Collection of Councils* (Labbe).

2. It is evident from the Council of Trent itself, session 24, chapter 12, where it defined that matrimonial causes pertain to ecclesiastical judges.

3. It is established from the letter of Pius VI to the Bishop of Motula, September 17, 1788, in which he expressly declares that such is the sense of canon 12 of the Council of Trent.

4. Theological reason confirms this. For since matrimony was elevated by Christ to the dignity of a Sacrament, it is necessarily subject to the spiritual power alone. And although the nature of a contract and the nature of a Sacrament are distinguished in matrimony, nevertheless the whole matrimony pertains to the Sacrament, since the contract is its matter and cannot be separated among Christians from the nature of a Sacrament. Otherwise, the greatest inconveniences would follow from a conflict of power if two powers independent of each other could constitute impediments of matrimony; for what one built up, the other could destroy.

787. **Questions. - QUESTION 1. Does an impediment invincibly unknown invalidate a matrimony contracted with it?**

Reply. Yes. The reason is that the law constituting such an impediment has as its object the invalidation of the contract itself, and therefore it always invalidates the contract independently of the knowledge and will of the contracting party. Moreover, invalidating laws must obtain their effect in every case unless the general good absolutely stands in the way, as will be said concerning the impediment of clandestinity, which ceases only when, while persecution rages, suitable Priests [1] cannot be had to assist at marriages. - Lacroix, no. 626, and others most commonly.

[1] Namely, even a Priest, unless he has a delegated faculty from him who by ordinary right ought to assist at the contract of matrimony, is altogether incapable of conferring any validity upon the contract by his presence.

Hence if, after matrimony has been contracted, a woman certainly discovers a diriment impediment by force of which the matrimony was null, she can neither seek nor render the debt, even if she were compelled to it by a threat of death, because the union would be fornicatory, which is licit in no case. Some except the case in which the woman would conduct herself merely passively, so that she would cooperate in such an act altogether materially; but not even this must be conceded, since there is question of a thing intrinsically evil, unless, according to a probable opinion, the woman is compelled to it by fear of death, provided nevertheless that the danger of consent is absent. - Recall what was said in volume 1, *On Human Acts*, no. 21, and *On the Fifth Precept*, no. 390.

788. ○ **QUESTION 2. Are those impediments which appear to have the nature of a penalty, such as the impediment of crime, also incurred even when unknown?**

Reply. Yes. Thus more commonly with Lacroix, book 6, part 3, no. 641 [2]. The reason is that those impediments have primarily the nature of a bond and only secondarily the nature of a penalty; and consequently they are always incurred, although ignorance excuses from a penalty according to the common opinion when there is question of a merely prohibiting law.

[2] Ferdinand Krimer should be consulted concerning this question, for he treats it expressly (*On the Decretals*, book 4, nos. 1011-1029), and, having weighed the reasons of each side, concludes thus (no. 1024): *Of these opinions opposed to each other, the affirmative... is without doubt very probable; nevertheless, the negative is not only probable absolutely, but also retains its probability in relation to its opposite. For the greater probability of the affirmative opinion neither proceeds from certain or evident principles nor concludes certainly or evidently, but only probably, and perhaps with some excess from authority; consequently it does not remove from the negative its probability even when compared with the affirmative. For it still remains within the limits of pure probability and has very probable solutions to its reasons, or solutions supported by a prudent foundation.*

That Krimer truly affirms that the affirmative opinion is deduced neither from certain principles nor by a certain conclusion is easily evident. Take, for example, Suarez, who, while he otherwise teaches that ignorance does not excuse from incurring this impediment, nevertheless establishes (*On Laws*, book 5, chapter 19, no. 6) that this impediment is penal. Thus he says:

Among the impediments of matrimony, those which arise by reason of an offense are penal, as are the killing of one's wife with a promise, adultery with someone while a spouse is living together with a promise of future matrimony, etc. And he gives the reason (ibid.) because *the invalidation of an act is a great burden and can cause harm; therefore, of itself it can be a sufficient penalty, and sometimes it is very well accommodated to the offense.* Palaus agrees with him (tract 3, disputation 2, point 2, no. 2), where he writes: *Sometimes the annulment of an act is introduced as a punishment for a committed offense, as IN THE OPINION OF ALL it is introduced... if a married person, after giving a pledge of matrimony, committed adultery with someone*, etc. Cardinal de Lugo speaks no differently (*On Penance*, disputation 16, no. 337): *In these cases matrimony is not prohibited because of a motive of special uprightness, but as punishment for the offense committed and to provide... for the safety of the spouse, whose life would be endangered if adulteries, promises, or plots to kill the spouse were made with the hope of a future matrimony.*

But if this, as Palaus said, must be held according to the opinion of all, then the question *whether ignorance of the invalidation... prevents the invalidation of the act* - to use the words of Suarez himself, l.c., chapter 22, no. 4 - depends upon the question whether ignorance of the penalty alone excuses from it, even if there was sin against the law. And he himself adheres thus to the negative opinion (ibid.): *In this question we judged the negative side to be truer.* Therefore, regarding the special question of the penalty of invalidation he argues thus: *Hence it must consequently be said in the present matter that when a human law prohibits an act by adding invalidation by way of penalty, if the law is not unknown as prohibiting, although it is unknown as invalidating, the act done against the law is invalid; because such ignorance does not excuse the sin against the law and consequently does not excuse from the penalty, although it is unknown; therefore neither does it excuse from the invalidation.* Thus Suarez.

But is this foundation solid? For Sanchez (*On Matrimony*, book 9, disputation 32, no. 17), with respect to that general principle, thinks the opposite opinion truer. Thus he says: *Nevertheless, I believe it truer that all these penalties are not incurred where the aforesaid ignorance of the law* - namely, of the penal law - *is present.* Therefore, concerning invalidation itself he thus concludes to the contrary (ibid., no. 18): *Add that the annulment of an act, when it is not from a defect of solemnity but as a punishment of the delinquent, is not incurred by those ignorant of the law, as Antonius de Butrio well observes on chapter 2, On Constitutions, no. 19*. That this must also be referred to the invalidation of matrimony is evident from what he has elsewhere (book 7, disputation 5, no. 7), saying that matrimony is forbidden between certain persons as a punishment for an offense committed.

From this you will understand why, supposing that principle of Suarez which Palaus rightly added to be in the opinion of all, namely, that matrimony in the case is invalidated as a punishment for crime, Leander of Murcia (*Disputations on I-II of St. Thomas*, book 2, disputation 4) concluded that all those stand for this opinion - namely, that the penalty of the invalidation of matrimony is not incurred - who assert that irregularity AND OTHER PENALTIES imposed by ecclesiastical laws are not incurred by one who is ignorant of them, even by vincible ignorance..., provided it is not crass and supine.

Moreover, that this opinion, which requires knowledge not only of the prohibiting law but also of the punishing law for penalties to be incurred, pleased many can be learned very easily from the Doctors cited by Sanchez (l.c., no. 17). And besides the fact that the Author also acknowledges this to be the common opinion, for the present it can suffice that Schmalzgrueber (on book 5, title 37, no. 109) writes likewise from the common opinion: *It is as a rule*, he says, *that one committing some offense is indeed subject to penalties proportioned to that offense, but not to other extraordinary penalties which are imposed to avoid the frequent practice of the offense or for another cause, unless the delinquent knew that the offense was prohibited under that penalty.* After Suarez himself (*On Censures*, disputation 4, section 9, no. 21) reported this very principle from Navarrus in these words: *Navarrus adds that whenever a penalty is exorbitant and extraordinary, OF WHATEVER KIND IT MAY BE, if it is unknown, even if the offense is committed, it is not incurred*, he sincerely admits (ibid., no. 22) that the reasoning of Navarrus is probable, except that it must not be extended to the penalties which God inflicts upon sins in eternity; for otherwise, as he says, those who are ignorant of the eternity of the penalties would not incur them. But no one doubts that the invalidation of matrimony in the case is an extraordinary penalty; therefore Navarrus most rightly applies that principle thus to the impediment of crime (*Manual*, chapter 22, no. 46): *If each party probably is ignorant of the impediment, they can contract matrimony as soon as the one who impeded it shall have died.* From these things it is evident that the principles admitted by Suarez himself lead rather to a conclusion contrary to the one he wishes.

Thus, in order to furnish support to that wavering conclusion, they take refuge in what the Author also intimates and Sporer expresses thus (*On Matrimony*, no. 44): *This impediment was introduced by the Church not precisely as a punishment for the offense, but principally to deter men lest they commit crimes in the hope of matrimony, as all the Doctors unanimously suppose.* Hence Suarez (*On Laws*, book 5, chapter 19, no. 10) holds that this impediment has rather the nature of a remedy. Thus he says: *Here there is considered not only the common utility which is found in a penalty insofar as it is a penalty, which is to avenge the offense...; but further there is considered the utility of a REMEDY, so to speak, by taking away occasions for perpetrating similar offenses. This utility is not*

common to every penalty, nor does it belong to its nature insofar as it regards vindication. Therefore, in this way we say that through that invalidation of matrimony in the aforesaid cases occasions for perpetrating similar offenses are taken away, and that this cause was sufficient for imposing such impediments even without vindication of the offense, which could have been effected through another penalty.

You will find a lengthy and complete direct reply to these things in the praised Krimer (on book 5, title 7, nos. 729-743), who most diligently pursues all the objections of the opposing side. For at present it will suffice us to show that these things too, according to the opinion of those very men who bring them forward, altogether waver and indeed destroy one another.

And first, while these men, to defend their cause, contend that the impediment of crime was introduced rather by reason of a remedy than as a punishment for an offense, behold Haunoldus (tract 1, *On Laws*, no. 109 and following), who, when about to refute John Salas and Pallavicino, who contend with us in this matter that invalidating laws imposed precisely as a punishment for some offense do not bind those who are ignorant because inculpable ignorance excuses from penalty, thinks it necessary, lest he betray his cause, to contend to the contrary that the invalidation of matrimony in the case is a pure penalty. Thus he says (l.c., no. 110): *That this invalidation* - namely, of matrimony contracted by a murderer or adulterer with an accomplice from an intention or promise of matrimony, etc. - *is a pure penalty appears certain to me.* Then Haunoldus thus rejects the support which Suarez sought in the utility of a remedy (ibid.): *For although by consequence it is favorable to spouses, nevertheless, if this stood in the way, no invalidating law would finally be a pure penalty, since each can finally be resolved into some favor.* Therefore he finally takes refuge in denying, contrary to the common opinion, that ignorance of a penalty excuses from incurring that penalty. But since all make an exception whenever the penalty is extraordinary, this one thing was finally left to him: to contend (ibid.), against the understanding of all, that the invalidation of matrimony because of the killing of one's wife or adultery, etc., is not an extraordinary penalty. And thus one of the patrons of that doctrine is compelled to destroy what another builds up; which certainly is not accustomed to happen when solid, certain, and firm principles are employed.

But what fear impelled Haunoldus to contend that the invalidation of matrimony in the case is a pure penalty? He was indeed compelled by another principle which the patrons of the same cause, altogether forgetful of themselves, establish elsewhere. For consult, for example, St. Alphonsus (book 7, no. 351), and you will see that the same Doctors, in order to prove that ignorance of the penalty, namely, of the irregularity itself, does not excuse from incurring irregularity from an offense, employ this very reason: that *irregularity is not a medicinal penalty for preventing crimes in the future, but is an incapacity or punitive penalty on account of the stain of guilt*. And thus

Suarez also has it altogether thus (*On Censures*, disputation 40, no. 9): *Here that special reason ceases because of which we said that invincible ignorance of excommunication or of a censure properly so called excuses from incurring it, because it is a medicinal penalty which is formally imposed for contumacy and so that one may recede from it; but irregularity, when it is a penalty, is imposed not as medicinal but in vindication of the offense...; and therefore this ignorance alone does not excuse from irregularity.* Nor does Schmalzgrueber speak otherwise, as though from the common opinion (book 4, title, no. 40): *The common doctrine with Covarruvias affirms that an ignorant person incurs the penalty alone*, namely, irregularity, *because these are not medicinal*, etc. Likewise La Croix (book 7, no. 482) gives as the reason why irregularity from an offense is incurred by one ignorant of it that *irregularity is not... a medicinal penalty requiring knowledge or contumacy*, etc.

These things having been established, and this question concerning irregularity now being omitted - for, as we shall see in its place with St. Alphonsus, it is equally probable that irregularity is not incurred in the aforesaid case - what remains to be said concerning the argument brought forward above by Sporer and Suarez, namely, that the impediment of crime is therefore incurred even by one ignorant of it because it has rather the nature of a remedy than of a penalty? What, I ask, is this: that the quality of a medicinal penalty, which previously, when the impediment of crime is treated, is brought forward as the reason why a penalty ought to be incurred even by one ignorant of it, is afterward, as we have seen with our own eyes, urged by the same authors as the reason why ignorance ought to exempt from incurring the penalty? Shall we hold firm that argument of theirs which they afterward employ to establish the opposite? Nor do they alone use it, but, what must certainly appear surprising, even those who defend that the impediment of crime is not incurred by one ignorant of it use the same argument taken from the nature of a medicinal penalty. For Schmalzgrueber (book 4, title 7, no. 58) presents their opinion thus: *They give the reason that the impediment of crime, from the disposition of ecclesiastical law, has the nature of a penalty for the crime perpetrated and of a remedy conducive to preserving the fidelity of marriages and the safety of spouses and to preventing various evils; but according to common doctrine, penalties, especially medicinal ones, established by ecclesiastical law are not incurred by those who invincibly are ignorant that they were established; therefore*, etc. This argument certainly ought to press the adversaries all the more validly because they not only concede each premise but assume it as most true and urge it for themselves against

others. And perhaps someone will think it must be attributed to the perceived weakness of the reasons for the affirmative opinion that Sporer (l.c.), after also mentioning without censure those who defended the opposite negative opinion, concludes: *Therefore I, with Father Gobat, would not fear to leave in good faith those who in good faith contracted while bound by the impediment of crime.*

What Wiestner objects (*On Conjugal Impediments*, part 2, no. 21) is of still less weight: that there is no parity with censures, irregularity, and deprivation of the conjugal debt, because censures require special contumacy, which ceases in one ignorant that a censure is attached to his offense. Krimer replies well (l.c., no. 1026): *Although censures require contumacy, nevertheless this does not essentially suppose an admonition or threat of punishment made by a man; for this fails in censures latae sententiae imposed generally by law, for incurring which the admonition and threat of the law itself, imposing the censure upon the delinquent by the fact itself, suffices. But this admonition and threat of the law also precedes the offense to which the impediment of crime is attached. Therefore here too that contumacy is present. If, therefore, a censure imposed by the law itself is incurred by one ignorant of it without another contumacy, the same must be said of this impediment. Therefore, by reason of contumacy there is no disparity in this respect between censures and this impediment.*

Others - see Diana, volume 2, tract 6, resolution 170, no. 3 at the end - employ this argument for the affirmative opinion: that the impediment of crime is not a penalty but an incapacity, or, if it must be called a penalty, nevertheless it is at the same time and principally an incapacity for contracting. But this reason proves little, because the incapacity itself was established by law as a punishment for the crime; and therefore what is required to incur the penalty is also required to incur the incapacity, and what exempts from the penalty will also exempt from that incapacity.

They further argue - see La Croix, book 6, part 3, no. 642 - from the practice and style of the Curia, because those guilty of this crime are never permitted to contract without a dispensation, as Pyrrhus Corradus testifies in *Practice of Apostolic Dispensations*, book 8, chapter 9, no. 17; therefore Diana (l.c.) holds the negative opinion as very prejudicial to the sacred tribunals of the Penitentiary and the Roman Dataria. To this objection it can be replied with Benedict XIV (*Canonical Question* 185, nos. 26-27) that the grant or denial of any dispensation or faculty by the Sacred Congregations in no way changes either the state of controversies or the condition of laws. Therefore, just as, according to the same Benedict XIV there, a dispensation granted or denied concerning irregularities or censures does not establish that the irregularity or censure was incurred, and the grant or denial of a faculty sought, for example, by a mendicant Regular who already possessed it by force of his privileges detracts nothing from the privileges of that Regular or of other Regulars, so neither does a dispensation granted for convalidating matrimony establish the preceding nullity of that matrimony, nor does a dispensation granted for contracting matrimony establish the certain existence of the impediment. And indeed, is it the practice of the tribunals of the Sacred Penitentiary or Dataria to command marriages to be celebrated without a dispensation when the petitioners have recourse to them for a dispensation even in a case of a doubtful impediment? And yet who is ignorant - see St. Alphonsus, book 6, no. 901 - that matrimony can be celebrated both validly and licitly without a dispensation with mere probability of the absence of an ecclesiastical impediment? But to what is added from Diana, Krimer replies well (cited book 4, no. 1023) that no prejudice or injury is done to those tribunals by this opinion; otherwise all opinions of the Theologians which sometimes deny the necessity of seeking a dispensation would have to be abolished. But no one contends that through the use of such opinions anything owed by right to those tribunals is withdrawn or denied.

Finally, others argue *ad hominem* from an absurdity: if a penal impediment necessarily requires knowledge of the penalty in the delinquent, the same would also have force regarding the impediment of affinity from illicit intercourse. For the solution of this difficulty someone perhaps would refer the objectors to what Engel has concerning this question (book 4, title 14, no. 11), for he cites Doctors who favored the opinion exempting the ignorant also from this impediment. But a reply of this kind is neither necessary nor opportune. For Krimer observes much better with others (l.c., no. 1018) that the incapacity from affinity does not of itself necessarily suppose any offense, but only the nearness of persons which flows from the commingling of blood; therefore affinity induces this incapacity equally whether it arises from licit or illicit commingling, although by the benignity of the Council of Trent the extension of the incapacity arising from a condemned union was, for just causes, restricted to narrower limits.

And let these things suffice both so that it may be established that Krimer did not say idly that the affirmative opinion concludes neither from certain or evident principles nor certainly and evidently, and also that the scandal of certain fainthearted men may be tempered, who are astonished and in some manner recoil when they hear that the opposite negative opinion not only has long been accustomed to be handed down as truly probable in the schools of the Roman Seminary under the presidency of its emeritus Professor, now Bishop of Loreto, the Most Illustrious and Most Reverend

Joseph Cardoni, but is also spontaneously admitted as such in the assembly of the Examiners of the Roman Clergy. You have a consequence of this opinion in the things which we brought forward a little above from St. Alphonsus (book 6, no. 901), and you have it indicated below (no. 789). Besides those cited here, you have in the praised Krimer, l.c., nos. 1014-1015, those among both the ancient and the recent writers who held this opinion. Compare also Pichler, who establishes and excellently vindicates this thesis (book 4, title 7, no. 6): *It is probable that the impediment of crime is not incurred by those who are ignorant that it was attached by law to their offense.* Reinhard Baumgartner also proposes and vindicates this thesis (*Conclusions from the Five Books of the Decretals*, book 4, title 7, conclusion 4); he published his work at Rome in the year 1759.

QUESTION 3. Do the laws of the Church constituting diriment impediments bind even in a case of the gravest inconvenience, for example, danger of death, etc.?

Reply. Yes, because from what has been said, ignorance, even complete, cannot render capable of that matrimony one who is rendered incapable by law; therefore much less can fear of harm, etc. Hence, if someone has contracted an impediment, for example, of affinity with his future bride through fornication with her sister, and the Superiors are unwilling to dispense from this impediment, he cannot marry her for any cause or fear [3].

[3] See, however, what the Author himself observed above, after St. Alphonsus, concerning a certain case of necessity, no. 771.

789. ○ **QUESTION 4. Is it licit to contract matrimony with a doubtful or probable impediment?**

Reply 1. More probably, yes, in a doubt, or probability, of ecclesiastical law concerning the absence of an impediment; because if perhaps the impediment is truly present, the Church is judged to supply the defect of the contract invalid according to Canon law, just as she supplies a defect of jurisdiction whenever the Doctors commonly hold that she supplies jurisdiction in the Sacrament of Penance where common error intervenes. Moreover, the opinion teaching that the Church also supplies in the present case of a doubtful impediment is generally received as probable by innumerable Doctors who favor it. - Thus Lacroix, no. 534. - St. Ligorius, no. 901, and others commonly [4].

[4] ** At this place the VV. admonish Father Gury (page 947, no. 158) that St. Alphonsus requires that the opinion concerning the absence of an impediment be universally, or at least certainly, received by Authors as probable. And they refer the reader to page 792.

Gury certainly does not speak of a doubtful probability. Moreover, what the opinion of the Doctors is concerning this matter may be seen above in the note to no. 724.

Reply 2. No, if there is question of probability of divine or natural law, for example, in the impediment of bond or of impotence, because then the Church cannot supply the probable defect, since that impediment does not depend upon the Church. Therefore the matrimony thus contracted would remain doubtful; and consequently it is never licit to receive a Sacrament with such a doubt [5]. Therefore, etc.

[5] St. Alphonsus (book 6, no. 902) judged that when a most grave cause urges, matrimony can be contracted with mere probability that an impediment does not exist, even if it is of divine or natural law, provided that there is also a declaration of the Supreme Pontiff as interpreter of divine law; and that this is established from the declaration of Urban VIII. In a doubt whether the marriages of certain infidel Indians were valid, and therefore whether those converted to the faith were bound to take the first of the several wives whom they had, or could choose whichever of them they wished, he replied that where the opinions of the Doctors on each side were probable, the Missionaries should follow the opinions more favorable to the barbarians according to the condition of the places and persons. You have the supplication presented to Urban VIII

by Father de Lugo, afterward Cardinal, concerning this matter, and the reply of the Pontiff, in Cardenas (*Theological Crisis*, part 4, dissertation 2, no. 552).

Nevertheless, it must be observed that Gregory XIII and the same Urban VIII had already given those Missionaries in addition the faculty of dispensing with respect to the bond itself of a matrimony contracted in infidelity and not yet consummated again after the conversion of both spouses, as we already saw in the note to no. 759. Therefore, the doubt, if any remained, concerning a bond perhaps existing with the first wife was provided for, or certainly could be provided for, by a dispensation at least as a precaution. Benedict XIV also recalls (*On the Diocesan Synod*, book 6, chapter 21, no. 6) that this faculty of dispensing was customarily granted to Bishops, Vicars Apostolic, and Prefects of Missions, expressed in these words: *Of dispensing with Gentiles and infidels having several wives, so that after conversion and baptism they may retain whichever of them they prefer, if she too becomes faithful, unless the first wishes to be converted.* These final words certainly do not indicate a spouse who was unwilling to cohabit without injury to the Creator, etc., and therefore one who could be said, according to the phrase of Paul, to depart; for thus no dispensation would have been necessary. And from the Acts of the Council of Lima - see the note to no. 759 above - it is established that a faithful person was permitted to cohabit with a spouse still infidel, at least for a time. Therefore the dispensation is referred to the case in which, not by force of the Pauline privilege, but by force of a Pontifical dispensation, the matrimonial bond, if any existed with the first spouse, was dissolved. But that Lambertini (l.c.), after bringing forward this faculty of dispensing, somewhat wonderingly observes that no mention is made in it of the infidel spouse having to be juridically questioned must be attributed to the prejudice which he had imbibed from Pontius, as it was possible to observe already in the note cited above.

Reply 3. No, also if there is question of probability of fact. The reason is that in probability of this kind the Church is not presumed to dispense. Moreover, the contrary opinion is not commonly received as probable, and otherwise excessive inconveniences would follow if, after the matrimony had been contracted, the error were discovered. - Thus commonly. - St. Ligorius, no. 902.

790. ◦ **QUESTION 5. Is it licit for spouses to use matrimony if, after the nuptials have been entered, a doubt concerning some impediment arises?**

Reply 1. No, until a sufficient inquiry concerning the truth has been made. If, however, only one doubts, although that party cannot seek the debt, the party must nevertheless render it to the other seeking it in good faith. - St. Ligorius, no. 903.

Reply 2. Yes, if, after serious diligence has been employed to discover the truth, the doubt still remains, because in a doubt one must stand for the validity of the act. Thus commonly against a few. - St. Ligorius, no. 904, etc.

791. ◦ **QUESTION 6. Is a matrimony contracted with an impediment believed to exist, but not existing, valid?**

Reply 1. If the contracting party is not altogether certain of the impediment but in some way doubts concerning it, the matrimony is valid. - Thus commonly with Lacroix, no. 525. - The reason is that the party contracts at least conditionally, namely, *insofar as I can*, although he does not advert to that condition; therefore, since the impediment does not exist, the consent is already absolute.

Reply 2. If the party contracts with certainty of the impediment, which he regards as of little importance, so that he determines to live in concubinage, it is certain that the matrimony is invalid.

The reason is that then the will to contract matrimony is not predominant. Reply 3. If the party contracts with certainty of the impediment, but grieving over the impediment and not daring to disclose it lest the matrimony be prevented or the party be defamed, or because of some inadvertence, the matter is disputed. More probably, the matrimony is valid because of the

predominant will to contract it. - Thus Lacroix, ibid. - Nevertheless, in practice, as a precaution the party should be induced to renew consent.

Errors Condemned by Pius IX — Concerning Matrimony and its Impediments

792. ○ Among the acts of Pius IX many things concerning matrimony are found, of which it is useful to report the principal ones.

I. In the condemnation and prohibition of the works of Nuytz, he speaks thus concerning this impious author in the Brief of the Apostolic See, August 22, 1851:

Many false things are also asserted concerning matrimony:

That in no way could it happen that Christ elevated matrimony to the dignity of a Sacrament;

That the Sacrament of Matrimony is nothing but something accessory to the contract and separable from it, and that the Sacrament itself consists in the nuptial blessing alone;

That by natural law the bond of matrimony is not indissoluble;

That the Church does not have the power to introduce impediments diriment of matrimony, but that this belongs to the civil power, by which existing impediments are to be removed;

That matrimonial causes and betrothals by their own nature pertain to the civil forum;

That in later centuries the Church began to introduce diriment impediments, not by her own right, but using that right which she had borrowed from the civil power;

That the Tridentine Canons (session 24, canon 4, On Matrimony), which inflict the censure of anathema upon those who dare to deny to the Church the faculty of introducing diriment impediments, either are not dogmatic or must be understood of this borrowed power;

That the Tridentine form does not bind under penalty of invalidity where the civil law prescribes another form beforehand and wills matrimony to be valid when this new form intervenes;

That Boniface VIII was the first to assert that a vow of chastity emitted in ordination renders nuptials null.

793. ○ II. In the Allocution of September 27, 1853, concerning the affairs of the Republic of New Granada (*Nouvelle-Grenade*), the Supreme Pontiff spoke thus:

> ... Since no Catholic is ignorant, or can be ignorant, that matrimony is > truly and properly one of the seven Sacraments of the evangelical law, instituted by Christ the Lord, and that therefore among the faithful matrimony cannot exist WITHOUT BEING AT ONE AND THE SAME TIME A SACRAMENT; and that for this reason any other union between a Christian man and woman, made by force of any civil law whatever, APART FROM THE SACRAMENT, is nothing other than a shameful and deadly concubinage, condemned for so long a time by the Church; and consequently that THE SACRAMENT CAN NEVER BE SEPARATED FROM THE CONJUGAL COVENANT, and that it belongs altogether to the power of the Church to decree all those things which in any way can pertain to that same matrimony, etc.

§ II. On the Impediments in Species

794. ○ Fifteen impediments diriment of matrimony are enumerated, expressed in these verses:

> Error, condition, vow, relationship, crime, Disparity of worship, force, Order, bond, propriety, Age, affinity, if clandestine, and impotence, Or if the woman has been abducted and not restored to a safe party: These forbid marriages to be joined and retract those already made.

We shall treat each separately.

Point I. On the Impediment of Error and Condition

A twofold error concerning matrimony is distinguished, namely: first, a substantial error, which concerns the person; second, an accidental error, which affects the qualities of the person. By condition, however, is understood a servile condition unknown to the other party.

795. **Principles.** - I. Every error concerning the person renders matrimony null by natural law, even if the error is altogether invincible. The reason is that on the part of the contracting party it removes voluntariness concerning the object of the contract, and therefore, consent being absent, the contract is invalid.

II. Error concerning the qualities of a person, whatever it may be, does not of itself invalidate matrimony. The reason is that error concerning qualities does not fall upon the object of the contract [1]; for that object is the person himself or herself with whom the contract is entered, as was just said, and not that person's qualities. Except the case in which a quality is explicitly intended as a condition *sine qua non*, as they say [2].

[1] You have a solid reason why the contract of matrimony ought to remain valid even if error concerning qualities is antecedent and gives cause to the contract in Molina (*On Justice and Law*, tract 2, disputation 259, no. 8, and disputation 252, no. 5) and Sanchez (*On Matrimony*, book 10, disputation 9, no. 20); but more clearly in Lugo (*On Justice and Law*, disputation 22, no. 88), who argues thus: *First, concerning the contract of matrimony and also concerning religious profession, or*

vows constituting the religious state, such as the simple vows of our Society, I think it must be said that if the error or fraud does not concern the substance, even if it gives cause to the contract, it does not render it invalid or to be invalidated.... The reason is that in those things which constitute a state firm and irrevocable by its nature, such as profession and matrimony, the will accommodates itself according to the nature of the thing at issue and consents without restriction or condition, but altogether absolutely and independently of conditions other than those which belong to the substance of the same contract. For from those conditions marriages and professions, and therefore the state itself, would remain uncertain, which is not according to the nature of the thing at issue. Therefore, whatever may be said of other contracts, concerning these it must altogether be said that they are not invalidated by fraud, even one giving cause to the contract, provided that it does not concern the substance. The inconveniences of an uncertain matrimony, as Lugo calls it, Schmalzgrueber indicates thus (book 4, title 1, no. 447): *If such an error vitiated matrimony, very many marriages would be dissolved, to the great harm of offspring, the greatest harm of the commonwealth, and public scandal, since error concerning a quality very frequently intervenes in this contract.* See also St. Alphonsus, book 6, no. 1012.

[2] Error concerning a quality renders matrimony invalid not only in this case, but also in another which the Author omits, although each case can be contained in that general, though somewhat obscure, rule that matrimony is invalidated because of error concerning a quality when an error of this kind concerning a quality passes into the substance. Therefore the first case, which the Author also intimates, is when the quality is a condition under which consent is given; for it is manifest that when the condition fails, the conditioned thing, that is, consent, also fails. The other case is when the quality determines the person with whom someone intends to contract; or when one neither knows nor determines the person with whom one contracts except from the indication and mark of that quality. Concerning this Pirhing says (book 4, title 1, no. 163): *If through the quality concerning which there is error a certain individual person is designated and conceived in the mind, who was previously unknown by sight, then the error redounds into an error of person.* Likewise Sanchez says sufficiently clearly (book 7,

disputation 18, no. 38): *To explain when error concerning a quality redounds into an error of person diriment of matrimony, I say briefly that this occurs when there is error concerning a quality which designates a certain person, who was not previously known to the contracting party apart from that quality* - namely, except from that quality - *and it is not established that the mind of the contracting party was to consent to the person present to him, whoever that person might be.*

III. Error concerning the servile condition of the other party dirimently invalidates matrimony by ecclesiastical law, as is established from book 4 of the Decretals, title 9. This impediment no longer has a place in Europe, where servitude has been altogether extinguished [3].

[3] This impediment has no place in Europe, not because the law ceases, but because occasion is commonly lacking, unless perhaps in parts of the Turkish Empire, or if any persons still reduced to servitude should come from elsewhere into other parts of Europe. According to the common opinion of the Doctors, error in this matter invalidates matrimony even if it was crass. See St. Alphonsus, book 6, no. 1019, and Schmalzgrueber, book 4, title 9, nos. 29-31. But if the contracting party knows the servile condition of the other, or if a union contracted in ignorance is afterward ratified once the error is known, it is certain according to the opinion of all that the matrimony is valid. By the disposition of Canon law, however, one knowingly contracting with a female slave becomes irregular (canon *Si viduam* 15, distinction 34; St. Alphonsus, l.c., no. 1018, and Schmalzgrueber, l.c., nos. 15-18); and in the second case consent would have to be renewed before the Pastor and witnesses, unless perhaps the nullity of the preceding contract were so altogether occult that it could not be proved; for then consent emitted anew by the free party would suffice. See Schmalzgrueber, book 4, title 3, no. 121, and title 9, no. 18.

Moreover, this impediment, as is evident, has force only with respect to the matrimony of a free person with a slave; for - and this must be carefully noted for places in which servitude still has force - marriages between slaves are to be held valid beyond controversy (Schmalzgrueber, l.c., no. 7; see canon 2, question 2, cause 29, and St. Thomas, II-II, question 104, article 5), even if they are contracted without the consent of the master (canon *Dignum* 1, *On the Marriage of Slaves*; Schmalzgrueber, l.c., no. 10). Therefore, just as a slave licitly contracts matrimony even against the will of his master, so the master sins gravely against justice if he either positively impedes the slave from matrimony or, after he has contracted it, treats him more harshly for this cause. Nevertheless, the master is not bound positively to consent and to undergo the prejudice consequently arising, according to the opinion of several Doctors, so that the slave could and should then prefer a spouse seeking the debt to a master seeking service; although Sanchez (book 7, disputation 21, no. 15) judges that this has place even if the matrimony is made without the master's consent. See Schmalzgrueber, l.c., no. 13.

But since the master has the right of selling slaves, the Doctors resolve the difficulty arising from this if matrimony was contracted without his consent as follows. First, if matrimony has not yet been begun by betrothals concerning the future on the part of the slave, the master can sell the slave, because he thus does not impede matrimony and otherwise uses his own right. Second, if matrimony has already been begun by betrothals concerning the future, it is not licit for the master to use that means, because the betrothed woman already has an acquired right that the slave stand by his promises and contract matrimony, which the master would impede by sending the slave elsewhere. Third, finally, if matrimony has already been contracted, some have thought that the slave can be sold because thus not the matrimony but only its use is impeded; others, however, more consistently deny this unless the wife can conveniently follow her husband. Schmalzgrueber, l.c., no. 14.

796. **Resolutions.** - 1. If someone thinks that he is contracting nuptials with Anna and marries Agatha, the matrimony is invalid. It is otherwise if, thinking that he had married a noble, wealthy, virginal, and peaceable maiden, he finds her on the contrary common, poor, corrupted, and quarrelsome.

2. A matrimony is valid if someone marries a widow while thinking that he is marrying an unmarried woman, even if he was induced into this error through fraud; for fraud indeed induces an obligation of repairing the injury, but it does not bring it about that consent does not concern the substance of the thing at issue. Indeed, this has force even if he certainly would not have wished to contract had he previously known her to be a widow; for attention

must be given not to what someone perhaps or even certainly would have done, but to what he actually did.

3. A noble maiden validly contracts with a wandering man who falsely boasts that he is noble and the possessor of many goods, and proves this by false testimonies. But that woman is not bound to cohabit with him and can immediately obtain perpetual divorce as regards bed and habitation. - St. Ligorius and all the others.

Point II. On the Impediment of Vow and Order

797. ○ I. A vow diriment of matrimony is only a solemn vow of chastity [1], emitted through profession in an approved Religion. For a simple vow of chastity, even perfect and perpetual, does not invalidate matrimony [2], but only impedes it, according to what was said above, no. 779.

[1] It is called a *vow of chastity*, not a *religious vow*, because religious profession invalidates matrimony precisely and only insofar as it includes a solemn vow of chastity. Therefore the vows, even solemn ones, of certain Equestrian Orders which profess only conjugal chastity do not invalidate matrimony. See Schmalzgrueber, book 4, title 6, no. 45.

[2] The simple vows which, by a special privilege of Gregory XIII, are emitted in the Society of Jesus after two years of novitiate must be excepted, as we said elsewhere in the note to no. 759 above.

II. The Order diriment of matrimony, however, is sacred Order, namely, the Presbyterate, Diaconate, and Subdiaconate.

The First and Second Lateran Councils speak concerning each of these impediments, and the Council of Trent, session 24, canon 9, says: *If anyone shall say that Clerics constituted in sacred Orders, or Regulars who have solemnly professed chastity, can contract matrimony, and that the matrimony contracted is valid notwithstanding ecclesiastical law or the vow, let him be anathema* [3].

[3] ** In the sole Clementine Constitution *On Consanguinity and Affinity*, a *latae sententiae* excommunication is imposed both against those who knowingly do not fear to contract matrimony with a nun and against nuns, Religious, and Clerics constituted in sacred Orders who contract matrimony. Moreover, this excommunication was not absolutely reserved, although the guilty could not be absolved before separation; but after separation they could be absolved by any confessor, unless perhaps the excommunicated persons had been denounced, for then the Bishop alone could absolve them. But under the new law this excommunication is altogether reserved to Bishops or Ordinaries. For in the Constitution *Apostolicae Sedis* issued by Our Most Holy Lord Pope Pius IX in the year 1869, among the *latae sententiae* excommunications reserved to Bishops or Ordinaries, this is read in the first place: *Against Clerics constituted in sacred Orders, or Regulars and nuns after a solemn vow of chastity, presuming to contract matrimony, and also all those presuming to contract matrimony with any of the aforesaid persons.*

798. **Questions. - QUESTION 1. By what law do the aforesaid impediments invalidate matrimony?**

Reply 1. According to the common opinion, the impediment of Order invalidates only by ecclesiastical law [4]. The reason is that, on the one hand, Order of itself is not repugnant to the conjugal state; nor, on the other hand, is there any divine prohibition found in Scripture or tradition. - St. Ligorius, no. 1059.

[4] See the note above to no. 41.

Reply 2. Since the solemnity of a vow belongs to ecclesiastical law, by that very fact the Pope can dispense, provided that a sufficient cause is present, that is, one proportioned to the gravity of the

matter [5].

[5] That the Pontiff can dispense from this impediment is the most received opinion of Theologians and Canonists, a long series of whom Sanchez cites (*On Matrimony*, book 8, disputation 8, no. 7); and indeed examples of this dispensation having been granted are everywhere available, as can be seen in Schmalzgrueber, book 3, title 35, no. 48.

QUESTION 2. What conditions are required for a solemn vow and Order to invalidate matrimony?

Reply 1. As regards a vow, it must have been emitted: first, voluntarily and deliberately; second, with the true intention of binding oneself; otherwise the vow would not be valid.

Reply 2. As regards Order, it is required: first, that it was received validly; second, that it was received voluntarily. - Thus all.

Point III. On the Impediment of Relationship

A threefold kind of relationship is distinguished, namely: first, natural; second, spiritual; third, legal. Concerning each separately.

Section I — On Natural Relationship

799. ◦ Natural relationship, or consanguinity, is the bond of persons descending from the same proximate stock through carnal generation, which arises from unity and participation in the same blood.

In consanguinity three things must be distinguished, namely: first, the stock, or the person from whom others derive their origin; second, the degree, or the measure of distance of one person from another; third, the line, or a series of persons descending from the same stock.

The line is twofold: one direct and the other collateral or transverse. The former is a series of persons of whom some descend from others, either immediately, as children from parents, or mediately, as grandchildren from grandparents or great-grandparents, etc. The latter, however, is a series of persons who, although they have a common stock, nevertheless do not descend from one another, as brothers, first cousins, etc.

A collateral line is equal or unequal according as the blood relatives are equally distant from the common stock.

800. **Statements.** - I. Consanguinity in the direct line, at least by positive law, invalidates matrimony indefinitely in any degree whatever. This is evident from Canon law in the *Response of Nicholas I to the Bulgarians*, chapter 37.

II. Consanguinity in the collateral line invalidates matrimony through the fourth degree inclusively, and not beyond. This is established from the Fourth Lateran Council and several places of Canon law.

III. Consanguinity invalidates matrimony also between those who were born only of the same father or only of the same mother; likewise between blood relatives born of illegitimate unions. The reason is that diversity of father or mother, or illegitimacy, does not prevent carnal consanguinity from existing between them.

Rules for Computing Degrees of Consanguinity

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

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

III. Rule. In an UNEQUAL collateral line, there are as many degrees as there are persons on the more remote side, always with the stock omitted. Hence if one is distant from the common stock by two degrees and his blood relative by three, they will be blood relatives to each other in the third degree, according to the saying: *The more remote degree draws the nearer to itself.* Therefore Berta will be related in the second degree to her paternal uncle, or her father's brother, because she is distant by two degrees from the common stock, namely, her grandfather, although the paternal uncle himself is separated by one degree from the same stock, since he is the son of the stock, or the brother of Berta's father. The same must be established concerning all others.

For computing degrees according to civil law, the number, or sum, of all the persons in each line is taken, with the stock omitted. Therefore in the direct line they are computed in the same manner as canonical degrees; in an equal collateral line, the canonical degrees are doubled; in an unequal collateral line, the lesser line is doubled and the excess of the greater is added.

802. **Questions. - QUESTION 1. By what law does consanguinity in the aforesaid degrees invalidate matrimony?**

Reply 1. It is certain that consanguinity in the direct line invalidates matrimony in the first degree by natural law and, more probably according to the opinion of certain Theologians [1], indefinitely also in the other degrees. But the case, as is evident, is most remote from practice.

[1] Others, however, think differently; and omitting for now the various opinions - in Schmalzgrueber, book 4, title 14, no. 30 - which extend the force of this impediment to more or fewer degrees, there are those who, with St. Thomas, think that only the first degree renders nuptials invalid by natural law. St. Alphonsus (book 6, no. 470) holds this opinion equally probable with the one which the Author reports, and several others with Schmalzgrueber (ibid., no. 31) judge it preferable to the others. But, as the Author well observes, these things contribute nothing to practice.

Reply 2. As regards the collateral line, in the first degree it more probably [2] invalidates by natural law, or at least by positive divine law, since the Church never dispenses so that brothers and sisters may

be joined, and infidels themselves detest nuptials of this kind; in the other degrees, according to all, it invalidates by ecclesiastical law [3], as is deduced from the practice of the Church, which dispenses from them.

[2] The Doctors disagree whether matrimony between brother and sister is invalid by natural law, and some call the affirmative opinion more probable, others the negative. Some contend that the Roman Pontiffs never dispensed as regards this degree, others that they sometimes dispensed. See Schmalzgrueber, book 4, title 14, nos. 45-46. And, as St. Alphonsus also observes (book 6, no. 470), St. Thomas also stands for the opinion which judges this union valid by natural law. It would indeed be useless to review the arguments of each side and the replies to the contrary reasons, which can be seen everywhere among the Doctors. See St. Alphonsus, l.c., and Schmalzgrueber, l.c., nos. 45-48. Meanwhile observe how much prejudice spontaneously flows from this against the opinion which, while denying to princes the power of establishing diriment impediments for infidel subjects, contends that natural law alone has force for them. For if this is presupposed, a matrimony contracted in infidelity between a brother and sister could not be held certainly invalid, however much it might be condemned by their laws; and since in a doubt, according to the general principle, one must stand for the validity of the matrimony, if both of them were converted to the faith they consequently could not be separated, even if that union were a scandal at once to infidels and to the faithful.

[3] Hence follows a consequence of the greatest importance. For since the laws of the Church do not bind those who are not baptized, marriages contracted between infidels who are joined in these degrees of consanguinity must therefore be held valid, considering natural law; and consequently, if they are converted to the faith, they are neither to be separated nor do they need a dispensation in order to remain in the union contracted. What is said concerning the impediment of consanguinity must also be said concerning the other impediments of merely ecclesiastical law.

The Doctors disagree whether marriages which heretics enter with an impediment of merely ecclesiastical law are to be held valid. See Schmalzgrueber, book 4, title 1, nos. 378-380, who, after bringing forward the reasons of each opinion, appears to incline toward the affirmative side.

QUESTION 2. How can degrees of consanguinity be found easily?

Reply 1. If the common stock is known, write that person's name on a sheet, and below it set down the generations and names of the persons descending on this side and that until you arrive at the persons to be joined in matrimony; from this you will easily compute the degrees.

Reply 2. If the stock is unknown, proceed thus: Write in the lower part of the sheet or table the name of the bridegroom on one side and the name of the bride on the other. Then above the name of the bridegroom note the names of those blood relatives who perhaps can be the cause why some relationship exists with the bride; do the same with respect to the bride. When this notation has been made, ascend on one side and see whether they meet in a common origin or stock from which the bridegroom and bride were mediately generated. Hence, after you have found it and at the same time observed whether the spouses are in an equal or unequal line, finally apply the rules to be proposed below, and the resolution of the doubt will be evident. Let the following be an example of these things:

Great-great-grandfather: Didacus Noel

Degree	Line of the bridegroom	Line of the bride
I	Great-grandmother: Julia Noel, wife of Titius Pascal	Great-grandfather: Arthur Noel
II	Grandfather: Maevius Pascal	Grandfather: Maurus Noel
III	Father: Paulus Pascal	Father: Hector Noel
IV	Bridegroom: Petrus Pascal	Bride: Maria Noel

In this example Petrus Pascal and Maria Noel are blood relatives in the equal fourth degree. But if Maria Noel descended immediately from Maurus Noel, Arthur Noel would be her grandfather and

Didacus Noel her great-grandfather, and therefore they would be blood relatives in the fourth degree, but touching the third.

803. ○ Another method is also indicated for recognizing degrees of relationship, namely, with a genealogical table or tree of consanguinity. Inspect the table and see in what line and in what cells you find the persons concerning whose relationship inquiry is made, and attend to how many degrees they are distant from the common stock. Example: You ask, for example, in what degree Titius the bridegroom is related by blood to Berta the bride, since you already know that the grandfather of the former was the brother of the great-grandfather of the latter. Place Titius in the middle cell N. Ascend to his grandfather; the latter's brother on the right side, in the cell where *paternal uncle* is marked, will be Berta's great-grandfather. Descend through his direct line by counting the grandfather, the father, and the bride herself; hence the common stock will be the one who is found in the third cell above the middle line. Thus you will count three degrees on the bridegroom's side and four on the bride's side; hence you will conclude that they are blood relatives in the fourth degree touching the third.

Imagine any other similar examples, placing either of the spouses in any cell, whether the middle one or one at the side, and ascending to the common stock so that from there you may descend to the other spouse; but pay no attention to the names which you find in the various cells encountered, because all of them will vary according to the cell selected, as is evident.

Consanguinity between the same persons can arise from a double or even multiple source, and then there is a double or multiple relationship, or an impediment to be disclosed in the petition for a dispensation. Thus, for example, if two brothers marry two women related by blood to each other, the children proceeding from each matrimony will be doubly related by blood to one another [4], and this circumstance must necessarily be declared.

[4] See several examples both of doubled and of tripled consanguinity in de Justis (*On Matrimonial Dispensations*, book 2, chapter 6, no. 61 and following).

Note. First, persons joined by a drawn line are among themselves in the direct line and with the others in the collateral line. Second, where the lines are joined, there the stock is found.

804. ○ **QUESTION 3. Who are collateral blood relatives?**

Reply. They are the following:

1. On the Father's Side

- PROPATRUUS, or the brother of one's great-grandfather (great-uncle).
- PROAMITA, or the sister of one's great-grandfather (great-aunt).
- PATRUUS MAGNUS, the brother of one's grandfather (grand-uncle).
- PROAMITA, the sister of one's grandfather (grand-aunt).
- PATRUUS, the brother of one's father (paternal uncle).
- AMITA, the sister of one's father (paternal aunt).
- PATRUELES, the children of brothers on the father's side (paternal first cousins).

2. On the Mother's Side

- PROAVUNCULUS, the brother of one's great-grandmother (great-uncle).
- PROMATERTERA, the sister of one's great-grandmother (great-aunt).
- AVUNCULUS MAGNUS, the brother of one's grandmother (maternal grand-uncle).
- MATERTERA MAGNA, the sister of one's grandmother (maternal grand-aunt).
- AVUNCULUS, the brother of one's mother (maternal uncle).
- MATERTERA, the sister of one's mother (maternal aunt).
- CONSOBRINI, the children of brothers on the mother's side (maternal first cousins).
- AMITINI, the children of brothers (first cousins).
- SOBRINI, their children (children of first cousins).
- NEPOTES, the children of brothers (nephews).
- PRONEPOTES, their children (great-nephews).

Degrees of Consanguinity

The consanguinity tree exhibits the following persons and canonical degrees from the person marked N:

Degree	Direct ancestors	Direct descendants
1	Father and mother	Son and daughter
2	Grandfather and grandmother	Grandson and granddaughter
3	Great-grandfather and great-grandmother	Great-grandson and great-granddaughter
4	Great-great-grandfather and great-great-grandmother	Great-great-grandson and great-great-granddaughter

Degree	Ascending paternal collaterals	Ascending maternal collaterals
2	Father's brother and sister (PATRUUS, AMITA)	Mother's brother and sister (AVUNCULUS, MATERTERA)
3	Grandfather's brother and sister (PATRUUS MAGNUS, AMITA MAGNA), and their children	Grandmother's brother and sister (AVUNCULUS MAGNUS, MATERTERA MAGNA), and their children
4	Great-grandfather's brother and sister (PROPATRUUS, PROAMITA), their children and grandchildren	Great-grandmother's brother and sister (PROAVUNCULUS, PROMATERTERA), their children and grandchildren

Degree	Collaterals in and below the generation of N
1	Brother (FRATER); sister (SOROR)
2	Paternal and maternal first cousins (PATRUELES, CONSOBRINI, AMITINI); brother's children (FRATRIS FILII); sister's children (SORORIS FILII)
3	Grandchildren or nephews (NEPOTES); children of first cousins (SOBRINI); brother's grandchildren (FRATRIS NEPOTES); sister's grandchildren (SORORIS NEPOTES)
4	Great-grandchildren or great-nephews (PRONEPOTES); their children (HORUM FILII); brother's great-grandchildren (FRATRIS PRONEPOTES); sister's great-grandchildren (SORORIS PRONEPOTES)

Section II — On Spiritual Relationship

Spiritual relationship is a certain proximity which, from the statute of the Church, arises from the administration and reception of Baptism and Confirmation between certain persons determined in Canon law.

805. **Principles.** - I. Spiritual relationship invalidates matrimony by ecclesiastical law: first, between the minister of the Sacrament and the subject and the latter's parents; second, between the godfather or godmother and the goddaughter or godson and their parents. Thus from the Council of Trent, session 24, chapter 2, *On Reformation*.

II. Several conditions are required for sponsors to contract spiritual relationship, namely: first, that they are baptized [5], for otherwise they are not subject to the Church; second, that they have the use of reason, because otherwise they are not capable of the office of sponsor; third, that they were designated by the parents, or even by the Pastor in their place or in their absence [6]; fourth, that the Baptism was valid [7].

[5] For contracting the relationship, Baptism is a necessary condition as regards all. Therefore, if either the one baptizing or the parents of the baptized child are infidels, even catechumens, the relationship is not contracted by them. Consequently, both a faithful person who baptized the child of an infidel and one who received that child from the sacred font could contract matrimony, not indeed with the baptized child, but with the child's parents after they had been converted to the faith. Schmalzgrueber, book 4, title 11, nos. 62-65.

It is certain, however, that this relationship is contracted even by a heretic, whether the heretic baptizes, or holds the child at the sacred font, or another baptized person, whether heretic or Catholic, either baptizes or holds the heretic's child. The reason is that whoever has the baptismal character is capable of this relationship and is subject to the laws of the Church. Sanchez, book 7, disputation 60, no. 2; Pirhing, book 4, title 11, no. 40. Moreover, the decrees of the Sacred Congregations are already known by which it is forbidden either that a Catholic lift the children of heretics in Baptism or that a heretic be admitted to this office in the Baptism of a Catholic.

[6] It is not actually necessary that someone be designated by the parents or by the Pastor; rather, it suffices that one who presents himself be admitted. See St. Alphonsus, book 6, no. 154, and the Declaration of the Sacred Congregation in Gallemart's note to chapter 2, session 24 of the Council of Trent, no. 7, or in Rebellus at the end of book 4, part 2, section 4, no. 95. It is generally necessary, however, that someone not merely assist materially and hold the infant, but have the intention or purpose of receiving the child or exercising the office of sponsor. Nevertheless, it is not further required that the sponsor have the intention of contracting spiritual relationship, because this is a consequence in no way dependent upon the sponsor's will, but upon the statute of the Church, and therefore it is contracted even by one ignorant of it. Schmalzgrueber, book 4, title 11, no. 66.

[7] Namely, if Baptism, which is the principal thing, does not subsist, neither can the accessory, namely, the relationship, subsist. Hence argue that if Baptism is conferred again conditionally and it is afterward discovered that the infant had previously been validly baptized, no relationship will be present. But so long as this is not established, the Church presumes the relationship. Understand this, however, when a true doubt is present, which St. Alphonsus (book 6, no. 151) calls a negative doubt, namely, when no solid reason favors the validity of the prior Baptism; for if the doubt is positive, namely, if probability is present on either side, anyone can resolve the doubt as he pleases, and, as St. Alphonsus has it, l.c., matrimony can be contracted as though no impediment existed, because no certain impediment is present.

The same must be said in two other cases, namely: first, if someone through error holds one infant for another; second, if someone holds an infant in private Baptism. For since in each case the Doctors disagree - see St. Alphonsus, book 6, nos. 149 and 151 - it must finally be admitted that the matter is doubtful. But if the relationship is doubtful, the impediment also will be doubtful; and a doubtful impediment, as St. Alphonsus himself observes, no. 151, is not an impediment of matrimony.

806. **Resolutions.** - 1. A godfather and godmother can enter matrimony with each other, but not with the father or mother of the baptized person.

2. Those who exercise the office of godfather and godmother when the solemnities of Baptism are supplied do not contract spiritual relationship, nor do those who receive the baptized person from the sacred font merely in the name of another [8].

[8] The latter point is confirmed by decrees of the Sacred Congregation, one of which Barbosa reports (*Collection of Apostolic Decisions* 177, no. 9), and two others Benedict XIV reports (*Canonical Question* 227). From another declaration of the Sacred Congregation, which Gallemart reports in the note to chapter 2, session 24 of the Council of Trent, no. 4, a man can exercise the office of proxy for a woman and conversely; in this case it is not forbidden that two men or two women actually lift the child from the sacred font.

3. Sponsors designated by the parents and unjustly rejected by the Pastor contract true spiritual relationship if they actually hold the infant; it is otherwise if they are justly rejected by the Pastor [9]. - St. Ligorius, no. 154.

[9] Although the Council of Trent, session 24, chapter 2, *On the Reformation of Matrimony*, decreed that only one person, either a man or a woman, or at most one man and one woman, should receive the baptized person from Baptism, nevertheless, it is established from the Declaration of the Sacred Congregation in the case of Aix, March 10, 1631 - Barbosa reports it in *Collection of Apostolic Decisions* 177, no. 10 - that this decree is not invalidating, provided that the third or fourth person was also designated, who will therefore contract the relationship.

4. A man who baptized a girl privately in a case of necessity can marry neither her nor her mother [10]. - Thus commonly. - St. Ligorius, *On Baptism*, no. 149.

[10] The same must evidently be said of a woman who privately baptized a little boy.

5. More probably, however, sponsors employed in private Baptism do not appear to contract this relationship. The reason is that in the Council of Trent there is question only of those sponsors who are employed in solemn Baptism, since none are required for private Baptism. - Thus more commonly with St. Ligorius, no. 149.

6. Sponsors do not appear to contract spiritual relationship unless they physically touch the baptized person, because otherwise they are not judged properly to receive that person from the sacred font [11]; for all the texts of Canon law by which spiritual relationship is established are expressed by these words: *one who receives, holds, lifts, touches*, etc. - St. Ligorius, no. 148, and others commonly.

[11] It is required that while the person is baptized, the sponsor so touch the baptized person that it can be said that the sponsor received, accepted, held, lifted, etc., that person in or from the sacred font. Or, if the custom is that the Priest holds the infant while the child is baptized, the sponsor must either present the infant to be baptized to the Priest or immediately receive the infant from the Priest's hand. Hence it would not suffice that the godmother mediately receive the child from the godfather, or conversely; nor would even a momentary touch of a finger or hand suffice, because this would not be to lift or hold, etc. It is not necessary, however, that the sponsor also answer for the infant, because this answering pertains to the sponsor of catechism, concerning whom something was said above in the note to no. 776. Schmalzgrueber, book 4, title 11, nos. 38-39.

7. Parents baptizing their children in necessity or in good faith contract no spiritual relationship by which they would be prohibited from the use of matrimony; for this prohibition has the

nature of a penalty, which is not incurred without fault. - St. Ligorius, no. 150. - Indeed, more probably they do not appear to contract the relationship even if deliberately, apart from necessity, they baptized their child [12]. - St. Ligorius, ibid.

[12] Since the matter is at least doubtful, the principle prevails that in a doubtful matter a certain right cannot be taken away from a spouse. Therefore it must be denied that through this an impediment is placed upon the use of matrimony. Schmalzgrueber, book 4, title 11, nos. 46-49.

Section III — On Legal Relationship

807. ◦ Legal relationship is the proximity of persons which arises from legal adoption. A twofold adoption is distinguished:

1. Perfect adoption, by which a person *sui iuris*, through legal form [13], passes into the power and family of the adopter and acquires all the rights of a legitimate child.

[13] Perfect adoption, which is also called arrogation, requires a rescript of the Prince; but for imperfect adoption, which is called simple, the authority of any competent judge suffices. See Schmalzgrueber, book 4, title 12, no. 3.

2. Imperfect adoption, by which an outside person who is not *sui iuris* is assumed as a child or grandchild, but does not pass into the family and power of the adopter and therefore does not become the latter's necessary heir by testament, although the person succeeds to the adopter intestate [14].

[14] On the contrary, through perfect adoption or arrogation, the adopted person becomes a necessary heir by testament to a fourth part of the goods. Schmalzgrueber, book 4, title 12, no. 3.

Principles

I. Legal relationship or adoption constitutes a diriment impediment by ecclesiastical law, although it was previously established in Roman law [15]. This is gathered from the *Response of Nicholas I to the Bulgarians*, etc.

[15] This relationship invalidates matrimony by ecclesiastical law insofar as Roman civil laws, through which this impediment was first introduced, were approved by ecclesiastical law.

II. Legal relationship, after the likeness of natural relationship, invalidates matrimony by Roman law between the following persons:

1. As though in the direct line, between the adopter and the adopted person and the latter's children while they are constituted under paternal power; second, between the adopted person and the children of the adopter, as though in the collateral line, while the latter's children remain under paternal power; third, between the adopter and the wife of the adopted person, and conversely between the adopted person and the wife of the adopter, as though in the direct line by way of affinity, as is established from the Declaration of the Sacred Congregation in *Hortana*, September 26, 1734 [16].

[16] These relationships, and consequently also the impediment arising from them, differ among themselves in that the first and the last are perpetual. Therefore the adopter, for example, cannot marry an adopted daughter or granddaughter even if the adoption has been dissolved by emancipation; nor can a stepson or daughter-in-law - understand, adoptive - be joined in matrimony with a stepmother or father-in-law, although the adoption has ceased either by emancipation or by the death of

the adopter. A dispensation of the Apostolic See would therefore be required, which, however, is granted with the greatest difficulty even in the latter case. The second relationship in the collateral line endures only so long as the adoption endures. See Schmalzgrueber, book 4, title 12, no. 26 and following, and St. Alphonsus, book 6, no. 1027, note 2. Adoption is dissolved in six ways according to Roman law: first, by the natural death of the adopter; second, by the civil death of the same; third, because of incestuous nuptials; fourth, because of a dignity, for example, the episcopal dignity; fifth, by sentence; sixth, by emancipation. Schmalzgrueber, ibid., no. 10.

808. **Questions. - QUESTION 1. Does legal relationship invalidate matrimony through the fourth degree between the adopter and the descendants of the adopted person, or conversely?**

Reply 1. It is certainly restricted to the first degree as regards the adopted person and the descendants of the adopter. This is established from Canon law.

Reply 2. It is disputed as regards the adopter and the descendants of the adopted person. Probably the relationship does not extend beyond the first degree, or beyond the adopted person, unless the adopted person has descendants constituted under his power [17], for nothing opposed to this decision is found in law. - St. Ligorius, no. 1027.

[17] You have a sufficiently clear rule if, with the more common opinion of Sanchez (book 7, disputation 63, no. 34), you establish that according to Roman law the impediment extends to those who, together with the adopted head of a family, pass into the power of the adopter.

The persons between whom matrimony can exist while the adoption remains can be indicated more easily. Thus, while the adoption endures, matrimony can exist: first, between the adopter and the mother of the adopted person. St. Thomas, *In IV Sentences*, distinction 42, question 1, article 2, reply to objection 5. Second, between the adopter and the daughter of an adopted woman, because the latter is not under the power of her mother and therefore does not pass into the power of the adopter. Third, between the adopter and an illegitimate daughter of the adopted person, because illegitimate children are not under the power of the father and therefore in the case the adopted person's daughter does not pass into the power of the adopter. Fourth, for the same cause, matrimony can exist between an illegitimate son of the adopter and the latter's adopted daughter. Fifth, between the son and daughter of two adoptive brothers, because these are bound to one another by no bond of relationship. Sixth, finally, between two adopted persons of one adopter, for this is forbidden by no law. Schmalzgrueber, book 4, title 12, no. 31 and following.

809. ◦ **QUESTION 2. Does imperfect adoption invalidate matrimony?**

Reply. More probably, no, with St. Ligorius, no. 1027, and others more commonly. The reason is that perfect adoption alone must be considered adoption properly so called [18].

[18] See in Schmalzgrueber, book 4, title 12, nos. 18-22, the reasons on account of which the Doctors commonly establish that the impediment arises from perfect adoption alone. He further observes with the common opinion of the Doctors that from simple or imperfect adoption there arises not only no diriment impediment, but not even an impeding impediment. Moreover, since Canon law introduced this impediment only through approval of Roman law concerning this matter, the Apostolic See alone can define with certain judgment the question whether this canonical impediment is incurred when in the civil code of various nations the nature of legal relationship differs more or less from arrogation or perfect adoption in Roman law. For until a definition of this kind is awaited, private Doctors, adhering to the general principles that matrimony is a thing very favorable and that therefore laws prohibiting and invalidating matrimony, whenever their sense is ambiguous, ought rather to be restricted, according to the fifteenth Rule of Law in the Sixth, than extended, will establish that more recent civil laws concerning legal relationship and the resulting obstacle to marriage are more readily to be interpreted of that simple adoption according to Roman law which produces no canonical impediment.

In France, moreover, perfect adoption does not appear to have force, since according to article 348 of the Civil Code the adopted person remains under his own right. For it is thus established: *The adopted*

person shall remain in his natural family and shall retain all his rights there. Hence it is disputed whether this adoption constitutes a diriment impediment. Carriere, Bouvier, etc., affirm it. But not a few others deny it, more probably as it appears.

And the opinion of the latter appears to be confirmed by this Decision of the Holy Office: *In the province of Bulgaria it is the custom that heads of families sometimes adopt for themselves as children, but without any solemnity of law, certain boys and girls. Persons adopted in this manner are commonly regarded among Catholics living there as legitimate children, so that they even succeed to the inheritance. The Reverend Lord Joseph Roveramus, missionary,... humbly petitioned the Sacred Congregation for the Propagation of the Faith that it deign to declare whether such an adoption produced an impediment of legal relationship. The same Sacred Congregation remitted the petition to the Sacred Congregation of the Holy Office. Then, in the General Congregation held before Our Most Holy Lord on Thursday, April 16, 1761, His Holiness... declared that in the aforesaid case no impediment existed.* Ferraris, *For Matrimony*, article 2, addition from the most recent Roman edition.

But the case of France appears altogether similar to the aforesaid case.

Several, in order to establish a diriment impediment, rely upon the reply of the Sacred Penitentiary to Lord Lasserre, Vicar General of Perigueux. But that reply by no means decides the matter. For the petitioner had asked thus: *Since in the same kingdom of France the law of adoption is now legally received, it is asked whether the canonical diriment impediment of adoption ought also to have place.* Reply: *Affirmatively, if there is question of an adoption legitimately entered.* But the petitioner did not propose what kind of adoption was at issue. Moreover, imperfect adoption, as it has place in law, is not called adoption simply, but arrogation [19].

[19] This reason, if it could of itself have any weight, would rather support the opposite opinion, since arrogation indicates perfect adoption, which induces an impediment.

Point IV. On the Impediment of Affinity

810. ◦ Affinity is the relationship which one contracts with the blood relatives of a person with whom one has carnal intercourse; or, it is the relationship arising from carnal intercourse between one person and the blood relatives of the other. Hence affinity arises between the man and the blood relatives of the woman, and conversely.

Hence:

1. Affinity arises both from licit intercourse, that is, conjugal intercourse, and from illicit intercourse, namely, from fornication, adultery, incest, etc.

2. Affinity can also be contracted between the spouses themselves if either has intercourse with one of the other's blood relatives.

811. **Principles.** - I. Affinity from licit intercourse invalidates matrimony through the fourth degree inclusively [1]; but that from illicit intercourse only through the second degree inclusively. This is established from the Fourth Lateran Council and from the Council of Trent, session 24, chapter 4.

[1] The Doctors observe that this decree is to be understood of the collateral line, but is not restricted to the fourth degree if there is question of the direct line. This observation, however, contributes nothing to practice, because matrimony between

persons related by affinity in the fifth or sixth degree in the direct line is scarcely probable, when the highest prosperity presented in Sacred Scripture is that of one who sees the fourth generation.

II. Affinity is not contracted except through perfect and consummated intercourse, or such that generation can follow from it of itself; because otherwise the man and woman do not strictly become one flesh [2]. - St. Ligorius, no. 1075.

[2] The Doctors agree unanimously in denying affinity if the woman alone has emitted seed; they do not agree if the man alone has done so. Concerning this controversy St. Alphonsus (book 6, no. 1075) concludes that each opposed opinion is probable; and it is certain that St. Thomas stands with those who require an act perfect on both sides. Therefore, since there is question of an impediment, according to the general principle it would have to be decided that the matter is doubtful, and consequently that the impediment is not present.

As regards practice, however, the rules which St. Alphonsus also has (l.c.) ought to prevail, namely: 1. when the intercourse is established, in the external forum there is always a presumption in favor of the impediment having been contracted; 2. the same is presumed even in the internal forum when the contrary is not established, because judgment is prudently made from things that commonly occur, especially if the woman admits that she experienced a great sensation of pleasure, even though she did not notice a seminal emission; 3. if it is certainly established that in fact emission did not occur on either side, in the forum of conscience a judgment in favor of the impediment cannot be rendered. Schmalzgrueber, book 4, title 14, nos. 71-73.

III. Affinity contracted between spouses cannot invalidate their matrimony, since it supervenes upon that matrimony already indissolubly contracted; nevertheless, it impedes its use as a punishment of the adulterous or incestuous spouse. This is established from several passages of Canon law, especially from the chapter *Si quis*, *On One Who Has Known*, etc. But this affinity, inasmuch as it is from illicit intercourse, by force of the decree of the Council of Trent, session 24, chapter 4, *On the Reformation of Matrimony*, is not contracted except from intercourse with the blood relatives of the other spouse in the first and second degrees. This is confirmed from an express Declaration of Gregory XIII reported by St. Ligorius, no. 1070.

812. **Rules.** - 1. Persons who are carnally joined are not properly related by affinity to each other, but are the source of affinity and occupy, as it were, the place of the stock.

2. Affinity cannot exist between two persons neither of whom has had intercourse with a blood relative of the other; therefore the blood relatives of one spouse have no affinity with the blood relatives of the other.

3. Two brothers can marry two sisters; a father and son can marry a mother and daughter; indeed, the son can marry the mother and the father her daughter. Hence the axiom: *Affinity does not beget affinity* [3].

[3] Formerly affinity begot affinity; hence a threefold kind of affinity prevailed and indeed invalidated matrimony. Innocent III abolished affinities of the second and third kinds in the Lateran Council. See canon *Non debet* 8, *On Consanguinity and Affinity*. What these affinities were and how they arose, see Schmalzgrueber, book 4, title 14, nos. 74-75.

4. The degrees of affinity are computed in the same manner as the degrees of consanguinity; indeed, affinity has no degrees of itself, but only by reason of consanguinity. Therefore, whatever the degree of consanguinity is with one person, such is the degree of affinity with the other.

5. One who has sinned with two sisters, or with first cousins, or with a mother and daughter, can marry none of them.

6. A man who has sinned with the sister, first cousin, or paternal aunt of his spouse is bound to render the debt when his spouse asks, although he himself cannot ask it. The reason is that, since there is question of a merely prohibiting law, the innocent person ought not to suffer from the fault of the guilty person.

7. One who sins with his own blood relatives is not deprived of the right to ask the debt, because he thereby contracts no affinity with his wife.

8. If each spouse has contracted affinity with the other through incest, neither can ask the debt, because each has lost his or her right; and therefore neither is bound, indeed neither can render the debt to the other. - St. Ligorius, no. 1069 and following.

813. **Questions. - QUESTION 1. By what law does affinity invalidate matrimony?**

Reply 1. According to the certain opinion of all, it invalidates by the law of the Church alone in the collateral line, and much more probably also in the direct line, if perhaps you except the first degree.

Reply 2. It is disputed as regards the first degree of the direct line [4]. Nevertheless, although repeatedly and earnestly petitioned, the Church has never wished to dispense if the affinity arises from legitimate matrimony, as Benedict XIV also

[4] Several theologians and canonists of great name who universally denied that matrimony with one related by affinity in the first degree of the direct line is invalid by the law of nature are cited by Schmalzgrueber (book 4, title 14, no. 103), who calls this opinion the more probable.

2. The lines drawn from one center to the opposite degrees exhibit the affinity of one spouse with the blood relatives of the other, and conversely.

Degrees of Affinity

The printed diagram places the man (VIR) and woman (MULIER) at its center. From each, direct lines ascend through degrees 1, 2, 3, and 4 to the other's blood relatives in the ascending line, and descend through degrees 1, 2, 3, and 4 to the other's blood relatives in the descending line. The crossed lines exhibit the man's affinity with the woman's blood relatives and the woman's affinity with the man's blood relatives.

NOTE. 1. This table presents the blood relatives of the man and woman in the direct line through the fourth degree. You will easily add the collateral lines, for example, brothers, first cousins, etc. testifies (*On the Diocesan Synod*, book 1, chapter 9), although it has not rarely dispensed in an affinity of this kind arising from illicit intercourse [5], for example, if someone should marry a wife after he has fornicated with her daughter or mother [6].

[5] The reason for this difference of practice is manifest; for affinity from fornicarious intercourse is not as perfect as that proceeding from legitimate and consummated matrimony, as Lugo observes with others (*Moral Responses*, book 1, doubt 40, no. 29), since in the former there is only a union of bodies, while in the latter there is also a partnership in a common life, as St. Thomas notes (*In IV Sentences*, distinction 41, question 1, article 1, minor question 3); but matrimony, as St. Thomas adds (l.c., minor question 4, reply to objection 2), causes affinity not only by reason of carnal intercourse, but also by reason of conjugal partnership, according to which matrimony is also natural.

Nevertheless, since very grave Doctors, as was said in the preceding note, deny that matrimony with a person so related by affinity is invalid by the law of nature, therefore, if two unbelievers who had contracted such a matrimony came to the faith, it would not be safe to separate them without a dispensation of the Pontiff, unless perhaps such marriages are invalidated among unbelievers by positive law. This is readily admitted, because, as the Doctors acknowledge, marriages of this kind were held to be shameful and abominable even among the Gentiles. See Schmalzgrueber, book 4, title 14, nos. 101-105.

Nevertheless, as Lugo observes (l.c.), since affinity from matrimony, whether or not it is a diriment impediment by the law of nature, is most certainly natural affinity, a person after Baptism could not therefore contract with the daughter or mother of the wife whom he had legitimately had during the time of his unbelief. Indeed, from the final chapter *On Divorces*, the Doctors extend this even to persons related by affinity in the fourth degree. The reason is that, since affinity from legitimate matrimony is, according to what has been said, a natural bond - see also St. Thomas, *In IV Sentences*, distinction 41, question 1, article 1, minor question 1 - it arises even among unbelievers and remains even after Baptism; but after Baptism they are now subject to the law of the Church invalidating marriages through the fourth degree. See Schmalzgrueber, l.c., nos. 86-89.

Indeed, according to those Doctors who teach with St. Thomas (l.c., minor questions 3 and 4) that this natural bond of affinity also arises from illicit intercourse, since according to Paul they then also become one flesh, it would further have to be said that if someone during the time of unbelief carnally knew a woman through fornication, after Baptism he could not marry her mother, daughter, or sister, because he contracted affinity with them. Although this affinity did not obstruct his matrimony while he was an unbeliever and was not bound by the laws of the Church, nevertheless, since it perseveres after Baptism, it also assumes the character of an impediment. Schmalzgrueber, l.c., nos. 86-89. But since Sanchez (book 7, disputation 65, no. 9), and with him Cardinal de Lugo (l.c.), Gonzalez, Navarrus, and others deny this natural affinity from illicit intercourse, this would be a doubtful impediment.

[6] When there is question of one who wishes to marry a daughter after he has fornicated with her mother, the condition is usually added in the dispensation, *provided that intercourse with the mother did not precede the birth of the daughter*, namely, so that the danger that someone might marry his own daughter may be guarded against. But the condition can be considered sufficiently fulfilled if intercourse with the mother preceded at such a time that this danger is entirely absent.

814. ○ QUESTION 2. Who are the various relatives by affinity?

Reply. They are the following:

- SOCER, a father by reason of affinity, whether of the married man or of the married woman (*beau-pere*).
- SOCRUS, a mother by affinity, as above (*belle-mere*).
- PROSOCER, a grandfather by affinity (*aieul par affinite*).
- PROSOCRUS, a grandmother by affinity (*aieule par affinite*). - GENER, the husband of a daughter (*gendre*).
- NURUS, the wife of a son (*bru, belle-fille*).
- PROGENER, the husband of a granddaughter (*mari de la petite-fille*).
- PRONURUS, the wife of a grandson (*femme du petit-fils*).
- LEVIR, the brother of a husband or wife (*beau-frere*).
- GLOS, the sister of a husband (*belle-soeur*).
- FRATRIA, the wife of a brother (*belle-soeur*).
- SORORUS, the husband of a sister (*beau-frere*).
- VITRICUS, the husband of one's mother (*beau-pere*).
- PRIVIGNUS, a son from the first matrimony of one's father or mother (*beau-fils*).
- NOVERCA, the wife of one's father (*belle-mere, maratre*).

815. ○ **QUESTION 3. Does affinity from a consummated but invalid matrimony invalidate matrimony through the fourth degree, or only through the second?**

Reply 1. By reason of affinity it invalidates only through the second degree, because there is no affinity from legitimate matrimony.

Reply 2. By reason of public propriety, however, it appears to invalidate through the fourth degree, because matrimony, even when invalid, invalidates through the fourth degree by force of public propriety. - See what is soon to be said, no. 818.

QUESTION 4. Has a wife who has been carnally known by a blood relative of her husband through force or fear lost the right to ask the debt?

Reply 1. No, if the force was absolute; for that impediment to asking the debt in the case of incestuous spouses has only the character of a penalty, but no penalty can exist where there is no fault. - Thus all.

Reply 2. No, even when the wife who suffered force or fear did not sin gravely, because a grave penalty bears no proportion to a light fault.

Reply 3. Indeed, more probably it appears that the answer must also be no if that wife sinned gravely, because grave fear excuses from human laws, even though it cannot excuse from the natural law. Therefore, since in our case it excuses from the law insofar as the law is ecclesiastical, it ought also to excuse from the penalty inflicted by that law [7]. - Thus more commonly with St. Ligorius, no. 1071, against some.

[7] Schmalzgrueber (book 5, title 39, no. 79) gives the reason more suitably when he says that one who has violated an ecclesiastical law because of grave fear is excused partly because one who sins thus cannot be regarded as contumacious and a despiser of ecclesiastical power, since he sins from the infirmity of nature rather than from the malice of an obstinate will; and partly because fear of this kind generally excuses from the observance of ecclesiastical law. From these things it is apparent that the reason adduced by the Author after St. Alphonsus and others does not always hold, and therefore another must be adopted, namely, the absence of contumacy; so that, even as regards ecclesiastical law, it must be established that it sometimes happens that one is excused from the penalty by reason of fear, although he is not totally free from fault.

Point V. On the Impediment of Public Propriety

816. ○ Public propriety is a relationship or a certain quasi-affinity which arises through a union, not of bodies, but of minds, both from betrothals between one betrothed person and the blood relatives of the other, and from ratified matrimony between one spouse and the blood relatives of the other spouse. By ecclesiastical law it invalidates matrimony.

Rules

1. Public propriety arising from valid betrothals, according to the new law of the Council of Trent, session 24, *On the Reformation of Matrimony*, chapter 3, invalidates matrimony only through the first degree [1].

[1] Namely, under the more ancient law, betrothals both *de futuro* and *de praesenti* invalidated matrimony through the fourth degree, and this even if they were invalid, provided that they were not invalid from a defect of consent. But the Council of Trent decreed thus (l.c.): *The Holy Synod wholly abolishes the impediment of public propriety where the betrothals will not be valid for any reason whatsoever; but where they will be valid, let them not exceed the first degree.*

2. Public propriety arising from ratified matrimony invalidates matrimony through the fourth degree inclusively. This is proved from several passages of Canon law [2].

[2] In fact, no text of Canon law is adduced to establish that the impediment of public propriety arises from ratified matrimony; and therefore the Doctors conclude that this is gathered by an argument *a fortiori*. For, as they say, the bond arising from ratified matrimony is stronger than that which arises from betrothals *de futuro*. Therefore it was equitable that, if an impediment is introduced by the latter, it should also be introduced by the former. But true affinity is not introduced by ratified matrimony, as is evident both from canon *Lex* 18, cause 27, question 2; from the Declaration of St. Pius V in the constitution *Ad Romanum*, July 1, 1568; and from the resolution of the Sacred Congregation in *Valentina*, 1607, reported by Benedict XIV (*Canonical Question* 291). Therefore it introduces at least the impediment of public propriety.

817. **Questions. - QUESTION 1. Does public propriety arise from conditional betrothals, or from betrothals dissolved by mutual consent or for any just cause?**

Reply to the first. No, unless the condition has been fulfilled, because when the condition has not been fulfilled true betrothals do not exist [3]. - St. Ligorius, no. 1061.

[3] You have this defined in the sole chapter, section 1, *On Betrothals*, in the Sixth: *Since no public propriety arises from conditional betrothals before the condition exists, just as none arises from betrothals lacking consent and from uncertain betrothals*, etc. That the impediment arises by that very fact after fulfillment of the condition, even without a renewal of consent, is gathered by an argument from the contrary. Schmalzgrueber, book 4, title 1, no. 108.

Reply to the second. Yes. The reason is that the impediment is contracted immediately after valid betrothals have been entered, and an impediment once introduced cannot be removed by the will of the betrothed persons or by another cause supervening upon them. Thus from a Declaration of the Sacred Congregation reported by St. Ligorius, no. 1063 [4].

[4] See Fagnanus on chapter *Ad audientiam*, no. 29, and Benedict XIV, *Canonical Question* 291.

818. ◦ **QUESTION 2. Does public propriety arise from private betrothals?**

Reply. Yes. The reason is that the Church admits no distinction between private and public betrothals.

QUESTION 3. Does public propriety arise from an invalid matrimony?

Reply. Yes, because before the Council of Trent propriety arose from a matrimony of this kind. But the Council changed nothing concerning this, although it restricted the ancient law concerning betrothals *de futuro* [5].

[5] Thus St. Pius V declared in the constitution *Ad Romanum*, July 1, 1568, in these words: *We, therefore... attending to the fact that under the designation of betrothals, which the said Council of Trent uses, matrimony contracted by words of the present is contained only improperly,... therefore... declare and define that the Decree of the Council of this kind is to be understood altogether and to proceed only in betrothals de futuro, but not in matrimony contracted as aforesaid; rather, in it the impediment still endures in all those cases and degrees in which it had been introduced by the ancient law before the aforesaid Decree of the Council.*

Except, first, if the invalidity arises from a defect of consent. Thus from Canon law. Hence the impediment of public propriety is not present if the matrimony was contracted either through error, or through fear, or with fictitious consent. - See St. Ligorius, no. 1062.

Except, second, if the invalidity comes from a prior impediment of public propriety arising from validly contracted betrothals [6]; for in this case an impediment is not introduced to the prejudice of the prior betrothals. - St. Ligorius, no. 1064. - Hence if Titius, for example, after entering betrothals

with Berta and abandoning her, marries her sister, he can, indeed must, return to the first woman; nor does he need a dispensation unless he consummated the matrimony.

[6] This is what is commonly meant when it is said that this impediment is not retroactive. Concerning this matter you have the express definition of Boniface VIII in the sole chapter *On Betrothals*, in the Sixth.

819. ○ **QUESTION 4. Does public propriety arise from civil matrimony?**

Reply. It appears that it must be affirmed, whether the contracting parties intend afterward to contract before the Church or not; for in the first case it is considered a betrothal contract, and in the second it is considered a clandestine matrimony, which, although invalid, according to what has been said invalidates matrimony through the fourth degree [7]. - See St. Ligorius, no. 1064.

[7] Elsewhere we have already observed, above in the note to no. 730, that it can scarcely happen that those who approach the magistrate to contract civil matrimony did not first agree concerning it. If indeed they agreed with each other to contract matrimony before the Church, betrothals had therefore already preceded from that time. But if this intention was lacking, not only had no betrothals preceded, which are a promise of matrimony and not of a concubinary union, but neither, according to the more solid opinion, do you have in the acts performed before the magistrate an invalid matrimony of this kind which would introduce the impediment of public propriety. See Appendix III at the end of this volume after page 1078.

Point VI. On the Impediment of Crime

The crime invalidating matrimony [1] is threefold, namely: 1. adultery; 2. homicide of a spouse; 3. both together, provided that certain conditions concur, which we set forth below.

[1] This is an impediment of ecclesiastical law; whether ignorance excuses from it was said above in the note to no. 788, question 2.

I. Adultery Alone

820. ○ For the impediment under this title to be incurred, it is required:

1. That the adultery be true, formal, and consummated. First, true, that is, that at least one of the fornicators be joined in a matrimony that is not merely putative but legitimate and valid, even if perhaps not consummated. Next, formal, and indeed on both sides, that is, that each know that one of them is married [2]. Finally, consummated, namely, with perfect carnal intercourse intervening [3]. I said *formal on both sides*, because odious things are to be restricted. - Thus commonly. - St. Ligorius, no. 1036.

[2] It therefore suffices that someone knowingly approach a married woman, nor is it necessary that the married woman know that the man with whom she commits adultery is also married.

Add with St. Alphonsus (book 6, no. 1036, V) that adultery must not be called formal if, even only from culpable and crass ignorance, the accomplice did not know that the other was married. For every ignorance of fact excuses from penalties unless it is affected ignorance; and, moreover, malice is required for formal adultery, and this is absent where ignorance is present.

[3] In the external forum this is always presumed. These statements therefore apply only to the forum of conscience; in which, if the Confessor truly discovers that the act was not consummated even on the woman's part - see what was said above in the note to no. 811, II - he ought not to raise a scruple concerning the impediment, whether there is question of a matrimony already contracted or one to be contracted. Schmalzgrueber, book 4, title 7, no. 50.

2. That there be a promise of matrimony made by one adulterer and accepted by the other at least through some sign [4], whether this promise precedes, accompanies, or follows the adultery; but if it precedes, it is required that it not have been retracted before the adultery. More probably, however, a renewed promise is not required [5].

[4] Both the promise and its acceptance must be true, and therefore a fictitious one does not suffice. See St. Alphonsus, book 6, no. 1039, and Schmalzgrueber, book 4, title 7, nos. 22-24, who confirms this from canon *Significasti* 6, *On One Who Has Married*, etc. Moreover, a conditional promise or acceptance does not suffice so long as the condition has not been fulfilled. It must be said otherwise if the added condition is fulfilled before the death of the spouse, and much more if before the adultery is perpetrated; for what certain authors say - cited by St. Alphonsus, l.c., no. 1040 at the end - namely, that even after the fulfillment of the condition the promise cannot be called pure, is entirely futile. See

Schmalzgrueber, l.c., nos. 25-28. And precisely the same must be held concerning the opinion of Pontius (*On Matrimony*, book 7, chapter 45, no. 2), that the silence of one party suffices for the promise of the other. For the acceptance of the promise here takes the place of an offense upon which a penalty is to be imposed; and it is very well known that offenses are not presumed. But in the case an offense would be presumed, because in silence we have merely presumed consent. Therefore the opinion does not stand. What is indeed astonishing is that Pontius, as we shall soon see, is the leader of those who deny that the impediment is incurred by one plotting the death of a spouse unless he outwardly signifies the intention of contracting matrimony; and he principally uses the reason that a merely internal act cannot be punished. But now, forgetful of himself, he contends that a merely internal and even merely presumed acceptance suffices for incurring the penalty! We have already observed elsewhere, however, that a blind fury for contradicting Sanchez has everywhere carried the man into absurdities and contradictions. Moreover, even if it existed, the probability of that opinion would be invoked here in vain. For mere opinion cannot be sufficient to establish a certain impediment. See Schmalzgrueber, book 4, title 7, no. 21.

[5] Some strength can also accrue to this opinion from canon *Significasti* 6, *On One Who Has Married*, etc. Nevertheless, since probability is also not lacking to the opposite opinion - see Schmalzgrueber, book 4, title 7, no. 30 - in a doubt whether a renewed promise occurred, according to the general canon the impediment can be considered merely probable and thus uncertain, which amounts to the same as none.

3. That both the promise of matrimony and the adultery occur while the prior spouse is living, or while the same matrimony endures [6]. - Thus from several passages of Canon law, for example, from canon *Si quis vivente* 5, cause 31, question 1; likewise from canon *Propositum* 1, *On One Who Has Married*, etc. - St. Ligorius, no. 1037 and following [7].

[6] Namely, both the adultery and the promise of matrimony must tend to the injury of one and the same spouse. This would not occur if Berta, for example, while her first husband was living, promised matrimony to Titius, but committed adultery with Titius when, after the death of the first husband, she had married Caius.

[7] Adultery invalidates matrimony by law not only when a promise of future matrimony is added, namely, of matrimony to be contracted after the death of the spouse - for if matrimony to be contracted while the other spouse was still living were promised, the reason for the impediment would cease, as Schmalzgrueber observes with the Doctors, book 4, title 7, no. 9 - but also if the adulterer, while the spouse is still living, contracts or rather attempts matrimony *de praesenti* with the adulteress. This is evident from canon *Cum haberet* 5, *On One Who Has Married*, etc. Nor does it matter whether he attempts to contract matrimony before the pastor and witnesses or clandestinely. For in establishing this impediment, regard is paid not to the validity of the matrimony or of the betrothals, if only a promise intervenes, which are contracted invalidly, as is evident, but to the reason of the crime. But if the accomplice was ignorant of the other's legitimate marriage when entering matrimony with that person, distinguish two hypotheses. Either, upon learning of the other's marriage, the accomplice commits adultery without retracting the matrimony, and thus the impediment will be introduced; for if the accomplice perseveres in the matrimony after acquiring knowledge, it is deservedly regarded as knowingly contracted, and, when joined with adultery, no less provokes the seeking of the other's death than if it had been knowingly contracted from the beginning. Or the accomplice retracts the matrimony before the adultery, or even ceases from the adultery, which previously

had been material and not formal, immediately upon learning of the other's marriage, and thus the reason for the impediment is absent. Compare Schmalzgrueber, l.c., nos. 12 and 15.

II. Homicide Alone

821. ○ Three conditions are required for an impediment to arise from this:

1. Mutual conspiracy. Hence it does not suffice that a spouse kill his or her own spouse if the person with whom the killer intends to enter matrimony is ignorant of or opposes this action. - Thus more commonly from canon *Laudabilem* 4, *On the Conversion of Unbelievers*. - St. Ligorius, no. 1033 [8].

[8] It is likewise the common doctrine that it does not suffice that someone, hearing of the killing of the spouse, approve and ratify it. Schmalzgrueber, book 4, title 7, nos. 56-57.

2. The intention of matrimony. - Thus commonly, although it is not expressed in the law. The reason is that the end of the law is that no one should kill his own or another's spouse in the hope of matrimony. Some with Pontius require that this intention have been manifested in some manner to the other party. St. Ligorius, no. 1034, says that it suffices that certain indications of this intention preceded, for example, familiar relations, love letters, etc. [9].

[9] As Schmalzgrueber says after Sanchez and others (book 4, title 7, no. 55; Sanchez, book 7, disputation 78, no. 19), this appears to be of little importance in practice. For in the external forum it is always presumed that the plotting of another's death was done with the intention of entering matrimony with another, if a woman and a man not her husband concur by common action toward the death of the innocent spouse, or when adultery preceded.

Observe further that these authors require this external manifestation of the intention only because, as they say, the Church does not punish merely internal acts. For this end, it certainly makes no difference whether this intention is manifested to the accomplice or to another person, and likewise whether it is signified in some manner before or after the crime. Moreover, while St. Alphonsus, no. 1034, merely requires that familiar relations, gifts, or love letters have intervened, it is plainly evident that it suffices that one signify that an intention of contracting matrimony is present to him, but it is not required that he signify that precisely for this reason he plots or has plotted the death. But if the matter is so, when can this manifestation of the intention ever be absent? For can matrimony be celebrated if one who is to contract it does not at some time disclose this will of his?

3. Death actually following from the physical or moral action of either accomplice. This is evident from Canon law. - Thus commonly.

III. Both Together

822. ○ When the crimes of adultery and killing a spouse are found joined together, mutual conspiracy for killing the spouse is not required, nor a promise of matrimony, but these three things suffice:

1. Adultery, such as was explained above. Hence it must precede the killing of the spouse [10]; it is not necessary, however, that it precede the plotting of the death.

[10] The reason is easily understood; for if the death of the spouse precedes, adultery, which consists in intercourse with the spouse of another, who is certainly living, can no longer have place.

2. A plotting of the death by one of the adulterers from the intention of matrimony; it suffices, however, that this intention be held by one of them. - Thus Gousset, no. 824; Carriere, no. 739; Collet, etc. - St. Ligorius further requires, as more probable, that this intention be manifested to the other party [11].

[11] What we said above in the note to no. 821, that this is not to be understood of the manifestation of the end which someone proposes to himself in killing, is confirmed from the fact that the matter proceeds equally even if the killing occurs without the knowledge of the accomplice in adultery. Finally, observe that, in favor of the opinion which requires the signification of the intention, not only the Salmanticenses and Sanchez but also Vasquez, who has nothing at all concerning this special question, are falsely cited in St. Alphonsus, no. 1036, VI; just as Pontius (book 7, chapter 45, no. 5) wrongly cites St. Thomas for the same point (*Supplement*, question 60, article 2). For the Holy Doctor indeed speaks of the intention, but he has not even a word concerning the external manifestation of the intention.

The VV. observe here (page 806, in the note) that the Salmanticenses alone are cited by the Holy Doctor directly and most correctly, as they say.... Therefore there is no need for us to inquire whether the authors brought forward by the Salmanticenses in favor of this opinion are rightly cited, nor indeed....

Reply 1. Even this observation of the VV. takes its origin from their preconceived opinion, namely, that when it is indicated in these Notes that certain citations are less pertinent to the matter, this must be attributed to a desire to censure the Holy Doctor Alphonsus and not to a concern to place faithfully before the eyes of the reader the genuine state of the controversy. Is it not intimated in this very little Note that St. Thomas is gratuitously cited by Pontius, concerning which otherwise the Holy Doctor Alphonsus says nothing?

Reply 2. What the VV. say, that the Salmanticenses are most correctly cited by the Holy Doctor, is not altogether true. For the Holy Doctor (l.c.) writes: *It is required, VI, that the killing have been done with the intention of marrying the adulteress, at least on the part of the killer, provided that he externally manifested such an intention TO THE OTHER PARTY*, that is, to the adulteress. But the Salmanticenses by no means speak of a manifestation of the intention made to the adulteress, but generally of some external sign of the internal intention, as was said in the note to no. 821. Thus they write (*Treatise* 9, chapter 12, no. 53): *It is required, however, that such an intention be manifested externally, because the Church cannot punish except what it can know.*

Reply 3. What the VV. then wish to cast back upon the Salmanticenses as an error in the citations, which even in St. Alphonsus do not pertain to the matter, must likewise not altogether be admitted. For St. Alphonsus here also cites Sanchez and Dicastillus, and he had also cited Sanchez in *The Apostolic Man*, treatise 18, no. 63. But the Salmanticenses cite neither Sanchez nor Dicastillus there. Therefore neither is what the VV. say true, that the Salmanticenses alone are cited directly by the Holy Doctor. For he brings forward these two on his own account and has not borrowed them from the Salmanticenses. But what the VV. add (l.c.), that Sanchez is expressly cited by St. Alphonsus in the preceding no. 1034 in favor of the opposite opinion, merely shows that the things contained in no. 1036 do not cohere with what we see written in no. 1034.

The VV. conclude in these words (l.c.): *But whether the doctrine of St. Alphonsus with the Salmanticenses is TO BE SPURNED, namely, that it is more probably required that there be an external signification of the intention, because the Church is not accustomed to punish merely internal acts, let others judge according to their wisdom.*

Reply. The question is not about doctrines TO BE SPURNED, because contempt contributes nothing to resolving controversies, but about assigning to reasons their proper weight. Now, of the authors cited by the Holy Doctor, apart from the Salmanticenses, only Pontius and Perez remain after Vasquez, Sanchez, and Dicastillus are removed. But Pontius, as we saw above in the note to no. 820, casts himself by this into open contradiction; and Perez casts himself into precisely the same contradiction, This impediment, which is called *both together* because of the double crime united, as Perez (disputation 33, section 2, no. 8, and section 5, no. 4), who freely copied from Pontius. Nor perhaps is the argument employed by St. Alphonsus altogether free from an inconvenience of this kind, namely, that the Church is not accustomed to punish merely internal acts. And indeed, where he asks (book 6, no. 1134) whether, when a dispensation is petitioned for matrimony to be contracted between relatives, the incestuous intercourse which indeed occurred between them with the intention of obtaining the dispensation more easily must be expressed, although this evil intention was conceived only in the mind, he contends that it must be expressed in the petition, and indeed under pain of nullity. And certainly, in order that the Holy Doctor may be consistent with himself, he replies to the opposing argument, that the merely internal crime of that

depraved intention is not subject to the power of the Church, that there is question here not of a penalty but of a dispensation, which is denied in the case. But is the denial of a dispensation not a penalty? Did he not himself premise that the Pontiff punishes this crime when he imposes both a greater penance and a monetary compensation?

Moreover, the argument which Pontius, afterward copied by the Salmanticenses, Perez, and St. Alphonsus, derives for the present matter from the fact that the Church cannot punish merely internal acts because it cannot know them is founded upon an equivocation. Indeed, theologians who hold, with whatever degree of probability, that only acts external in some manner are the object of human law do not assert this concerning just any manifestation of an interior act. Let a merely mental or internal heresy be an example. For we all agree that this is not subject to the penalty of excommunication, just as a merely internal sin is not. But I ask: does this sin become external so that it is subject to excommunication because someone manifests that he committed this merely internal sin? Certainly an act of sin is not called exterior because it becomes manifest in any manner whatsoever, but because in the moral order it is one and the same with the interior act, so that it constitutes one total act with it. Now, in the present case, the interior act consists in someone's plotting a killing from the intention of matrimony with the adulteress. It is therefore the mere will, or rather the intention of the end, insofar as in his mind he chooses and directs the killing of his spouse as a means to this end. But what, finally, will be the exterior act in the case by which that interior intention so discloses itself that it constitutes one moral act, and thus can in some manner be called the exterior act of the intention? Not the killing of the spouse, because that spouse could have been killed for another end. Not the contract of matrimony itself with the adulteress, because it has no necessary connection with the will of the chosen means, nor is it of itself the exterior act of that intention. It remains, therefore, that this intention be indicated by some other sign. But whatever sign you devise, it will never be such that it constitutes one total act in the moral order with the interior intention. It will be a signification or confession of the intention extrinsic to the act of intention, but by no means the exterior act of the intention. Therefore, once the equivocation or confusion is removed between the interior and exterior act insofar as these two constitute one and the same moral act, and a manifestation wholly extraneous to the internal act, which consequently contributes nothing to constituting that same act, that argument of Pontius plainly collapses. For when it is said that the Church punishes, for example, an exterior act with censures, what is understood is not the confession or expression of an internal sin, but the exterior act of sin itself, constituting one and the same sin with the interior act.

From these things it can rather be concluded that a new argument arises here against that opinion which denies to the Church power concerning merely internal acts, concerning which see volume I, no. 89. For it is the unanimous opinion of all the Doctors that the impediment of crime is incurred according to the foregoing when it is established that the spouse was killed from the intention of matrimony with the adulteress or accomplice in the killing. But that intention, which assumes the killing as a means for attaining the end of obtaining that matrimony, can indeed be narrated or manifested, but does not of itself have an external act which can be called an external sin corresponding to the depraved act of the internal will. Therefore by the fact itself all unanimously admit and profess the power of the Church over merely internal acts.

3. The death following from the plotting of one of the adulterers, in the same manner as was said above concerning homicide alone. Thus from the same law. - See St. Ligorius, no. 1036. constitutes a single impediment. But if both adultery and homicide separately have their own conditions, as set forth in no. 821 or 822, they introduce a double impediment.

823. ◦ Hold all these things in memory in these fewer words:

1. Adultery with a promise of matrimony accepted by the other party.

2. Homicide from common conspiracy and with the intention of contracting matrimony, held by at least one party and manifested.

3. Both together with a view to matrimony, but without conspiracy and a promise of matrimony [12].

[12] Since this impediment of crime is of ecclesiastical law, it has no place among unbelievers, as St. Alphonsus also touches upon from the common doctrine (book 6, no. 1037), even if they afterward come to the faith. The same must be said if, as

regards the first of the received causes of this impediment, either one of the two, namely, either the adultery or only the promise, was made after Baptism. See Schmalzgrueber, book 4, title 7, no. 3. Likewise, as regards the third cause, if the believer was not a participant in the killing which the unbeliever perpetrated. Schmalzgrueber, ibid., no. 46. But if a believer, after matrimony has been promised, commits adultery with an unbeliever, and likewise if a believer, as regards the third cause, perpetrated the killing, or, as regards the second cause, was a participant in the plotting or killing, the believer incurs the impediment, by which consequently, although indirectly, the unbeliever also is bound, just as happens in the impediment of disparity of worship. Indeed, this has place even if a believing wife did this so that her unbelieving husband, after afterward entering matrimony with her, might be converted to the faith, as is expressly contained in canon *Laudabilem* 1, *On the Conversion of Unbelievers*, where the Pontiff gives this reason: that the Church does not wish to compensate such a loss with such a gain. See Schmalzgrueber, l.c., nos. 46-48.

Point VII. On the Impediment of Disparity of Worship

Disparity of worship is understood in general as a diversity of religion between the contracting parties. But here it is properly understood as the disparity which intervenes between a baptized and a non-baptized person. Nevertheless, we shall also speak here of disparity of worship between baptized persons contracting matrimony, or of mixed marriages.

824. **Principles.** - I. Disparity of worship which exists between a baptized person and an unbeliever or non-baptized person renders matrimony invalid. Thus from unwritten law, that is, from custom having the force of law [1]. - See St. Ligorius, no. 1044. - This is established from the common doctrine of the Holy Fathers and theologians [2], and Benedict XIV asserts that it is well established in the letter to the Cardinal of York, section 10.

[1] Since this impediment seemed to rest upon custom, but custom has no force in places in which, far from having become prevalent, it has not even begun, this gave rise to the fact which Diana (volume 6, treatise 1, resolution 15, no. 2), Verricelli (*On Matrimony*, question 175, no. 6), Clericatus (*On Matrimony*, decision 26, no. 23), and, after them, Benedict XIV (constitution *Singulari Nobis*, February 9, 1749, section 19) relate: that certain grave theologians, among whom was Lessius, in a consultation held at Rome, judged that disparity of worship among the Chinese and Japanese in those beginnings of conversion was not a diriment impediment, and that in these circumstances the bishops there could suspend the promulgation of the law. But, as Benedict XIV adds (ibid.), an end was placed upon the question by decreeing that the custom's not having been received could bring it about that, when the Chinese and Japanese began to embrace the Catholic faith, the Holy See could give the Apostolic Vicars a faculty by which they might dispense them from the impediment of disparity of worship. Benedict XIV further relates from documents printed at Paris in the years 1627 and 1676 that this faculty was granted; and several grants of this kind may be seen in Father Perrone (*On Matrimony*, book 2, section 1, chapter 7, article 2).

Moreover, since the Holy See under Clement XIII, through an instruction sent to missionaries from the Congregation of the Holy Office, prescribed that if marriages between Catholics and unbelievers happened to have been contracted without a dispensation, the consent would afterward have to be renewed, it is clear from this that there too this impediment was thereafter held to be diriment.

[2] Namely, the theologians establish not only from the doctrine of the Fathers but also from Sacred Scripture that marriages of this kind are prohibited by both the natural law, the positive divine law, and also the canons of the Church, and thus are illicit. Concerning this matter see Sanchez, book 7, disputation 71, and Schmalzgrueber, book 4, title 6, nos. 121-124. But at the same time they admit that from none of these sources can it be gathered that those marriages are also invalid; and, as Benedict XIV says in the constitution cited by the Author, since that impediment was not established by Canon law, it remains that it be found to have been received and confirmed by the common custom of the Catholic Church.

II. A diversity of religion between baptized persons does not constitute a diriment impediment. This is proved from the fact that marriages between Catholics and heretics are declared invalid by no law or custom. - Thus the unanimous consent of the theologians.

III. A diversity of religion between Catholics and heretics or apostates constitutes an impeding impediment. This is gathered both from the practice of the Church, which has always turned the faithful away from these marriages with the greatest solicitude, and from the express Declaration of Benedict XIV, who calls these unions detestable, which Holy Mother Church has perpetually condemned and forbidden. Bull *Matrimonia*, concerning the marriages of Holland, November 4, 1741.

825. **Questions. - QUESTION 1. By what law is matrimony between baptized and non-baptized persons invalidated?**

Reply. It is certain that it is invalidated by ecclesiastical law alone [3]. For in the first centuries of the Church this impediment did not exist, and several marriages of this kind are read of as approved in ecclesiastical history, such as the matrimony of St. Monica with Patricius [4]. - This is also confirmed from the Declaration of Pius VI in the letter to Cardinal de Frankenberg, *Exequendo*, July 23, 1782 [5].

[3] Catharinus with a few others cited by Sanchez (book 7, disputation 71, no. 6) preferred to hold that these unions are invalid by divine law; Schmalzgrueber reports and refutes their reasons (book 4, title 6, no. 126 and following). For the Doctors who support the opposite common and true opinion, see Sanchez, l.c., no. 7.

[4] See several examples of this kind, and testimonies of the Holy Fathers concerning the same matter, in Schmalzgrueber, book 4, title 6, nos. 120-125.

[5] The Declaration of Pius VI does not concern the impediment invalidating marriages between believers and unbelievers, but the impeding impediment between Catholics and non-Catholics.

826. ○ **QUESTION 2. To whom belongs the faculty of dispensing from such an impediment?**

Reply. To the Roman Pontiff alone, with bishops altogether excluded unless they have obtained this faculty from the Supreme Pontiff. Yet it was never granted to them by the Holy See, although they petitioned for it most urgently, as Pius VII testifies in the letter *Vix nova* of February 17, 1809, to the bishops of France [6].

[6] The reply of the Author, as is evident, concerns only marriages of Catholics with non-Catholics; for we already said in the note to the preceding number that, among barbarous nations, the faculty of dispensing in marriages of Christians with unbelievers had several times been given to bishops, Prefects of Missions, and missionaries among those peoples. See Perrone, *On Matrimony*, book 2, section 1, chapter 7, article 2.

827. ○ **QUESTION 3. Under what conditions is the aforesaid dispensation granted?**

Reply. Three things must be present: 1. that the danger of seduction be absent for the Catholic party; 2. that the children of both sexes to be born of the matrimony are to be educated in the Catholic religion; 3. that there be a grave reason. These are established from the practice of the Church. See the letter of Gregory XVI to the Archbishop of Freiburg, May 23, 1846. Hence the error is evident of those who believe that they satisfy God and the Church if they instruct sons in the religion of the father and daughters in the religion of the mother [7].

[7] These things likewise concern only a dispensation for marriages between Catholics and non-Catholics. But from several Instructions, which you also have in Father Perrone (*On Matrimony*, book 2, section 1, chapter 7, article 2), the following conditions are found prescribed as to be observed in dispensations concerning marriages between Christians and unbelievers: 1. that cohabitation with the unbeliever would bring neither insult to the Creator nor danger of perversion; 2. that the offspring would be instructed in the Christian religion; 3. that a dispensation would be granted only in places -

understand a Province, Vicariate, etc., but not a village in which there might happen to be more Christians - where there were more unbelievers than Christians; 4. that the dispensation would be granted only for grave causes, so that a dispensation would rather be given from impediments of consanguinity or affinity if marriages with unbelievers were avoided by this means; 5. it is sometimes added that there be a probable hope of the conversion of the unbelieving contracting party.

828. ○ **QUESTION 4. Is a matrimony entered between Catholics and heretics valid if, after a dispensation has been obtained, the heretical party is unwilling to acquiesce in the condition imposed by the Church, namely, that the children OF BOTH SEXES be educated in the Catholic religion?**

Reply. Yes. For there is question of a merely impeding impediment, and consequently this condition does not affect the validity of the matrimony.

QUESTION 5. Can the Pastor assist at a mixed marriage if a dispensation has intervened?

Reply. Yes. Thus the Sacred Congregation of the Inquisition replied on December 20, 1838: *If the other party is Catholic, a dispensation having been obtained from the impediment of mixed religion and the customary clauses and conditions having been observed, it is lawful.*

829. ○ **QUESTION 6. How ought the Pastor to conduct himself in these circumstances?**

Reply. The celebration of the matrimony ought to take place before the Pastor and two witnesses according to the prescriptions of the Holy Council of Trent, but outside the church, under which the sacristy is included, and without the blessing of the Pastor. These are the very words of the instrument of dispensation composed concerning the impediment of mixed religion according to the instruction of the Sacred Congregation of the Inquisition. It is also established from the Decision of the Holy Office of November 25, 1838. Hence it is evident that the Priest cannot then wear the stole and surplice [8].

[8] Nevertheless, in the Instruction of November 15, 1858, given by order of Our Most Holy Lord Pope Pius IX to all archbishops, bishops, and local ordinaries concerning mixed marriages, the following is contained concerning the present matter: *But if in some places the sacred Prelates recognize that the same conditions cannot be fulfilled without graver losses and evils arising from them, in this case alone His Holiness, for avoiding greater losses and evils of this kind, commits to the prudent judgment of the same sacred Prelates that they themselves, while the cautions concerning removing the danger of perversion from the Catholic spouse, concerning the conversion of the non-Catholic spouse being sought as far as possible by the Catholic spouse, and concerning all the offspring of both sexes being educated altogether in the holiness of the Catholic religion always remain firm and are most diligently observed, judge when the aforesaid conditions of contracting these mixed nuptials outside the church and without the blessing of the Pastor cannot be fulfilled, and when in entering these mixed marriages the custom of employing the rite legitimately prescribed in the Diocesan Ritual for marriages to be contracted can be tolerated, the celebration of Mass, however, always being excluded.*

QUESTION 7. Can the banns be proclaimed?

Reply. No. This is established from the same instrument, in which one reads: *the proclamations being omitted*. It is also confirmed from the letter of Pius VI cited above to Cardinal de Frankenberg.

830. ○ **QUESTION 8. Can the Pastor assist at the matrimony if both parties are unwilling to consent to the Catholic education of the offspring, but the heretical party altogether demands that the offspring of his or her sex follow his or her religion?**

Reply. No; rather, he ought to abstain from every intervention. Thus the Sacred Congregation of the Inquisition, June 17, 1829 [9].

[9] But in the instruction added to the Letters of Gregory XVI given to the Primate and Bishops of Hungary on April 20, 1841, the following is contained: *His Holiness declared that it can be tolerated that, whenever, from the condition of times, places, and persons, a matrimony of a non-Catholic man with a Catholic woman, and conversely, although the necessary cautions have been omitted, cannot be impeded without graver danger, and moreover it appears expedient for the utility of the Church and the common good that it, although forbidden and illicit, be contracted before a Catholic pastor rather than before a non-Catholic minister, to whom the parties would easily have recourse, the same Catholic pastor, or another priest acting in his place, may be present at the matrimony with material presence only, no ecclesiastical rite being employed, just as if he acted only as what they call a qualified or authorized witness, namely, so that after hearing the consent of each spouse he may thereafter, by reason of his office, enter the validly performed act in the register of marriages.* Reported by Roskovany, volume 2, page 818.

QUESTION 9. If a dispensation from the impediment of mixed religion has not been obtained, can the Pastor assist if the law prescribes his assistance?

Reply. This regularly cannot be done unless the Pastor intervenes as a civil magistrate. Thus the Sacred Congregation of the Inquisition, December 20, 1838. Nevertheless, the Supreme Pontiffs are accustomed to permit assistance of this kind where necessity requires it, provided that the promise of each party concerning the education of the offspring in Catholicism has first been altogether required. Thus Pius VII granted to Pastors who were living in Russia and Germany the faculty of assisting, if they were compelled, at mixed marriages entered without a dispensation having been obtained. Nevertheless, the presence of the Pastor does not prevent the spouses contracting in this manner from sinning gravely. Gregory XVI confirmed this.

QUESTION 10. Can a Catholic who contracts these nuptials without a dispensation afterward be admitted to the Sacraments when he wishes to partake of them?

Reply. Yes. This is established from the cited letter of Pius VI to Cardinal de Frankenberg, in which the following is contained: *To this we say that, when he demonstrates that he repents of his sinful union, this can be granted to him, provided that before confession he sincerely declares that he will procure the conversion of his heretical spouse, renew his promise concerning the education of the offspring in the orthodox Religion, and repair the scandal given to the other faithful. If such conditions concur, We do not oppose the Catholic party becoming a participant in the Sacraments.*

QUESTION 11. Can a Catholic Priest, with a safe conscience, assist at the matrimony if the spouses also contract matrimony in a Protestant church according to the Protestant rite, either before or afterward?

Reply. No. - Thus the Sacred Congregation of the Inquisition, April 21, 1847 [10].

[10] Concerning those who in these circumstances celebrate matrimony without the presence of the Pastor in places where the form prescribed by the Council of Trent is in force, Pius VIII decreed thus in letters given to the Archbishop of Cologne on March 26, 1830: *But now by these Our Letters We will and command that mixed marriages which hereafter happen to be contracted in your Dioceses without the form prescribed by the Council of Trent being observed, if no other canonical impediment obstructs them, be held as ratified and true marriages; as We by Our apostolic authority declare and decree that those marriages are true and ratified.*

831. ○ **QUESTION 12. Are Calvinists and Lutherans living in places where Baptism is doubtful and suspect to be regarded as unbelievers, so that the diriment impediment of disparity of worship is considered to exist between Catholics and them?**

Reply. The Congregation of the Holy Office itself replied thus to this question on November 17, 1830:

1. As regards heretics whose sectarian Rituals prescribe the conferral of Baptism without the necessary use of the essential matter and form, the particular case must be examined.

2. As regards others who baptize validly according to their Rituals, Baptism must be considered valid. But if doubt persists even in the first case, Baptism must be considered valid in relation to the validity of the matrimony.

3. But if it is certainly known that there is no Baptism according to the present custom of that sect, the matrimony is null.

On the same day and feria, Our Most Holy Lord Gregory XVI, Pope by Divine Providence, in the customary audience granted to the Reverend Father Assessor of the Holy Office, approved the aforesaid resolution rendered by the Most Eminent Fathers.

The aforesaid Decision was renewed by the same Sacred Congregation of the Inquisition on July 20, 1840.

Hence it appears that the following must be established:

1. In a doubt concerning the validity of Baptism, the validity of the matrimony is generally to be presumed [11].

[11] Indeed, validity must be retained according to the decree cited above. For the Church is then considered to dispense if perhaps the Baptism was in fact not valid.

2. If there is question of a matrimony to be celebrated between Catholics and one party certainly lacks Baptism, it is evident that this Sacrament must be conferred upon that party before the matrimony. But if the matrimony has already been celebrated with this defect, it must be revalidated after Baptism has been conferred.

3. Finally, if there is question of an invalidly baptized heretic in relation to a mixed marriage, recourse must be had to the Holy See [12].

[12] Since this matrimony is certainly invalid, if the spouses cannot be separated and the other party is unwilling to receive Baptism, it remains that a dispensation be sought.

Point VIII. On the Impediment of Force or Fear

These few things must be established:

832. ○ I. Grave fear certainly invalidates matrimony by ecclesiastical law, and more probably also by the natural law [1], as follows *a fortiori* from what was said concerning Contracts, volume 1, no. 780.

[1] Whichever law you say invalidates it, this impediment admits no dispensation; rather, it is necessary that the cause of fear be removed. Thus Alexander III, canon *Cum locum* 1, *On Betrothals and Matrimony*: *Since consent has no place where fear or coercion intervenes, it is necessary that, where the assent of each is required, the material of coercion be removed.*

Therefore, while the cause of fear perseveres, the invalid matrimony is revalidated neither through intercourse nor through cohabitation, for these things are otherwise presumed to have been extorted by fear. For while fear endures, just as matrimony cannot be validly contracted, so neither can an invalidly contracted matrimony be revalidated. It must be said otherwise if intercourse is admitted entirely freely and with marital affection, as the Doctors commonly hold after St. Thomas (*In IV Sentences*, distinction 29, question 1, article 3, minor question 2, reply to objection 2), or even if cohabitation is voluntary, which, according to canon *Ad id* 21, *On Betrothals and Matrimony*, is accepted as a ratification of consent. In this case, if the impediment was occult, it certainly will not be necessary to renew consent again before the Pastor, according to the general doctrine which Benedict XIV confirms from decrees of the Sacred Penitentiary issued by the authority of St. Pius V, Declarations of the Sacred Congregation of the Council, and the practice of the Sacred Roman Rota (*Instruction* 87, no. 62).

Nevertheless, it is not necessary also to admit what he himself adds, as though relying upon the authority of Sanchez (*On Matrimony*, book 2, disputation 36, no. 4), whom he highly praises, namely, that it is necessary for the other spouse also, who did not know the impediment, to be informed of it when the matrimony must be revalidated by new consent. For although Sanchez teaches this (l.c.) as more probable when the consent of each contracting party is invalid because of an impediment by which each is rendered incapable of contracting by the law itself, he nevertheless teaches the opposite concerning the present case, when there is question of a defect of consent alone, as also happens when either contracting party consents fictitiously. Thus he writes (*On Matrimony*, book 4, disputation 18, no. 2): *Second, it must be supposed that if, after a matrimony extorted by fear, intercourse voluntarily had with conjugal affection follows, the prior matrimony is ratified and begins from that time to be valid, if the other party, who consented without fear, perseveres in the original consent. And the reason is that, since it is not necessary that the consents be simultaneous, and the consent of the one who did not suffer fear was legitimate, only the voluntary consent of the one who had consented through fear was wanting for the matrimony, as I said in book 4, disputation 15, no. 2. But this consent is sufficiently expressed through intercourse*, etc., from chapter 15, question 30, *On Betrothals*. *Therefore, when it follows, the prior matrimony is ratified.* And in the same manner, a little later (ibid., no. 3), he reasons concerning consent expressed through lengthy mutual and voluntary cohabitation, confirming it from the explicit definition of the law in canon *Ad id* 21, *On Betrothals and Matrimony*. Therefore that opinion of Lambertini must be set aside, since it is not only destitute of foundation but also opposed to the dispositions of Canon law cited by Sanchez.

The following conditions, however, are required, namely, that the fear be instilled: 1. by an external and free cause; 2. unjustly; 3. for the end of contracting matrimony.

II. Light fear, even if unjust, does not invalidate matrimony [2]. The reason is: 1. because light fear is not considered to influence consent gravely and efficaciously; 2. because by positive law grave fear alone renders matrimony invalid; 3. because otherwise innumerable marriages would be invalid to the greatest detriment of society.

[2] In a doubt whether fear is to be considered grave, the common doctrine is that judgment must be made in favor of the validity of the matrimony, both because the cause of matrimony is favorable and because of reverence for the Sacrament, as Laymann says (book 5, treatise 10, part 2, chapter 5, no. 4). To this pertains the statement of Innocent III, canon *Licet* 47, *On Witnesses and Attestations*: *It is more tolerable to leave some persons joined contrary to the statutes of men than to separate persons legitimately joined contrary to the statutes of the Lord.* See Schmalzgrueber, book 4, title 1, no. 432.

The disagreement of the Doctors concerning the sufficiency of reverential fear is easily reconciled if you consider that this fear also, according to the variety of circumstances, is deservedly regarded sometimes as light and sometimes as grave, as was said in the Treatise *On Human Acts*. Thus Laymann with others, l.c., no. 3, who judges by a similar reason concerning importunate entreaties, which, according to the differing circumstances of persons, may be contradicted easily or only with great difficulty, as Sanchez, book 4, disputation 7, no. 7, Koninck, Lessius, etc., also note.

Point IX. On the Impediment of Prior Bond

833. ○ By *prior bond* is understood the bond of matrimony by which spouses are so bound to one another that, while both are living, neither can enter a valid matrimony with any other person.

The impediment of prior bond is founded upon two attributes of matrimony, which are indissolubility and unity. Hence it is deduced that the impediment of prior bond is of divine law.

834. **Resolutions.** - 1. One who in good faith believes that a spouse is dead when in fact the spouse is living, and proceeds to other nuptials, does not indeed sin, but contracts invalidly and is bound to return to the prior spouse when that spouse appears.

2. Therefore, for entering a new matrimony, the absence alone of the spouse, however great it may be, does not suffice; rather, certain and authentic proofs of death are required [1]. - Thus from Canon law, canon *In praesentia* 19, *On Betrothals*.

[1] Concerning these indications or proofs, see Schmalzgrueber, book 4, title 21, nos. 10-11.

3. The moral certitude required by law is not obtained through even a public rumor unless it is supported by some positive proof, nor through a single witness unless other indications are present, concerning which it belongs to the Bishop alone to judge. Hence in doubt recourse must always be had to the Bishop [2]. But while the doubt remains, he cannot permit the celebration of the matrimony. Nevertheless, the matrimony which would be celebrated in such doubt would be valid, although gravely illicit, if the spouse concerning whose death doubt existed were in fact dead.

[2] Giraldi, on chapter *In praesentia* 19, *On Betrothals*, perhaps too harshly requires that recourse be had to the Ordinary if there is legitimate proof only through witnesses, as though that moral certitude which, according to the opinion of all, suffices could not be had in this manner.

Point X. On the Impediment of Age

835. ◦ The impediment of age consists in a defect of age sufficient for fulfilling the duties of matrimony. It invalidates the matrimony of the prepubescent by ecclesiastical law [1], as is gathered from chapters 7, 10, and 14, *On the Betrothals of the Prepubescent*, etc.

[1] That puberty is required only by ecclesiastical law is the common doctrine with St. Thomas (*In IV Sentences*, distinction 36, question 1, article 5). The reason is that, by the law of nature, beyond consent nothing more is required for the contract of matrimony than bodies capable of it, even if they are not proximately capable. Hence it follows that the marriages of prepubescent persons who have the use of reason are valid among unbelievers, who are not subject to the laws of the Church, unless they are prohibited and invalidated among them by a special law. See Schmalzgrueber, book 4, title 2, nos. 48-49.

It likewise follows from this that the Pontiff, for the good of peace or another just cause, can dispense even with the faithful so that they may contract matrimony below the years of puberty. This is also established by the authority of Nicholas I, chapter *Ubi non est* 2, *On the Betrothals of the Prepubescent*, and is confirmed by examples of dispensations of this kind which St. Pius V, Clement VIII, and Gregory XV granted. See Schmalzgrueber, l.c., nos. 50-52, who nevertheless skillfully gives the reason why cohabitation must not be permitted before puberty. Indeed, Reiffenstuel (book 4, title 2, no. 11), with Barbosa, Gonzalez, Suarez, and others, teaches as sufficiently probable that even a Bishop can dispense for a most urgent, especially public, cause, for example, for the good of peace, especially if the contracting parties are near the years of puberty and it is doubtful whether bodily maturity supplies for age, concerning which you have various opinions of the Doctors in St. Alphonsus, book 6, no. 1065.

Puberty, moreover, is attained according to Canon law for females when the twelfth year has been completed, and for males when the fourteenth year has been completed [2].

[2] The reason for the differing age for females and males is taken from the fact that the power of generation is accustomed both to begin and to cease earlier in females than in males, as Gonzalez, on chapter 3, *On the Betrothals of the Prepubescent*, Reiffenstuel, same title, no. 3, and Schmalzgrueber, same title, nos. 45-47, note.

Nevertheless, this is excepted in the law: *provided that bodily maturity does not supply for age*. This is understood of those prepubescent by age who are already mature in bodily powers, or capable of generation, and who otherwise can sufficiently understand the burden of the conjugal bond [3].

[3] Since matrimony is valid by the natural law even though the contracting parties are not yet proximately capable of the conjugal act, as was said above, and ecclesiastical law requires nothing except the completion of that established age, there is no reason why a matrimony could be considered invalid if the legitimate age is indeed present, but the man cannot yet carnally unite with the woman or beget. What is to be done in this case, see St. Alphonsus, book 6, no. 1066.

Point XI. On the Impediment of Clandestinity

836. ○ A clandestine matrimony is called one which is contracted without the solemnity required by the Church, namely, without the assistance of the Pastor and of at least two witnesses. This impediment is of ecclesiastical law alone, since it was established by the Council of Trent, as is evident from session 24, chapter 1.

For the validity of matrimony any witnesses whatsoever suffice, whether they are men or women, adults or minors, provided that they have the use of reason and can testify to the contracted matrimony [1].

[1] St. Alphonsus rightly observes after Sanchez and others (book 6, no. 1085) that even unbelievers can exercise the office of witnesses; nor is it necessary that they be called for this purpose, but they suffice even if they are passing by chance or are present there, provided that they have perceived what was done. Indeed, they suffice even if they were called deceitfully and for another purpose, and even if they are present unwillingly and detained by force. See Barbosa, *On the Office of the Pastor*, part 2, chapter 21, nos. 46 and 80.

Two matters must be treated: 1. the force of the Decree of the Council of Trent; 2. the assistance of the Pastor.

Section I — On the Force of the Decree of the Council of Trent

837. ○ The Council establishes thus: *Those who attempt to contract matrimony otherwise than in the presence of the Pastor, or of another priest with the permission of that Pastor or the Ordinary, and of two or three witnesses, the Holy Synod renders altogether incapable of contracting in this manner, and decrees that contracts of this kind are invalid and null.... It declares further that a Decree of this kind shall begin to have its force in each parish after thirty days, to be counted from the day of its first publication made in the same parish.*

838. **Resolutions.** - 1. Clandestine marriages are altogether invalid in all places where the Decree of the Council was promulgated. This is manifest from the Decree itself.

2. But they are not invalid in places where this promulgation was omitted either culpably or inculpably; for in those places they were valid before the Council, and there they must be held in the same condition in which they were held previously, as is evident from the Decree of the Council itself, which strikes with anathema those who deny their validity so long as the Church has not invalidated them.

3. Clandestine marriages are illicit everywhere and prohibited under grave sin [2]. For the Church has always detested them, as the Council of Trent declares and Benedict XIV plainly shows in *On the Diocesan Synod*, book 8, chapter 12, no. 4.

[2] The Council of Trent adds this sanction (ibid.): *Moreover, it commands that the Pastor or another priest who was present at a contract of this kind with a smaller number of witnesses, and the witnesses who were present without a Pastor or priest, as well as the contracting parties themselves, be gravely punished at the judgment of the Ordinary.* Hence, as Schmalzgrueber notes (book 4, title 3, no. 131), some complain undeservedly about Bishops who have inflicted a penalty of excommunication incurred by the fact itself where increasing malice requires this remedy. Moreover, as regards places where the Tridentine decree is not in force, the Doctors except certain cases in which matrimony can even be contracted clandestinely licitly, namely, for avoiding grave danger or harm. See Tanner, volume 4, disputation 8, *On Matrimony*, question 3, doubt 6, no. 111.

The Decree of Trent is recognized as received in Italy, Spain, Portugal, France, Holland, Belgium, Ireland, and in parts of Germany that were then Catholic. But it was not received in England, Sweden, Saxony, Denmark, and several places of Germany and Switzerland [3].

[3] In a doubt whether this Decree was promulgated somewhere, promulgation is presumed where the Decree was observed for some time in the parish as a decree of the Council. Thus a Declaration of the Sacred Congregation reported by Benedict XIV, *On the Diocesan Synod*, book 12, chapter 5, no. 6. Cardinal Petra reports another declaration, *Commentary on the Apostolic Constitutions*, volume 4, folio 81, no. 35.

Moreover, Benedict XIV issued a Declaration in the year 1741 in which he establishes that clandestine marriages entered or to be entered in Holland and the Federated Provinces of Belgium between heretics, or between one heretical party and the other Catholic party, are valid. But he establishes nothing concerning marriages between Catholics themselves [4].

[4] Indeed, Benedict XIV expressly declared that this disposition in no way concerns Catholics. *Let them know*, he says, *that unless they celebrate the nuptials before a Catholic minister and two witnesses, they will never be true and legitimate spouses either before God or before the Church.* Thus in the Letter of September 17, 1746, to Simon, Missionary in Holland, section 3, *Bullarium*, volume 3, supplement no. III. See also *On the Diocesan Synod*, book 6, chapter 7. Nor ought it move us that the opposite seems to be intimated in the Reply of the Congregation for the Affairs of the Church of France, April 22, 1795 - see *Complete Course of Theology*, volume 25, page 689 - where it is said that marriages before an intruded Pastor are null and that the Declaration of Benedict XIV for Holland does not assist them because the Apostolic See had not extended that Declaration to France, as though it would have applied to marriages between Catholics even if it had been extended to France! For that reason appears to have been added there no less superabundantly than irrelevantly.

But a list of the places to which the Benedictine Declaration was extended by the Apostolic See may be seen in Father Perrone (*On Matrimony*, book 2, section 1, chapter 6, article 4), concerning which, however, observe two things. First, the decrees reported there (page 270, Roman edition) which pertain to Ireland in 1785, to the whole Russian Empire and the Kingdom of Poland in 1844, likewise to the Rhenish Provinces under Prussian rule in 1830, and those (ibid., page 271) which concern Bavaria in 1834, Hungary in 1841, and Georgia in 1845, are not in fact extensions of the Benedictine Declaration. For besides the fact that this Declaration takes its origin from altogether different principles, it refers primarily to marriages of heretics and was afterward extended by a certain quasi-extension to mixed marriages, as Benedict XIV himself indicates (*On the Diocesan Synod*, book 6, chapter 6, no. 12); but the Decrees which pertain to the regions listed above contain a derogation from the Tridentine decree, or a certain dispensation, and refer only to mixed marriages. Second, with the decrees collected there by Father Perrone, two are intermingled: one for Japan, July 2, 1625, and the other for Curacao in 1851. Since each refers only to marriages of Catholics among themselves, it plainly has nothing in common with the Benedictine Declaration.

It would be superfluous to enumerate here the places to which this Declaration was in fact extended, for each person will easily learn this concerning his own domicile.

839. **Questions. - QUESTION 1. Is the matrimony valid of those who, departing from a place where the Decree of the Council of Trent has been received, contract in a place where it**

has not been received?

Reply 1. They contract invalidly if they proceed to another place in fraud of the law, that is, with the intention of contracting clandestinely. This is established from the Decree of Urban VIII of the year 1627, etc., etc.

Reply 2. Nevertheless, they contract validly if they have or acquire a quasi-domicile there [5], because by force of this domicile they enjoy all the privileges of the inhabitants. And this holds even if they transferred their domicile from their homeland to that place for the purpose of contracting clandestinely there, because there is no fraud there, since the privilege of the place favors them just as it favors other inhabitants. This is established from the same Decree of Urban VIII [6]. - St. Ligorius, no. 1080, etc.

[5] There are some who think that, in order for someone to acquire a quasi-domicile and be considered not merely a guest but an inhabitant and resident, it is necessary that he intend to remain there for the greater part of a year. Nevertheless, those who hold that for this it suffices to have the intention of residing for several months, especially if a house, room, etc., has been rented, appear to think more conformably to the law. Thus Suarez, Navarrus, Laymann, etc., cited by Schmalzgrueber, book 2, title 2, no. 19. Moreover, as soon as someone actually has the intention of remaining there for as long as is required for an effect of this kind, the common opinion of all is that the matrimony is valid even if he contracted it immediately upon arriving there. The reason is that, just as domicile, so also quasi-domicile is acquired immediately when someone approaches a place of this kind with the intention of remaining there for the legitimate period. See Barbosa, *On the Office of the Pastor*, part 2, chapter 21, no. 36.

[6] Benedict XIV discusses the threefold case to which the decree of Urban VIII refers in this manner (*Instruction* 33, no. 9): *Therefore the matrimony set forth in the first and second place is decreed invalid, since fraud had intervened; the matrimony adduced in the third place is declared valid even with fraud, because a new domicile also had been acquired.* You have these cases proposed by the Archbishop of Cologne, with the reply of the Sacred Congregation and the decree of Urban VIII, in Benedict XIV's Letters to Anthony, Archbishop of Goa, March 15, 1758, in the appendix to the *Bullarium of the Propagation of the Faith*, or in the other appendix to volume IV of the *Bullarium of Benedict XIV*.

Moreover, a certain third case pertains to the question proposed by the Author, one which he touches upon neither in the first nor in the second reply: namely, the case of one who proceeds to the aforesaid place not, however, with fraud, that is, with the intention of contracting clandestinely, but at the same time without the intention of establishing a domicile or quasi-domicile there. And indeed there is no question of a matrimony which that person contracts with a person who already has a domicile or quasi-domicile there, for then, as the Author soon teaches, according to the opinion of all, the other spouse enjoys the privilege of his or her consort. Rather, the question arises when in the aforesaid circumstances each contracting party is a stranger there.

The more common opinion, with Sanchez (book 3, disputation 18, no. 28), Pontius (*On Matrimony*, book 5, chapter 9, no. 2), Reiffenstuel (book 4, title 3, no. 123), Engel (same title, no. 20, conclusion 3), etc., holds that they contract validly even if they employ neither a Pastor nor witnesses for that contract. The reason is that strangers are not bound by the laws of their homeland when they travel outside it, and especially in regard to contracts, of which kind matrimony is, since in these they are subject to the laws and obtain the forum of the places in which they are staying, as is declared in the final chapter *On the Competent Forum* and law *Si fundus* 6, Digest, *On Evictions*. Nor does it obstruct this that the Council of Trent rendered persons incapable of contracting without the prescribed solemnity, while incapacity, as is said, follows the person as a shadow follows the body. For this proceeds only when the person was rendered incapable absolutely and simply, and individually by a sentence of a judge; but it is otherwise if the incapacity is general from a law. For then it follows the nature of the law, and consequently, where the law does not bind, there neither does the incapacity bind, nor does annulment of the act follow. Thus, besides those cited, Barbosa, *On the Office of the Bishop*, part 2, allegation 32, no. 153, and Schmalzgrueber, book 4, title 3, no. 110.

It is useful here to append concerning this matter what is read in the *Acts of the Holy See*, etc. (volume 7, page 557), where, on the occasion of a Declaration by which the Sacred Congregation pronounced a certain matrimony invalid, an Appendix is added so that it may be established that the Sacred Congregation arrived at that judgment for other causes:

> "It must not be thought that by this Declaration of the Sacred Congregation anything was taken away from the opinion both of theologians and of canonists when they establish that those who proceed to a place in which the Decree of Trent either was never promulgated or ceased to bind contract validly without observing the form prescribed by the Council, even if they do not have the intention of establishing a domicile or quasi-domicile there, provided, however, that they did not proceed there in fraud of the law, namely, with the intention of contracting clandestinely."

The most illustrious Father Anthony Ballerini, Professor of Moral Theology in the Roman College, summarized this doctrine of the Schools in a few words in the note to Gury, volume 2, section 839: *The more common opinion with Sanchez*, etc., as above.

And indeed the illustrious Ballerini spoke very moderately in calling this doctrine merely *more common*, since Reiffenstuel (book 4, title 3, no. 123), Pichler (book 4, title 3, no. 123), Marcus Struggl (*On Matrimony*, book 3, no. 180), and Ferraris (*Impediment*, article 2, no. 110) handed it down as absolutely common; indeed George Gobat (treatise IX, no. 484) professed it to be most common. Add that Ferraris (l.c.), Pichler (l.c.), and La Croix (book 6, part 3, no. 712) adduce Declarations of the Sacred Congregation in confirmation of this doctrine. Otherwise, you will find altogether very few who taught the contrary; among these the Defender of Alberti altogether undeservedly numbered the Holy Doctor Alphonsus. You will say more correctly that the Holy Doctor left this question aside. Indeed, you will see (book 6, no. 1081) that on this point of doctrine he opposes La Croix and the Salmanticenses to Sanchez. But both the Salmanticenses (treatise 9, chapter 8, no. 21) and La Croix (book 6, part 3, no. 712) certainly depart from Sanchez if there is question of those who arrive in those places with fraud, that is, with the intention of contracting matrimony; but if that intention and thus that fraud is absent, both the Salmanticenses (ibid., no. 19) and La Croix (l.c.) plainly agree with Sanchez that the matrimony is undoubtedly valid. Therefore St. Alphonsus was discussing those who departed in fraud, not others. This is brilliantly confirmed by the fact that the Holy Doctor attacks only that doctrine which has against it the Declaration confirmed by Urban VIII. But that Declaration strikes only those who depart in fraud of the law or with fraud. Therefore it does not strike the others.

The Defender of Alberti indeed contends that fraud of this kind is found even in the bare fact, although those departing had no intention at all of celebrating a clandestine matrimony there. But the unanimous consensus of all theologians and canonists rejects this interpretation of the Decree, entirely unheard of down to our times; not even one of them will be found who suspected that this sense of fraud pertained here. Since the Defender appeals to Benedict XIV in this matter, it will be helpful to present that Pontiff's genuine and most lucid opinion against this novel theory. After proposing the common doctrine that one who lives outside the territory of the legislator is not bound by the statutes of the place (*On the Diocesan Synod*, book 12, chapter 4, no. 9), he immediately excepts (ibid., no. 10) the case *if someone departs from a place in fraud of the law, namely, with the sole intention of avoiding the obligation of the statute*. By what examples does he explain the nature of this fraud? First, by those who departed from a place where the Tridentine decree was promulgated solely with the intention of contracting matrimony clandestinely and proceeded to a place where it was not promulgated. From the Declaration of the Sacred Congregation sanctioned by Urban VIII, he pronounces this matrimony invalid. Next, by the example of those who, having sins reserved in their own dioceses, migrate in fraud of the reservation to another diocese in order to obtain absolution from Regulars. He concludes: *From this it is manifest that deceit and fraud avail no one for escaping the bond of the law, and that this fraud is truly committed by one who, WITH THE SOLE INTENTION OF ELUDING THE LAW, rushes from the place where it is in force*. Therefore, according to Benedict XIV, the Defender of Alberti wrongly requires fraud in the bare fact if the intention of eluding the law is absent. This is also confirmed by the unanimous opinion of all who hold that absolution from reserved sins is valid whenever the intention of eluding the reservation is absent in the one migrating.

But what the Defender adds, that according to Benedict XIV (*Instruction* 33) fraud is committed against the Pastor, certainly applies when the matrimony is celebrated in another Diocese or Parish in which the Tridentine Decree is in force. For then the matrimony is invalid both if the nuptials are contracted without the assistance of a Pastor and if they are contracted with the assistance of a Pastor who is not their own, since by force of the Tridentine law the office of assisting as the legitimate witness so that the matrimony is valid belongs only to the contracting parties' own Pastor; and Benedict XIV (l.c.) is indeed speaking of this latter hypothesis. But when the nuptials are celebrated in a place where the Tridentine Decree is not in force, and therefore no Pastor is required by law to assist as witness for the validity of the contract, it is utterly vain to imagine that injury or fraud is present against a Pastor whose office would not be necessary even if the proper Pastor of the contracting parties happened to be in the same place.

From all these things it is now certainly permissible to conclude that the Sacred Congregation declared the matrimony of Albertus with Armanda invalid by reason of altogether different grounds.

Moreover, neither the doctrine handed down by the Author nor the things supplied here are obstructed by what Benedict XIV has in the cited Letter to the Archbishop of Goa, when he replies that for the validity of matrimony in the case it appears sufficient that, before the matrimony is contracted, the one contracting has lived for the space of at least one month in the place where the matrimony is celebrated. For the Pontiff did not intend there to establish that either a stay of one month suffices in the case of one who does not have the intention of acquiring a domicile or quasi-domicile, or that one who has this intention cannot validly contract before the month elapses, or finally that the space of one month suffices for acquiring a domicile or quasi-domicile. He intended merely to provide an indication by which it could be sufficiently presumed that the contracting party had the intention of acquiring at least a quasi-domicile, and therefore, unless something counsels otherwise, judgment must be made in favor of the validity of the matrimony.

QUESTION 2. Is the matrimony valid of those who, departing from a place where the Decree of Trent is not in force, contract clandestinely in a place where it is in force?

Reply. No, even if they contract while merely passing through, because here there is question of a general law of the Church. According to the general principle, however, an exemption from the common law is local, not personal. Therefore those who have a domicile there can use the exemption only so long as they are in that place; if they migrate to another place where the common law is in force, they become subject to the common law.

840. ○ **QUESTION 3. Do spouses contract validly and clandestinely when one has a domicile in a place where the Decree of the Council of Trent has been received and the other in a place where it has not been received?**

Reply 1. Yes, if they contract in the place where the Tridentine Decree has not been received. The reason is that the spouse belonging to the place where the Council of Trent has not been received is not bound by the law of the Council and communicates his privilege to the other because of the indivisibility of the contract. Thus Benedict XIV, *On the Diocesan Synod*, book 6, chapter 6, no. 12, and Clement XIII in the year 1767, in a reply to the Archbishop of Mechlin.

Reply 2. No, if they contract in the place where the Decree of Trent is in force. The reason is the same as in the second question.

QUESTION 4. Does inability to have recourse to one's own Pastor or Bishop excuse from the impediment of clandestinity?

Reply 1. Yes, if that inability is common in some province, for example, during some political and religious disturbance. The reason is that, if the law bound in such a case, it would be harmful to the common good and would tend to the detriment of society. Moreover, this is established from a Declaration of the Sacred Congregation reported by Benedict XIV, *On the Diocesan Synod*, book 12, chapter 3, no. 5, and also from various Decisions of Pius VI [7].

[7] Thus Pius VI concerning this matter, in a Letter to the Bishop of Lucon on the occasion of the French disturbance in the year 1793: *Since several of these faithful are altogether unable to have a legitimate Pastor, their marriages contracted before witnesses and without the presence of the Pastor, if nothing else obstructs them, will assuredly be both valid and licit, as has more frequently been declared by the Sacred Congregation for the Interpretation of the Council of Trent.*

Recently, moreover, a decree was issued by the Supreme Congregation of the Inquisition, by which it is declared that the faculty of celebrating matrimony validly and licitly with two witnesses and without the presence of the Pastor is present when access to him is not safe for the space of a month. Hence it follows that when it can prudently be judged that within a month there will not be a faculty of safe access to the Pastor, from that time, without another delay intervening, matrimony can be contracted validly and licitly in that form.

Reply 2. No, if the inability concerns a particular case, because an invalidating law does not cease on account of a private inconvenience. - Recall what was said at no. 787 [8].

[8] No decree has been issued up to the present by which this controversy is defined; nor does section 787, to which the Author refers, contain anything suitable for resolving this question.

St. Alphonsus, who otherwise denies validity in the case according to the stricter opinion (book 6, no. 1079), nevertheless writes elsewhere (*On Privileges*, no. 57): *Indeed, Pignatelli asserts, AND PROVES in volume 3, consultation 66, no. 5, that in such a case*, namely, of urgent necessity, *not only the reservation*, namely, of the dispensation, *but even THE LAW OF THE IMPEDIMENT ceases, since it has now become harmful; for it is altogether certain that a harmful law does not bind, as all teach with St. Thomas. And from this Roncaglia and the Instructor of New Confessors*, namely, Giordanini, praised elsewhere by us, *infer that, when the case arises in which the spouses have already arrived at the Church and one of them manifests to the Confessor an occult impediment already contracted as a sin, and the matrimony cannot be deferred without scandal or infamy, the Confessor can then declare that in that case the law of the impediment does not bind and that the matrimony can be licitly contracted.* Other examples of this necessity are brought forth both by Francis Amicus (*Course of Theology*, volume 9, disputation 7, section 43, no. 139) and by James de Graffiis (*Golden Decisions*, book 2, chapter 86), which can also be seen in Diana (volume 2, treatise 6, resolution 72, no. 4, and resolution 73 at the end, where in favor of the same opinion he cites the Tridentine theologian Dominic Soto, *In IV Sentences*, distinction 22, question 1, article 2); and also by the above-praised Pignatelli, who discusses celebrating matrimony when death is imminent.

Moreover, all the reasons which are customarily brought forward for the negative opinion - see Schmalzgrueber, book 4, title 3, no. 106, and St. Alphonsus, cited no. 1079 - are finally contained in this single reason proposed in various manners: that the Tridentine Decree is invalidating and nullifying.

But was not the impediment concerning which the same St. Alphonsus, with Pignatelli and others cited there, treated above likewise invalidating and nullifying and rendering persons incapable of contracting? And, what is principal, whence comes the reason for the distinction between the case of common inability and that of particular inability? Would not that reason, that there is question of an invalidating law, apply equally? For, as Francis Amicus acutely argues (l.c.), a difference would certainly exist if the Declarations, of which there are several concerning cases of common inability in some village or town, for example, had the force of a Dispensation from the law, which dispensation would not extend itself to cases of particular inability. But those Declarations do not present even the slightest appearance of a Dispensation. In declaring the validity of marriages which in those circumstances are celebrated apart from the form prescribed by the Tridentine Synod, they give the reason which applies equally to each case, namely, the necessity of the faithful, for whom it would be absurd that matrimony be taken away, and the physical or moral impossibility of observing the form established by the Holy Synod. Hence it is that Marchant (*Sacred Tribunal*, volume 3, treatise 1, title 7, question 8, conclusion 3), after establishing this thesis, *There is epikeia and interpretation in that law concerning the presence of the Pastor in matrimony when from real causes that presence is impossible*, etc., confirms this very thesis from a Reply of the Sacred Congregation to the Bishop of Tricarico, reported by Gallemart on session 24, chapter 4, *On the Reformation of Matrimony*, no. 11, because, namely, the reason adduced has the same force in both circumstances. Therefore it is not surprising that the affirmative opinion also appeared sufficiently probable to others cited by Sanchez, book 3, disputation 17, no. 3, and Diana, cited resolution 7. These things have been said so that the genuine state of the controversy may not be hidden from the reader.

Of the eighteen columns in which the VV. attack this Note (pages 807-815), we shall touch upon those things which have some appearance of an objection, omitting the empty taunts which you would say were substituted for reasons.

First, they object (page 809) that it is wrongly asserted in the Note that all the reasons for the negative opinion are finally contained in this one, that the Tridentine Decree is invalidating and nullifying. For, they say, the principal reason for that opinion is that the Council of Trent prescribed a substantial form, upon omission of which the contract becomes invalid and null, and those attempting to contract are rendered altogether incapable of contracting.

Reply. From what, I ask, is it inferred that this solemnity is substantial except from the fact that the Council of Trent renders those contracting otherwise altogether incapable of contracting in this manner? These are the words of the Decree, session 24, *On the Reformation of Matrimony*, chapter 1: *Those who attempt to contract matrimony otherwise than in the presence of the Pastor, or of another priest with the permission of that Pastor or the Ordinary, and of two or three witnesses, the Holy Synod renders altogether incapable of contracting in this manner, and decrees that contracts of this kind are invalid and null, as by the present Decree it*

renders them invalid and annuls them. But we do not call the solemnity of the preceding Proclamations, which the Holy Synod prescribes in the same Decree, substantial but extrinsic, because the Holy Synod indeed condemns but does not render incapable of contracting those persons who attempted to contract in this manner, nor did it render contracts of this kind invalid or annul them. Therefore, since the reason why the circumstance of the presence of the Pastor and witnesses is called substantial is that the Tridentine Decree is not merely prohibiting but also invalidating, it is sufficiently evident why the Authors finally and in fact reduce the arguments for the negative opinion to this and only this.

Hence, as regards the present matter, the things which the VV. discuss (page 810) concerning the difference between this and other diriment impediments are altogether slight and even empty. In the contract of matrimony, whatever it may finally be, that is substantial or essential, and is so called, by reason of whose absence the contract is invalid, so that it is not apt matter for the Sacrament. Hence Schmalzgrueber, in the very place which the VV. cite (book 4, title 3, no. 106), reasons thus: *The Tridentine Decree renders contracting parties altogether incapable of contracting*

without a Pastor and witnesses. But no case of necessity can supply the incapacity of the matter of a Sacrament...; for because of a defect of natural water it is not lawful to baptize in wine, nor because of a defect of wine can Mass be celebrated with water...; just as in no necessity can blood relatives be joined without a dispensation, since by the law of the Church they have been rendered incapable of contracting with one another. Therefore the conclusion is always drawn from the fact that the contracting parties are incapable of contracting either by the natural law or by the positive law of the Church, whatever may be the cause of the incapacity and thus whatever may be the reason why the contract is rendered invalid.

Second, the VV. object (pages 810-811) that the doctrine which Suarez defends (*On Laws*, book 5, chapter 28), that epikeia has no place in a law invalidating an act by the fact itself and before any sentence, applies here. And they especially note these words of Suarez: *Therefore in no case can the invalidation which arises from a defect of such a form*, namely, a substantial form, *cease*.

Reply 1. The jurisconsult Albertus Brunus (*On Form and Solemnity According to Jurists*), cited by Barbosa (*On the Office and Power of the Pastor*, part 2, chapter 21, no. 81), places forty exceptions or limitations upon the aforesaid principle, *That an act is null if the substantial form is not observed* (the cited work, article 15, from folio 44 verso to folio 65). Of these limitations, the thirty-third (folio 63) is this: *Thirty-third: the aforesaid Rule, that when the form is not observed the act is null, fails when a necessity of law or fact is imminent.* But the thirty-fourth is of this kind (folio 63 verso): *Thirty-fourth: the aforesaid Rule, that when the form is not observed the act is null, is limited so that it does not proceed against one prevented from fulfilling the form and employing the solemnities, which happens in many ways.* Brunus confirms these exceptions or limitations by many examples. Concerning the latter, Barbosa himself (l.c.) relates that, although chapter *Quia propter* 42, *On Elections*, establishes as substantial form that an election must be made through three scrutiners, nevertheless, if there are not three in the College who can be chosen as scrutiners, an election made by a smaller number or without them is valid. Those things which can be read in St. Alphonsus concerning contracts celebrated without the due solemnities (book 3, no. 711), and concerning a testament made for non-pious causes without the solemnities required by law (book 3, no. 927), could also be referred here not altogether inappropriately.

Reply 2. But we do not need these things. For the VV. themselves (l.c.) adduce the aforesaid doctrine of Suarez not only as regards the impediment of clandestinity but also as regards other diriment impediments. *Nor can it be conceived*, says Suarez in the passage cited by the VV., *that the incapacity ceases of itself, or that it was introduced under this condition, that it be removed or, as it were, suspended in a case of necessity;... as is evident of the incapacity to contract with a blood relative in a prohibited degree, which in no case can cease without a dispensation.* Therefore, if they oppose the doctrine of Suarez as unshaken concerning the impediment of clandestinity, they must likewise hold it as unshaken concerning the impediment of consanguinity. For the same principle applies in each case.

But if this principle is unshaken, how then does the Holy Doctor Alphonsus, whose words are read in the Note, approve the opinion of Pignatelli that in a case of necessity even the law of the impediment ceases, since it has now become harmful? How does he approve what Roncaglia and Giordanini infer from it: that, when the case arises in which the spouses have already arrived at the Church and one of them manifests to the Confessor an occult impediment already contracted as a sin, and the matrimony cannot be deferred without scandal or infamy, the Confessor can then declare that in that case the law does not bind

3. Because this is gathered from the Declaration of Benedict XIV concerning the marriages of the impediment and that the matrimony can be LICITLY contracted? How do the words of Suarez which the VV. object to us - IN NO CASE CAN THE INCAPACITY CEASE - cohere with the proposition approved by St. Alphonsus - IN A CASE OF NECESSITY THE LAW OF

THE IMPEDIMENT CEASES; HE CAN DECLARE THAT IN THAT CASE THE LAW OF THE IMPEDIMENT DOES NOT BIND AND THAT MATRIMONY CAN BE LICITLY CONTRACTED?

I said that these things are approved by St. Alphonsus. For he adds (*On Privileges*, no. 57): *But it must be observed that this applies when the Bishop is absent; for when recourse can be had to him, it must necessarily be had.* Therefore the Holy Doctor Alphonsus was so far from holding that principle of Suarez as unshaken that he embraces an opinion diametrically opposed to that principle. Therefore the VV., unless they wish to condemn the doctrine of the Holy Doctor Alphonsus, ought not to press the aforesaid doctrine of Suarez. And since, as was observed in the Note, no Decree has been issued up to the present by which this controversy is defined, and the sole reason adduced for the negative opinion does not otherwise appear peremptory or convincing, it certainly does not seem fitting that the VV. should prevent someone, according to the reply of the Sacred Penitentiary which the VV. themselves so often repeat, both opportunely and inopportunely, from being able with a safe conscience either to follow in the tribunal of Penance or to profess in the schools the opinions of the Holy Doctor Alphonsus. And if the Sacred Penitentiary replies that these are not to be disturbed, neither ought the VV. themselves disturb them nor proclaim that those persons are to be disturbed.

Third, the VV. object (pages 814-815) that St. Alphonsus, as is also indicated in the Note (book 6, no. 1079), denies that a clandestine matrimony is valid even in a case of necessity. Therefore, rather than suppose the Holy Doctor to be less consistent with himself, we ought to seek a reconciliation of the two passages. And this appears easy according to the VV. if it is observed that in one passage (*On Privileges*, no. 57) there is question of an impediment from which the Supreme Pontiff can and is accustomed to dispense. But from the impediment of clandestinity in particular cases the Supreme Pontiff never dispenses. Moreover, in the former passage St. Alphonsus speaks of an occult impediment, but this in no way pertains to the impediment of clandestinity. Thus indeed the VV.

Reply. Anyone who proposes a fitting mode of reconciliation is certainly to be received most willingly; but the one which is proposed by the VV. does not appear to be of this kind. The difficulty is in this: where St. Alphonsus denies that the impediment of clandestinity is removed in a case of necessity, he gives the reason thus with the Salmanticenses: *Because necessity cannot render capable those whom the Council of Trent declared altogether incapable.* Elsewhere, however (*On Privileges*, no. 57), the Holy Doctor admits that in such a case, namely, of so great a necessity, the law of the impediment ceases, the law of the impediment does not bind, and matrimony can be contracted licitly and thus validly. But the law of the impediment is that which renders persons altogether incapable; therefore, when the law of the impediment ceases, the contracting parties are no longer incapable. But necessity, as the Holy Doctor admits, is that which brings it about that the law of the impediment ceases, does not bind, and that matrimony can be contracted validly and licitly. Therefore necessity can render capable those whom the law otherwise renders altogether incapable.

And indeed the difficulty is further increased from the fact that where the Holy Doctor speaks of that necessity on account of which the law of the impediment ceases, a certain general principle is established. For it is said (*On Privileges*, no. 57) that *in a case of so great a necessity the law of the impediment ceases, since it has now become harmful; for it is certain that a harmful law does not bind, as all teach with St. Thomas*. Hence the many things which the VV. bring forward on pages 811-812 against what is said in the Note now fall away, namely, that the same reason applies to each case, that is, both the common and the particular inability to observe the solemnities: namely, the necessity of the faithful, etc. For according to the foregoing, in that case of necessity the law becomes harmful and injurious. Now, to the question whether a law ceases when its adequate end ceases IN A PARTICULAR CASE, the Holy Doctor Alphonsus (book 1, no. 199) replies most clearly: *If it ceases contrarily, namely, when the matter of the law would become HARMFUL IN THAT CASE or very difficult, THEN ALL ASSERT THAT THE LAW DOES NOT BIND.* Therefore, according to the general principles admitted by St. Alphonsus, even in a particular case necessity renders capable of contracting those whom the law otherwise renders incapable in general.

But what is added by the VV., that the Pontiff can and is accustomed to dispense from the impediment of consanguinity but never dispenses from the impediment of clandestinity in a particular case, is nothing. For, first, the foregoing principles of St. Alphonsus are general and apply to any law of an impediment whatsoever, just as the principle by which he resolves the question proposed concerning some occult impediment is general. The VV., on their own authority, suppose that impediment to be consanguinity. But the general principle employed there is this (*On Privileges*, no. 57): *Where matrimony cannot be deferred without scandal and infamy, the Confessor can declare that in the case the law of the impediment does not bind and that matrimony can be licitly contracted.* Therefore recourse is made here in vain to a distinction between one impediment and another. Second, what is said, that the Supreme Pontiff does not dispense from the impediment of clandestinity, is likewise empty. For to what purpose is there talk of seeking a dispensation from the Supreme Pontiff when there is question of a case of necessity in which access to Superiors is supposed impossible? And if recourse to the Superior were available, would

not another remedy be ready at hand, since the Superior can substitute another priest for the Pastor? Third, to what purpose is talk of dispensation intermingled here when, as St. Alphonsus says, in that necessity the law of the impediment ceases? Does any theologian or canonist teach that a dispensation must be sought in those cases in which the law ceases and does not bind? A dispensation is certainly defined as a relaxation of a law or obligation; but it is absurd to seek relaxation of a law or obligation when the law or obligation does not exist. Hence also is evident the reply to those many things which the VV. discuss in order to transform the Declarations of the Sacred Congregation concerning the validity of clandestine matrimony in a case of necessity into so many Dispensations, as Jansen, cited by them on page 811, absurdly asserted.

To this also pertain those things which the theologians commonly hold when they ask: *Whether, in order to revalidate a matrimony null because of an occult impediment but already celebrated in the face of the Church, it must be revalidated again before the Pastor and witnesses*. Those who stood for the affirmative opinion employed a reason which could by no means appear futile. For the first matrimony had been invalid because of an occult impediment; but the second, unless the form prescribed by the Council of Trent is observed, must be called invalid because of the defect of substantial form, which can be supplied by nothing, just as, to use the words of Schmalzgrueber cited above, water in Baptism cannot be supplied by wine, nor can wine be supplied by water in the celebration of Mass. But do those who hold the negative opinion, now confirmed also from Declarations of the Sacred Congregation, have recourse to obtaining a dispensation? In no way; and behold the reason which St. Alphonsus also adduces after others (book 6, no. 1110): *The reason is that the Council, in prescribing the presence of the Pastor and witnesses for the validity*

of matrimony, is deservedly presumed not to have wished to comprehend this case. But one who reasons thus uses not the remedy of dispensation but epikeia. For epikeia - see Schmalzgrueber, book 1, title 2, no. 44 - is called a restrictive interpretation or restriction of the law according to equity and goodness, when, namely, we interpret some particular case not to be contained under a law enacted universally because of its circumstances. Nor does St. Alphonsus say otherwise (book 1, no. 201): *Epikeia is the exception of a case on account of circumstances from which it is judged certainly, or at least probably, that the legislator did not wish that case to be comprehended under the law.* Therefore St. Alphonsus finally admits epikeia even in that Tridentine law in which the VV. contend with so great an apparatus (page 810) that epikeia can have no place.

Fourth, the VV. object (page 812): *If, as Suarez says, license were given to feign and invent cases, the widest door would be opened to innumerable errors and abuses eluding the disposition of the Council of Trent*.

Reply. This argument proves too much. Even when a law ceases not contrarily but merely privatively, St. Alphonsus (book 1, no. 199) indeed says that the opinion permitting the use of epikeia is less pleasing to him, because, as he says, *commonly speaking, the danger of error almost never ceases altogether in a particular case*. Nevertheless, he adds: *But if at some time a case should occur in which someone was altogether certain and secure that every danger of error was absent, I would then not dare to reject the second opinion*, which permits the use of epikeia. But if the Holy Doctor affirms this where there is question of a law ceasing only privatively, *a fortiori* it applies where there is question of a law ceasing contrarily, an example of which he himself had proposed in *On Privileges*, no. 57.

These things have been said thus far so that the state of this controversy may be understood more fully. For the VV. (page 813) censure these words of the Note: *These things have been said so that the genuine state of the controversy may not be hidden from the reader.* And they add: *Father B. would indeed be deserving of praise if he had truly accomplished this and had not rather proposed a spurious state of the controversy to the reader by either passing over in silence or reporting less correctly the true and most grave reasons which the patrons of the negative opinion adduce.* Now, therefore, the reader will have the condition of the controversy even more clearly understood when he has before his eyes all the reasons for the other opinion proposed by the VV. and can judge what they are worth, even with the authority of the Holy Doctor Alphonsus being employed.

841. ○ QUESTION 5. Are clandestine marriages of heretics considered valid where the Tridentine law is in force?

Reply. It is disputed. Several affirm it because, as they say, the Church is not considered to will that so many marriages be invalid. But it appears that this must altogether be denied for the following reasons:

1. Because where the Tridentine law was published, it binds all indiscriminately; therefore it binds heretics just as Catholics, since they too are subject to the jurisdiction of the Church.

2. Because if heretics were exempted from that general law of the Church, they would obtain an advantage from their rebellion, which is certainly absurd. of heretics, or mixed marriages, in Holland. For the Pontiff declared that these marriages are valid although clandestine. Therefore without that Declaration they would have been invalid, as has more frequently been declared by the Sacred Congregation. But the exception confirms the law.

4. Because this is established from several Decisions of the Sacred Congregation, as may be seen in Father Perrone, *On Christian Matrimony*, volume 2, book 2, section 1, chapter 6 [9].

[9] In order that it may be evident where this controversy also stands, these few things will now suffice from the many which could be said.

Therefore let the judgment which Pius VII generally rendered concerning this question in the Letters to Charles Dalberg, Archbishop of Mainz, be examined and carefully retained. It is reported by Roskovany, *On Mixed Matrimony*, volume 2, page 86, and *Catholic Monuments*, volume 2, page 94, and is as follows: *The opinion of those teaching that the marriages of heretics entered before a non-Catholic minister are null, and that therefore second nuptials will be valid provided that they are contracted before a Catholic Pastor, is neither universally true nor sufficiently safe, and therefore is not to be followed indiscriminately in practice in every case.... Hence it has happened that the aforesaid opinion, which maintains that marriages contracted among heretics before a non-Catholic minister are generally null and invalid, has always had adversaries both more numerous and of the highest authority, so that it has scarcely retained any degree of probability, especially after the publication by Benedict XIV in the year 1741 of the most celebrated Declaration concerning the marriages of Holland. Beware therefore, Venerable Brother, and teach your suffragan Bishops by your example and admonitions lest in examining and judging the aforesaid matrimonial cases they be deceived by these depraved doctrines and fallacious reasons*, etc.

It is certainly remarkable that Pius VII attributes especially to the Benedictine Declaration the fact that scarcely any probability now remains to the opinion asserting the nullity of these marriages; but the Author, on the contrary, has recourse to the same Declaration in order to seek support for that opinion! Nor will anyone hesitate greatly about which is more to be believed.

Indeed, while the Author asserts that the nullity of those marriages is established from Decisions of the Sacred Congregation reported by Father Perrone, Benedict XIV, on the contrary, affirms that nothing had yet been defined generally by the Apostolic See through any decree, but that the replies of the Sacred Congregations referred only to certain particular circumstances and for that reason had not always been uniform. Thus the Pontiff in the constitution *Matrimonia*, section 2: *Although His Holiness is not unaware that at other times, in certain particular cases and with attention to the circumstances then set forth, the Sacred Congregation of the Council replied in favor of their invalidity, nevertheless having it equally established that nothing had yet been defined generally and universally by the Apostolic See concerning marriages of this kind*, etc. And again, concerning the same matter in *On the Diocesan Synod*, book 6, chapter 6, no. 4: *We indeed, during the space of many years before We ascended to higher dignities, exercised the offices of Secretary of the Congregation of the Interpreters of the Council of Trent, Doctor of Decrees in the Office of the Apostolic Penitentiary, and Consultor of the Supreme Inquisition, and were present at the discussion of the aforesaid cases; but We were never able to acquiesce in that opinion by which the aforesaid marriages are judged null. Therefore it was continually in Our desires that some opportunity offer itself in which a general rule and law might be established concerning either the nullity or validity of the same marriages, for in the preceding time only particular decrees had been made in this or that case, which had not even always been conformable to one another because of the variety of circumstances which were present in one kind of fact but absent in another.* From these things it is apparent that the Decisions of the Sacred Congregation were so far from establishing a general law that the Congregation itself sometimes defined the opposite, and Benedict XIV therefore professes that in a matter still altogether uncertain he had always stood for the contrary. And if the replies of the Sacred Congregation then left the matter uncertain, this must be said *a fortiori* of the replies rendered after the Benedictine Declaration down to our age. Therefore nothing concerning any general principle can be concluded from Decisions of the Sacred Congregation.

The Author then argues from the general doctrine that heretics are subject to ecclesiastical laws and consequently to this law of the Tridentine Synod. But Benedict XIV most expressly signifies, on the contrary, that the marriages of heretics in Holland were declared valid because those marriages are not comprehended by the Tridentine law. Thus he says in the

constitution *Singulari Nobis* of February 9, 1749, to Henry, Cardinal of York, section 17: *For it has been proved by the truest arguments and conjectures that the Council of Trent, when it established that new diriment impediment, did not extend its decree to those marriages which gave occasion to the dispute resolved by Us in the year 1741, as can conveniently be gathered from the opinions of the theologians and canonists who wrote concerning this matter*, etc. He urges the same thing again in the Letters to Anthony, Archbishop of Goa, speaking of the Fathers of Trent: *That consideration raised a scruple in others, namely, lest by the abolition of clandestine marriages, that is, those which are celebrated without the Pastor of the man or woman,*

the minds of the heretics could thereby be gravely exasperated, whose marriages would have been null, and consequently their offspring illegitimate, since they had never been celebrated before a Catholic Pastor and two witnesses. But since the Fathers of the Council wisely established in this manner: It decrees further that a decree of this kind shall begin to have its force in each parish after thirty days, to be counted from the day of its first publication made in the same parish; since it was not credible that a decree of this kind was to be promulgated by them, it followed that their marriages made without the presence of a Pastor and two witnesses could never have been called invalid, as Cardinal Pallavicini continues, etc.

Nor is what the Author adds firm: that from the fact that the Pontiff declared those marriages in Holland to be valid although clandestine, it follows that without that Declaration they would have been invalid. For the Declaration did not give those marriages intrinsic firmness or validity, but merely extrinsic firmness, that is, it authentically declared what they already were and what was to be judged concerning them; it did not bring it about that they were intrinsically such, that is, valid. Conversely, the absence of the Declaration does not bring it about that they are invalid, but only that their validity is not authentically established for us.

842. ○ **QUESTION 6. Is the Tridentine Decree considered to be in force in a Church recently formed among heretics or unbelievers?**

Reply. Yes, if the Tridentine decree was published in those parishes. Although by ordinary law this Decree must be promulgated, nevertheless, where it has not been published, the founders of a new Church could sometimes defer promulgation of this Decree by reason of a special difficulty, namely, when Priests are so rare in a large province that from time to time they cannot assist at marriages. But in a similar case it would be more prudent to have recourse to the Apostolic See, to which it belongs to judge what is more expedient in so grave a matter.

843. ○ **QUESTION 7. When the faithful cannot have recourse to their own Pastor, ought they to contract before another Priest if they easily can?**

Reply 1. They ought to seek permission from the Pastor or Bishop by letter, if this can easily be done, so that some Priest may be delegated to assist at the matrimony.

Reply 2. If they cannot request or obtain this faculty, they can contract validly before two witnesses even without any assistance of a Priest. - Thus commonly. - The reason is that a simple Priest, and likewise another Pastor who is not the proper Pastor of at least one of the contracting parties, can contribute nothing to the validity of the act. This is also established from the reply of the Sacred Congregation of April 22, 1795, approved by Pius VI. For it replied that in these circumstances only a blessing should be received from some Catholic Priest. - See the collection of Decisions of the Roman Curia concerning matrimonial matters at the end of the little work *On the Impediments of Matrimony*, published at Louvain in the year 1827.

844. ○ **QUESTION 8. Are spouses who, in the absence of a Pastor, contracted clandestinely bound to receive the blessing when an opportunity is given?**

Reply. They are not indeed bound, but they are to be exhorted to this. Priests, however, ought to declare to the spouses that a blessing of this kind in no way pertains to the validity of the matrimony. This is evident from the reply of the Congregation mentioned in the preceding question, given on the same day and approved by the same Pontiff. - See the little work just cited, page 175.

Section II — On the Assistance of the Pastor

Two matters must be treated: 1. what kind of Pastor ought to assist; 2. how he ought to assist.

I. What Kind of Pastor Ought to Assist

845. ○ I. Only that Pastor can validly assist at a matrimony who is the proper Pastor of either contracting party, and therefore one who has jurisdiction over them or at least over either one. For it is established from the Council of Trent that only the Pastor can validly assist at matrimony. From several Declarations of the Sacred Congregation of the Council of Trent, we have it established that *Pastor* is to be understood in this manner.

II. The jurisdiction of the Pastor is constituted through the habitual domicile or quasi-domicile of the contracting parties, or of either of them, in his parish, but not through domicile of origin or through mere habitation for a brief time. This is gathered from Declarations of the Sacred Congregation and from Benedict XIV, etc. - Thus by the unanimous consent of the theologians.

846. **Questions. - QUESTION 1. What period is required so that a stranger can contract matrimony in a place not his own?**

Reply. Residence for one month suffices. This is deduced from the Declaration of Benedict XIV in the Letter to the Archbishop of Goa, *A Few Weeks Ago*, March 19, 1758 [10], which is as follows:

[10] Compare what was said above in the notes to no. 839, question 1.

After these things We judge it necessary to add something so that it may be manifest what is required for acquiring a quasi-domicile. But in this matter no other reply can be given than that, before the matrimony is contracted, the one contracting must have resided for the space of at least one month in the place where the matrimony is celebrated. The definitions of the Congregation of the Council concerning this matter can be observed in Fagnanus..., where, after considering their context, he has the following: A man and woman of Utrecht, fearing an impediment from their parents, proceeded to the neighboring city of Aachen and, after remaining there for some time, contracted matrimony. When the Sacred Congregation was consulted concerning its validity, it judged that the time for which the contracting parties remained at Aachen must be expressed; and if it was at least one month, a decision in favor of validity was to be given....

It could be doubted, however, whether, for acquiring a quasi-domicile for the sake of matrimony, not only preceding residence but also subsequent residence for some space of time is required. But since We have observed that subsequent residence is regarded by those authors who have treated this matter as an aid of great importance for saying that a new domicile was sought, while nothing concerning it was prescribed by the Congregation of the Council in the definition adduced a little above, We are unwilling to decree anything new concerning this matter [11].

[11] These things manifestly confirm what was said above in the note to no. 839, namely, that the space of one month was not established by Benedict XIV as though a stay of one month without the intention of remaining there for as much time as suffices for acquiring a quasi-domicile were sufficient, or as though, when this intention is present, it were necessary for a

month to elapse before the nuptials are celebrated. For it is expressly said that a stay of one month is considered in the case as an aid by whose assistance the intention of establishing at least a quasi-domicile in that place can be presumed. Otherwise, that monthly stay would not be a mere aid for presuming or proving something, but would itself be the manifest establishment of a quasi-domicile. The same thing is evidently gathered from the fact that the Pontiff immediately adds that he is unwilling to resolve the question whether, beyond the preceding residence of a month, some subsequent stay in the same place is further required after the nuptials have been contracted. For if he had defined that the space of a month sufficed for constituting that quasi-domicile which was already adequate for validly contracting matrimony there, by that very fact he would also have defined that this subsequent stay was in no way necessary. Thus, with no one dissenting, the matrimony would in fact be considered valid of one who, coming from France to London with the intention of establishing a quasi-domicile there - suppose, for example, a man attached to the French Ambassador to the King of England - contracted nuptials on the day after his arrival and on the same day, according to the example proposed, was recalled to Paris by an entirely unforeseen command of the Prince. For by the right of quasi-domicile he could validly contract; but for one who already legitimately possesses this right, it is indifferent whether some unforeseen cause leads him elsewhere contrary to what he had determined.

But that mention of subsequent residence there is made by Benedict XIV as another aid for presuming whether there was an intention of establishing a domicile in that place is also evident from the same Benedict's *Instruction* XXXIII, no. 9, where, speaking of the same Decisions of the Congregation of the Council mentioned by Fagnanus, which he also calls Decisions here, he has the following: *It must nevertheless be observed that those entering matrimony in this manner had acquired a domicile or quasi-domicile in that place before they completed the matter. For they had remained there for a long time before the matrimony, nor did they afterward depart from there in order to return to their first residence and domicile.* Here you see both the preceding residence and the things which followed it invoked as mere aids by which both the acquisition of domicile or quasi-domicile and consequently the validity of the contracted matrimony were established.

Moreover, observe that all the things which the Author adduces from the Letters of Benedict XIV to the Archbishop of Goa have no relevance unless you suppose, what the Author otherwise does not indicate, that there is question of a stranger who, without abandoning his own domicile, proceeds purposely to another place in order to celebrate matrimony there. See what we said in the note to no. 839, question 1.

847. ○ This doctrine of Benedict XIV is confirmed by a recent Decision of the Sacred Congregation of the Inquisition of December 6, 1843. For to this petition: *John and Mary, having domiciles at Mechlin, come to London and, without the authority or permission of their Pastors, after only one month has elapsed, contract matrimony in London. It is asked whether this matrimony is invalid because of the aforesaid Council of Trent, session 24, chapter 1, On the Reformation, or not.* The Sacred Congregation of the Inquisition replied to the proposed doubt on December 6, 1843: *Let the Letter of Benedict XIV to the Bishop of Goa stand.*

But residence for one month in some place does not suffice to confer jurisdiction upon the Pastor of that place so that he can validly assist at matrimony if it is made for the sake of recreation or a stay in the country, or for rural business; because then neither a domicile nor a true quasi-domicile is present [12], as is established from a Declaration of the Sacred Congregation reported by Benedict XIV, *Instruction* 33, no. 7. See *Analecta of Pontifical Law*, volume 2, section 1886, and St. Ligorius, no. 1086.

[12] When the intention of establishing a domicile or quasi-domicile somewhere is absent, it makes no difference whether a brief or long stay is prolonged there. Thus, for example, if as a traveler you remain in some city awaiting an opportunity to buy merchandise, a companion for a journey or voyage, the outcome of some lawsuit, the cessation of difficulties which delay your return to your homeland, or something of this kind, even if you remain there for five or even ten years, prolonging a stay precarious from day to day, you will never acquire that right of domicile which suffices for validly contracting matrimony before the Pastor as though he were your own.

848. ○ **QUESTION 2. Can persons without domicile contract before any Pastor?**

Reply 1. Yes, if both contracting parties are persons without domicile. The reason is that they have no proper Pastor.

Reply 2. If only one is without domicile, they can still contract before any Pastor, because the spouse having a fixed domicile can use the privilege of the other. - Thus commonly. - St. Ligorius, no. 1089 [13].

[13] Benedict XIV defines a person without domicile in *Instruction* 33, no. 10, as one who, having abandoned his domicile, seeks a residence in foreign lands. This must be understood both if he has determined where he will establish his residence and if he has not yet determined it; for in each case he still equally lacks a domicile, as Sanchez notes (*On Matrimony*, book 3, disputation 25, no. 3). Add that it is not necessary for him to seek a residence; for one who nowhere has or wishes to have a certain and constant residence is equally, indeed *a fortiori*, called a person without domicile, as the same Sanchez observes, l.c., no. 1. Moreover, for the present matter, in order for someone to be called without domicile in relation to a parish, it is not even necessary that he seek a domicile in some remote or foreign region. Rather, it is generally sufficient that, after abandoning his prior parish, he has not yet established a residence in another, because he is then truly without a parish, since he has lost the prior parish and has not yet acquired another. Therefore: 1. one who, after abandoning a parish, has not yet found a house in which to live and meanwhile lodges in some place is without domicile; 2. even if he has found the house in which he will live, but lodges elsewhere while the found house is being vacated by its former inhabitant, he is likewise without domicile as regards the parish; 3. thus also if he has arrived in a city and has not yet determined in what part he will live, he is numbered among persons without domicile or without a parish. Sanchez, l.c., no. 4.

The Holy Council of Trent, moreover, commands Pastors two things regarding persons without domicile, session 24, chapter 7, *On the Reformation of Matrimony*: 1. that they not be present at their marriages unless they have first made a diligent inquiry; 2. that, after the matter has been reported to the Ordinary, they obtain from him permission to do this. You have the manner of the inquiry in the Instruction which the Holy Inquisition, with Clement X approving, added; Giraldi (*Exposition of Pontifical Law*, section 656), Ferraris (*Instruction of Pastors*, nos. 36-53), and in part St. Alphonsus, book 6, no. 1089, report it in full with other encyclicals of the same Inquisition.

QUESTION 3. Can a suspended, irregular, excommunicated, or schismatic Pastor assist VALIDLY at matrimony?

Reply. Yes, provided that he has not renounced the title or been canonically deposed from it. - Thus commonly. - But generally he would assist illicitly [14]. - St. Ligorius, nos. 1085, 1084.

[14] The Pastor in the case is not a minister of the Sacrament, but a mere witness; and the Doctors do not agree among themselves whether he sins when he assists after being requested by the contracting parties. But St. Alphonsus appears to require too much when he requires in the contracting parties a most grave cause for requesting him, since otherwise he does not require so grave a cause in order that Sacraments may licitly be sought from an unworthy minister.

Add here that a Pastor validly assists at a matrimony even if he is not yet a Priest, and although the Bishop has prohibited this to him. The same must be said of the Vicar General if, contrary to the prohibition of the Bishop, either he himself assists at a matrimony or gives some Priest the faculty of assisting. See St. Alphonsus, book 6, no. 1081, and Benedict XIV, *Canonical Question* 98.

Both Cardinals in their respective Titles and in churches subject to them, and Pontifical Legates in provinces entrusted to them, have the faculty of assisting at marriages. See Ferraris, *Matrimony*, article 3, nos. 12, 20, 45.

The VV. observe here (page 816, in the Note) that the things said in the first part of this Note do not cohere with the Note to no. 960, where it is said that a Pastor who is to be avoided assists at matrimony validly but illicitly.

Reply. That in the one place it is merely affirmed that the Doctors do not agree among themselves concerning the proposed question, as is seen in the present Note, while in the other one of several opinions is admitted, as is contained in the Note to no. 960, involves no conflict, all the more because in the latter place the principal question, namely, whether the Pastor sins gravely or lightly, is not resolved by the word ILLICITLY, but at most the opinion of those who exempt the Pastor from every sin is set aside. For St. Alphonsus in fact reports three opinions thus (book 6, no. 1083): *Whether a Pastor excommunicated as one to be avoided sins gravely by assisting, Coninck and Pontius... affirm. But Sanchez, Bossius, Hurtadus, Diana,*

Villalobos, Leander, etc., deny it; some of these hold that he does not even sin lightly. Indeed, the question is not altogether resolved against the third opinion either, because there is no inquiry there concerning whether the Pastor did or did not first take care to substitute another Priest for himself in that office.

But against what is said in the Note, namely, that St. Alphonsus appears to require too much in the case when he requires in the contracting parties a MOST GRAVE cause for requesting the Pastor, they object (page 817) that a most grave cause is required, because otherwise, without necessity, there would be communication in a sacred and grave matter with a person to be avoided.

Reply. For some necessity to exist in a matter of this kind, a most grave cause is not required, but even a necessity or merely grave, or non-light, cause can suffice. Hence, although Suarez treats of a graver matter, namely, seeking Sacraments from one to be avoided, he does not require a most grave cause but *some just necessity* (*On Censures*, disputation 16, no. 27); the Doctors generally call a cause just which is considered sufficient to excuse from the ecclesiastical precept in question. In this matter it must also be kept before one's eyes that, when the Church excommunicates someone by name, it certainly imposes a precept both upon the excommunicated person not to mingle with the faithful, especially in a sacred matter, and upon the faithful to avoid communication with him. Nevertheless, it is sufficiently clear that by this the Church intends to inflict a grave penalty upon the contumacious guilty person, not to punish the faithful, as it were, by imposing a most grave burden. Hence the Doctors cited by the Salmanticenses (treatise 9, chapter 8, no. 48) find a sufficient necessity which excuses the person to be avoided from sin, at least grave sin, in assisting at marriages when when he executes his office for the utility of others. Therefore their utility suffices for excusing the others. For it is well known - see Suarez, l.c. - that a cause which excuses the one conferring also excuses the recipients, and conversely. Nevertheless, the Pastor will not be excused from sin if, when he can easily and without burden to others, he does not commit the office of assisting at the matrimony to another.

849. ○ **QUESTION 4. Does a Priest who is falsely considered the Pastor assist validly?**

Reply. Yes, if he has a colorable title and is regarded as the Pastor from common error. The reason is that the Church then supplies jurisdiction for the common good. - Thus all. It also appears more probable that the same must be said if common error alone is present without a colorable title, for the same reason, as was said concerning jurisdiction in the internal forum in the Treatise *On Penance*, no. 548.

QUESTION 5. Does any Priest validly assist at matrimony with the presumed permission of the Pastor?

Reply. No, because it is not true permission; tacit permission, however, or even permission extorted by fear or deceit, suffices. - St. Ligorius, no. 1088, and others commonly.

850. ○ **QUESTION 6. Can a Vicar validly assist at matrimony apart from the delegation of the Pastor?**

Reply 1. Yes, if the Vicar supplies the place of a deceased or absent Pastor; for then he is certainly delegated for the universality of causes. Indeed, then he can also subdelegate another, for by law one delegated for the universality of causes can subdelegate another for a particular case. - Recall what was said in the Treatise *On Laws*, no. 116, and *On Penance*, no. 545.

Reply 2. But if the Vicar is the cooperator of a present Pastor, there is greater difficulty, nor can the matter be defined by a general and absolute rule. Therefore attend to the statutes or custom of the dioceses. For a Bishop constituting Vicars as assistants of the Pastor can either confer upon them immediately the right of assisting at marriages or leave that right to be committed to them by

delegation of the Pastor. But according to the custom more commonly received in France and in other places, it appears that the following can be established:

1. The Vicar can assist at the matrimony of parishioners celebrated in the parish itself, because he exercises the office of the Pastor himself.

2. The Vicar can also appoint another Priest to assist at matrimony in a particular case. The reason is that, while the aforesaid custom is in force, he is delegated for the universality of causes and consequently can subdelegate another. - Bouvier, chapter 7, article 6. - Carriere, no. 1344.

II. How the Pastor Ought to Assist

851. **Principles.** - I. It is required and sufficient for the validity of matrimony that the Pastor be morally present, like a witness who must give testimony concerning a completed matter. The reason is that the Pastor is employed here as the principal witness deputed by the Church, as is established from Benedict XIV, *On the Diocesan Synod*, book 13, chapter 23.

II. It is required that the Pastor be addressed and advised concerning what the contracting parties wish to do, or that he be employed by them. The reason is that otherwise the Pastor is not considered to attend to what is being done, nor can he judge that those who act wish to act seriously [15]. It is not required, however, that he was expressly called for this purpose. For it would suffice if he were present there by chance, or had been summoned under another pretext. This is evident from a Declaration of the Sacred Congregation. - Carriere, *Compendium*, no. 309. - Bouvier.

[15] It suffices that while the contracting parties express consent they give some sign, for example, with the eyes, modulation of the voice, a nod, etc., by which they indicate to the Pastor that they wish to have him as a witness, even though he was not previously informed or called, and by chance, thinking nothing of it, hears them after he has been called to it, etc. These are the words of a Declaration of the Sacred Congregation reported by Benedict XIV, *On the Diocesan Synod*, book 13, chapter 23, no. 1.

Hence:

1. The merely physical presence of the Pastor does not suffice, since he must attend to what is being done. Hence one who is drunk, sleeping, or insane cannot assist at matrimony.

2. It is not necessary that he see the contracting parties, provided that he hears them clearly expressing their consent. Therefore a blind man can assist at matrimony, but not one both blind and deaf.

852. **Questions. - QUESTION 1. Does a Pastor coerced by force and fear assist validly?**

Reply. Yes, because according to law it suffices that he be present and know what is being done, whether willing or unwilling. This is manifest from a Declaration of the Sacred Congregation. - See St. Ligorius, no. 1092 [16].

[16] The case must not be omitted in which the Pastor, wishing to resist lest he be regarded as a witness, closes his eyes, blocks his ears, or shouts and attempts to flee, so that he may render the act invalid because he can afterward affirm that he saw or heard nothing. But the Sacred Congregation has already replied a hundred times with what is also contained in the reply to the Bishop of Jaen in the year 1581, reported by Benedict XIV, *On the Diocesan Synod*, book 13, chapter 23, no. 1:

namely, that the matrimony is invalid if the Pastor neither saw nor heard the things being done, UNLESS, HOWEVER, HE AFFECTED NOT TO UNDERSTAND.

Weighing this clause, Benedict XIV (l.c., no. 11) teaches that it must be understood of the case in which the Pastor, unwillingly employed for the contract of matrimony, therefore neither sees nor perceives because he deliberately wished neither to see nor to perceive, although he naturally could have both seen and perceived in the same manner as the witnesses employed for that same contract admit that they saw and perceived. He then treats of a case argued in the year 1753: *Celebrated in the preceding year 1753 was the Carthaginian matrimonial case, argued and judged in the Congregation of the Council, in which there was question of a certain matrimony contracted before a Pastor unexpectedly found in his own house, who had indeed seen the man and perceived his words, but had neither seen nor heard the woman.* After recalling the studies of theologians and opinions of the Doctors, he concludes: *But when the fact itself concerning which there was question had been accurately weighed and all its circumstances diligently examined, it was manifestly established that, if the Pastor did not see the woman and did not understand her words, this happened because he himself, with a fixed mind, was unwilling to see and hear her, although he could easily have seen and heard her, just as the witnesses employed for that act had seen well and heard correctly. Therefore judgment was rendered, and with Our assent a sentence proceeded in favor of the validity of the matrimony.*

QUESTION 2. In what place can the Pastor or a Priest deputed by him assist at matrimony?

Reply 1. He can assist validly everywhere, even outside the parish. Reply 2. Apart from a grave cause, he cannot assist licitly except: 1. in his own parish church; 2. in another parish church with the consent of the Pastor of that place; 3. in private chapels or oratories with the permission of the Bishop in whose territory the place is situated.

853. ○ **QUESTION 3. Can or ought a blessing be given to the spouses in every case?**

Reply 1. If by the name *blessing* are understood the words, *I join you together*, etc., it must always be given under grave obligation [17] in a matrimony of Catholics, because it is prescribed by the Council of Trent.

[17] This resolution is opposed to the canon received by all, that nothing is to be condemned as mortal unless it is certainly established. See volume 1, no. 152, in the note. Only a few, against many others cited by St. Alphonsus, no. 1094, have said, merely as an opinion, that this omission can be regarded as grave.

The VV. here oppose the opinion of St. Alphonsus (page 947, no. 159), who writes in book 6, no. 1094: Pontius, Sanchez, Palaus, and the Salmanticenses with Gutierrez and Bonacina teach probably that it is not mortal if the Pastor omits, "I join you together," etc. Add Coninck, Villalobos, and Diana, cited by Busembaum in that place. But Bossius with Rebellus, Barbosa, Veracruz, and Salsedus still probably, and perhaps more probably, say that it is mortal, because it appears to be a transgression in a matter of great moment.

Reply. The Note recalls the Canon received by all, that nothing is to be condemned as mortal unless it is certainly established; and St. Alphonsus himself most earnestly inculcates this Canon both in the *Moral System*, final proposition, and in the Treatise *On Penance*, book 6, no. 604.

Moreover, in the present question St. Alphonsus admits that each opinion is probable and, merely with some doubt, says that PERHAPS the latter is more probable. Therefore, since the Holy Doctor himself defines the matter to be plainly uncertain, this doubtful greater probability can now serve for mere erudition, but not for the use of confessors or as a rule of consciences. Indeed, it is especially suited for confirming that this omission cannot be condemned as a grave fault.

Reply 2. But the blessing which is called solemn and is given at Mass must always be given unless the bride is a widow [18]. - Recall what was said at nos. 770, 829, and following.

[18] The Doctors disagree wonderfully concerning this. Some generally will that any nuptials whatsoever be blessed, provided that they are just; others contend that they are not to be blessed when each spouse, or at least either spouse, has received the blessing; others with St. Thomas say that they are to be blessed when a widower marries a virgin, but otherwise if she is a widow. Schmalzgrueber rightly concludes (book 4, title 21, nos. 41-42) that one who conforms himself to the Ritual of his own Church will act best, for in this the custom of his own Church will appear.

Point XII. On the Impediment of Impotence

854. ○ Impotence for performing the matrimonial offices, or incapacity for carnal intercourse of itself apt for generation, is distinguished in several ways, namely:

1. Certain or doubtful, according as it is or is not manifest.

2. Antecedent or consequent, according as it precedes the matrimony or follows it.

3. Temporary or perpetual, according as it can or cannot be removed by the passage of time or by art.

4. Natural or accidental, according as it arises from an intrinsic defect or from an extrinsic cause, for example, sorcery.

5. Absolute or relative, according as it exists between a man and all women, or between a man and some determinate woman; or conversely.

855. **Principles.** - I. Antecedent and perpetual impotence, whether absolute or relative, renders matrimony invalid by the natural law. The reason is that the object of the matrimonial contract does not exist, since intercourse is impossible. This is also established from Canon law. - St. Ligorius, no. 1095.

II. Consequent impotence and temporary antecedent impotence do not invalidate matrimony. The reason is that the actual use of matrimony does not pertain to its essence, and it suffices that consummation either was possible at the time of the contract or will be possible in the future.

III. Impotence certainly known renders the use of matrimony illicit, even if only attempted, because where intercourse cannot be completed [1], the end which renders the union licit is absent.

[1] Where there is question of impotence consequent upon matrimony, according to the principles now commonly received in the schools of physicians or physiologists, the case will be very rare in which conjugal intercourse ought to be forbidden to spouses as though illicit by reason of impotence. For conjugal intercourse must then be called altogether illicit only when, considering its nature in itself, its natural effect, namely, conception or generation, can in no manner whatsoever follow from it. On the contrary, it must be considered licit when generation cannot easily be hoped for but is nevertheless not impossible, and otherwise nothing more can be accomplished by the spouses in those circumstances. But as often as the man still retains the power of emitting seminal substance in some manner, intercourse of this kind, from which generation, although with difficulty, can nevertheless absolutely follow, will scarcely ever be impossible for spouses. For it is now commonly received among physiologists and physicians, as experience has taught, that for conception and the effect of generation it is by no means necessary that the man emit seminal fluid and inject it even into the more interior parts of the female organ; rather, it suffices that fluid of this kind be poured and applied to the external surface of the same organ, or to the mouth or entrance of the vagina, as they say. Thus Vallisnieri, *History of the Generation of Man*, part 1, chapter 8, no. 7, and part 2, chapter 13; so also the more recent medical dictionaries compiled from the studies of men more celebrated in medical science, one of which appeared at Venice in the year 1834 under the title *Classical Dictionary of Internal and External Medicine*, and the other likewise at Venice in 1840 under the title *Dictionary of Practical Medicine, Surgery, and Pharmacy*. The former, under the entry *Impotence*, volume XVII, page 89, says: *Many facts tend to demonstrate that it suffices that the seminal fluid be deposited at the entrance of the woman's sexual parts in order that fertilization occur.* Therefore it concludes, ibid., page 101: *It would not be lawful to affirm that an individual capable of emitting semen upon the more external genital parts of the woman is absolutely incapable of reproduction.* But the latter, likewise says under the entry *Impotence*, volume 3, page 691: *Since several facts tend to demonstrate that it sometimes suffices for semen to be deposited at the entrance of the genital parts in order to fertilize, absolute impotence will not be decided except when*, etc. Finally, more recently Louis Fleury says the same in the work entitled *Therapeutic and*

Clinical Treatise on Hydrotherapy, Paris, 1866, page 1025: *Fertilization can occur in the absence of all penile intromission, by the mere presence of semen at the orifice of the vagina.*

I said, however, where there is question of impotence consequent upon matrimony, namely, when there can be question only of the morality of the act between spouses certainly legitimate. For if there were question of antecedent impotence, the question would already concern the validity of the matrimony, and this must be left to the ecclesiastical judge to resolve.

I said further, if otherwise nothing more can be accomplished by the spouses in those circumstances. For it must not be thought that, because generation remains possible in some manner from that mode of uniting and thus, since the end of the seminal substance is not altogether frustrated, the act cannot be called repugnant to nature, it is therefore lawful for spouses to use matrimonial rights in that most imperfect manner whenever they can unite in a more suitable manner. For although generally they are not bound to employ the greatest diligence so that the effect intended by nature in the conjugal work may follow more certainly, they are nevertheless bound to avoid, insofar as it lies in their power, that mode of the act by reason of which generation not only can be impeded but can be attained only with the greatest difficulty.

Meanwhile, the Confessor will diligently observe that the occasion for employing the foregoing principles of physiological science is not restricted only to those circumstances in which the man is unable to fulfill his part more perfectly than was said there. For it happens perhaps more frequently that, while the man could fulfill his office perfectly, nevertheless the female organs serving this work, or even the present condition of health and constitution, are affected by such discomforts and diseases that they in no way permit intercourse more perfect than the aforesaid. But since these diseases or this condition do not altogether impede the effect intended by nature but still leave generation possible of itself, conjugal intercourse in those circumstances, although less perfect, cannot therefore be forbidden as illicit. The same must also be observed concerning the elderly, to whom theologians permit the use of marriage - see below, no. 908, resolution 4 - provided that they can sufficiently complete the act or do not have an empty hope of completing it. For they can be considered sufficiently capable of the act so long as at least they can fulfill their part in the aforesaid manner.

856. **Resolutions.** - 1. Eunuchs or castrated men deprived of both testicles are regarded as impotent, but not if they lack only one.

2. In a doubt concerning antecedent impotence, judgment must be made in favor of the validity of the matrimony, and the spouses must be permitted to attempt intercourse. Indeed, three years are granted to them for this by Canon law, notwithstanding a greater probability in favor of perpetual impotence. - St. Ligorius, no. 1103.

3. In a doubt concerning consequent impotence, the spouses are likewise permitted to attempt intercourse until they are certain that it can in no manner be completed. - St. Ligorius, no. 1101. The Confessor, however, ought to proceed cautiously; and if he discovers that impotent spouses are in good faith, it will more frequently be better to abstain from admonition, lest they fall from material sin into formal sin.

4. Impotence must not be confused with sterility; for sterile persons are not impotent for the conjugal act. Hence elderly persons who are able to consummate matrimony contract validly; likewise women who can receive semen even if they do not retain it. - St. Ligorius, no. 1095. - Gousset, no. 791.

5. The Confessor must take the greatest care not to proceed rashly in a matter of such great moment and subject to so many difficulties, or to decide anything by his own authority. Rather, after duly examining the case with all its circumstances, he must refer it to the Ordinary, to whom it will then belong to establish and determine what ought to be done in a matter of this kind. Indeed, as it appears to us, a prudent and discreet Confessor will not question spouses concerning impotence, nor admonish even those whom he believes impotent; nor will he give a

final answer to those consulting him concerning this matter unless he has first consulted the Bishop. - Gousset, no. 791.

Point XIII. On the Impediment of Abduction

857. ○ Abduction is the violent carrying away of a woman from a safe place to another place where she is detained under the power of the abductor [1], for the purpose of entering matrimony.

[1] It is the same whether the abductor carries out the abduction himself or through others, and likewise whether he retains the abducted person in his power by himself and in his own custody or through others and in their custody. This is gathered from a Declaration of the Sacred Congregation of the Council of June 25, 1864, which can be seen in the *Roman Acts*, volume 1, pages 15-25. But one who abducts for himself incurs the impediment, not those who abduct for another, although the latter can otherwise incur penalties decreed against abductors both by civil and Canon law. See Schmalzgrueber, book 5, title 17, no. 20.

Abduction invalidates matrimony by ecclesiastical law between the abductor and the abducted woman. This is established from the Council of Trent, session 24, chapter 6.

Three conditions are required for incurring that impediment, namely: 1. that the abducted woman be carried away from one place to another; 2. that the woman be abducted solely for the purpose of matrimony; 3. that the abduction occur while the woman resists [2], or is altogether unwilling. This is gathered from the text of the Council of Trent [3]. - St. Ligorius, no. 1107.

[2] It makes no difference whether the woman is carried away from her own home by force or, led about by deceit, unknowingly comes into the power of the one plotting the abduction; likewise, whether she is carried away from her own dwelling or, having been led from it through fraud, is thereafter prevented from being able to return to it freely. For free consent is equally absent both if through open force and if through fraud she is no longer permitted to be in her own power. See the Declaration of the Sacred Congregation cited in the preceding note.

[3] The text of the Council of Trent cited by the Author does not in fact add this condition, that the woman be carried away altogether resisting and unwilling. The Doctors, however, are commonly accustomed to infer it from the fact that the Council speaks of that abduction by which the liberty of matrimony is injured. See Schmalzgrueber, book 5, title 17, no. 35. But liberty of consent appears sufficiently present when the woman consents to her abduction.

Nevertheless, this doctrine can easily be reconciled with the opposite opinion if a suitable distinction is employed. For the abduction of a woman consenting to her own carrying away can occur in two ways: first, when negotiations concerning nuptials with the abductor preceded and the woman consents to her own carrying away so that the marriage which otherwise was impeded can be entered. Then no impediment arises, since it ought rather to be called flight with the man for freely contracting matrimony than abduction. Second, when no negotiation concerning nuptials had preceded; and then the woman's consent to her own carrying away is presumed to have been extorted through deceit. Since consent to matrimony cannot be inferred from consent to the abduction, the abduction of the woman, although willing, is included in the decree of the Council. See Riganti on Rule 49 of the Chancery, no. 79 and following.

These things are brilliantly confirmed from Declarations of the Sacred Congregation which you have collected in the Appendix inserted in the first volume of the *Roman Acts*, beginning at page 54. From these the Author of the Appendix draws the following conclusions: I. an abduction which falls under the decree of the Council is not present when negotiations concluding the matrimony to be entered precede the abduction. For in this case the man has a right to have the woman espoused to him, and the woman is bound to consent to the matrimony. II. Nor is this abduction verified if, without deceit, the man carries away the woman by agreement because negotiations concerning the matrimony could not be concluded on account of the opposition of the parents. III. Nor is abduction verified if not the man but the woman solicited the man to carry her away. In these two cases it must rather be called the flight of the woman with the man so that they may more freely contract matrimony than abduction. IV. On the contrary, abduction is verified if the woman is carried

away through snares and deceitful solicitations by one planning abduction, so that afterward under the influence of the abductor she is compelled to consent to matrimony.

And the same Author deservedly concludes that whenever the woman appears to have consented to the abduction, the resolution must be taken from the circumstances considered. For if the woman consents to the carrying away so that she may contract matrimony more freely, and uses this means of carrying away to remove obstacles, it does not appear to be abduction but mere flight, although some injury is inflicted upon the dissenting parents. But if the man cannot obtain the woman's consent to matrimony by a direct way and, therefore meditating the seizure or theft of the girl, begins to circumvent the inexperienced woman by snares, deceitful solicitations, etc., so that by these arts he may extort some compliance from the fickle girl, and, having obtained it, carry her away in contempt of her parents, everyone sees that the man indeed intends to compel the girl into matrimony, while the girl, through the man's snares, in some manner adheres to the circumvention without herself seriously perceiving that she is being driven to enter a marriage which perhaps she would never have entered willingly and against the will of her parents.

And in these things there is contained that by which the following question of the Author concerning abduction by seduction may also be resolved.

858. **Questions. - QUESTION 1. Does ABDUCTION BY SEDUCTION, or when a woman is induced by gifts, flatteries, etc., to follow the abductor, introduce an impediment?**

Reply. No. The reason is that through the impediment of abduction the Church intends only to provide for perfect liberty of matrimony, which is not injured when a consenting woman is carried away, even against the will of her parents. - Thus commonly, according to St. Ligorius, no. 1107. Sanchez, Bonacina, the Salmanticenses, Scavini, etc., agree.

And indeed not a few French theologians contend that, at least in France, abduction by seduction invalidates matrimony by prescribed custom. But this must not be admitted, for a custom which rests only upon a false interpretation of the law cannot bind. - Compare Gousset, no. 797.

But the Declarations of the Sacred Congregation of the Council which are cited for that opinion cited in the *Analecta of Pontifical Law*, volume IV, page 1848 and following, concern altogether particular cases, and the circumstances are not sufficiently established, so that it can be asserted that a violent carrying away of the woman was absent. In France itself, Scavini says, the opinion teaching that abduction by seduction introduces a diriment impediment of matrimony, which had long been in force, is everywhere rejected.

859. ○ **QUESTION 2. Are betrothals contracted while the abducted woman is under the power of the abductor valid?**

Reply. A twofold probable opinion is given:

The first opinion denies it, because betrothals require liberty just as matrimony itself does; for a penal law is extended where the same reason applies. - Sanchez. - The Salmanticenses, etc.

The second opinion affirms it, and St. Ligorius with La Croix, etc., calls this the more probable. The reason for this opinion is that betrothals, since they are always rescindable, require less liberty than matrimony [4].

[4] Nevertheless, since this obligation is doubtful, the Confessor cannot urge it.

860. **Resolutions.** - 1. The impediment is not contracted if the woman is carried away only from one room to another room in the same house, because in this manner she is not properly

placed under the power of the abductor; rather, she must be carried away from one house to another.

2. The impediment is not contracted if the woman is abducted for another cause besides the end of entering matrimony, for example, for the end of satisfying lust, etc.; because the Council intends nothing else through this impediment except to favor the liberty of matrimony.

3. The impediment is not incurred if the woman abducts the man, because the Council speaks only of a man as abductor.

4. The impediment is not incurred if matrimony is contracted between the abductor and the abducted woman after she has been freed from the power of the abductor. This is clearly evident from the text of the Council of Trent. - St. Ligorius, no. 1032. But St. Ligorius rightly notes, ibid., that this impediment endures so long as the abducted woman is in the power of the abductor, even if she consents freely [5].

[5] The Church renders the abducted woman incapable of contracting so long as she is in the power of the abductor; therefore her consent, however free it may be supposed, will always remain without effect.

§ III. On Dispensation from Diriment Impediments of Matrimony

Three matters must be treated: 1. the power of dispensing; 2. the causes of dispensation; 3. the manner of obtaining a dispensation.

Point I. On the Power of Dispensing

861. **Principles.** - I. The Pope can dispense from all impediments of ecclesiastical law: 1. validly in every case, because he is the primary Superior; 2. licitly if he does so for a just cause, as right governance requires.

II. A Bishop cannot ordinarily and by his own right dispense from diriment impediments. The reason is that a Bishop can do nothing against the common law of the Church except from the concession of a Council or of the Pope, or from legitimate custom. But Bishops can claim for themselves the right of dispensing from such impediments for none of these reasons, as is evident both from the practice of the Church and from various Declarations of the Sacred Congregation, and especially from the Rescript of Pius VII to the Bishops of France in the year 1809. In it the Pontiff complains that not all the Bishops of France had recourse to the Holy See for obtaining faculties to renew marriages invalidly contracted during the time of the disturbance in France [1].

[1] Formerly, several Bishops in France, from a privilege annexed to the See, were accustomed to dispense from diriment impediments. But these privileges were suppressed together with the sees themselves in the new circumscription of dioceses made by Pius VII in the year 1802 through the Bull *Qui Christi Domini*, in which the following is contained: *We suppress, annul, and perpetually extinguish the title, lordship, and entire present state of the archiepiscopal and episcopal Churches, together with their respective chapters, rights, privileges, and prerogatives of every kind.*

862. **Questions. - QUESTION 1. If the spouses are from different dioceses, must a dispensation be obtained from each Bishop if each enjoys the faculty of dispensing by special Indult?**

Reply. It is disputed, and there is a twofold probable opinion:

The first opinion denies it. The reason is that when a Bishop removes an impediment from his own subject, he renders that subject capable of contracting with another impeded person. For one cannot become capable of contracting with another unless the other also becomes capable of contracting with the first. Moreover, by delegating the Bishop the Pope gives him his whole right; therefore the dispensation of the Bishop is valid just as if it were granted by the Pope himself. St. Ligorius, no. 1142, calls this opinion probable [2].

[2] Since it is probable that there is no need of another dispensation, it is lawful to contract in this manner according to the general principle that the Church supplies where perhaps there is need.

The second opinion affirms it. The reason is that the Bishop of one party has no jurisdiction over the subject of another, while the faculty of dispensing is restricted to his own subjects.

863. ○ **QUESTION 2. Can Bishops dispense from doubtful diriment impediments?**

Reply. More probably, yes. The reason is that although dispensation from diriment impediments is reserved to the Pope, nevertheless, since reservation is odious, it must be interpreted strictly and restricted only to certain cases. But if there is question of a doubt or of probability of law, dispensation appears useless, according to what was said above concerning impediments in general, since in this case the Church is considered to supply [3].

[3] The resolution of the Author, as is evident, comes to this: that in the case neither a dispensation of the Pontiff nor of a Bishop is necessarily required.

QUESTION 3. Can a Metropolitan dispense his suffragans' subjects in a case of necessity or of an Indult?

Reply. No, because a dispensation is an act of voluntary and gracious jurisdiction and is granted from the indulgence and mercy of the one dispensing; but recourse to the Metropolitan cannot be had except in matters pertaining to the contentious forum. Therefore, etc. [4].

[4] If there is question of a faculty of dispensing granted by a Pontifical indult, it will be necessary to consider the form of words in which it is conceived and from this to judge whether it is restricted to subjects alone.

Point II. On the Causes of Dispensation

864. ○ The causes which are adduced for obtaining a dispensation are: 1. grave or light; 2. motive or final, or merely impulsive; 3. true or false. - See the Treatise *On Laws*, no. 117 and following.

If in a petition a truth which must necessarily be expressed is concealed, for example, some impediment or a circumstance to be declared, etc., it is called subreption in the dispensation, or a subreptitious dispensation. But if something false is asserted as true, it is obreption, or an obreptitious dispensation.

When dispensations are said to be without cause, this signifies that none of those causes customarily alleged as canonical is present.

865. **Principles.** - I. A cause is required for the liceity of a dispensation. This is established from the Council of Trent, session 24, chapter 5, *On the Reformation of Matrimony*: *In marriages to be contracted, either let no dispensation at all be given, or let it be granted rarely, for a cause, and gratuitously.*

II. For the validity of a dispensation it is required that in the petition there be no obreption or subreption falling upon the motive or final cause. The reason is that the Superior is not considered to dispense except under the tacit condition: *if the prayers rest upon truth*.

866. **Questions. - QUESTION 1. What are the just causes for dispensing from diriment impediments?**

Reply. They are the following:

1. The narrowness of the place, that is, if it is feared that because of the narrowness of the place the girl will not suitably marry another. Every place not having three hundred hearths is regarded as narrow; and this holds even if the bride will transfer her domicile elsewhere [1].

[1] Anyone easily sees that this cause for dispensing is that in that place it is difficult to find a man whom the girl can suitably marry. Nor is consideration given to whether perhaps this difficulty could cease by seeking a husband elsewhere, since that is infrequent and foreign to common customs.

2. The lack of a suitable dowry, which otherwise is offered to the girl by a relative, or by a stranger, but on the condition that she marry the relative. 3. The already advanced or over-mature age of the woman, namely, when she has already exceeded her twenty-fourth year and does not find another man of her condition whom she can marry [2]. 4. Carnal intercourse already had with a female relative or another person laboring under an impediment, when there is otherwise danger that infamy may follow, etc. 5. Excessive familiarity of the parties, from which scandal is feared unless they marry. 6. The legitimization of offspring born or conceived from fornication. 7. The allaying of grave enmities, or the ending of a lawsuit between the parents, relatives, or relatives by affinity of the petitioners. 8. Christian virtues which probably would not be found in another man. 9. Excellence of merits toward the Church. 10. The preservation of goods in an illustrious family. 11. A large alms to be expended upon pious works. 12. The poverty of a widow burdened with children, whom the man intends and promises to support.

[2] The same standard does not hold for all places in this matter. For in some places a girl who has attained her twentieth, or even her eighteenth, year is regarded as so over-mature that she finds with difficulty anyone whom she may marry.

It sometimes happens that one cause taken separately is not sufficient, but, joined with another, is regarded as grave and therefore suffices.

The causes now admitted as canonical for the second and third degree are: narrowness of the place, lawsuits to be avoided, intercourse already had, scandal to be removed, and the over-mature age of the woman. - Bouvier.

The suppression of the truth, or the expression of what is false, concerning those things which by law, custom, or the style of the Roman Curia must be disclosed, is always regarded as substantial.

867. ○ **QUESTION 2. What things must necessarily be expressed by law, under pain of invalidity, in a petition for a dispensation?**

Reply. They are the following: 1. The true and legitimate cause moving one to obtain the dispensation. 2. Even the lowest species of the impediments, for example, affinity from licit or illicit intercourse; public propriety from betrothals or from a ratified marriage. 3. The number of impediments, for example, if besides relationship there is also affinity, or if there is double or multiple consanguinity or affinity. 4. Filiation or co-parenthood in spiritual relationship. 5. The degree of consanguinity, affinity, or public propriety from a ratified marriage; indeed, if the petitioners are in an unequal line, the nearer degree must also be expressed. This, however, is not required for validity unless they are joined in the second degree touching the first. 6. Incestuous intercourse had between the petitioners, whether with the intention of obtaining the dispensation more easily or even apart from such an intention [3]. This is proved from the Bull *Pastor bonus* of Benedict XIV.... 7. The various circumstances of a marriage celebrated with an impediment, namely, whether clandestinely; whether with the required proclamations; whether with the good or bad faith of both parties, or of only one of them; whether with the hope of obtaining the dispensation more easily; and whether the marriage was consummated.

[3] 1. In this place the Author followed St. Alphonsus, who (book 6, no. 1135) judged that this controversy, which until that time the Doctors had customarily disputed on both sides, must now be called entirely settled; and therefore he hands it down as indubitable that, if the circumstance of incest is kept silent, although it was not committed for the purpose of obtaining the dispensation more easily, the Rescript is so vitiated that the dispensation is void, and consequently the marriage invalid.

Thus the Holy Doctor (book 6, no. 1135): *But it must altogether be held (that the marriage is null).... And concerning this there is no longer any doubt today from the Bull Pastor bonus of Benedict XIV, where section 41 says: "But if the petitioners shall have obtained from Our Datary a dispensation upon a prohibited degree in the first and second, or in the second only, and also in the third or fourth, with the intercourse which followed between them kept silent, which they cannot disclose without detriment to honor; and by reason of such silence they seek a dispensation for contracting marriage, or a revalidation of one contracted; the same Major Penitentiary may, if the intercourse is still secret, grant a dispensation of this kind, or respectively a revalidation, in the forum of conscience only; a composition of fifty gold ducats of the Camera being made, when there is question of the first and second, or the second degree only, to be transmitted to the Datary for the purpose (as is the unshaken custom) of being expended in alms, etc.*" To these words St. Alphonsus adds: *From these things observe that the Pope, by saying, "may grant a revalidation," does not hold as valid marriages contracted with such concealment.*

And again (*Homo Apostolicus*, treatise 18, no. 85): *Concerning this today* (says the Holy Doctor) *every doubt ceases, since it was declared by Benedict XIV in the Bull Pastor bonus (section 41), where a marriage from a dispensation obtained with INCEST kept silent is pronounced void.*

2. But the opinion of Blessed Alphonsus (which some afterward copied), as well as the argument drawn from the Constitution of Benedict XIV, does not appear to be without its difficulties.

And indeed, to set aside for the moment the foregoing words of Benedict's Constitution, it must not be denied that the opinion which afterward pleased St. Alphonsus at one time also pleased Benedict XIV, or, to speak more precisely, Lambertini. For in Instruction 87, which he published for the Confessors of his diocese of Bologna so that they might know fully those matters for which recourse must necessarily be had to the Cardinal Penitentiary, he has the following (no. 13): *Writers indeed contend among themselves whether these things must be openly set forth (namely, the intercourse which occurred, or the will and design that they might obtain the dispensation more easily) in order that the impediment of consanguinity or affinity may be dispensed by the Apostolic See; yet in reality no room for doubt remains, since the Supreme Pontiffs have most clearly declared their mind concerning this matter. For in their Letters, when they impart some dispensation, under pain of subreption or obreption they indicate that not only the intercourse, if it occurred previously, but also with what design and will it was entered into, must be explained.* For this he cites Corradus, *Practice of Dispensations*, book 8, chapter 1, no. 36 and following, and Father Syrus on the Constitution of Innocent XII, faculty 32, section 26, and faculty 33, section 27.

3. But from these citations no slight difficulty now arises. For Corradus (loc. cit., no. 37) gives as the reason why the dispensation is null that incest is by law an impediment; and he tries to confirm this by a Declaration of the Sacred Congregation which we reported elsewhere (above, note to no. 776), in which it is read: *For this reason, that such relatives by consanguinity and affinity, through this intercourse, were rendered incapable of contracting marriage, from the fact that they are said to have committed incest, which prevents incestuous persons from contracting marriage.*

But according to St. Alphonsus this reason adduced by Corradus is altogether defective. For we have already shown elsewhere (note to no. 776) that according to St. Alphonsus both the impediment of incest and the others which were comprehended under the prohibitory impediment of Crime were so removed by force of custom that they no longer need dispensation. Thus the Holy Doctor (*Homo Apostolicus*, treatise 18, no. 53): *Under this name (CRIME) certain offenses were formerly comprehended, namely INCEST with one's own mother (the Canon must be understood not of a mother but of a godmother), the abduction of another man's betrothed, etc.; but this impediment also became obsolete through desuetude.* And again (book 6, no. 857): *Other impediments (namely, INCEST, the abduction of another man's betrothed, etc.) TODAY ARE NOT IN FORCE, NOR DO THEY NEED A DISPENSATION.* Nor, as we have already seen (note to no. 776), must this be called a singular opinion of St. Alphonsus; for it was shown there that this is the most common opinion of all. Indeed, the same Holy Doctor (book 6, no. 905) calls it the common opinion that the impediments of incest and other crimes have been removed through non-use: *Thus* (he says) *also Concina and the Salmanticenses with Sanchez and the COMMON opinion.* Therefore, in the judgment of St. Alphonsus together with the most common opinion of all, this argument of Lambertini, if indeed he wished to rest upon the testimony and authority of Corradus, already plainly collapses.

4. Nor is the other citation of Father Syrus from a manuscript work for the use of the office of the Sacred Penitentiary, bearing the title *On the Constitution of Innocent XII*, etc., of any greater force. Lambertini cites from that manuscript faculty 32, section 26, and faculty 33, section 27. Nothing need be said at present about the latter citation, because there it treats of those who in committing incest proposed to themselves this end, that they might obtain the dispensation more easily. Therefore, a few words about the former, in which Father Syrus appears to have wished to avoid the difficulty which we noticed arising in Corradus's reason. Father Syrus therefore writes thus: *It must be observed that although incestuous intercourse between relatives by consanguinity or affinity does not present any impediment to marriage, nevertheless a dispensation obtained from the Datary is subreptitious and invalid if, in obtaining it, mention is not made of the said intercourse previously had between them.* Having excluded in this way the reason adduced by Corradus, Syrus substitutes the little reason employed by Sanchez, from whom he had also copied the foregoing. For he continues thus: *For such is the style of the Curia which has prevailed, that this incest be declared for this purpose, that through fear of having to make this disclosure relatives by consanguinity and affinity may be deterred from incestuous intercourse, as Sanchez notes, book 8, disputation 25, no. 8.*

5. But how wretched these things also are! Syrus premises that incestuous intercourse between relatives by consanguinity or affinity does not present any impediment to marriage.

Let pass for the moment what Syrus intermingles concerning incest between blood relatives. Since the laws merely make provision concerning incest between relatives by affinity, this addition is due to empty reasonings drawn from the fact that incest was mentioned generally in the verses denoting crimes which impede marriage; and indeed it is due to reasonings drawn contrary to the very well-known maxim of Law that odious things are to be restricted. Against this addition Giraldi (*Notes to the Thesaurus, On Penalties*, part 2, word *Incest*, chapter 1) suitably warns that the Canon *If anyone with his mother*, canon 17, cause 33, question 2, from which some inferred that incest between blood relatives also was comprehended by that law, treats of a godmother, and by no means of a mother who is a blood relative.

But what pertains more closely to the matter: does not Syrus himself show most plainly that his assertion is false when he reports the formulas of Dispensations? For (*On the Formulas of Matrimonial Dispensations*, part 2, chapter 2, formula 3) he thus reports the formula of a Dispensation *For contracting, upon incest not expressed in the letters obtained from the Datary*: *Moreover, by Apostolic Authority specially delegated to me, I dispense you FROM THE IMPEDIMENT ARISING FROM INCESTUOUS INTERCOURSE which you had with your relative by consanguinity or affinity, so that, notwithstanding THE AFORESAID IMPEDIMENT, you may and can licitly contract marriage with her....* And again (ibid., formula IV), he himself thus reports the formula of a Dispensation *Upon a marriage contracted, concerning incest concealed in the Datary*: *Moreover, by Apostolic Authority specially delegated to me, I dispense you FROM THE IMPEDIMENT ARISING FROM INCESTUOUS KNOWLEDGE not expressed in the letters of Dispensation by virtue of which you contracted, so that, notwithstanding it, you may licitly contract marriage anew with her, with consent renewed, and consummate it, and remain in it.* What, then, is more wretched and monstrous than for someone to deny that incest presents any impediment to marriage, and not hesitate to appeal to the style of the Curia to prove this, and afterward himself to report the formulas of Dispensation in which incest is exhibited as an IMPEDIMENT OF MARRIAGE and then

dispensed as an impediment? Can the style of the Curia, to which Father Syrus appeals, be known better from any other source than from the formulas of Dispensation?

It must therefore again be concluded that Lambertini rests upon the testimony of a man who shamefully contradicts himself in this matter. But here again it must be recalled that, in the judgment of St. Alphonsus together with the most common opinion of the Doctors, the argument drawn from this has no force, since the prohibitory impediments of incest or other crimes were removed by ancient custom and do not need a dispensation. Therefore, the argument which Lambertini draws from the citation of Syrus also has no force.

6. We called it a little reason, however, namely, the reason which, as we indicated above (no. 4), Syrus copied from Sanchez in order to substitute it for the argument which others used to establish the necessity of expressing the incest, and which Lambertini in turn appears to have copied from Syrus; for he himself also writes (loc. cit.): *But the Supreme Pontiffs wisely established this, that they might keep the most grave crime of incest far from blood relatives*. And to these words Lambertini indeed appends the aforesaid citation of Corradus and Syrus. That citation can further displease for a twofold reason: first, because he cites two men of whom one contradicts the other, while one denies that incest introduces an impediment to marriage, but the other affirms this very thing and indeed establishes it as the foundation of his thesis; and then because, while he substitutes blood relatives for relatives by affinity, he follows the opinion of certain persons founded upon an empty deduction rather than the prescriptions of Law. For that which we reported from Navarrus (note to no. 776) is sufficiently well known: almost all theologians hold that from incest with a blood relative there indeed arises the impediment of affinity, BUT NO OTHER, whether it is committed before or after the marriage has been contracted. Among these are St. Thomas, Sotus, St. Antoninus, and Sylvester, whom Covarruvias also follows, etc.; and Sanchez, as we shall presently see, confirms this.

Whatever may be the case concerning this, Sanchez certainly observes (book 8, disputation 25, no. 6) that the truer opinion holds that FROM INCEST WITH BLOOD RELATIVES NO IMPEDIMENT OF MARRIAGE ARISES; and also that incest with relatives by affinity, although it produces that impediment, has nevertheless been removed by contrary custom and NEEDS NO DISPENSATION. From this he concludes that there is no reason why a dispensation from the impediment of consanguinity or affinity, with that incest kept silent, should be subreptitious. Therefore, in order nevertheless to defend against the other opinion, which he calls probable, the necessity of disclosing incest not only with relatives by affinity but also with blood relatives, he has recourse to the aforesaid reason. *The legitimate foundation of this opinion*, he says (loc. cit., no. 8), *is not that this incest presents some impediment to marriage. FOR THE CONTRARY IS TRUER. But the foundation is the style of the Curia..., and its reason is that through fear of having to make this disclosure relatives by consanguinity and affinity may be deterred from incestuous intercourse*. Hence also are those words of Lambertini (loc. cit.): *They wisely established this (the Pontiffs), that they might keep the most grave crime of incest far from blood relatives*.

But perhaps others will with difficulty admire the marvelous wisdom of the Pontiffs in a law described in these colors. A remedy and restraint against the crime of incest was sought, namely, as they say. Now such a remedy and restraint can indeed be perceived in that law which was customarily deduced from the old Law expressed in title 13, book 4, *On Him Who Has Known a Blood Relative of His Wife*. For a penalty was inflicted upon incestuous persons of this kind, by force of which they were to be deprived perpetually of the hope of contracting marriage with any person, since the crime of adultery was also added to that incest. Therefore, everyone guilty of this crime was prohibited from marriage without a dispensation, to be obtained at least from the Bishop. But to what, finally, does a remedy of this kind come according to this new theory, which confines any penalty only to those few among all incestuous persons who might wish to contract marriage with one another? And indeed in such a way that the penalty no longer consists in a prohibition of marriage between them, which could be relaxed or not relaxed according to the just judgment of ecclesiastical authority, but resides in the mere disclosure of the crime, which disclosure, moreover, imposes no burden of itself whenever the matter is to be transacted with the Sacred Penitentiary under fictitious names? Does there shine forth in this new remedy for restraining incest that wisdom which could be found in the penalty imposed by the old law?

7. But another difficulty of no little weight also occurs in that paragraph of Lambertini's Instruction. *No room for doubt remains* (he says), *since the Supreme Pontiffs have most clearly declared their mind concerning this matter. For in their letters, when they impart some dispensation, under pain of subreption or obreption they indicate that not only the intercourse, if it occurred previously, but also with what design and will it was entered into, must be explained*.

Let the latter point pass, concerning which no one doubts. St. Alphonsus writes excellently after all the others (book 6, no. 1134): *It is common among all that, if intercourse was had on the part of both for obtaining the dispensation more easily, and intercourse is*

alleged as the sole cause for obtaining the dispensation, then that evil intention must necessarily be expressed; otherwise the marriage will be null, because no one ought to profit from his own crime.

The difficulty remains in the other member, namely, when intercourse was had entirely without that depraved intention. Lambertini appeals to the letters by which a dispensation is imparted. But it does not sufficiently appear how he effectively derives his conclusion from letters of Dispensation of this kind. For this conclusion could be deduced by him from these Letters of Dispensation insofar as incest is spoken of in them as an impediment of marriage, which therefore must necessarily be mentioned by those who seek a dispensation from another impediment, for example, affinity, and the concealment of which impediment therefore renders the dispensation subreptitious. For in fact, in the formulas of dispensations which we transcribed above (no. 5) from Father Syrus, incest is exhibited as an impediment of marriage. And we discern this very same thing in the formulas of Letters which Father Paul Marcus Leo presents in his *Practice Concerning Apostolic Letters and Those of the Sacred Penitentiary*. Thus, for example, in the Dispensation given to those who, before the Ordinary executing the letters of Dispensation, falsely denied that intercourse had occurred, although in reality it had occurred between them, it is read (*op. cit.*, part 2, page 309): *Provided that THE IMPEDIMENT ARISING FROM THE AFORESAID INCESTUOUS KNOWLEDGE is occult*, etc. And again:

(Ibid., page 316): *But since the aforesaid Dispensation (from the third degree of consanguinity) is invalid because of the aforesaid carnal intercourse not expressed in the letters..., provided that THE IMPEDIMENT ARISING FROM THE AFORESAID INCESTUOUS KNOWLEDGE is occult..., mercifully dispense*, etc. But if Lambertini is to be considered to have drawn his conclusion from this (and certainly he could not have drawn it from elsewhere), behold, on the contrary, Father Syrus, to whom he himself refers the reader in this matter, absolutely denies (above, no. 4) that incestuous intercourse between relatives by consanguinity or affinity presents any impediment to marriage! And to Father Syrus may be added both St. Alphonsus, who (above, no. 3) teaches absolutely that the impediment of incest is no longer in force and does not need a dispensation, and (see note to no. 776) the most common opinion of the Doctors, which professes that an impediment of this kind was entirely removed by long-standing and therefore legitimate custom. It remains, therefore, that the conclusion of Lambertini's Instruction rests upon the little reason which Father Syrus, cited there, had taken from Sanchez, and by which Sanchez (above, no. 6), having excluded the reason drawn from the antiquated impediment of incest, nevertheless endeavored probably to prove the necessity of expressing incestuous intercourse. But even if what we indicated above is now passed over, namely, that a reason of this kind appears plainly unhappy and less worthy of the wisdom of legislators, the context of the Apostolic Letters to which Lambertini there appeals stands entirely in the way besides. For in them the whole reason for subreption, as we have already seen, is established in this: that the petitioners, while seeking a dispensation from the impediment of affinity and keeping silent about the incestuous intercourse, conceal this other impediment of marriage, which no less than the first needs a dispensation, as Corradus, cited there together with Father Syrus, openly holds. Therefore, the little reason taken from Father Syrus and Sanchez is also overthrown by the appeal to the Apostolic Letters.

It is therefore already sufficiently clear that this part of Lambertini's instruction to his clergy of Bologna is burdened by most grave difficulties. It is therefore no wonder that his own clergy of Bologna deferred so little to this doctrine of their Archbishop that, during that very time, as we shall see, in a solemn Resolution of Cases of conscience they departed into the opposite opinion.

8. But enough now concerning the argument which someone might perhaps draw from that Instruction of Lambertini, all the more because below (no. 30) we shall see the same Lambertini excellently refuting the arguments which are drawn from Apostolic letters of Dispensations. Let us now return to the argument which the Holy Doctor Alphonsus (above, no. 1) draws from Benedict's Constitution *Pastor bonus*, and which he proposes as the sole and decisive argument.

It was said above (no. 2) that this opinion of the Holy Doctor is not without its difficulties. And indeed, in the first place, this occurs: the Holy Doctor himself freely concedes that before Benedict XIV this controversy was freely disputed on both sides in the schools. Indeed, in the Naples edition of his work of the year 1748, he himself did not hesitate to follow as truly probable the opinion opposed to Lambertini's (book 6, treatise 6, chapter 3, doubt 4, note C, question 3). And for other reasons also it is worthwhile to report the text of the Holy Doctor. To the question, namely, *When a dispensation is sought for a marriage between relatives, must incestuous intercourse had between them be expressed?* he replies: *There is a twofold probable opinion. The first affirms that it must be expressed in the Sacred Penitentiary if the intercourse was occult, but in the Datary if it was public. Thus Palaus, Sanchez, Laymann, Coninck, etc., among the Salmanticenses. And they testify that the Sacred Congregation declared this to be the style of the Roman Curia. The second opinion, however, denies it, because incest of itself is not a diriment (understand prohibitory) impediment of that marriage, nor does it render the dispensation more difficult. Thus the Salmanticenses with Ledesma, Hurtado, Henriquez, Perez, Rodriguez, Basilius, Villalobos, Praepositus, and others. And Sanchez RIGHTLY calls it probable. From this they infer that, if a*

dispensation is committed to the Bishop and he asks about the intercourse, the contracting parties can deny it even with an oath, since the interrogation is probably not legitimate. And this, EVEN IF IN THE PONTIFICAL RESCRIPT IT IS SAID: PROVIDED THAT INTERCOURSE HAS NOT OCCURRED BETWEEN THEM. Because this is understood, etc.

9. Let these latter consequences now be set aside; they can certainly appear of great moment to those who judge that this opinion, which St. Alphonsus held as truly probable, should be preferred to the opinion toward which he afterward inclined (above, no. 1). Meanwhile, let these points be noted: 1. St. Alphonsus judged that nothing should be deferred here to the judgment of Sanchez, who (book 8, disputation 25, no. 8) had called that first opinion far truer; 2. he judged the little reason by which Sanchez defended his opinion (above, no. 6), which Father Syrus and Lambertini afterward copied, not even worthy of mention; 3. here also the Holy Doctor repeats that incest is not an impediment of marriage which needs a dispensation, and since he constantly retained this thesis even after he departed from the foregoing opinion, it does not easily appear by what intrinsic foundation the Holy Doctor could fortify his new doctrine (above, no. 1); 4. but it was to be desired that in this place, just as for the first opinion he indicated the Declaration that such is the style of the Curia, so for the second he had not kept silent about what, as Sanchez also reports (loc. cit., no. 6), Gutierrez has (*Canonical Questions*, book 1, question 15, no. 11), writing: *With the same opinion agree two other distinguished theologians of this city; indeed, I was informed THAT ACCORDING TO IT JUDGMENT WAS GIVEN TWICE IN ONE CASE.* And after the first edition of this work, Navarrus, one of the aforesaid, advised that a dispensation upon the impediment of consanguinity or affinity, without mention being made of intercourse previously had, is valid and that another dispensation of the Pope is not required.

10. But what is chief, while the Holy Doctor plainly professes both in words and in deeds that until his own time this question was freely disputed on both sides in the schools and within the bounds of probability, by that very fact someone will rightly conclude that almost all the force is cut away from the argument which he thought could be deduced for his new opinion from the aforesaid Constitution of Benedict XIV (above, no. 1).

And indeed, whatever may be drawn and urged from the Constitution *Pastor bonus* of Benedict XIV, these same things are read in the Constitution *Romanus Pontifex* (September 3, 1692), by which Innocent XII, no less than Benedict XIV in his own Constitution, enumerates and establishes the faculties of the Major Penitentiary and the Office of the Penitentiary, so that the words of Benedict XIV plainly appear to have been copied from the Constitution of Innocent. For Innocent XII thus says (cited Constitution, section 34): *But if the petitioners who shall have obtained from Our Datary a dispensation upon a prohibited degree both in the first and second and in the second only, and also in the third or fourth, with the intercourse which followed between them kept silent, which they cannot disclose without detriment to honor, and by reason of this concealment seek a dispensation for contracting marriage or a revalidation of a marriage contracted, the same Major Penitentiary may, if the intercourse is still secret, grant it in the forum of conscience only; a composition of fifty gold ducats of the Camera being made, when there is question of the first and second, or the second degree only, to be transmitted to the Datary for the purpose, as is the unshaken custom, of being expended in alms*, etc.

From this, however, someone will reason by an obvious argument in this way: Either it is contended that by these words of the Constitution of Innocent the necessity of expressing incest is defined and, consequently, that if the incest is kept silent the Rescript of dispensation is invalid; or it is contended that these things are in no way defined there. If it is contended that this question must be held as defined from the words of Innocent, then it is held and asserted with less consistency that the matter was freely disputed by both theologians and canonists in the schools, and could be disputed without censure, until Benedict XIV settled the contest by his Constitution; for the question ought then to be said to have been settled earlier by Innocent. But if it is contended that this controversy was not resolved by the Constitution of Innocent, it must be conceded, whether they wish it or not, that the controversy was in no way defined by the Constitution of Benedict either. And the reason for this conclusion is sufficiently manifest. For the sentence of each Constitution is wholly one and the same, and moreover their authority is at the same time one and the same. Indeed, does not St. Alphonsus himself hold the Constitution *Pastor bonus* as a mere confirmation of the Bull of Innocent XII? For the Holy Doctor writes thus (book 6, no. 1144): *It is asked in what impediments the Sacred Penitentiary has the faculty of dispensing. For the explanation of this question, which can be of great profit for the practice of Pastors and Confessors, I have judged it worthwhile to note here those things which are contained in the Bull of the Supreme Pontiff Benedict XIV which begins Pastor bonus, issued on April 13 in the year 1744, where the Bull of Innocent XII, issued on April 3, 1692, beginning Romanus Pontifex, IS CONFIRMED AND INSERTED.* Therefore, wherever you finally turn, that new assertion of the same St. Alphonsus, that TODAY AFTER BENEDICT XIV there is no longer any room for doubt concerning this controversy, can in no way be admitted.

11. Hence also that appears to collapse which the distinguished man Peter Giovine has in the very recent work *On Matrimonial Dispensations*, Naples, 1866, where (consultation 27, section 9, no. 8) he writes: *Today the matter is settled, that the dispensation remains void... if incestuous intercourse is concealed...; and this... was definitively declared by Benedict XIV through the*

celebrated Constitution which begins "Pastor bonus." For we find nothing in the words of Benedict which declares those things more than was said in the Constitution of Innocent. And if you do not contend that the controversy is defined by the words of Innocent XII, then indeed, since Benedict XIV merely repeats the sentence of his Predecessor, no new declaration which defines the matter can be conceived there. Indeed, since Benedict knew very well that by the Constitution of Innocent the controversy had so little been held as defined that it was disputed most freely on both sides in the Catholic schools, as he himself testifies in his Instruction 87, as we have seen, certainly if he had wished to declare anything further, if he had wished to define anything, he ought to have added something to the sentence of his Predecessor and changed something in it, so that at last the theologians and canonists might understand the sense and force of the Constitution of Innocent. But he added nothing and changed absolutely nothing in it. Therefore, by the very fact that he added nothing further to the Constitution of Innocent but merely repeated Innocent's words and sentence, he showed sufficiently and more than sufficiently by the fact itself that he wished to define or declare nothing, and wished to preserve the whole matter in the *status quo*, as they say, that is, to permit it, no less than his Predecessors the Pontiffs, to the free disputation of theologians and canonists.

12. And this reason indeed draws a certain greater force from the fact that Benedict XIV himself, while still in a lower dignity, had shown himself persuaded that the Roman Pontiffs had openly declared, under pain of subreption, the necessity of expressing the intercourse. See what was said above concerning his Instruction 87. For the graver and grosser the common error of all the Doctors could appear to him, not one of whom until that day had suspected, as will appear below, that the Roman Pontiffs had interposed any judgment on this question, the more vehemently did reason urge him, once made Pontiff, to declare in at least some manner what sense underlay the words of Innocent XII. Yet he did nothing of this kind.

13. But this also must be added here: from that Instruction 87 it is sufficiently deduced that Benedict XIV himself found nothing in the Constitution of Innocent XII which effectively contributed to the resolution of this controversy. And indeed, why is it that, while in that Instruction he strains every nerve to prove the necessity of expressing incestuous intercourse, he nevertheless does not take an argument from the Constitution of Innocent, but has recourse to the Apostolic letters of Dispensations which are customarily given by the Offices of the Sacred Penitentiary and the Datary, and refers to Father Syrus and Corradus, who report these formulas and add to them whatever commentary they can? Shall we suspect that the Constitution of Innocent was unknown to Lambertini himself, when for several years he exercised the office of Doctor of the Sacred Canons in the very Office of the Sacred Penitentiary? Or shall we think that he regarded as more effective an argument drawn from formulas of dispensing of this kind rather than from that Pontifical Constitution, although elsewhere, as we shall see, he himself defends most keenly and invincibly that no effective argument can be deduced from them? Or, finally, was Benedict XIV so slow of mind that in the Constitution of Innocent, which in this very Instruction (loc. cit.) he cites merely in order to indicate the faculty of dispensing handed down by Innocent, he did not even from afar and dimly perceive anything of that argument which St. Alphonsus believed himself to have discovered most clearly and decisively in those words for ending the question? And if Benedict XIV found nothing in that Constitution suited to settling this controversy, so that in that Instruction he expressly testifies (above, no. 2) that after the Constitution of Innocent and down to his own days a question of this kind was customarily discussed on both sides, how can anyone suspect that Benedict XIV, by employing the same words which he knew had been employed by his Predecessor Innocent XII, wished to settle this controversy?

14. To this is added that, after that Instruction 87 had been issued, among the clergy of Bologna whom he himself then governed as Archbishop, the opinion defended and inculcated by him had so little prevailed that, when in the ecclesiastical meetings customarily held in the metropolitan Church for discussing moral questions, and at which he himself testifies that he was accustomed to be present (Instruction 87, no. 1), the case of which we now speak was proposed, an opinion contrary to his persuasion and encyclical Instruction was adopted, as we shall see a little below. I said, after that Instruction had been issued; for the meeting in which the case was resolved was held in September of the year 1740, while the Instructions had appeared first at Bologna, each separately at the time when it was proposed; then all collected together in the same city; and again in the year 1740 at Venice according to the model of the Bologna edition. Therefore, the more difficult he saw it to have his opinion received even by his own clergy, the more necessary some declaration must have appeared to him, by which an opinion which in his judgment contradicted Apostolic Rescripts of dispensations might at last be abolished. Yet no trace of such a Declaration appeared. Therefore, by this very fact Benedict's later intention discloses itself, namely, to define nothing concerning this matter.

15. And the force of this conclusion also appears to be increased from this: if Benedict XIV had really wished by his Constitution to define something and to correct the common opinion which, according to the opinion stated above, was erroneous, he certainly would have chosen a less suitable manner of executing his design. For not only would a mere repetition of the words of Innocent have been an inept mode of declaring Innocent's words, but besides, the condition of an error common among all the gravest Doctors would altogether have required that the Declaration or Definition be issued and promulgated in that manner by which the correction of the error could easily be obtained. But a promulgation suited to attaining this purpose will scarcely be found in Letters given to the Major Penitentiary in which his faculties are enumerated; and, on the hypothesis of such a Declaration, the facts confirm this, for, as will be openly evident below, no one in the City of Rome itself, so long as Benedict XIV held the Pontificate, had knowledge or even suspicion of this supposed Declaration or Definition.

16. But one could suspect such a Definition all the less because no one is ignorant that it was the most constant custom of the same Pontiff, if ever he determined to interpose his judgment in some grave controversy concerning which the Doctors had previously disagreed among themselves, never to omit to set forth, or at least to indicate, the state of the controversy, nor was he accustomed to pass over in silence the reasons persuading either side; but he always added some express indication of his mind and purpose by which it was openly established that by his own Authority he wished to put an end to the controversy. Yet not the least trace of all these things can be found in his words cited above.

17. Furthermore, that in reality nothing concerning this controversy was defined by the Constitution of Innocent can be gathered not obscurely from another source. For once it becomes known, first, that most Authors who afterward fought for the necessity of expressing incest nevertheless, no differently than others had generally done before Innocent, proposed their thesis within the bounds of probability; second, that there were others, and very many of them, who after the Bull of Innocent was issued contended, at least as more probable, that there was no need for the circumstance of incest to be expressed in petitions for dispensations; and third, finally, that whichever of the contrary opinions the Authors supported, none of them, either for or against, brought forward the Constitution of Innocent, which otherwise they did not ignore, or even made any mention of it; it must certainly appear sufficiently manifest that, according to the common understanding of the Doctors, the aforesaid Constitution contributed nothing toward resolving the present question. And a reading of the Authors who flourished from the time of Innocent XII easily shows that the matter stands thus with respect to each of those three points.

18. And to begin with the first, among those who, although they defended the necessity of expressing intercourse, nevertheless after Sanchez held it only as more probable, or inclined more to neither side, let there be, for example, Mazzotta, who writes thus (treatise 7, disputation 1, question 3, chapter 3, section 3, no. 3): *But whether one seeking a dispensation from consanguinity or affinity with Bertha ought also to express the incestuous intercourse committed with her is a dispute among the Doctors.* And after saying that Sanchez affirms it with many, while others contradict, he himself adds nothing further.

Thus Collet (*Treatise on Dispensations in Particular*, part 1, chapter 17, article 1), who, after adducing the opinion of Sanchez, adds: *I think this opinion, as the safer and at least equally probable with the opposite, must be adhered to.*

Thus La Croix (book 6, part 3, no. 922): *If you have known your relative by consanguinity or affinity in a diriment degree, and afterward, wishing to contract with her, seek a dispensation but do not express that intercourse occurred, Navarrus, Gutierrez, Ledesma, Rebellus, Laymann..., Sanchez very probably say that the dispensation is void.... Others, however, hold the opposite with Henriquez, Salas, Vega, Rodriguez, Diana, Pontius, Hurtado, Krimer, Perez, and Aversa, who calls it safe in practice....*

Thus Simonnet (treatise 18, disputation 5, section 23), while adhering to the opinion of Sanchez, nevertheless also reports without any censure the opposite opinion of the others.

Thus also Kugler (*On Matrimony*, no. 259) holds with Sanchez as more probable that the dispensation is surreptitious if the incest is concealed. But he observes that the betrothed are not to be questioned about this where the practice does not prevail.

Add to these also Louis Habert, who (*On Laws*, chapter 10) teaches that a dispensation is not surreptitious if through ignorance the circumstance of incest is not expressed.

19. But as regards the many more others who after the Constitution of Innocent maintained, at least as more probable, that there was no need for the circumstance of incest to be expressed, let Vincentius De Iustis lead their line. He was somewhat near to and almost contemporary with Innocent XII, and he treated this argument expressly and deliberately (*On*

Matrimonial Dispensations, book 1, chapter 4, nos. 250-364); and after he had fundamentally, most fully, and at the same time most learnedly examined this matter on every side, he concludes thus: *From all these things taken together it is sufficiently and more than sufficiently established that the expression of the intercourse is not necessary... if the petitioners have another cause which moves the Pontiff to grant the dispensation, since concealment of the intercourse itself does not intrinsically affect the dispensation... and it is not commanded to be expressed by any law, style, custom, Council, Canon, Decree, Rule, or Constitution.* Moreover, he had premised (no. 317) that *many Doctors... most openly taught this opinion in their treatises to be probable and safe in practice, AND DAY BY DAY CONTINUE TO TEACH IT.*

Not long after Innocent XII and Vincentius De Iustis, Constantinus Roncaglia wrote his moral work. Having premised (treatise 21, question 4, chapter 3, question 10) that according to the more common opinion the intercourse must be expressed if it is public, although, as he says, not a few assert the contrary, he then adds: *The foregoing holds if the intercourse is public, for it must not be expressed if it is occult. And although Sanchez wills that occult intercourse must be disclosed when a dispensation for an impediment is sought from the Sacred Penitentiary, nevertheless others affirm that this is not necessary; for just as the Datary or Chancery dispenses even for the internal forum although occult intercourse is not expressed, so the same must be said of the Penitentiary when, besides the intercourse, there is another legitimate cause for seeking the dispensation, all the more because incest with one's own blood relative does not need a dispensation.*

Near the time of Innocent's Constitution was also Dominicus Viva. Yet to the proposed question whether a dispensation is valid if the intercourse is kept silent (*On Matrimony*, question 6, article 3, no. 8), he replies: *Sanchez with others denies it... but Pontius... and others cited by Perez probably TEACH that the dispensation in the case adduced is valid, because neither does incest need a dispensation, nor is it commanded by any law that it be expressed; and besides, if the incest is expressed, the dispensation is rendered easier, not more difficult.*

John Reuter was about their contemporary, and he writes thus concerning this matter (*Moral Theology*, part 4, treatise 8, no. 583): *One who seeks a dispensation in order to marry a blood relative or relative by affinity whom he has known, and does not express the intercourse, has an invalid dispensation according to Sanchez and others; a valid one according to Krimer and others, because if he had expressed the intercourse the dispensation would have been easier. Nor does the contrary style of the Curia stand in the way when it is not confirmed by a Decree of the Pontiff, which does not exist.*

Likewise John Clericatus, who (*On Matrimony*, decision 40, no. 11) discusses this question thus: *If carnal intercourse has occurred between betrothed persons having the diriment impediment of consanguinity or affinity, must it be expressed to the Pope under pain of a subreptitious dispensation? There is a great dispute among the Doctors, whom the Salmanticenses report as asserting each opinion to be probable, but the negative to prevail; this is also embraced by Vincentius De Iustis (On Matrimonial Dispensations, chapter 4), where he calls this Question great and difficult; but at no. 259 he limits it to when in the Bull of dispensation there is the clause, "Provided that intercourse has not occurred," which, however, he says at no. 263 is not inserted today in Bulls of matrimonial dispensations; and Pyrrhus Corradus, book 8, chapter 8, no. 20, testifies to this, inveighing against Vicars who execute those dispensations and ask the petitioners whether they have had intercourse together, when they do not have this in their mandate. It is true, however, that concerning this question the Doctors suppose the dispensation to be sought and obtained from some other reasonable cause, namely, because of the narrowness of the place...; in view of these, or of any one of them, there is no need to express the intercourse which perhaps the betrothed blood relatives had with each other, as Vincentius De Iustis himself concludes after a long disputation.*

Thus also Schmalzgrueber (book 4, title 16, no. 197): *If the intercourse is occult, its expression is not necessary, as Sanchez teaches with others.... Nor in this case is there need to set forth the occult intercourse before the Sacred Penitentiary and petition that it supply the defect of the dispensation, both because incest with one's own blood relative does not need a dispensation, and because no solid foundation for this expression appears.*

Reiffenstuel has nearly the same (appendix to book 4, section 4, nos. 191-192): *It is said* (he says) *notably, If the intercourse is now public; for if it is occult, Sanchez rightly teaches with others that its expression is not necessary.... And although Sanchez wills that occult intercourse must at least be set forth before the Sacred Penitentiary, and it must be petitioned to supply the defect of the dispensation, nevertheless no solid foundation for this expression appears... especially since incest with one's own blood relative does not need a dispensation.*

Thus also Maschat (at the end of book 4, treatise *On Dispensations*, section 3, no. 24): *If intercourse is alleged as the cause, it must be expressed whether it was had in the hope of obtaining the dispensation more easily; and if another cause is alleged, nevertheless public intercourse must be expressed according to the style of the Curia, but not occult intercourse.*

To this must be referred the fact that Cardinal Gotti (*On Matrimony*, question 7, doubt 2, section 3, no. 17) presents the expression of intercourse merely as something safer and fitted for removing scruples, even if the incest was committed for

obtaining the dispensation more easily: *Nevertheless, for removing* (he says) *all doubts and scruples, it is safer that those who seek a dispensation faithfully and sincerely set forth all things which can assist or delay the dispensation, namely, expressly and distinctly the degree of consanguinity or affinity, and the incest, if it was committed for the purpose of obtaining the dispensation more easily.* A fortiori, however, as is evident, according to the distinguished Cardinal the expression of intercourse is not necessary if it was not had for that end, that the dispensation might be obtained more easily.

Vitus Pichler is no different (book 4, title 16, no. 37), where he writes: *It must nevertheless be noted that mention of the intercourse, if it is occult while the impediment is public, ought not to be made in the petition to the Datary; but according to many it should be made if the intercourse also were notorious. Some think that recourse must be had to the Penitentiary so that the defect of the dispensation may be supplied because of occult intercourse not expressed in the Datary; but this does not appear necessary.* Yet from the words cited no one should persuade himself that, according to Pichler, mention of the intercourse is necessary, at least if it was public. For a little afterward he adds:

If some legitimate cause is alleged, and the intercourse was not had under the said hope (namely, of a more easily obtained dispensation), *there is an immense controversy whether intercourse which is not occult must be expressed in an impediment of consanguinity.*

To these is added Giribaldi, who (*Treatise X, On Matrimony*, chapter 18, no. 9), after proposing the question, *Must incestuous intercourse perhaps had between relatives by consanguinity and affinity necessarily be expressed when a dispensation is sought for contracting marriage?*, replies (no. 58): *The first opinion teaches that it must necessarily be expressed, lest the dispensation be subreptitious and lest the marriage afterward contracted be null....* But he adds (no. 59): *The second, truer and more probable opinion teaches that intercourse had between relatives by consanguinity and affinity who wish to contract marriage need not necessarily be expressed, and that through this the dispensation is not rendered subreptitious, nor the marriage afterward contracted rendered null. The reason is that incest is not a diriment impediment which by reason of itself needs a dispensation, nor perhaps a prohibitory one, since it has already been abrogated by custom.*

Finally, in the *Resolutions of Cases of Conscience* which on the title page of the volume are said to have been proposed and resolved by command of His Eminence Prosper Lambertini, then Archbishop of Bologna and afterward our Most Holy Lord Pope Benedict XIV, you will find the same doctrine. For after the necessity of expressing the depraved intention in committing incest, namely, to obtain the dispensation more easily, was established there (case 2, September 1740), these things are added: *Yet I think this must be understood, first, when the aforesaid intention was manifested, since the Church does not judge internal things; second, when the same intention was reciprocal between those having intercourse, since it is not equitable that the offense of one harm the other; and third, finally, when another sufficient cause of dispensation was not related, since otherwise the obligation of manifesting either the fault or the intention had in the intercourse no longer appears to urge.*

It is therefore sufficiently manifest that the theologians and canonists after Innocent XII not only did not hold as certain and established by Pontifical authority the necessity of expressing incest, or the nullity of a dispensation because the same circumstance was kept silent, but that most of them regarded as more probable, truer, and safe the doctrine which denies that necessity.

20. But as regards the third point, namely, that theologians and canonists who discussed this question after the Constitution of Innocent judged that no account was to be taken of it, this can be dispatched briefly. Let anyone who wishes to learn the matter with his own eyes read through the Doctors whom he has cited here. He will certainly see that neither those who teach that incest must be explained in the petition draw an argument for that opinion from the Constitution of Innocent, nor again do those who oppose that opinion have the authority of the Constitution of Innocent objected to them. And you will find altogether the same silence concerning the Constitution of Innocent among the few others who, without making any mention of the opposite opinion, teach that incest must be expressed; such are Billuart (*On Laws*, dissertation 5, article 3, section 4), Cuniliati (treatise 14, chapter 7, section 29, no. 6), and Catalani (part 3, question 14, chapter 19, no. 13). Moreover, the hypothesis is altogether incredible and manifestly repugnant which imagines, on the one hand, that the controversy was defined by Pontifical authority through a solemn Constitution, but, on the other, that all theologians and canonists, otherwise Catholic and most obedient toward the Apostolic See, took so little account of the Pontifical Constitution and Pontifical oracle that, in treating that controversy, they did not regard it even as worthy of mention, and indeed, while the Apostolic See looked on, some at most held the doctrine supposedly defined as probable, while others openly attacked it.

21. And to this certainly pertain the things which Vincentius De Iustis discusses concerning the same matter (loc. cit., no. 317): *Although these Treatises* (in which, namely, the necessity of expressing incest is denied) *have been printed, circulated everywhere, publicly held and read in the hands of many, and are daily held, maintained, and publicly read, nevertheless this opinion has not until now been condemned by any Constitution publicly and authentically known; whereas, if it were false and erroneous, it must be presumed*

that it would have been condemned in some manner, so that such condemnation would be publicly and authentically known before Ecclesiastical Tribunals. For there is question of a most grave matter; because if the contrary opinion were certain, from the concealment of intercourse of this kind there would arise invalidity of the dispensation, nullity of the marriage, invalidation of the Sacrament, illegitimacy of the offspring, perpetual concubinage and incest, and consequently innumerable sins, crimes, and most grave scandals.... Therefore, it can and must be presumed that if this opinion were not probable, defensible, and safe, it would have been condemned in some manner by the Church, and in such a manner that its condemnation would everywhere be published legitimately and authentically.

22. Moreover, we said that if, from the unanimous suffrage of the Doctors, nothing concerning the proposed controversy was defined by force of the Constitution of Innocent, a judgment not dissimilar can be made concerning the Constitution of Benedict XIV. For, as is readily evident, it is not lawful to attribute more authority and weight to the Constitution of Benedict than to that of Innocent; and otherwise nothing is declared concerning the present matter in Benedict's Bull which was not declared, and perhaps more effectively, in Innocent's.

But this very thing can be confirmed by an argument not dissimilar to that which we used in drawing out the sense of the Constitution of Innocent, namely, by the testimonies of those who could more conveniently know the sense of Benedict's Bull and disclose it to us. It may indeed have belonged to Blessed Alphonsus, certainly a most learned man but far distant from Rome, to attribute by reasoning such a sense to the words of Benedict's Bull that he could consider the controversy already settled by Benedict. But certainly not so with those who, dwelling at Rome during the very age of Benedict XIV, could learn something better about this matter in the light of that City, and indeed, because of the offices they held, necessarily ought to have known it, and therefore can be more suitable witnesses concerning the sense of Benedict's Constitution. These men, namely, no less than those who wrote before Benedict XIV, we find either asserting the necessity of expressing incest as merely probable or even probably attacking it.

23. First there occurs to us Daniel Concina, who in the year 1751, namely, the ninth year after the Constitution *Pastor bonus* was issued, at Rome, in a volume whose title page is adorned with the coat of arms of Benedict XIV, proposed to himself this question (*On Matrimony*, book 2, dissertation 3, chapter 5, no. 17): *When a dispensation is sought between relatives by consanguinity or affinity, must the incestuous intercourse had between them be expressed?* He appeals neither to the names nor the Bulls of Innocent or Benedict, but replies thus: *Authors dispute on both sides concerning this question. Pontius, Henriquez,... to whom Viva is added,... defend the negative opinion.... On the contrary, Sanchez, Diana,... defend that it must be manifested, and testify that the Congregation of Cardinals declared it so.... Others reply that the Congregation of Cardinals declared that the intercourse must be expressed as something safer and more secure, not as something more probable. But these are mere probabilistic inventions and therefore must be rejected; wherefore the latter opinion is MORE PROBABLE.*

Father Philip of Carboneano follows, Professor in the College of the Propagation of the Faith, Consultor of the Sacred Congregation of the Index, and Qualificator of the Supreme and Universal Inquisition. And his testimony appears to be all the more weighty because he dedicated to Benedict XIV himself the work in which he professes his opinion concerning this controversy; and the Pontiff so approved the labors of the Friar Minor that he entrusted to him the task of adding also those things which could be useful to Missionaries. What, then, does Father Philip say concerning our question? Namely (appendix I to the treatise *On Matrimony*, article 1), he establishes first that intercourse must be set forth if it is notorious.

Then he continues thus: *I said that the intercourse must be expressed if it is notorious, because if it remained occult, it cannot be presumed that the pious mother Church intends that this be divulged with enormous defamation of oneself...; and in this sense the arguments just adduced must be understood.... But must recourse then be had to the Penitentiary? Pichler and Reiffenstuel deny it, because, they say, incest does not need its own dispensation; and besides, the Penitentiary neither can nor is accustomed to demand any composition, since whatever it issues it issues gratuitously. Several theologians and canonists teach the same.... But Sanchez judges that in this case recourse must be had to the Penitentiary.... M. Paul Leo teaches the same. I think this opinion, as the safer and at least equally probable with the opposite, must be adhered to, and I have known Bishops who adhered to it.* From these things it is evident that this writer also, distinguished at that time by reputation and by the offices which he held, however much he adhered more to the opinion establishing the obligation, nevertheless, no differently from Concina, attributed mere probability to it, and did not in the least suspect that this controversy had been defined by force of Benedict's Constitution.

Let Ubaldus Giraldi be the third witness. He was an Examiner of the Roman clergy and published at Rome, ten years after the death of that Pontiff, his celebrated *Exposition of Pontifical Law*, notably adorned especially with the doctrines of Benedict XIV. Concerning the present question, he judged it useful to bring forward nothing else (see part II, section 122) than what Rhemigius Maschat had written concerning it, whose *Canonical Institutions* he himself had enriched with his additions. But

from the words of this writer adduced above, it is evident that he stood with those denying the obligation of expressing the intercourse if it had remained occult.

From these things someone will sum up the argument thus. It must appear altogether improbable that this was the mind of Benedict XIV; and again it can scarcely be believed that his Constitution *Pastor bonus* was understood at Rome in such a way as to define the obligation of expressing incest, and yet the aforesaid writers could, in the City itself, while the same Pontiff looked on, and even in writings published at Rome without objection from the Master of the Sacred Apostolic Palace or any other of the Revisers, indeed dedicated to the same Pontiff, and indeed so praised by him that by his command they were used in the schools, dispute in so uncertain a manner concerning a doctrine notoriously, as is supposed, defined by the Pontiff himself, that they either held and maintained it as merely probable or even adhered to the opposite as more probable; while they utterly disregarded, and judged not even worthy of mention, as if it did not exist, the Pontifical Constitution which by its own authority would have put an end to uncertain disputes concerning it. But, as can be gathered from the testimonies brought forward, the aforesaid Authors discussed the proposed argument altogether in this manner in books published at Rome; and the writings of Philip of Carboneano, dedicated by the Author to the Pontiff himself, were deemed worthy, by the will of the same Pontiff, to be taught in the schools of the College of the Propagation of the Faith, and indeed were adopted by command of the Bishops in several Seminaries of Italy. Therefore.

24. And the things which we read in the Lucan Resolutions of cases also impel us to judge thus concerning this Constitution. For when, in July of the year 1743, a question was proposed concerning Caius and Bertha, blood relatives, who had obtained a dispensation without the intercourse being expressed, the reply was: *That dispensation is valid, as indeed is probable; for first, that the intercourse must be expressed is nowhere provided in law. Then, the intercourse is not the final cause of dispensing. Next, when a doubt arises, that interpretation must rather be made which sustains the act than that which destroys it.... Moreover, if anyone wishes to adhere to the contrary opinion, a dispensation must be sought from the Sacred Penitentiary* (*Solutions of the Lucan Conferences*, volume 1, page 183, Lucca, 1762).

But perhaps the resolution (ibid., volume 3, page 366) whose Author was John Dominic Mansi in March of the year 1760 bears more upon our matter. For when the same case was proposed, he indeed set aside the opinion of Vincentius De Iustis and adhered to the opposite, citing Pyrrhus Corradus, M. Paul Leo, and also Instruction 87 of Lambertini, afterward Pope Benedict XIV. Nevertheless, he concludes the matter thus: *The things hitherto adduced have no place when the dispensation has obtained its desired effect and the marriage has already been contracted.* For this he again cites the aforesaid Instruction of Lambertini. Now it is most manifest that the case in which Mansi exempts one from the obligation of seeking a Dispensation again from the Sacred Penitentiary is precisely that in which, according to St. Alphonsus, the Constitution of Benedict XIV would have defined that recourse must be had to the Sacred Penitentiary for a dispensation. Otherwise, since the distinguished Mansi strives to fortify his whole resolution with the doctrines and authority of Benedict XIV, why, in order to strengthen, and indeed to resolve decisively, the first part of the question, does he not turn to the Constitution *Pastor bonus*, but appeal to Instruction 87 of Lambertini, which is so far from having the force to settle the question that it presents this doctrine fortified by such an array of arguments, as we saw above, that it appears to betray the cause? Indeed, why is it that in the other part of the resolution he goes over to an opinion which, according to St. Alphonsus, the same Lambertini, now Pontiff, had condemned? It must therefore be concluded that, apart from St. Alphonsus, no one had even the slightest suspicion of this definition of Benedict XIV.

And this may be confirmed by the testimony of another anonymous theologian of the Order of Preachers, who in the year 1797 published at Venice, in the Italian language, a work entitled: *Decisions of Cases of Conscience and of Canonical Doctrine Made in the Diocese of Bologna by Order and According to the Mind of His Eminence Cardinal Lambertini, and Afterwards Supreme Pontiff. An Edition Corrected Again and Enlarged through the Work of a Dominican Religious*, etc. For under the title *Consanguinity*, case III, he discusses the present question thus (volume 3, page 144): *I said that the incest committed must be expressed in the petition if it is notorious; because if it has remained occult, it cannot and ought not to be presumed that the compassionate mother Church intends that such a shameful sin be divulged with most grave infamy of the persons.... But at least in such a case must recourse be had to the Sacred Penitentiary, and the impediment of consanguinity together with the occult incest be manifested to it under fictitious names, in order to seek from it a dispensation in the forum of conscience? Some theologians reply that it must not, because, they say, incest does not need its own dispensation.... But Sanchez is of the opinion that in this case recourse must be had to that Penitentiary.... M. Paul Leo is of the same opinion.... One ought to yield to a man of such experience in matters of this kind and in practice adhere to this opinion, which is safer and at least of equal probability with the contrary, all the more because the continuator of Tournely also testifies that he knew Bishops who adhered to this opinion.* At which words it again occurs to ask: Would this theologian have remained hesitating in some uncertainty, and finally undertaken to resolve the question with the sole support of Sanchez and M. Paul Leo, who opined thus, if at

least some report or suspicion had spread through the theological schools that a definition of the controversy had already been issued by the most celebrated Constitution of Benedict XIV?

To these must be added the distinguished theologian from the Order of the Servants of the Blessed Virgin Mary, namely, Marcus M. Struggl, all the more because on the very title page of his book he testifies that he hands down Theology according to the canonical and moral doctrine which shines forth in the excellent Works of Benedict XIV happily reigning; indeed, in the Notice to the Reader he expressly professes that he composed his work in all things according to the universal Constitutions of the Supreme Pontiff Benedict XIV which pertain, even reductively, to Moral Theology. And since elsewhere he cites Constitutions of the same Pontiff which are contained in the first volume of the Bullarium published in the year 1746, he certainly knew the Constitution *Pastor bonus* very well.

He therefore writes thus (treatise 12, question 4, article 2, no. 22): *If the marriage has not yet been contracted and the petitioners are relatives by consanguinity or affinity..., then it must be expressed whether carnal intercourse, which, for example, is alleged in the Penitentiary as a cause of dispensation, did not occur under the hope of obtaining the dispensation more easily. But if, on account of a public impediment of consanguinity or affinity, a dispensation is sought from the Datary for other causes, mention must not be made of the carnal intercourse... unless this also was public; as Reiffenstuel teaches with the more common opinion of others* (see his opinion above, no. 19). Struggl, therefore, no differently from Reiffenstuel, judged that the depraved intention in having intercourse must indeed be expressed when the intercourse is alleged as a cause of dispensing, and likewise that it must be expressed if it was public; but in other cases, nowhere. And again (ibid., article 4, no. 57), where he teaches that a dispensation is invalid when the petitioners deceitfully do not express some obstacle to the dispensation, he certainly mentions that the petitioners had intercourse under the hope of a future marriage; but concerning mere intercourse had apart from an intention of this kind, not even a word.

25. And this historical exposition of the sense which both theologians and canonists universally attributed to the Constitutions either of Innocent XII or Benedict XIV, for it makes no difference of which one there is question, can suffice for someone to conclude that it must be greatly doubted whether that new interpretation of them which Blessed Alphonsus introduced against the unanimous opinion of all Catholic schools can be regarded as legitimate. It therefore remains to inquire whether it rests upon some solid foundation.

But this in reality resides wholly in these words of his (book 6, no. 1135): *Observe that the Pope, by saying, "may grant a revalidation," does not hold as valid marriages contracted with such concealment*. This argument, which had never before been drawn from the words of Innocent, must rest upon this general principle: a superior can never delegate any power unless the cause of necessity is altogether certain, in which subjects seek to be aided through the exercise of such delegated power.

But a principle of this kind will easily appear fallacious, and even daily practice convicts it of falsity. For who does not know that recourse to Superiors lies open and is customarily had both when certain laws impose the necessity of this recourse and when the laws appear so uncertain that they leave that necessity also less certain? And since one delegated by a Superior for providing for the necessities of subjects ought to possess power in each hypothesis, what wonder is it if the Superior delegates to him faculties of absolving, dispensing, convalidating, condoning, remitting, relaxing, composing, derogating, revalidating, etc., even when the laws are not so certain as to render altogether necessary the absolution, dispensation, convalidation, condonation, remission, relaxation, composition, derogation, revalidation, etc., which the subjects nevertheless seek?

And to illustrate the matter by some example: some Doctors contend that, on account of incest, excommunication *latae sententiae* is incurred; others, only excommunication *ferendae sententiae*; and others that not even excommunication *ferendae sententiae* is established for this crime. Nevertheless, in the formula of absolution from incest with a dispensation (in M. Paul Leo, *Practice of the Office of the Sacred Penitentiary*, part 2, page 329), a faculty is given of absolving from censures on account of incest. Shall we therefore conclude that the Pontiff from whom this faculty of absolving comes has already declared or defined that censures are incurred on account of incest?

There are those who judge it probable or even most probable (see above, note to no. 65, question 5) that the Matins of the following day can licitly be recited at the second hour after noon and that the precept is thereby satisfied; others deny this. Suppose now that someone sought and obtained the faculty of reciting Matins at the second hour, which certainly is granted by an inferior only by force of a faculty delegated by the Pontiff. Will you therefore conclude that the Pontiff thereby defined or declared that Matins is recited invalidly if this faculty is absent? But elsewhere (above, page 47, in the note) we reported these words of Suarez: *This argument is weak, because many things are granted in privileges, not because they are necessary, but because they are sought either because of fear or scruple, or in order to remove a doubt arising from various opinions.* We also transcribed

these words from Diana (ibid.): *You will say: The Pontiffs grant privileges so that Matins can be recited two hours after noon. Therefore. I reply: those who seek this privilege are a sign that they hold the contrary opinion; and many things are sought from the Pontiff for greater caution and because of scruple; but from these things it does not follow that the cited opinion of the Doctors is not probable, nor that it cannot be followed.*

26. Indeed, in this very matter of which there is question, and in the very Constitutions both of Innocent XII (Constitution *Romanus Pontifex*) and of Benedict XIV (Constitution *Pastor bonus*), a most luminous example concerning our matter presents itself to us.

And indeed, in the Constitution of Innocent (section 32) these words are contained: *In marriages to be contracted, the same Major Penitentiary may, in the forum of conscience only, dispense, or command a dispensation to be granted, FROM OCCULT IMPEDIMENTS which do not render marriage null.*

Likewise, in the Constitution *Pastor bonus* of Benedict XIV (section 39), it is read thus: *In marriages to be contracted, the same Major Penitentiary may, in the forum of conscience only, dispense, or command a dispensation to be granted, FROM OCCULT IMPEDIMENTS which do not render marriage null; and likewise from the omission of proclamations, even for the purpose of contracting secretly*, etc.

But what, finally, are these occult impediments of marriage, yet not diriment, for relaxing which the faculty is here granted to the Major Penitentiary? St. Alphonsus, who (book 6, no. 1144) in the foregoing section 39 incorrectly read *concerning OCCURRING impediments*, added: *But merely prohibitory impediments of this kind today, as we said above, are reduced to three, namely, a vow, betrothals, and the prohibition of the Church.* But that reading is manifestly erroneous, and it must be read, *Concerning occult impediments*. What, therefore, are these occult, non-diriment impediments? Certainly not a vow, for each Constitution treats below of dispensation from a vow. Not betrothals, because the Apostolic See does not dispense to the prejudice of a third party. Not time, because nuptials are prohibited at no time, but only the solemnities of nuptials are forbidden at certain times; moreover, this is not an occult impediment, just as neither the Catechism nor the prohibition of the Church are occult impediments, of which exclusively there is discussion in the cited texts of the Pontifical Constitutions. It remains, therefore, that in the cited texts the Major Penitentiary is given the faculty of dispensing from those merely prohibitory impediments which elsewhere we said (above, note to no. 776) were comprehended under the name Crime, and the first of which is incest, which Paul Marcus Leo in his *Practice of the Sacred Penitentiary* (part 2, page 205) designates with these most noteworthy words: *Incest with a male or female blood relative of one's spouse or betrothed, from canon 1 and canon Transmissae 4, On Him Who Has Known a Blood Relative of His Wife.*

And in fact the same Paul Marcus Leo (loc. cit., page 329) reports the formula of a dispensation from this impediment thus: Title: *Absolution from incest with a dispensation for one who has known a mother and daughter and intends to contract marriage WITH AN UNRELATED WOMAN OTHERWISE PROHIBITED TO HIM BY NO LAW; the letters of absolution and dispensation are made as below. Friar Antonius Barberinus*, etc. *Insofar as it is so, after first hearing his sacramental Confession, absolve the said bearer on this occasion from whatever sentences, censures, and ecclesiastical penalties he has in any manner incurred on account of the foregoing matters, and from incest and excesses of this kind*, etc., *a salutary penance according to the measure of the fault, and other things*, etc., *to be imposed upon him on that account*, etc.; *and with the same bearer, so that, notwithstanding the said incest, he may, with SOME OTHER WOMAN OTHERWISE PROHIBITED TO HIM BY NO LAW, contract marriage in the forum of conscience, with the form of the Tridentine Council observed, mercifully dispense*, etc. Leo himself then adds in a Note the reason why a dispensation of this kind is necessary: *An incestuous person is prevented from contracting marriage with any person..., and therefore needs a dispensation.*

With these things premised, let it now be asked: From the fact that, besides Innocent XII, Benedict XIV also in the Constitution *Pastor bonus* grants to the Major Penitentiary the faculty of dispensing concerning the aforesaid occult impediment of Incest, does an effective argument arise by which it may indubitably be concluded that an incestuous person is so prohibited from contracting marriage with any other person otherwise prohibited to him by no law that for this purpose a dispensation from an impediment of this kind by the Apostolic See is necessary for him? But was it not shown elsewhere (above, note to no. 776), according to the most common opinion of the Doctors, that the non-diriment impediments both of incest and of the other crimes were removed and became obsolete through desuetude? Did not St. Alphonsus himself, already from his own time (above, no. 4), proclaim: *The impediments of incest*, etc., *TODAY ARE NOT IN FORCE, NOR DO THEY NEED A DISPENSATION*? And if these impediments do not need a dispensation, to what purpose is the Major Penitentiary given the faculty of dispensing in the Constitution of Benedict XIV, as though this dispensation were necessary? And if a faculty of dispensing from these impediments is granted by the Pontiff, why do we not conclude by the

same argument as St. Alphonsus that those impediments need a dispensation? How, I ask, does this reasoning differ from the foregoing reasoning of St. Alphonsus?

It must therefore be concluded that the principle upon which St. Alphonsus's argument rests is altogether fallacious: that no power is ever delegated by a Superior unless the cause of necessity is certain, in which subjects seek to be aided through the exercise of such power.

27. But the fallacy of this principle and argument can be known nowhere better than from those things which Benedict XIV himself discusses in the one hundred eighty-third of his Canonical Questions.

These matters are most opportune, not only because for knowing the force and sense of the Constitutions both of Innocent XII and of Benedict XIV himself we are permitted in a certain manner to employ him as interpreter, but also because, on account of the similarity of the cause and the arguments, they pertain especially to our matter.

There was question, namely, of those who, joined in the mixed third and fourth degree of consanguinity, had afterward obtained a dispensation upon the fourth, with the third concealed. But after a marriage had thus been contracted and consummated, dissensions arose between the spouses; the invalidity of the dispensation, and therefore the nullity of the marriage, began to be treated, as indeed grave Doctors held, and the controversy was brought before the Sacred Congregation of the Council. But what especially pertains to the present matter must be examined attentively: how and by what arguments the Officials of the Sacred Datary undertook to defend the nullity of the marriage. *The distinguished Officials of the Datary* (as it is said in the exposition of the Question), *having read through the Registers from the time of St. Pius V to the present, drew up a discourse together with a justificatory Summary, and tried once and for all to prove that marriages*, etc., *had always been held null and invalid.*

Of their arguments Benedict XIV, then Secretary of the Sacred Congregation of the Council, reports the last thus in the discourse which he appends (no. 8): *The final argument is that whatever the Apostolic Datary does is said to be performed by the Pope himself. And since in the printed Discourse twenty-four examples are adduced by the distinguished Officials of the Datary, from which the nullity of a marriage is shown... when the nearer degree was concealed..., it appears that nothing clearer can be adduced concerning the matter at issue. For how could St. Pius V have granted in letters a declaration of equal validity in the terms of marriage..., how could other Pontiffs have commanded that Ordinaries publicly declare the nullity of the prior marriage and that the spouses contract anew, if the preceding marriage had been held valid? And again, how could the same Roman Pontiffs in other letters have declared equal validity in the terms of a marriage contracted and consummated..., that, with the form of the Council observed, the marriage be contracted anew; that the contracting parties be absolved from incest and from the excommunication imposed in the single Clementine decree On Consanguinity; that the offspring be declared illegitimate; and that, on account of the incest committed, the surviving spouse remain perpetually without hope of marriage, if the marriage contracted had been valid by law?*

Who, moreover, does not see that arguments of this kind, which we see the Officials of the Sacred Datary using in this cause, are altogether similar to that argument by which St. Alphonsus afterward deduced the nullity of marriages from the faculty given to the Penitentiary to revalidate them? For it was certainly necessary that a faculty for this be granted to the Officials of the Sacred Datary by the Pontiff so that they could HEAL AND REVALIDATE marriages which in the case were considered void or at least doubtful, and in addition impose a repeated celebration of the marriage and the other things to be imposed according to the style of the Curia; no differently than in our case the Major Penitentiary is given the faculty of revalidating the marriages of which there is question.

28. What, then, did Benedict XIV say to these things? He roundly denied that an argument for the nullity of the marriage could be drawn from them. For (loc. cit., no. 21), after a preliminary protestation of the obedience owed to the style of the Datary, Benedict replies thus to the foregoing argument (no. 26): *Finally, it is most clearly recognized that nothing is adduced which directly strikes the controversy now at issue. For in all the examples in which the Supreme Pontiffs*

ABSOLVED FROM THE PENALTIES OF INCEST, DECLARED THE OFFSPRING LEGITIMATE, AND PRESCRIBED THE RENEWAL OF CONSENT with the form of the Council observed, the petitioners were supplicating for a dispensation and thus showed themselves ready to remain in the marriage, so that it is not surprising if the Supreme Pontiffs, GRANTING THE REQUESTS IN ABUNDANCE to the same persons supplicating for absolution from censures and for the legitimization of the offspring, both absolved them from censures, declared the offspring legitimate, AND PRESCRIBED THE RENEWAL OF CONSENT.

Benedict XIV therefore concedes that the Curia of the Datary conducted itself in all those things as though the marriages had been void. But he plainly denies the consequence; namely, against the Officials of the Datary, he denies that it follows from those Acts that the marriage was void. *But from these things* (he says) *an argument cannot be drawn toward a declaration of the*

nullity of the marriage. Why? Because, namely, as he had premised, the Supreme Pontiffs, and therefore the Officials both of the Sacred Datary and of the Sacred Penitentiary, in accordance with the faculties granted to them, both dispense from incest and absolve from penalties and censures, and, with the tax imposed, prescribe the renewal of consent as though the marriage were void. But all these things have place also hypothetically when the petitioners supplicate for obtaining them; and, *GRANTING THE REQUESTS IN ABUNDANCE*, as Benedict XIV says, they are furnished to those asking, since all these things leave untouched the theoretical question whether they are altogether necessary.

29. Benedict XIV also confirms his intent, which likewise pertains to our matter, by other examples (ibid., no. 27): *There can be an example in dispensations which are granted to petitioners as a precaution, or concerning irregularities, or concerning censures. For just as from these dispensations an argument is not valid for the incurrence of an irregularity or censure even in a similar case fortified by all the circumstances which were present in the cases in which the said dispensations were granted, when there is a formal dispute whether the irregularity or censure was incurred; so FROM WORDS OF THE SUPREME PONTIFFS SUPPOSING THE NULLITY OF THE MARRIAGE IN THE HYPOTHESIS in which the petitioners supplicate and are ready to remain in the marriage, AN INFERENCE TO THE POSITIVE NULLITY OF THE MARRIAGE IS NOT VALID*.

Thus far Benedict XIV. His reply, as is evident, destroys all force of the argument by which St. Alphonsus wished, from the same premises proposed even in the Constitution of the same Benedict XIV, to infer against him the nullity of marriages. Nor is there perhaps any place here for objecting that Benedict XIV wrote these things before he was elevated to the summit of the Pontificate. For the authority of the writer is not to be weighed here, although, even if it were weighed, indeed it would have its own weight, and no slight one, and ought especially to have it with those who in the present controversy object to us Instruction 87 of the same Benedict XIV; rather, the outcome of the case which the Sacred Congregation decided must be examined. For to the Question: *Whether the nullity of the marriage is established*, the Sacred Congregation replied: *Negatively.* Therefore, since the Sacred Congregation finally rendered a judgment for the validity of the marriage, by that very fact it showed by its authority that the reply of Benedict XIV was of invincible force, and, on the contrary, that the argument adduced above, to which the one produced by St. Alphonsus is similar, was of no force, by which the Officials of the Sacred Datary, arguing from the style of the Curia, contended that those marriages must be held invalid.

30. And this Reply of Benedict XIV, plainly invincible from the suffrage of the Sacred Congregation, not only breaks all the force of that argument which St. Alphonsus used, but in the same manner also removes all force from the reason by which the same Benedict XIV in his Instruction 87 wished to prove as we saw above that a dispensation from the impediment of consanguinity is invalid if the preceding incest was concealed in the petition. For he himself sought the argument (above, no. 2) from Apostolic Letters of Dispensation. But can we imagine in these Apostolic Letters anything suited to expressing the invalidity either of the dispensation or of the marriage contracted which does not appear in the arguments alleged above (no. 27) for the same end by the Officials of the Sacred Datary? But Benedict XIV himself, as we have just seen with our own eyes, judged and proclaimed all those arguments altogether ineffective for inferring the nullity of the dispensation or marriage; and the Sacred Congregation plainly ratified his judgment. Therefore, from that Instruction 87 of Benedict no valid support for the conclusion of St. Alphonsus can be drawn, Benedict XIV himself and the Sacred Congregation being judges.

31. It will be useful, however, to append here also the reply which in the same Canonical Question 183 Benedict XIV made to those objecting to the style of the Curia. *The other things* (he says at no. 20) *which were weighed to the contrary regard the style of the Datary; and by the said style some of the aforesaid Authors were induced to maintain the nullity of the marriage.... But speaking of this style, it is marvelous what and what kind of things have been said by other Authors who hold for the validity of the marriage.... Father Sisius, Apostolic Penitentiary in the Sacred Lateran Basilica, says in his manuscript Annotations on the Constitution of Innocent XII concerning the faculties of the Major Penitentiary: To the style of the Curia, however, it is replied that it indeed makes law, but not when it is contrary to the law itself. But the style in the subject matter, that the marriage is null unless the nearer degree is expressed in the dispensation, which style we saw observed in the Datary, does not make law and cannot be observed, because it would be opposed to the same Motu proprio of St. Pius V.* Thus Father Sisius. Yet Benedict XIV prefers to his reply this other one (no. 21), namely, that *nothing is adduced to the contrary which directly strikes the controversy*, which we have already reported above from no. 28, and in reality comes to the same thing, since he denies that the style of the Curia rests upon law.

Nevertheless, could not the reported reply of Father Sisius also be given to those who, after Sanchez, especially urged the style of the Curia to defend the necessity of expressing incestuous intercourse, namely, of holding a dispensation as subreptitious if the preceding incest was concealed? Why could it not also be replied to these Authors that the style of the Curia indeed makes law, but not when it is contrary to the law itself? But if you ask what that law is, the answer is indeed

easy. Let that new little reason which Sanchez contrived for proving the necessity of expressing incest, as we saw (no. 6), be banished, plainly as it deserves; and let the most true reason for this practice be recalled, the genuine and certain character of which is presented to us both by the testimony of the Doctors (note to no. 776), by the Declaration of the Sacred Congregation of the Council (ibid.), and by the very style of the Sacred Penitentiary, which appears most clearly in the formulas of Dispensations adduced above (nos. 5 and 26). From these it will manifestly appear that the necessity of expressing incest arose from and was founded upon the fact that incest by the old law presented a non-diriment impediment of marriage, on account of which an incestuous person was prohibited from contracting marriage with any woman otherwise prohibited to him by no law. From this, however, a dispensation was held subreptitious if an incestuous person sought a dispensation from another impediment and kept silent about the incest, because according to the style of the Curia there is the defect of subreption whenever one laboring under a twofold impediment sets forth only one while concealing the other. These things are altogether certain.

Moreover, the matter is confirmed by the unanimous testimony of the Doctors: through contrary custom the non-diriment impediments of crime, and therefore also the impediment of incest, were removed; and this, as we have seen, the Holy Doctor Alphonsus also affirms repeatedly. And if, in order to admit the existence of a custom as true, according to the judgment of St. Alphonsus (book 3, no. 1025), it suffices that some fewer recent Authors testify concerning it, since they can more suitably than the ancients testify concerning a matter which consists in some fact, then a fortiori it must be admitted when the Doctors agree unanimously in testifying to that very thing. But that the Doctors agree unanimously in this was clearly shown in the note to no. 776. Who, moreover, does not know that, according to the opinion of all theologians and canonists, a custom which has flourished through a long series of years and indeed centuries prescribes even against ecclesiastical laws? And if there is prescription by a custom of this kind, does not the custom itself now make law? It is therefore no wonder that St. Alphonsus expressly affirmed that both incest and the remaining non-diriment impediments of crime are no longer in force in such a manner that they do not need a dispensation. Behold, therefore, a sufficiently obvious reason why the reply of Father Sisius adduced by Benedict XIV for his own matter can also pertain to the present matter, and indeed a fortiori. For, as is evident from the exposition of the cause concerning which Benedict XIV treats in Canonical Question 183, there were some Doctors and there were also reasons upon which the style of the Datary rested, which held marriages invalid if, in seeking a dispensation concerning a mixed degree, the nearer degree had been concealed; but no one can now be cited who defends that incest has the character of an impediment to contracting marriage, so settled is the matter, as St. Alphonsus also testifies.

32. Concerning this conclusion, perhaps this one thing could move someone: how does it happen that the Apostolic See granted to the Major Penitentiary a certain special faculty of dispensing and even revalidating marriages where there is an uncertain and perhaps no necessity for a dispensation or revalidation?

To this difficulty it must first be replied that neither this nor any other difficulties can cause facts to be denied when the facts are certainly established. Moreover, did we not see above (nos. 26-27) that in the Constitution *Pastor bonus* the Major Penitentiary was also granted the faculty both of absolving from censures plainly obsolete and of dispensing from impediments which, even according to the Holy Doctor Alphonsus, do not need a dispensation? But otherwise there is a reason of its own, and a most grave one, why the Apostolic See wills the Office of the Sacred Penitentiary to be fortified with faculties of this kind also. For besides the general reason which can be seen indicated above (no. 26), namely, the necessity of providing for the tranquility of consciences in perhaps doubtful causes, there is another and twofold reason which required this faculty in the Major Penitentiary concerning the present matter.

33. The first is the extreme gravity of the anxiety by which the minds not only of the faithful but also of Confessors are tormented in doubts concerning the validity of marriages. For there is not question of the mere honesty of an act, when tranquility can easily be restored to consciences from that principle that an act must be considered honest whenever no certain law stands against it; but there is question of the validity of an act, namely, a matrimonial contract, which in no manner depends upon the dictate of conscience. But although, even when there is question of the validity of a marriage, if the cause of the doubts concerns impediments of merely ecclesiastical law, anxieties can be met through a doctrine sufficiently received in the schools (see above, no. 789), which exempts one from seeking a dispensation if that which appears to stand in the way of the validity of the marriage is something doubtful or merely probable. Yet no one is ignorant that there are those whose minds can scarcely enjoy any peace unless by means of a dispensation they cast aside every scruple. To this pertain those words of Cardinal Petra (*Commentary on Constitution 8 of Gregory XI*, no. 13): *Setting aside the opinions of the Moral Doctors..., with our Canonists it must more safely be said that one wavering in a doubt of this kind is bound to inform himself and his conscience according to the disposition of the law before he attempts the prohibited act; then either to put aside the scruple*

altogether according to the judgment of a prudent man, or, if he cannot quiet his wounded conscience, to have recourse to the Holy Apostolic See for a dispensation at least as a precaution, which he will easily obtain, as Fagnanus advises.

34. The second reason resides in the singular condition of this cause or question. Namely, as we pursued at length above (see also the note to no. 776), the genuine origin and legitimate reason which introduced the necessity of expressing incest if one guilty of this crime wished to contract nuptials arose from this: incest, no differently from certain other grave crimes, was punished by the sacred canons with this penalty, that the guilty person was perpetually barred from any nuptials with any person unless he obtained the benefit of a dispensation from the Apostolic See or from the Bishop.

And let it now pass how it happened that, while all the graver theologians and interpreters of the Sacred Canons, as we also indicated elsewhere in the note just cited, clearly show that this penalty was inflicted by the Pontifical Constitutions only upon incest committed with a relative by affinity in the first or second degree, or indeed committed with a blood relative but only when the incestuous persons obstinately and with contempt for ecclesiastical authority persevered in that crime under the appearance of marriage or without such appearance, some persons nevertheless, contrary to the best-known principles of law which command that odious things be restricted and that penalties not be extended beyond the cases clearly expressed in the law, transferred it not only to every properly so-called incest, that is, with a relative by affinity or consanguinity, and even in the fourth degree, but further to less properly so-called incest, namely, with persons joined only by spiritual or legal relationship.

Whatever may be the case concerning this, the aforesaid laws prohibiting nuptials to incestuous persons caused them to need a dispensation for contracting with any person, but to need a twofold dispensation if they wished to contract with a blood relative or a relative by affinity. And from this, as we saw elsewhere in the cited note, arose the most true reason why a dispensation was held subreptitious when the incest was kept silent, namely, because, with two impediments concurring, one was concealed in the petition.

But when contrary custom gradually destroyed the force of the impediment by which an incestuous person was bound through those laws, behold the Doctors already disagreeing about the necessity of expressing incest, and at the same time behold this controversy covered with other darkness by those who inopportunely and unskillfully mixed elements altogether foreign with its foundations set forth above.

Meanwhile, however, what was the Apostolic See to do in a matter which enters daily practice, amid so great a disagreement of the Doctors and especially amid so great a confusion added to the dispute after Sanchez?

35. I said, after Sanchez, because in reality it is owing to Sanchez that this controversy was altogether disturbed and removed from its native condition and its own foundations. For he himself rightly and clearly set forth the genuine state of the controversy when (book 8, disputation 25, nos. 6-7) he reported two opinions, of which one denied and the other affirmed the necessity of expressing incest, but in such a way that the resolution of the controversy depended upon one and the same prior question, namely, whether that law and impediment by which an incestuous person was barred from nuptials without a dispensation was still in force.

But behold, afterward Sanchez, thoroughly disturbing the state of the question, most inopportunely undertook to bring forward a third opinion, which he called more probable (ibid., no. 8). And indeed, while he expressly admits that the aforesaid impediment of incest is no longer in force, you would now conclude that he adjudicates the cause to the authors of the first opinion, which for this reason denies the necessity of expressing that circumstance. Nevertheless, behold, he attributes the stronger position, at least as more probable, to the defenders of the second opinion, and for the reason which they sought from the aforesaid penalties imposed upon an incestuous person by the old law he substitutes the empty little reason above (no. 6), adding the style of the Curia, as though this style of the Curia did not rest upon that old law which he himself proclaims already obsolete by force of custom. And indeed from this we see an opportunity afterward given to writers to hunt out other empty little reasons (see note to no. 776), by which they might provide some foundation for the aforesaid style. Meanwhile, however, as we have already said, what policy did the Apostolic See observe in this confusion of affairs?

36. For even if only the true hinge of the controversy and its true and whole foundation is kept before the eyes - whether the impediment of incest, from which alone comes the true reason for expressing this crime in the petition, is in force, and universally whether those prohibitory impediments imposed upon certain crimes are still in force - Pichler (book 4, title 1, no. 92) will certainly reply that the Doctors commonly contend that all impediments of crime, or those arising from an offense, were removed by universal custom; Reiffenstuel (*Moral Theology*, treatise 14, distinction 14, question 2, no. 11),

that they appear removed by contrary and long-standing custom and are no longer in use; Pirhing (book 4, title 16, no. 12), that today they are altogether removed by long-standing custom; John Dominic Mansi (*Moral Theology*, book 5, treatise 10, part 4, chapter 15), that the Doctors testify that these impediments of crimes were altogether removed by long-standing custom; Babenstuber (treatise 8, part 7, disputation 3, article 1, no. 5), that all these impediments of crime were abrogated through non-use, as the Authors most commonly teach and the practice of the Churches proves; Cardinal Gotti (*On Matrimony*, question 8, doubt 2, section 2, no. 11), that several of the aforesaid impediments are no longer in force but were abrogated by contrary custom; and, lest we add others fruitlessly, St. Alphonsus himself (book 6, no. 985) calls this opinion absolutely common. Nevertheless, Fortunatus Veneri in the last century (*On Matrimony*, question 7, article 1) discusses these impediments as though they were then in force at least in some manner. But Clericatus (*On Matrimony*, decision 38, no. 35) reports three opinions: the first holds that they are no longer in their force and therefore, as abrogated by use and custom with the Prelates of the Churches knowing and consenting, no longer impede; the second holds that they are even now in their force; but the third, which was Mastrius's, reconciles the two in such a way that the first is true when the impediments are occult, but the latter if they are brought into the contentious forum. The praised Peter Giovine also mentions these opinions (*op. cit.*, section 376, no. 2), adding that the second pleased Cardinal Ursinus, Archbishop of Benevento, afterward Benedict XIII, while the third pleased Lambertini, afterward Benedict XIV.

Likewise, then, if, setting aside this hinge and foundation of the controversy, we seek the opinions of the Doctors concerning the controversy itself, not only, as we have already seen, do some affirm and others deny that this circumstance of incest must be expressed, but in addition it is found that, according to the diversity of opinions, a diverse practice also prevailed. Thus already from his own age Peter Ledesma (*On Matrimony*, question 56, article 4, conclusion 3) distinguishes where there is or is not a custom of seeking a dispensation even from incest.

John Praepositus (*On Matrimony*, question 7, doubt 24, no. 227) mentions the custom that this dispensation is not necessary. - And Pirhing (loc. cit.): *Those thus impeded commonly enter marriage, without any dispensation sought, with the prelates knowing and seeing*. And Giribaldi (*On Matrimony*, chapter 18, doubt 9, no. 59): *It is not always expressed on the advice of learned men, although sometimes it is expressed on the advice of others*. And, omitting others, Vincentius De Iustis (loc. cit., no. 343): *For this intercourse, as Diana and Trullench weigh, is not always expressed on the advice of learned men, although sometimes it is expressed on the advice of others adhering to the contrary opinion.*

37. It will be useful, however, to ask again here: What indeed was the Apostolic See to do amid so great an uncertainty and variety not only of opinions but also of practice? For the Curia, which, as Maschat says (*Treatise on Dispensations*, section 3, no. 34), *does not so easily depart from its ancient formulas*, preserves its style, as though, namely, the impediment and penalty of incest were in force, although, as Giraldi observes concerning this (section 714), *the impediment appears removed by desuetude, unless in some place such a penalty has been received by use*, as he adds with Thesaurus. But the Apostolic See, since it had not yet judged that it should be declared that those impediments had ceased through non-use and by force of contrary custom, nevertheless ought and wished to provide for those who, either on account of a custom perhaps still in force somewhere, or on account of persuasion introduced into them by those who held thus, sought from it a remedy for their conscience. Therefore, most wisely both Innocent XII and Benedict XIV, while defining nothing about this controversy either as to theory or as to practice, nevertheless grant the Major Penitentiary the faculty that, if some think they need a dispensation either for contracting marriage or for convalidating one contracted, he can grant what is sought. And it appears for this reason to have been done that, just as in the Constitution of Benedict XIV, section 43, it is said, *if they have recourse to it*, because recourse to the Datary also lay open, so in section 41 it is said, *if they seek*; because it certainly both could and can happen that others, following another opinion, abstain from seeking in the same circumstances.

38. Finally, this does not appear to be passed over concerning practice, namely, that the doctrine commonly handed down concerning impediments which appear to have the character of a penalty can be recalled here also. And if according to that doctrine (see above, note to no. 788, question 2) it can be considered probable that an impediment of crime, even a diriment one, is not incurred by those ignorant of it, then certainly with stronger reason this can be held concerning a merely prohibitory impediment of crime. And since this impediment consists in the penalty inflicted upon the crime of incest, namely, that without a dispensation one must be perpetually deprived of the hope of any marriage; but this penalty, also on account of the confusions introduced into this question, remains almost unknown through desuetude even to most students of Theology; a fortiori it must be considered unknown to the people of the faithful. Therefore, even if this impediment had to be said to be in force, which hypothesis otherwise has no place from the foregoing, scarcely any person could now be found who, on account of ignorance of this impediment, could not and therefore ought not to be held probably excused from it; and who, for this reason, since he would need no dispensation for contracting marriage because

of this cause, would validly be dispensed perhaps from another impediment, even if in seeking the dispensation he made no mention of the incest.

39. And concerning these things let what has hitherto been said suffice to this extent, so that no one may be unaware of what the opinions of the Doctors, set forth and weighed in a most simple and historical manner, can contribute toward the resolution of the question proposed. For finally we wish to subject all things to the judgment of those to whom it belongs to pronounce a legitimate and definitive sentence both concerning all other things and concerning this controversy also, which can rightly appear merely disciplinary. And for the same reason we say that it must further be added that account must be taken in this matter also of the Responses of the Sacred Penitentiary, which at one time, as it was given to me to learn from the custodian of the Registry or secret Archive of the Sacred Penitentiary, replied to a certain Bishop who asked that expressing the disputed circumstance in petitions for dispensations was merely safer; but at another time it inclined to the opinion of St. Alphonsus. For whatever it finally judged, we all certainly know that, although even its private Responses to private persons do not have, as is admitted among all theologians and canonists, the force of a definitive sentence, nevertheless, from the consent of all the Doctors, they are, as St. Alphonsus says (book 1, no. 106), of great weight and rightly worthy of obedience. See the Response in appendix IV at the end of this volume.

There is no need to reply to anything in the ten columns which the VV. wrote (pages 817-822) concerning this Note, since they had nothing by which they might in any manner weaken the reasons adduced in the Note. It is permissible to ask this one thing of them: that before they clamor that an end has already been imposed upon this theoretical controversy, they not neglect to weigh attentively the things which the Holy Doctor Alphonsus has (book 6, no. 556), and which we reported above (note to no. 588, page 542).

868. ○ **QUESTION 3. What must be done in a doubt whether a cause falsely alleged was final or impulsive, or whether it was true or false?**

Reply. In all these and similar doubts, the dispensation must be regarded as valid. The reason is that in a doubt one must stand for the validity of the act. - St. Ligorius, no. 1133.

QUESTION 4. When the cause of a dispensation ceases, does the dispensation cease, for example, if the offspring to be legitimated by the marriage has died, etc.?

Reply 1. Affirmatively, if the cause ceases before the dispensation is issued or granted by the Bishop or by another to whom it was committed by the Pontiff. - St. Ligorius, no. 1132.

Reply 2. Negatively, if the cause ceases when the dispensation has already been issued and communicated to the petitioners by the delegate, even if it ceases before the celebration of the marriage. The reason is that through the dispensation the impediment has already been removed. - St. Ligorius, ibid. - See volume 1, note to no. 120.

869. ○ **QUESTION 5. What must specifically be set forth when there is question of a marriage to be contracted for the first time?**

Reply 1. The impediment for which a dispensation is sought must be expressed in its own proper species, not one for another, not even a greater one for a lesser; for example, consanguinity for affinity. The reason is that in dispensations an argument from the greater to the lesser is not valid, nor does the Superior will to dispense in that of which he is ignorant.

Reply 2. If a dispensation from an impediment arising from illicit intercourse is sought, it must be set forth whether that intercourse was had by one or both under the hope of obtaining the dispensation more easily.

870. ○ **QUESTION 6. What generally must be expressed in a petition for a dispensation concerning a marriage invalidly contracted?** Reply. It must be set forth: 1. whether both parties, or only one or the other, entered the marriage in good or bad faith, namely, with knowledge of the impediment; 2. whether under the hope of obtaining the dispensation more easily; 3. whether they consummated the marriage; 4. whether they contracted clandestinely or in the face of the Church, whether after the proclamation of the banns or with these omitted. For a dispensation is customarily obtained more or less easily according to these various circumstances.

Hence, if some persons contracted before a civil magistrate so that a dispensation might thereby be granted to them more easily, this must be expressed, since bad faith was present, which renders a dispensation more difficult to obtain. If they contracted civilly with the intention of not contracting before the Church, this also must be expressed, because they attempted a clandestine marriage. But if they contracted in good faith and with the intention of seeking a dispensation from the Church, this circumstance does not appear absolutely required to be expressed, although it is better not to omit it. - Bouvier.

871. ○ **QUESTION 7. If one who has obtained a dispensation from the impediment of AFFINITY arising from illicit intercourse, for example, with a blood relative of his betrothed, again sins with the same woman before marriage, does he need a new dispensation?**

Reply 1. No, if the dispensation has not yet been put into execution by the delegate; because such dispensations take effect not from the day of issue but from the time of execution. - Thus all.

Reply 2. Indeed, no, even if the dispensation has been put into execution. The reason is that the impediment of affinity has already been removed by the dispensation as regards the effect of contracting marriage. - Thus commonly against some.

But if, after the marriage has been contracted, he sins again with the same blood relative of his wife, he is deprived of the right of seeking the debt, because the dispensation according to the style of the Curia was granted for the purpose of contracting marriage, not for sinning more freely.

But he would need a new dispensation if, before the marriage, he sinned with another blood relative of his betrothed, even after the dispensation had been issued, because a new affinity would be contracted.

872. ○ **QUESTION 8. Is a new dispensation required if, after a dispensation has been obtained from the impediment of CONSANGUINITY, incestuous intercourse occurs between the betrothed?**

Reply 1. Affirmatively, if the intercourse was had before the execution of the dispensation. Thus from the common interpretation [4] and from the style of the Roman Curia requiring a declaration of incest of this kind; for when this is manifested, the Pontiff imposes a greater penance upon the petitioner. It is also confirmed from a Declaration of the Sacred Congregation in the month of May 1634. - St. Ligorius, no. 1141. [5]

[4] Concerning these things compare what was said in the preceding Note; from them you will also conclude that this is wrongly attributed to the common interpretation, as the Author says. For besides St. Alphonsus, and anyone else who copied these things from him, where are all those Authors, so that their interpretation can be called common?

But concerning what is said of the style of the Curia, besides those things which you already have noted in the preceding Note and at no. 776, observe what Vincentius De Iustis (*On Matrimonial Dispensations*, chapter 4, no. 344) skillfully warns with several others: the existence of this style, which requires the expression of incest, still must be proved; and otherwise this style would not induce necessity upon others unless it is written, proved, and confirmed by a special Decision and Declaration of the Pontiff, as the canonists cited by the same De Iustis teach (ibid., no. 345).

[5] Concerning these Declarations, Vincentius De Iustis writes thus after others (*On Matrimonial Dispensations*, chapter 4, no. 355): *I say first that the asserted Declarations do not prove anything, nor must they be regarded, since they are not authentically established.* And it is certainly worthwhile to add those things which he himself subjoins (ibid., no. 362), since he also touches upon that Garcia whom the Author cites a little later: *From what has been said, it is inferred that, concerning Declarations of this kind, faith neither can nor ought to be given to Doctors who cite them in their treatises, as Garcia, Friar Leo, Bellarmine, Barbosa, Possevinus, and others commonly do; because unless they are presented authentically, they do not prove and are not to be regarded, especially since the same*

Sacred Congregation, through its particular Decrees, by the express mandate and command both of Gregory XV on June 6, 1621, and of Urban VIII on August 2, 1633, so disposes. At that time, when many Declarations were being circulated through the tribunals and were asserted to have been made by the Sacred Congregation, many of which were erroneous, mutilated, and altered, the Sacred Congregation, by the express order of the said Most Holy Lord Urban, commanded and expressly prescribed that no faith in judgment or outside it was to be given by anyone to Declarations of this kind, printed, to be printed, or manuscript. Vincentius De Iustis reports this command of the Sacred Congregation issued by order of Urban VIII (ibid., no. 363).

Jerome Nicolius had previously written thus concerning the same matter (*Theory and Practice of Both Laws*, etc., part 2, book 5, title 39, page 319): *On April 27, 1721, the Most Illustrious Fathers of the Sacred Congregation of the Council decreed that all and every collection of declarations, decisions, or interpretations of the same Congregation of the Council of Trent, whether printed or to be printed, must be added to the Index of prohibited books; both because they are for the most part false, and because they are diverse and very much beneath the gravity of the style of the same Sacred Congregation, and therefore not worthy of this Sacred Tribunal. Gregory XV of holy memory approved this.*

Nor let anyone ask us here why, then, in the note to no. 776, we also did not hesitate to employ one of these Declarations for our matter. We shall reply that it was not unknown to us that it also was taken from the catalogue of Declarations which Rebellus, in a most unfortunate work worthy of no price and no trust, collected up to no. 166 at the end of book IV, part II. But it could readily be admitted for a twofold reason. First, because at least in some part it presented the doctrine then unanimously received in the schools and founded upon certain laws. Then, because, since it was also adduced by Pyrrhus Corradus, it was most suited to removing those things which he had attempted altogether ineptly and most wretchedly concerning this question.

But the Declaration which the Author borrowed from St. Alphonsus was taken from Pittonius, namely, an Author who stands out singularly among writers who heap together and patch together Declarations of this kind with no selection and judgment, and whose collections therefore can be of no use.

Reply 2. Negatively, however, if the intercourse was had after the execution of the dispensation. The reason is that, once the dispensation has been granted and therefore the prohibition of marriage removed, the malice of incest also ceases. - This is also established from the same Sacred Congregation.

873. ○ **QUESTION 9. Is a new dispensation required for blood relatives if, after a dispensation has been obtained, intercourse is repeated by them?**

Reply. No, because the incest is morally the same, nor must the number of acts of intercourse be declared, as was just said. Hence a new act of intercourse does not invalidate the dispensation, whether it occurs before its issue or afterward, just as was resolved above concerning the similar case at no. 871; for there is parity of reason.

874. ○ **QUESTION 10. If someone seeks a second dispensation in the same matter after another was previously obtained, ought he to express the first?**

Reply 1. Affirmatively, if the impediment contracted arose from some crime. The reason is that relapse into the same crime draws the Superior back from dispensing.

Reply 2. Negatively, if the impediment does not arise from some crime, or arises from a different crime. - Thus St. Ligorius, no. 1137, and others commonly.

875. **Resolutions.** - 1. A dispensation would be invalid if affinity were expressed in the petition instead of consanguinity, and conversely, etc., even if this were done from inculpable error. For the Superior grants the dispensation according to the things set forth in the petition, which, since they are false in fact, necessarily effect no dispensation. On the contrary, the dispensation would be valid if the error were found in the Pontifical Rescript, for example, through the fault of the copyist.

2. Likewise, the dispensation would be invalid if the third degree were expressed for the second, or the fourth for the third; the reason is that a dispensation is granted with much greater difficulty for a nearer degree than for a more remote one. But otherwise it would have to be said if through error the third degree were put for the fourth, because a dispensation in the greater contains a dispensation in the lesser of the same species. - Thus commonly against a few.

3. It is not necessary to say in the petition how many times intercourse was had with a blood relative of the wife, because from several acts of intercourse there arises one affinity. Nevertheless, intercourse had with several blood relatives of the wife must be expressed, because from these so many different affinities are contracted; and although these impediments are not diverse in species, they are nevertheless distinct in number. It is manifest from a Declaration of Benedict XIV. - St. Ligorius, no. 1138.

4. An error in the name or surname of the petitioners, or of the diocese or parish, more probably does not prejudice the validity of the dispensation, provided the substance is established, that is, the impediment and the cause. - Thus Sanchez, book 8, disputation 21, no. 37, and others commonly.

Point III. On the Manner of Seeking a Dispensation

876. ○ For granting dispensations of the Holy See, two tribunals, according to the diverse quality of the impediments, namely, the Datary and the Penitentiary, have been established at Rome.

I. **The Datary.** Recourse must be had to the Datary for all notorious impediments, or those which are foreseen as likely to come to the knowledge of others, or those which can be manifested without infamy, scandal, and other inconveniences.

II. **The Penitentiary.** Recourse must be had to the Sacred Penitentiary for dispensations and faculties which regard only the internal forum, namely, for occult impediments. In the petition, however, the

proper names of the betrothed being kept silent, fictitious names are supplied [1].

[1] At present, however, it is permitted to approach the Penitentiary even for notorious impediments when a dispensation is sought *in forma pauperum*.

877. **Questions. - QUESTION 1. How must a dispensation be sought if there are two impediments, of which one is public and the other occult?**

Reply 1. If they are altogether disparate, recourse must be had to the Datary for the public impediment and to the Penitentiary for the occult one; nor is it necessary that mention be made before one tribunal of the dispensation sought or obtained from the other tribunal. Impediments are considered disparate when one is not increased by the other, as, for example, consanguinity and a vow, or consanguinity and machination.

Reply 2. But if they are not disparate, a dispensation from the public impediment must be sought from the Datary, with the other which must remain secret kept silent; and both must be expressed in the petition to the Penitentiary. The reason is that, from what has been said, they render the dispensation more difficult. But they must be held as not disparate when they are of such a nature that when joined they bring a greater repugnance to contracting marriage; for example, if someone wishes to marry a blood relative whose sister he shamefully knew. For then the dispensation is rendered more difficult. Hence in the aforesaid case the petitioner must seek from the Datary a dispensation from the impediment of consanguinity, and from the Penitentiary a dispensation from the impediment of affinity arising from an illicit cause, at the same time setting forth the other dispensation obtained from the Datary. - Thus commonly. - St. Ligorius, no. 1139.

878. ○ **QUESTION 2. Must recourse be had to the Sacred PENITENTIARY so that the circumstance of intercourse had secretly between blood relatives may be manifested?**

Reply 1. It is certain that there is no obligation to set forth occult intercourse in a petition to the Datary for the impediment of consanguinity. The reason is that no one is bound to defame himself, and otherwise this public revelation of occult incest is not prescribed.

Reply 2. But this circumstance must be manifested to the Sacred Penitentiary. The reason is that it is generally prescribed that intercourse had between blood relatives who wish to enter marriage be set forth. Now, since it is certain that there is no obligation to set forth occult intercourse in a petition to the Datary, because no one is bound to defame himself, and since it is not said in the precept that a public revelation of occult incest must be made, it follows that occult intercourse must at least be disclosed by a secret manifestation before the Penitentiary, lest the law become altogether useless and an exemption from a certain law be granted without any cause. Many formerly held the opposite; but today there is no longer any doubt concerning this, says St. Ligorius, no. 1135, after the Bull *Pastor bonus* of Benedict XIV [2].

[2] It has already been said above that this precept or law of setting forth the occult circumstance of incest in the present case is not proved, nor does any force accrue to this opinion from the Constitution of Benedict XIV, which the Author adduces again.

879. ○ **QUESTION 3. Is a dispensation sought in the form for the poor valid if the petitioners are not poor?**

Reply. Affirmatively. The reason is that the obreption falls only upon the impulsive cause, but not upon the motive or final cause; for poverty is not the reason on account of which the dispensation is granted, but the reason on account of which it is granted gratuitously. Hence another motive cause must always be present. - Thus St. Ligorius in *Homo Apostolicus*, no. 87, where he says this is established from a decision of the Sacred Congregation of September 9, 1679. - Some nevertheless deny it, because, they say, the Pope does not intend to dispense except with those who are truly poor. - La Croix, no. 859. - Gousset, no. 866.

In practice, however, although those who obtain a dispensation in the form for the poor when they are not poor sin gravely, nevertheless, once the marriage has been contracted, it appears that one must stand for its validity, at least on account of the authority of St. Ligorius and the Sacred Congregation, unless this declaration is proved not to be authentic.

QUESTION 4. Who must be regarded as poor?

Reply. From Canon law they must be in some manner pitiable, since according to the style of the Curia the petition must be drawn up thus: *The petitioners are poor and pitiable, and they live from their labor and industry.* In practice the state of their fortune must be set forth, or one must stand by the rules given by the Bishop.

From a Declaration given by the Rectors of the Apostolic Datary in the year 1841, those whose fortune does not exceed the value of 5,000 francs are to be regarded as poor; but those whose fortune does not exceed the value of 10,000 francs are called nearly poor. - Bouvier, *Dispensations from Impediments*, sect. 3, section 3.

880. ○ **QUESTION 5. How must a dispensation be executed?**

Reply 1. As regards a dispensation of the Sacred Penitentiary, after absolution let it be made in these or similar words: *By Apostolic authority I dispense you from the impediment N. which you incurred, so that you may enter marriage (or consummate one entered, or remain in it), and I render legitimate the offspring begotten (or to be begotten). In the name of the Father*, etc.

But if the dispensation is from a vow of chastity, it is said: *Moreover, by dispensing I commute for you the vow of chastity which you made, so that you may contract marriage and use it, into the works which I have prescribed for you. In the name*, etc.

No formula is prescribed under pain of nullity, indeed not even under precept, for none is contained in the Roman Ritual. If the Confessor had omitted to legitimate the offspring, he could repair this omission; for then he would continue the cause committed to him and not yet completed. - Bouvier.

Reply 2. As regards a dispensation of the Datary: 1. The delegate for dispensing must inquire into the truth of the causes, as is contained in the Rescript; more probably, however, this inquiry is not required for validity. 2. He must declare before the parties and witnesses that the impediment of marriage is removed, and order that an attestation of this dispensation be written in the registers of the diocese. 3. He must transmit the Rescript of the Datary to the Pastor of either party with permission that he may assist at the marriage.

A dispensation from the Datary must always be sought through the Bishop. A dispensation from the Penitentiary, however, can be sought immediately by the petitioner or by another in his place. Nevertheless, it is safer and easier that this also be sought through the Bishop, with the name of the petitioner kept silent.

881. ○ **QUESTION 6. How must a dispensation be obtained from Bishops when they can dispense by an Indult?**

Reply. The same rules which are held as necessary in the Roman Curia must necessarily be observed in the case also, because it is the mind of the Supreme Pontiff that Bishops can use the apostolic concession in no other manner.

A Bishop dispensing by virtue of an Apostolic Indult must, under pain of nullity, express that he dispenses as a delegate of the Holy See from an Indult of delegation granted on such a day and year and to be valid for so many months or years; because the Indults commonly prescribe this, and Benedict XIV asserts in the Constitution *Ad tuas manus*, August 2, 1748, that this is then prescribed under pain of nullity.

882. ○ **QUESTION 7. What are the clauses customarily appended in dispensations from the Sacred Penitentiary?**

Reply. They are the following, namely: 1. *If it is so.* But faith must be given to the penitent unless the delegate certainly knows the opposite from knowledge received outside confession. 2. *After first hearing sacramental confession.* According to this clause, therefore, confession is necessary. 3. *With the occasion of sin removed.* It is understood if the occasion is voluntary, which must in fact be removed; but if it is necessary, let it at least be removed from the will by rendering it remote rather than proximate through the due means. 4. *Provided that the impediment is occult.* 5. *A grave penance having been imposed upon him.* It is understood according to the condition and strength of the penitent. 6. *These presents being torn up, under pain of excommunication latae sententiae.* This tearing up must be done immediately, but understand morally, namely, at least within three days after the dispensation has been executed. But if the clause of tearing up is not appended in the letters, as it is not appended when the marriage has not yet been contracted, then there is no obligation to tear them up; rather, a dispensation of this kind must be cautiously noted by the Pastor in a book which cannot be seen by anyone else, so that, namely, when there is need, he may be able to attest to the dispensation obtained. - St. Ligorius, no. 1143.

883. ○ **QUESTION 8. How can the monetary tax imposed upon petitioners be reconciled with the Decree of the Council of Trent commanding that a dispensation be granted GRATUITOUSLY?**

Reply. If money received on the occasion of dispensations were to accrue to the benefit of the one dispensing, the command of the Council of Trent would be violated and the dispensation would be simoniacal; but the matter does not stand thus. For the money is received only as an alms to be expended upon pious works [3].

[3] It is not necessary that the cause for dispensing precede the granting of the dispensation, but it suffices that through the dispensation itself and its manner the cause itself be completed. For when a dispensation is given without cause, some

satisfaction or fine is imposed for a pious work or for another common utility of the Church; through that work the cause of the dispensation arises, which is then made by way of commutation, just as we also said was done in the granting of Indulgences. Thus Suarez (*On Laws*, book 6, chapter 18, no. 26).

884. ○ **QUESTION 9. How is a dispensation of the Sacred Penitentiary to be executed if the impediment is known and common to both contracting parties?**

Reply. In this case each must be dispensed by his or her respective Confessor. This is established from a response of the Sacred Penitentiary, November 15, 1748. The same Rescript, however, can serve for two Confessors, and it must be torn up by the one who executes it later with his penitent. But if the impediment is known to only one party, a single execution is required. - Collet, *Treatise on Dispensations*. - Bouvier, etc.

Forms — For Seeking Dispensations — I. from the Datary

Most Holy Father,

885. ○ John N. (the proper name is inserted) and Anna N., of the parish commonly called N., Diocese of N., blood relatives in the equal second degree, desire to enter marriage with each other, and therefore humbly implore from Your Holiness the dispensation necessary for them. The reasons are: 1. THE AGE OF THE MAIDEN, who, now twenty-five years old, would probably not find another man whom she could suitably marry; 2. THE CHRISTIAN VIRTUES existing in each petitioner; 3. THE SMALLNESS OF THE PLACE. (Let other causes be inserted, if there are any.)

At N., on the ... day, etc.

P., Pastor of the Parish.

If they are poor, after the reasons have been set forth it is said: *They are poor and pitiable, and live only from their labor and industry.*

The petition drawn up by the pastor of the petitioners must be sent to the Bishop. The Bishop, or the Vicar General in his place, sends it, furnished with testimony, the episcopal seal, and signature, to his agent at Rome, who solicits the dispensation and transmits it to the Bishop.

II. from the Penitentiary

Most Eminent and Most Reverend Lord,

886. ○ Titus, aware (or ignorant) of the impediment, contracted marriage in the face of the Church with a woman whose mother, daughter, or sister he had previously known carnally; wherefore, since they cannot be separated without scandal and the impediment is occult, he most humbly petitions Your Eminence graciously to grant him a dispensation so that he may contract validly.

Deign, Your Eminence, to direct the response to me, the undersigned.

Here the name and surname of the person to whom the reply is to be sent must be expressed; likewise the name of the town or city to which or through which it is to be sent, and these indeed in

the vernacular language. Above the closed and sealed petition is written: *To the Most Eminent and Most Reverend Lord Cardinal Major Penitentiary.*

887. ○ Another form, when there is a twofold impediment, one public and the other occult.

Most Eminent and Most Reverend Lord,

Peter and Anna, blood relatives in the second degree, not in hope of obtaining a dispensation more easily [4], but overcome by mad lust, had intercourse together. John, however, Peter's brother, intends to marry Anna, a dowry having been established for her which she could not otherwise have according to the condition of her state. Both petition the Most Holy Lord that the Apostolic Datary deign to dispense with them concerning the said impediment of consanguinity. The petitioner Anna, however, humbly petitions Your Eminence that, by a special grace, you deign to dispense with her so that, notwithstanding the aforesaid entirely occult impediment of affinity arising from illicit intercourse, she may licitly and validly contract marriage with the said John.

[4] These words are not pertinent; for the circumstance of intercourse previously had, with or without the purpose of obtaining a dispensation more easily, enters into the case only when it is a question of a marriage to be contracted between the incestuous persons themselves. But if the incest was committed without the purpose and hope of obtaining a dispensation, and it is a question of marriage to be entered between the incestuous persons themselves, we have already said (above, in the Notes to nos. 867 and 872) that there is no pressing necessity to set forth this circumstance, unless perhaps it is the only cause available for obtaining the dispensation.

Another Form for a Vow of Perpetual Chastity

Most Eminent and Most Reverend Lord,

888. ○ A certain maiden, approximately fifteen years old, knowingly and freely made a vow of preserving perpetual chastity; but now, in the judgment of the Confessor who has long heard her confessions, she would come into certain danger of salvation unless she marries. Wherefore she humbly and earnestly petitions that her vow be commuted for her to the effect of contracting marriage.

Deign, Your Eminence, etc.

Another Form concerning the Same Matter

889. ○ Titius, being bound by a vow of chastity and being in grave danger of incontinence, humbly petitions Your Eminence to deign to grant the petitioner a dispensation from the aforesaid vow, so that he may contract marriage, etc.

In addition, take care to observe these things concerning a petition:

1. Petitions to the Datary in which the canonical causes are not expressed, or which lack the testimony of the Bishop or another required condition, are torn up, and no response is made by the Officials of the Sacred Congregation.

2. In France a cause now occurs quite frequently which can be added in the petition, namely, a marriage civilly contracted, or the danger that it may be contracted. In that event, however, the

dispensation is granted chiefly for the benefit of the bride, the offspring born or to be born, and the family, or to avoid scandal harmful to religion and morals.

3. The form of dispensations now received both in the Penitentiary and in the Datary is commissorial; that is, the power of dispensing is given, but the dispensation itself is not precisely given. Hence it follows that the causes alleged must be true both at the time when the Rescript is issued at Rome and at the time when the dispensation is committed to execution; for in the Rescript it is said, *if the matter is so*, or something equivalent, or it is at least understood [5].

[5] Others, however, with Garcia (*On Benefices*, part 6, chapter 2, no. 283) and Pyrrhus Corradus (*Practice of Apostolic Dispensations*, book 7, chapter 2, no. 32), think it sufficient that the cause exist at the time when the Delegate executes the Dispensation itself; because the words of the Rescript, *If you shall find the matters to be true*, etc., are in the future tense; and otherwise the Pontiff, saying in the Rescript, *Not having certain knowledge of the foregoing*, etc., appears to commit the business according to those circumstances which the Delegate will find. Suarez (*On Laws*, book 6, chapter 20, no. 14), with others (in De Iustis, *On Matrimonial Dispensations*, book 1, chapter 6, nos. 299-301), objects that the petition is subreptitious and that it must not be presumed that the Pontiff wishes to favor frauds. But the others will perhaps reply that a dispensation which is finally granted for a truly existing cause is not subreptitious; and the adversaries must readily agree that it will be valid if in the case the falsity was set forth not through deceit but in good faith. Wherefore they will derive the nullity of the dispensation not from the eventual defect of the cause, but from the crime of fraud, which the Pontiff wills to punish in this manner, even if otherwise the dispensation is granted for a truly existing cause. But this will be said less consistently by those who, according to the common opinion, hold that a dispensation obtained by one who, together with a true and sufficient cause, fraudulently adds in the petition other causes likewise sufficient in themselves but altogether false, is valid. Let the definition of this question, however, belong to wiser men.

4. A dispensation for the internal forum is customarily committed to a Doctor in Theology or in Canon law, or, if one cannot be had, to a Confessor approved by the Bishop, who cannot execute the dispensation unless he has first heard the confession. But because in most places Confessors who are Doctors in Theology can now rarely be found, the faculty of dispensing is ordinarily committed simply to a Confessor to be chosen by the penitent.

Chapter VII. On the Revalidation of Marriage

890. ○ A marriage can be invalid: 1. through defect of consent; 2. through defect of the prescribed form; 3. through incapacity of the parties.

Article I. On the Revalidation of a Marriage Invalid Through Defect of Consent

It is certain, 1. that a marriage invalid through defect of consent alone can be revalidated by the simple renewal of consent.

It is certain, 2. that renewal of the consent of each party is required if neither truly consented, and at least of the one who did not consent if there is only one. Concerning several matters, however, there is controversy; hence:

891. **Questions. - QUESTION 1. Must consent be renewed by both parties if only one consented fictitiously or under compulsion?**

Reply. Negatively. The reason is that the consent of the other, having been truly placed, perseveres so long as it has not been positively retracted. Thus the Theologians commonly; and St. Ligorius, no. 1114, calls this opinion the truer one, that is, morally certain.

Some nevertheless affirm, although their opinion does not otherwise appear probable. But in practice it is preferable to choose the safer counsel and, insofar as it can be done without inconvenience or danger, care must be taken that consent be elicited from both.

QUESTION 2. Must consent be renewed before the Pastor and witnesses?

Reply. Negatively. This is apparent from the practice of the Church and the common opinion, namely, because of the inconveniences which would follow from that obligation.

Article II. On the Revalidation of a Marriage Invalid Through Defect of the Prescribed Form

892. ○ I. It is certain that a marriage invalid by reason of clandestinity must be entered before the Pastor and witnesses, unless a dispensation from the law of the Council of Trent is obtained from the Supreme Pontiff, which otherwise is rarely granted. For that law obliges until it has been fulfilled, since it is a condition *sine qua non* required in every case for the validity of marriage, unless recourse to the Pastor is impossible, as was said above where the impediment of clandestinity was treated.

II. If both spouses do not refuse to present themselves before the Pastor, the marriage must be revalidated before him either publicly or secretly, according as the nullity of the marriage was public or occult. The reason is that, in the former case, scandal must be removed; but in the latter it must be forestalled and the reputation of the spouses preserved.

This is further confirmed from the Declaration of Cardinal Caprara, legate *a latere* in France, in the Instruction on the revalidation of invalid marriages. For thus he says: 6. *If the nullity of the marriage is occult, or commonly unknown, the marriage must be contracted secretly before the proper Pastor, with at least two trustworthy witnesses employed, in order to avoid scandals; the entry is then to be recorded in the book of secret marriages.* 7. *If the nullity of the marriage is public, the marriage must be celebrated publicly, with the form of the Council of Trent observed, in order to remove scandal. But if the Ordinary, on account of particular circumstances, shall judge it expedient that it instead be celebrated secretly before the proper Pastor and two witnesses, it can be celebrated secretly, provided, however, that the public scandal can be removed in another manner and is removed as soon as possible.*

Various difficulties occur, however, if one party consents to contract before the Pastor and the other refuses, or if both are badly disposed. Hence:

893. **Questions. - QUESTION 1. What must be done if one party or both consent to renew consent before the Pastor, but refuse to go to the church?**

Reply. They must be joined in their own home or in another place chosen by them, provided grave witnesses are present, by whose aid the convalidation of this marriage can be made public if this is necessary for removing scandal, namely, if the invalidity of the former union is notorious.

QUESTION 2. What must be done if one party refuses to contract before the Pastor?

Reply. Cardinal Caprara responds thus in the cited Instruction: *If the refusal arises from ignorance or some error contrary to the laws or doctrine of the Church concerning impediments which invalidate marriage, let the refusing party be instructed with due prudence and in charity. And insofar as the party still refuses to convalidate his marriage in the face of the Church, then pains must be taken that he appoint a special proxy who may contract the marriage in his name in the customary manner; or at least that, by consent de praesenti expressed through a Letter directed to the proper Pastor or to another Priest having the permission of the Ordinary or Pastor, the marriage be renewed.*

894. ◦ **QUESTION 3. What if the indisposed party is unwilling to contract even through a proxy, etc.?**

Reply. The same Cardinal Caprara responds thus:

If the things prescribed thus far can by no means be obtained, and one party cannot be brought to carry out the celebration of the marriage according to the things handed down above ..., we judge that recourse can be had to a dispensation in the root of the marriage, or to the sanation of the marriage in the root, so that at least the salvation of the soul of the innocent party, the legitimacy of the offspring, and the tranquility of the families may be fully provided for, and the salvation of the soul of the refusing party also may be provided for as soon as possible.

QUESTION 4. What if neither party consents to contract marriage anew?

Reply. Nothing at all is to be done here and now, since no dispensation is granted by the Church in such a case. It remains, therefore, that the Pastor devote himself to fervent prayer, frequently commend the most wretched concubinaries to God, and strive with assiduous care to procure their conversion.

Article III. On the Revalidation of a Marriage Invalid Through the Incapacity of the Parties

To revalidate a marriage invalid through an ecclesiastical impediment, before all else a dispensation from the impediment must be obtained. It is given in a twofold kind, namely: 1. a simple dispensation, or one in the customary manner; 2. a dispensation in the root of the marriage.

§ I. On the Revalidation of Marriage in the Ordinary Manner

895. ○ I. Rule. If each spouse is aware of the impediment, each is bound to renew consent, after the dispensation has been obtained, in order to revalidate the marriage. The reason is that knowledge of the nullity of the marriage because of a known diriment impediment had necessarily excluded true consent in the preceding contract of marriage.

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

III. Rule. The party ignorant of the impediment would not necessarily have to renew consent for the validity of the marriage if the impediment regarded only the other party. The reason is that the consent of the former was valid from the beginning and therefore perseveres; hence renewal of the consent of the incapable party would suffice. Thus, if a member of the faithful had married an unbaptized woman who was ignorant of the impediment, it would suffice, after the infidelity ceased or a dispensation was obtained, that the faithful spouse renew consent; because the consent of the unbeliever was valid, since the Church could not impress a personal incapacity upon her.

896. **Questions. - QUESTION 1. Must the party who is ignorant of the impediment necessarily renew consent for the valid restoration of the marriage?**

Reply. There are two probable opinions:

I. OPINION. It commonly affirms. The reason is: 1. because the impediment removes the efficacy of consent from the beginning; therefore it remains inefficacious, and consequently can produce no effect, since it perseveres in the same manner in which it was given. A simple dispensation, however, does not heal the defect which preceded, but only renders the parties capable of consenting in the future. 2. Because this clause is customarily added in the Rescripts of the Sacred Penitentiary: *The other party having been informed of the nullity of the prior marriage*. Therefore, etc. - Sanchez, Sylvius, Navarrus, etc.

II. OPINION. It denies. The reason is that the prior consent, although it lacked its effect because of an impediment imposed by positive law, was nevertheless valid by natural law, since it was given to a person capable of contracting by natural law. Therefore, once the impediment is removed, the prior consent suffices, which virtually perseveres in its effect through conjugal intercourse, cohabitation, or other external signs. Therefore, when the internal consent of the spouse aware of the impediment is added, expressed at least through similar external signs, the consent of both is united and the marriage is convalidated. Nor does the clause of the Sacred Penitentiary stand in the way, for it is judged to be added not as a true condition but as a simple instruction; because otherwise this condition would often be frustrated. - The Salmanticenses, etc.

Nevertheless, in practice one must not depart from the first opinion unless a dispensation in the root is obtained, at least outside a case of urgent necessity. But if the case is urgent and a dispensation in the root cannot easily be obtained, it will be licit to use the second opinion; because in straits of this kind it is not forbidden to use a probable opinion even with the danger of frustration of the Sacrament [1]. An urgent necessity is present when, from manifesting the nullity of the marriage to the other party or from the separation of the spouses, danger of death or grave infamy or scandal can prudently be feared. Thus St. Ligorius, nos. 1114, 1115.

[1] Say rather that the Sacrament is not then frustrated; for it is a question of matter in which the Church can supply. And since in the case it is not permissible to have recourse to the same Church, while otherwise the contracting parties act according to a probable opinion, it must be held that the Church in fact supplies.

897. ○ **QUESTION 2. Does the renewal of consent presuppose knowledge of the nullity of the marriage?**

Reply. It appears that one must affirm with the more common opinion. The reason is that renewal of consent must necessarily proceed from the intention of effecting a marriage; but one who believes that the prior marriage was valid does not will to effect a marriage, but only renews and ratifies the marriage previously entered. And since that marriage was invalid, the marriage cannot be convalidated through consent of this kind. This must especially be affirmed if it is a question of a spouse who is presumed likely to dissolve the marriage if he knew of the nullity. For then he would be judged to say that he wills the marriage, but the one which existed from the beginning, and not another. - See St. Ligorius, ibid.

898. ○ **QUESTION 3. Must consent be renewed before the Pastor and witnesses?**

Reply 1. Affirmatively, if the impediment is public. The reason is: 1. because the reason of removing or forestalling scandal then presses; 2. because the Briefs of the Datary always require it in this manner; 3. because otherwise the validity of the marriage could not be proved before the Church, since it is publicly established that the Pastor and witnesses were not present except at the celebration of an invalid marriage; and thus the end intended by the Council of Trent would not be obtained. For the spouses, after the marriage had been secretly revalidated, could separate and enter new marriages with others with impunity.

Reply 2. Negatively, if the impediment is occult. The reason is: 1. because the law of the Council of Trent then appears already to have been sufficiently fulfilled through the presence of the Pastor and witnesses at the first marriage; or because the Council of Trent, in prescribing the presence of the Pastor and witnesses, is rightly presumed not to have wished to include this case. For the Council wished only to meet the inconveniences which arose from marriages celebrated secretly; but in our case the marriage has already been publicly contracted, and therefore that danger is absent. It is sufficient, therefore, to place the new consent secretly. 2. Because an extension of the law to this case would be not only useless but also harmful, since it would furnish occasion for many scandals, expose the parties to defamation, and induce many other inconveniences; therefore, etc. 3. Because it is proved from the constant practice of the Sacred Penitentiary, the Sacred Congregation of Cardinals, and other tribunals. - St. Ligorius, no. 1110, and others commonly against a few.

899. ◦ **QUESTION 4. Must at least a marriage null because of an occult impediment be revalidated before the Pastor and witnesses if they were aware of the impediment at the time of the marriage?**

Reply. Negatively, more probably. The reason is that the assistance of the Pastor and witnesses was prescribed by the Council of Trent not so much for attesting to the validity of the marriage, which can be unknown to them in many ways, as for proving the external celebration of the marriage, so that the danger that the same spouses might enter other marriages may be forestalled.

Sanchez with La Croix and several others, however, probably affirm, says St. Ligorius; because the Pastor and witnesses, by assisting at a marriage known to them as invalid, were witnesses only of the nullity of the marriage.

In practice, apart from grave difficulty, the safer part should be followed. Otherwise this case is scarcely probable as regards practice.

900. ◦ **QUESTION 5. In how many ways can consent be renewed or elicited from the party ignorant of the impediment after the dispensation has been obtained?**

Reply. These are the principal ways assigned by various authors:

I. Way. If the spouse simply says: *Our marriage is null because of some impediment*; or: *My Confessor told me that it is null ..., and therefore let us renew consent*.

II. Way. If the spouse says: *I did not have true consent when I contracted marriage; I now wish to give a new consent; do you also wish to give it?* This way is commonly admitted by authors, and can rightly be employed without a lie, since null consent is not true consent; and otherwise the spouse ignorant of the impediment thus knows the nullity of the marriage sufficiently.

III. Way. If the spouse says: *I am troubled by scruples concerning the validity of our marriage , and therefore let us renew our consent*. This way can be admitted according to the more common opinion with St. Ligorius, no. 1117. For it is sufficient that the other party place consent independent of the prior consent; and for this it is sufficient if the party prudently doubts the validity of the first marriage.

Various other ways are also proposed by several Theologians; for example, if a spouse says to the other spouse: *Tell me, please, if our marriage were null, would you not wish to contract again?* Or: *If you had not married me, would you not now wish to marry me?* etc. But these ways are rightly rejected, because it is thus uncertain whether the other party intends to repeat consent for the preceding marriage or rather to consent to a new one. - See St. Ligorius, no. 1117.

§ II. On the Revalidation of Marriage with a Dispensation in the Root

901. ◦ A dispensation in the root is the abrogation, in a particular case, of the ecclesiastical law which introduced the impediment, joined with the invalidation of all the effects which previously followed from the law. - Benedict XIV, *Institution* 87, no. 80; *On the Synod*, book 13, chapter 21, no. 7.

This dispensation, therefore, produces its effect by removing the effects of the law which were produced on account of the nullity of the marriage before the dispensation was introduced, and also

in the very act of contracting. Thus also the same Supreme Pontiff.

Hence a simple dispensation differs from a dispensation in the root in this: the former does not have its effect except from the time when it is granted, or *ex nunc*, and consequently cannot exempt from the renewal of consent. The latter, however, convalidates the marriage from the time of the marriage, or *ex tunc*; that is, through a fiction of law, it ascends to the root or origin of the marriage and places the matter in the same state as if the impediment had never existed. Hence it is called a dispensation *in the root*, because it destroys the effect of the impediment from the root or beginning of the marriage, namely: 1. by healing the defect of consent; 2. by bestowing validity upon the marriage; 3. by conferring legitimacy upon the children with respect to spiritual effects [1].

[1] Understand that the child is rendered fit for benefices, sacred Orders, and ecclesiastical offices; concerning this there has never been any disagreement of opinions.

The question is, as Sanchez says (*On Matrimony*, book 8, disputation 7, no. 3): Whether the Pontiff, by dispensing in the root of an invalid marriage, can legitimate children born from it before the dispensation of the marriage, in places not temporally subject to him, so that they are capable of offices and of succession to temporal goods? That is, whether he can effect that the dispensation be carried back to the time when that invalid marriage was contracted, so that it is judged as though it had been validly entered from the beginning by means of that dispensation, to this effect: that offspring had from it before the dispensation are also legitimate in all respects, no otherwise than if they had been born from a legitimate marriage. And the whole difficulty arises when the impediment on account of which that marriage was invalid was introduced by pontifical law. This controversy is indeed of the greatest moment, since from it there must be determined, for example, whether a son born of an illegitimate marriage, but who has obtained legitimation by aid of this dispensation in the root, must be preferred in succession to a Majorat or a Fideicommissum either to another younger brother who was, however, legitimately born after the dispensation had been obtained, or to another blood relative.

Sanchez, moreover (ibid.), after adducing the reasons for the negative opinion and some of its patrons, then explains his own opinion thus (ibid., no. 4): *But the most frequent and truer opinion holds that the Pontiff can do this. It is derived from this: the root and origin from which it arises that offspring are illegitimate and consequently incur the disabilities of illegitimacy, whether ecclesiastical or secular, is the ecclesiastical law by which it was established that the impediment found in that contract of marriage would render it void; and if that law did not stand, the marriage would have been valid and the offspring legitimate and would not have incurred those disabilities. But the Pontiff can invalidate and revoke his law with respect to effects which have followed from it by human law, and not only with respect to those to be incurred in the future, by effecting that they are not incurred, but also with respect to those already incurred, by abolishing them as if the law promulgated had never existed, as is established from the sole Clementine* On the Immunity of the Church, *where Clement V revokes certain Constitutions of his Predecessors even with respect to effects previously produced, in these words: "Whatever has followed from them or on account of them, we entirely revoke, and we will that they be held as undone." There the Gloss, Cardinalis, Ancharranus, Imola, and the Abbot infer from this that the power of the Pontiff concerning those things which are of positive law is so great that he can revoke them as from the time when they were promulgated, and abolish all past effects as if they had never been promulgated. Therefore the Pontiff, thus dispensing in the root of the marriage, that is, at its beginning, by revoking the impediment which invalidated it as if it had never existed, will effect that the dispensation is carried back to the beginning of the marriage and consequently is judged as though that marriage had been valid from the beginning, with no invalidating impediment existing; in which case the offspring would be truly legitimate in all respects. And it is confirmed, because this is not to dispense in civil law and its effects, but indirectly and through a certain consequence; namely, because by civil law those disabilities are incurred by the offspring on the supposition of the firmness of the ecclesiastical law invalidating the aforesaid marriage, from which it followed that the marriage was invalid and consequently the offspring conceived from it illegitimate and subject to all the disabilities of illegitimacy established by civil law. Since, therefore, the Pontiff by his dispensation in the very root of the marriage directly removes the firmness of that ecclesiastical law and wholly abolishes it, just as if that law had never been promulgated, he will effect indirectly and through a certain consequence that all those disabilities cease, since they depended upon the firmness of the ecclesiastical law. And this reason, and the other matters which can be seen there, are explained still further; where, after illuminating the reasons with still fuller light, he adds very many Doctors who handed down the same opinion.*

Nevertheless, it is entirely due to this paragraph, in which he so vigorously undertook to defend and vindicate the rights of the Apostolic See - to this paragraph, I say - that the name of Thomas Sanchez was entered into the Index of Prohibited Books, and that even in catalogues of books which are offered for sale in the City you may often see this mark of infamy branded upon the name of Sanchez and his work *On Matrimony*. How, you will say, could this happen? Receive the

explanation briefly. When this work was published at Venice in the year 1612, this paragraph offended the eyes of the petty theologians who were serving the Venetian republic in the protracted war which it did not cease for many years, indeed for centuries, obstinately to wage against the Apostolic See and its rights. It was therefore commanded by the Magistrates that the work could not be brought forth into the light there unless the hated paragraph, as though opposed to the rights of the republic, were cut out and entirely removed. But that deed did not escape the eyes of Roman vigilance; for, perceiving from that malicious omission in a most celebrated work worn by the hands of all an offense against its rights and thence a scandal to many, it willed that the corrupted edition of Sanchez's work be taken from the hands of the faithful, and therefore ordered that the third volume be entered among condemned books. Wherefore the condemnation falls not upon the genuine work of Sanchez, but upon a particular edition of the work corrupted by wicked fraud. But the fact that, in catalogues of books for sale, that mark of infamy is very often appended to the name of Sanchez without any distinction made between the genuine work and the corrupted edition is due to the ignorance or inadvertence of those who undertake the care of these catalogues.

902. **Principles.** - I. The Church, or the Supreme Pontiff, can dispense in the root of marriage with respect to all impediments of ecclesiastical law. The reason is: 1. because to dispense in the root is nothing other than to remove the impediment not only for the future but also for the past, or to remove the effects which it produced, so that before the Church they are held as though they had never existed. In these things, however, there is nothing which exceeds the power of the Church. Therefore, etc. 2. Because this is established and confirmed from the practice of the Church, which for several centuries has been accustomed to grant such dispensations. Boniface VIII is read to have dispensed in this manner first, in the year 1301; but in more recent times Pius VI, Pius VII, Leo XII, etc., dispensed more frequently in the same manner.

903. ○ II. Three conditions are required so that a marriage can be convalidated by aid of a dispensation in the root, namely:

1. That the union of the spouses have had the external appearance of a just marriage and have not been manifestly fornicarious. Thus Benedict XIV. Cardinal Caprara requires the same. The reason is that otherwise true consent would not be present, and consequently marriage could in no way be present; or the root of marriage would not be present, as Benedict XIV says.

2. That the consent of both have persevered; for the Church cannot convalidate consent retracted even by only one party. Moreover, the Pontiff not rarely requires in the Rescript that the persevering consent of both parties be established. Some nevertheless contradict this.

3. That an urgent and most grave cause be present. Thus Benedict XIV. This can be present chiefly in three cases, namely: 1. when one party cannot be brought to the renewal of consent and nevertheless exhibits present consent to remain in the marriage; thus Cardinal Caprara; 2. when the impediment is known to only one party and cannot be manifested to the other without grave inconveniences; 3. when there is an urgent reason for not warning the spouses of the nullity of the marriage.

This third condition is not required for the validity of the dispensation if the dispensation is granted by the Supreme Pontiff; otherwise, if it is granted by the Bishop from a particular Indult. - Carriere, no. 1444.

904. **Questions. - QUESTION 1. Can a dispensation in the root be obtained and applied while both parties are ignorant of it?**

Reply. Affirmatively. The reason is that knowledge of the dispensation is in no way required for the Church to be able to remove the effect of the law, or the obstacle which stood in the way of the efficacy of consent; for the power of the Church is altogether independent of such knowledge. It is confirmed from the practice of the Church. For Clement XIII, as Collet relates, granted to a certain Procopius (who appears to have been a Bishop) the faculty of sanating in the root, without the parties being warned, many marriages invalidly entered because of an excessive extension of faculties received. Other examples of a similar revalidation of marriages are also related by others.

QUESTION 2. Can a dispensation IN THE ROOT be granted if both parties knew the impediment when they contracted?

Reply 1. Negatively, according to the more common opinion, if the spouses in contracting clearly knew the nullity of the marriage. The reason is that, once the invalidity of the marriage is known, true and properly so-called consent to it cannot be given, but there is only an intention of living in concubinage; and consequently the consent cannot be healed, since it was fictitious from the beginning.

Reply 2. Affirmatively, if the spouses, although they knew the impediment when contracting, nevertheless doubted whether the marriage was null, or did not attend to its invalidity. Thus Cardinal Caprara appears to be understood, who supposes that a dispensation in the root can be obtained to convalidate a clandestine marriage when one party refuses to renew consent before the Church. It appears that one must distinguish in the same manner concerning marriages contracted only civilly.

905. ◦ **QUESTION 3. Can a Bishop dispense IN THE ROOT when he can dispense from diriment impediments by a particular Indult?**

Reply. Negatively. The reason is that a dispensation in the root requires greater power, and therefore is not judged to be contained in other faculties. This is confirmed from the practice of the Church, which always gives a special faculty when it intends to grant the power of dispensing in the root.

QUESTION 4. How is a dispensation IN THE ROOT to be executed?

Reply. In the same manner as a simple dispensation, adding in the formula the words *in the root*. Thus, for example: *I, by the apostolic authority granted to me, heal and consolidate in its root the marriage contracted by you with N., and declare the offspring received and to be received legitimate, in the name of the Father, and of the Son, and of the Holy Spirit.* But no formula is contained in the Roman Ritual.

Chapter VIII. On the Conjugal Debt

906. ○ Hear St. Ligorius as he approaches this question, *On Matrimony*, no. 900: *It irks me to have a longer discourse on this matter, which bears such great foulness before it that it disturbs chaste minds by its very name alone. But would that this matter were not frequent in the hearing of confessions, so that it would not be altogether necessary for the Confessor to be instructed by a full treatment, but it would suffice for him to be instructed by a compendium! Let the chaste reader therefore pardon me if I speak of it at length here and descend to particular cases which exhibit a more repulsive baseness....*

The conjugal debt is said to be that common action of spouses which is necessary for generation and which has been ordained by the supreme Provider of all things for the propagation of human society. This action consists in carnal intercourse, by which a man and a woman are made as though one body and one flesh.

An act of this kind is called a debt by the Apostle; for it is that which the spouses mutually owe to one another.

We must treat: 1. of the liceity of the conjugal act; 2. of the obligation of the same; 3. of the sins of spouses.

Article I. On the Liceity of the Conjugal Act: 1. in Itself; 2. with Respect to Circumstances

§ I. On the Liceity of the Conjugal Act Considered in Itself

907. **Principles.** - I. The conjugal act between legitimate spouses is of itself honorable and licit; for it is a means established and ordained by the Author of nature himself for the legitimate propagation of the human race.

II. The ends which render an act of this kind honorable are: 1. the generation of offspring, which is numbered among the principal ends of marriage; 2. the satisfaction of the obligation toward the other spouse; 3. the calming of concupiscence, and consequently the avoidance of incontinence both in oneself and in the other spouse; 4. the desire of fostering or conciliating honorable love, of manifesting or promoting conjugal affection, etc. - Thus commonly with St. Ligorius, no. 881 and following, Sanchez, and others against some who do not admit the last two ends.

908. **Resolutions.** - 1. The use of marriage is illicit if it is made for pleasure alone, that is, by expressly excluding the other ends [1]. This is apparent from proposition 9 condemned by Innocent XI, which reads thus: *The act of marriage exercised for pleasure alone is entirely free from all fault and venial defect.* Nevertheless, of itself it would be only a venial sin, just as it is venial to take food for delight alone. But the use of marriage is free from this fault if it is a remedy for concupiscence; for its satisfaction is licit as a remedy for concupiscence, whether this is intended expressly or implicitly [2]. - St. Ligorius, no. 912.

[1] See the fuller explanation of this doctrine in the Note to no. 28, vol. I, which certainly must be kept diligently before the eyes, lest anyone importunately harass both himself and others with empty anxieties concerning the use of pleasures.

[2] By these words the Author wished to signify that even this slight disorder or fault of one acting for pleasure alone is scarcely ever actually present. And the reason is plain: because the disorder does not reside in desiring pleasure. For, as St. Thomas says (*Against the Gentiles*, book 3, chapter 26, no. 6), *The pleasure which follows good and desirable operations is good and desirable*; and this (as the Angelic Doctor adds, ibid., no. 7) *accords with the order of nature.... For we see that nature has joined pleasure to those operations of animals which are manifestly ordained to necessary ends.... For unless pleasure were present, animals would abstain from the aforesaid necessary acts.* Therefore the disorder of one acting for pleasure alone will be present when he so rests, as it were, in the pleasure that he positively excludes every other end. I said that he *positively excludes* it; for the common and certain doctrine concerning every action teaches (see the things which we adduced from St. Thomas, vol. I, nos. 31, 32) that, for an act to be good, it is sufficient that either the further ends or those intrinsic to the work not be excluded, although the agent otherwise bears himself negatively with respect to them; that is, he does not think of them at all while acting, but apprehends the act only under a certain general concept as licit for himself and therefore honorable. The same must also be said concerning the conjugal act, namely, that for its honorableness it is sufficient that the ends intrinsic to this work, which the Author also enumerates in the preceding number, not be positively excluded, while the agent apprehends the work as licit for himself, or (which is the same) as not illicit, although he thinks nothing of those ends while acting.

It can scarcely happen, moreover, that the ends intrinsic to the conjugal work are altogether positively excluded. And this indeed the Author wished to intimate when he introduces the use of marriage as a remedy for concupiscence.

And indeed the Apostle is the authority that this end also, and indeed as an intrinsic one, is present in marriage, so that it may be a remedy for concupiscence, when he says (1 Cor. 7:2): *But because of fornication, let every man have his own wife, and let every woman have her own husband.* And again (ibid., verse 5): *Do not defraud one another, unless perhaps by consent for a time ... and return again to the same, lest Satan tempt you because of your incontinence.* And again (ibid., verse 9): *But if they do not contain themselves, let them marry; for it is better to marry than to burn.*

Indeed, Chrysostom, explaining these words of the Apostle, contends that this end is the principal one in the present age. For thus he says (*On Virginity*, chapter 19): *When marriage was delivered for the sake of procreating children, then MUCH MORE was it delivered for extinguishing the heat of nature. And Paul testifies to this, saying: But because of fornication, let each have his own wife, not because of the procreation of children. For there he commands them to come together, not that they may be parents of many children; but why? Lest Satan tempt you, he says. And proceeding he did not say: If they desire children; but what? Let those who do not contain themselves contract marriage. For in the beginning, as I said, it had this twofold occasion; but afterward, with land and sea and the world filled, only one pretext remains, the abolition of wickedness and lust.* And again (*Homily: What Sort of Wives Are to Be Taken*, section 5): *Before all else learn what the cause of marriage was and why it was introduced into common life, and seek nothing further. What, therefore, is the cause of marriage, and why was it given by God? Hear Paul saying: But to avoid fornications, let each have his own wife. He did not say, so that poverty may be avoided and riches acquired; but what? That we may avoid fornication, that we may moderate concupiscence, that we may live soberly, that we may please God, content with our own wife. Marriage brings us this; this is its fruit; this is the gain from it.... This, then, must be regarded in marriage*

especially: that we may flee sin and be free from fornications. Marriages are to be sought in this, that they may help us to lead life chastely.

Moreover, it will appear superfluous to explain in what manner marriage contributes to the aforesaid end, or by what reason it extinguishes the heat of nature, wards off the temptations of Satan, is the abolition of wickedness and lust, and conduces to moderating concupiscence and leading a sober and chaste life. Nevertheless, it will be useful to hear this from St. Thomas, who, upon the cited text of the Apostle (*Lecture 1 on chapter 7 of the First Epistle to the Corinthians*), has these things among others: *The Apostle, considering the human race now multiplied ..., set aside that necessity for which marriage had been instituted as an office of nature, and proposed the second necessity, according to which it was instituted as a remedy for fault. For because carnal concupiscence still remains in the faithful after baptism ..., it especially incites men to venereal acts because of the vehemence of pleasure. And because it belongs to greater virtue to overcome this concupiscence entirely than can be suitable for men ..., it is necessary that concupiscence be yielded to in part and overcome in part; and this is done when the act of generation is ordered by reason....* But according to the same Holy Doctor, the act of generation is ordered by reason through two things, namely (ibid.): *1. that man use the act of generation according as it is fitting for the generation ... of children; 2. that in the human species there not be wandering and uncertain couplings, such as fornicarious couplings are, but that determinate men be joined to determinate women; and this determination is made through the law of marriage.*

Therefore, according to the teaching of St. Thomas, the remedy for concupiscence divinely prepared for man through the institution of marriage resides in this: that through acts suitable for generation in legitimate marriage, concupiscence itself is satisfied; namely, that one yields to and satisfies that appetite for venereal things which the apprehended vehemence of pleasure excites. And since this satisfaction of concupiscence constitutes an end intrinsic to the work, it is manifest that one who is moved by the apprehension of pleasure to conjugal acts, which he otherwise knows to be entirely licit for him as one joined in legitimate wedlock, is so far from excluding a due end that instead, while he wills to satisfy this appetite, he pursues and fulfills the very end for which marriage was instituted by God. Wherefore that proscribed proposition which the Author recalls certainly had to be condemned; but it assuredly also had to be condemned for this reason: that it absurdly presents the act of marriage as though it were an indifferent work undertaken for pleasure alone, when in it there ought rather to have been discerned, from Apostolic doctrine, the work of calming concupiscence through the licit and honorable satisfaction of the venereal appetite, in which the intrinsic end of the work itself consists.

(**) 1. On the occasion of this Note the VV. wrote thirty-six columns (pages 822-840), in which they take up for censure the things which have some connection with the argument of this Note, both in this Note itself and also in other places throughout the course of the whole Work. They so divide the matter into three parts that they discuss: 1. the act of marriage exercised for pleasure; 2. pleasurable acts in general; 3. the interpretation of Propositions 8 and 9 among those condemned by Innocent XI.

Moreover, it seemed good to begin from this last head, for thence a plainer way will be laid out for resolving the difficulties also concerning the two former heads.

2. The VV. therefore contend (pages 836-840) that the condemnation of that proposition IX - *The act of marriage exercised for pleasure alone is entirely free from every fault and venial defect* - is not avoided through its interpretation handed down both in this Note and in the Note to no. 28, vol. I, in which these things are contained: *It is one thing to act FOR PLEASURE; it is another to act FOR PLEASURE ALONE. The latter positively excludes a further end of the work.... But the former involves no disorder of this kind.... From this the reason clearly discloses itself why propositions VIII and IX concerning the act of marriage or the act of eating for PLEASURE ALONE were rightly proscribed by Innocent XI. For they labor under an intrinsic defect on account of the predicate ALONE, which positively excludes all other ends to which actions of this kind are ordained. For the fact that someone otherwise is enticed and moved to a work by the appetite for pleasure, just as to labor by the hope of a prize or wage, is consonant with the order of nature, as St. Thomas holds.*

3. Moreover, do not authors whom St. Alphonsus holds as approved stand as sureties for this doctrine, some of whom everyone sees indicated there?

Cardenas, for example, distinguishes in entirely the same manner between a work exercised for pleasure and one exercised for pleasure alone; and he affirms that the one is free from fault, the other not free from it. For concerning the former he thus holds (*Dissertation* 6, chapter 2, article 2) in the titles of sections 53, 54, and 55: *It is not illicit to engage in conjugal intercourse for pleasure as a subordinate end. Pleasure has been ordained by nature for the easier generation of offspring. By the very fact that it is had for pleasure as a subordinate end, it is not had for pleasure alone.* But concerning the latter he says thus under the title of section 63: *He who uses conjugal intercourse for pleasure alone inverts the order of nature.* I ask: does Cardenas not clearly distinguish between one and another manner of acting for pleasure? Why, therefore, do the VV. allege Cardenas against the Note and, in addition, transcribe from Cardenas a long catalogue of Authors who condemn as illicit acting for PLEASURE ALONE? Is not this very thing also condemned as illicit in the Note?

4. Diego Duarte, formerly a Penitentiary in the Lateran Basilica, holds no differently from Cardenas (*Brief Exposition of the Condemned Propositions*, etc., Rome, 1712, no. 162), saying: *It is asked whether it is licit to engage in conjugal intercourse for pleasure alone? Reply. The opinion which denies that carnal intercourse had for PLEASURE ALONE is not free from every fault, even venial, was condemned by Innocent XI with proposition 9.... But if one engages in the said intercourse for pleasure as a subordinate end ..., no fault at all will intervene; for one who so acts follows the order of nature, which appointed pleasure in intercourse for rendering easier the generation of offspring and the preservation of the species.*

5. Felix Potestas expresses the same thing more briefly thus (vol. 1, part 2, no. 2280): *The act of marriage was instituted by nature for two ends: for the procreation of offspring ... and for the calming of lust; for which reason he who exercises the act of marriage for delight commits no sin if he orders it ... to the principal end. He sins venially, however, who exercises it for delight alone.*

6. Nevertheless, the VV. contend that it is the same whether you say that an act was placed for pleasure, or that an act was placed for pleasure alone; for they say that the condemnation of the aforesaid proposition is avoided in neither case. For thus they say (page 837): *For verifying the condemned proposition, it is not necessary that one who seeks pleasure positively exclude every*

other end; it suffices that he exclude it negatively. For whether the other ends are excluded positively or negatively, it is always true that such an operator

The principal circumstances regard the person, the manner or position, and the time. acts for pleasure alone, or has no other end except pleasure itself. Hence the genuine sense of condemned proposition IX is: *The act of marriage exercised for pleasure alone (that is, referred to no other end than pleasure) is entirely free from every fault and venial defect*.

7. Reply. Indeed, you would rightly say that these things fell from the pen of the VV. altogether less cautiously. What it means to bear oneself negatively with respect to certain ends of a work is explained quite plainly in the Note by the words immediately following: *that is, he does not think of them at all while acting*. Only those who have never touched the scholastic doctors are ignorant that this meaning is assigned to that mode of speaking in the schools. It must be supposed, say the Salmanticenses (treatise 9, chapter 3, no. 24), that one who seeks precisely some accidental end in marriage can bear himself in two ways: either by positively excluding the other substantial end ..., or by bearing himself negatively concerning the proper end of marriage, either because he does not attend to it, does not remember it, or does not care about it, BUT WITHOUT EXCLUDING IT.

So far is it from being the same (as the VV. contend) either positively to exclude or negatively to bear oneself toward the ends of marriage, that the same Salmanticenses condemn the former as a grave fault, but call the latter a good and meritorious act. For concerning the former they say (ibid., no. 25): *If anyone were to contract marriage POSITIVELY EXCLUDING its proper and substantial end, he would not only sin mortally, but would enter no marriage*. But concerning the latter (ibid., no. 30): *If anyone intends precisely other ends extrinsic to marriage, without excluding its proper substantial end, and thus tacitly and implicitly retaining it, such as riches, honor, PLEASURE, beauty, etc., he would commit no sin, but in contracting marriage WOULD EXERCISE A GOOD AND MERITORIOUS ACT.*

8. But it was said in addition that the VV. wrote altogether less cautiously that it is the same whether other ends are positively excluded or one bears oneself negatively toward them, that is, thinks nothing of them while acting. For from this general principle it immediately and directly follows that, in every act, that end toward which the agent bears himself negatively, that is, of which he does not think while acting, must now be held as positively excluded. Moreover, it immediately follows from this that every action which is not elicited from charity and actually referred through charity to God, who by right is the ultimate end of all actions, is vicious. This doctrine indeed presents the condemned Quesnellian and Baian dogma that whatever does not proceed from the fountain of charity is sin, and that even good works performed merely with a view to eternal reward must be numbered among sins.

The reason for this consequence is plainly apparent. For as St. Thomas holds (book 3 of the *Sentences*, distinction 27, question 1, article 4, question 3), charity is compared to the other virtues both as mover, as end, and as form. He explains thus why charity is called the mover of all the other virtues: *That charity is the mover of the other virtues is apparent from this: that the good itself which is the object of charity under the aspect of an end is the end of the virtues. In all ordered powers or arts, it so happens that the art or power which concerns the end orders the acts of the others to its proper end. Hence charity also moves all the other virtues to its own end, and according to this it is said to command their acts*. Then he speaks thus of charity insofar as it is an end: *If, therefore, charity is the*

A fourfold circumstance, or impediment attached to the person, can stand in the way of seeking the debt, namely: 1. a vow of chastity;

mover of the other virtues, it is likewise their end, because this is common to all virtues: that their acts are their proximate ends.... But the end of an inferior power or habit is ordered to the end of the superior one ...; hence the acts of all the other virtues are ordered to the act of charity as to an end; and for this reason charity is called the end of the precept.

And again (book 2 of the *Sentences*, distinction 38, question 1, article 1), where the Holy Doctor wishes to prove that both God and charity together are the end of all wills or virtues: *As there is one end of all things*, he says, *namely God, so there is one ultimate end of all wills, namely God. Nevertheless, there are other proximate ends; and if according to those ends the due relation of the will to the ultimate end is preserved, the will will be right.... But the due relation of the will to the ultimate end is preserved according to that end by which the will is fitted to participate in the ultimate end ..., and this is charity ...; and therefore not only God but also charity is the end of all right wills*.

With these things premised, suppose, please, that what the VV. assume is established: that the end toward which the agent bears himself negatively, that is, of which he thinks nothing while acting, must be judged positively excluded. Will not the ultimate end, namely God and charity, be held positively excluded if a man while acting does not think of God and charity?

And consequently, will not all actions which are not elicited from charity and are not actually referred to God be so many sins?

9. But the doctrine of St. Thomas recedes very far from these absurdities, precisely because it is wholly removed from that incautious principle of the VV. For thus the Holy Doctor says (ibid., reply to objection 4): *It must be said that, in order that the end of some action be God or charity, it is not necessary that someone, while performing that action, think of God or charity.*

And elsewhere (I-II, question 1, article 6, reply to objection 3): *It must be said that it is not necessary that someone always think of the ultimate end whenever he desires or performs something; but the force of the first intention, which regards the ultimate end, remains in every desire of any thing, even if the ultimate end is not actually thought of.*

And again (*On Evil*, question 2, article 5, objection 10, which he concedes): *It is established that he who has charity has ordered himself and all his things to God, to whom he adheres as the ultimate end. Therefore, whatever he orders either to himself or to any other thing of his, he acts meritoriously, even if he does not actually think of God, unless he is impeded through some disorder of the act which is not referable to God. But this cannot be without being at least a venial sin.*

And again (*On Evil*, question 9, article 2): *It sometimes happens that a man does not actually order an act to God, although that act of itself contains no disorder by reason of which it is not referable to God; and nevertheless, because the mind of man is habitually related to God as to an end, that act not only is not a sin, but is also a meritorious act.*

10. Hence Valentia holds thus (I-II, disputation 8, question 6, point 3): *It must be noted that it is not necessary that the works of the just, in order to be meritorious de condigno, be referred to God by an explicit act either present or elicited a little before; but a virtual relation is sufficient for this, consisting in the fact that the just man AT SOME TIME referred himself and all his things to God through an act of charity.*

And Montesinos is witness that this is the common doctrine in the schools, who expressly writes (on I-II, question 1, article 4, question 1, no. 13): *It is the common doctrine of Theologians ... that the act of any moral virtue tends to its proper object by reason of its proper honorableness; nevertheless, implicitly and by its nature, without anything else, it tends to God; NOR IS IT NECESSARY THAT IT BE EXPRESSLY ORDERED TO HIM.*

Let us therefore conclude that the principle which the VV. assume is altogether false, namely, that the end toward which the agent bears himself negatively, that is, of which he does not think while acting, is positively excluded; indeed, a principle of this kind leads directly to erroneous doctrines condemned by the Church.

11. What can appear more wonderful, however, the VV. do not sufficiently notice: through that principle of theirs even the Holy Doctor Alphonsus is involved in exactly the same condemnation. For these are the words of the Holy Doctor (*On Human Acts*, no. 44): *Although someone approaching the table does not think of the preservation of life, but ONLY of the pleasure of food, as Gonet says, he does not sin on that account; because he wills such pleasure, at least virtually, for the preservation of life, and thus does not desire it inordinately.* Now it is manifest that one who approaches the table thinking merely of the pleasure to be taken from food, but nothing of the preservation of life, bears himself negatively with respect to this intrinsic end of food. But, say the VV. (above, no. 6), whether the other ends are excluded positively or negatively, it is always true that such an operator acts for pleasure alone. Therefore even St. Alphonsus (according to the principles and reasonings of the VV.) teaches that it is licit to eat for pleasure alone, and consequently professes the condemned doctrine that eating and drinking to satiety for pleasure alone is not a sin, provided it does not harm health; which is proposition VIII proscribed by Innocent XI!

And for confirming (if it please the Superiors) a condemnation of this kind of the doctrine of St. Alphonsus, there also concur the things which the VV. (page 837) adduce from Martinet (*Moral Theology*, book 5, article 8, section 6) in confirmation of their aforesaid principle. This, they say, the distinguished Martinet rightly expresses in these words: *He who in intercourse, neither excluding nor intending the ends of marriage, seeks pleasure alone, assuredly acts inordinately and cannot be excused from venial fault, from the proposition condemned by Innocent XI: The act of marriage*, etc. And indeed, one who in an action neither excludes its proper ends nor expressly intends them assuredly bears himself negatively toward those ends. But this is precisely what the words of St. Alphonsus present concerning one who, seeking pleasure alone from food, neither excludes the end of preserving life nor intends it, since he does not think of it; yet according to Martinet, he who so acts cannot be excused from fault by reason of the proposition condemned by Innocent XI. Therefore St. Alphonsus, who teaches that this man does not sin, falls into condemned doctrine!

12. But again it ought to appear no less wonderful that the VV., after accusing those same Notes, as we have seen, of a condemned dogma, then say that they do not stand far from St. Alphonsus. For thus they write (page 834): *Insofar as Father*

B. says: "In order that someone may honorably take pleasure from play ..., it is by no means necessary that he think of the end of play, whether intrinsic or further," he would not stand far from St. Alphonsus if he were to add that some honorable end, at least virtually intended, is necessary. For the Holy Doctor says (*On Human Acts*, no. 44, at the end): *For an actual relation of all words or works to an honorable good is not required, since this would be an unbearable burden and a matter entangled in six hundred scruples;*

but a virtual relation suffices, as we have said. Hence, although someone approaching the table does not think of the preservation of life, etc. (as above, in the preceding number).

13. Reply. In order that one may properly recognize how great and of what kind the distance is between the meaning of that Note and St. Alphonsus in so grave a question, it is preferable to have before the eyes the complete context of the Note, which is as follows (Note to no. 28, vol. I): *The negative exclusion of an end does not vitiate an act; for it is not necessary for the honorableness of an action to think of a further end or even of the end intrinsic to the work. Therefore, in order that someone may honorably take pleasure from play, food, or rest, it is by no means necessary that he think of the end of play, food, or rest, whether intrinsic or further; but it is sufficient that he apprehend the action as consonant with right reason, or even that he find nothing in it contrary to the order of reason.*

And altogether consonant with these are the things which are read thus also in the Note at this place: *The common and certain doctrine teaches (see the things which we adduced from St. Thomas, vol. I, nos. 31, 32) that for a good act it is sufficient that the ends, either further or intrinsic to the work, not be excluded, although the agent otherwise bears himself negatively toward them, that is, does not think of them at all while acting, but apprehends the act only under a certain general concept as licit for himself and therefore honorable.*

Now let us inquire whether that which the VV. say is lacking is absent in these words, namely, an honorable end at least virtually intended. But he must be blind who does not see here an honorable end, or, as St. Alphonsus says, an honorable good, intended not merely virtually but altogether actually.

And indeed in the former text it is expressly required that the agent apprehend the action as consonant with right reason. But St. Thomas finds the character of the honorable good in this, that it is ordered by reason. Thus the Holy Doctor (I-II, question 39, article 2): *Every honorable good proceeds from these two things, namely, from the rectitude of reason and of the will.* And again (II-II, question 145, article 2, reply to objection 3): *Something is called honorable ... insofar as it has a certain comeliness from the ordering of reason. But that which is ordered according to reason is naturally fitting for man*, etc. And in another manner the same Holy Doctor (II-II, question 145, article 1): *The honorable, properly speaking, is referred to the same thing as virtue.* Moreover, concerning virtue he speaks thus (II-II, question 23, article 3): *Human virtue, which is the principle of all the good acts of man, consists in attaining the rule of human acts.... Hence moral virtue is defined by this: that it is according to right reason.* This he afterward repeats elsewhere (II-II, question 145, article 2), saying: *This pertains to the character of the honorable, which we said to be the same as virtue, which moderates all human things according to reason.* Therefore, when in the Note it is said that an action is apprehended and consequently elicited as consonant with right reason, is it not openly said that the will actually tends toward the honorable good and virtue?

And in the other text, is it not most expressly said that the will tends toward that which it apprehends as licit for itself and therefore HONORABLE? But thus the will pursues the honorable good not merely virtually but altogether actually. Why, therefore, do the VV. accuse these Notes as though, according to them, an honorable end toward which the action tends is lacking?

14. Yet although it is false, according to the meaning of the Notes, that a relation to the honorable good is lacking from actions, nevertheless that which the VV. said must be conceded: the opinion of these Notes differs from the assertion of St. Alphonsus, at least if the latter is taken word for word; for the Holy Doctor, for the honorableness of an act, requires that the honorable good be intended virtually, while in the Notes it is required that the will actually tend toward the honorable good. But is this distance or difference of opinions of such a nature that the VV. rightly contend that the opinion of the Notes must be turned toward the opinion of St. Alphonsus? I would indeed judge that not a few will greatly doubt this, and for another reason.

And in truth, if the opinion of the Holy Doctor is taken word for word, it immediately occurs to ask whence that virtual relation to the honorable good arises, or how the honorable good is virtually intended there. For the example which the Holy Doctor supplies is pleasure taken from food. Someone will therefore ask: In what manner is this pleasure virtually referred to the honorable good, or how is the honorable good virtually intended in it? For this must proceed either from a preceding or actual intention of the agent, as happens when someone orders means to an end; or, apart from every added intention of the agent, it will arise from the nature of the pleasure itself, just as we saw with St. Thomas that all acts of all

virtues are by their nature virtually referred to the end of charity, even if the one acting thinks nothing of charity. But in the case the former remains excluded, because, as St. Alphonsus says, one approaching the table thinks only of the pleasure of food. But if you say the latter, why, someone will ask, do we say that the spouse sins who, approaching the other spouse, does not think of the preservation of the human species (or another end of marriage), but ONLY of the pleasure of intercourse? Why could someone not contend that this person does not sin, with the reason of St. Alphonsus added (above, no. 11), because he wills such pleasure, at least virtually, for the preservation of the human species or as a remedy for concupiscence, and thus does not desire it inordinately? Otherwise, can these things please the VV., who meanwhile propose that the notion of a virtual relation is to be drawn from this passage of St. Alphonsus?

15. Otherwise, it will be judged much more congruous that this expression of the Holy Doctor is altogether elliptical, and that it is understood that one who approaches the table knows and apprehends the taking of food as an action licit of itself and consonant with reason.

And in this manner it is easily understood how the agent in the case virtually wills the preservation of life and, generally, those ends which render the action honorable. For while he wills the act as consonant with the order of reason, he certainly virtually wills those things on account of which the act is consonant with the order of reason, although he does not then think of them and indeed is altogether ignorant of them.

Indeed, no other norm assuredly appears consonant with the weak condition of men, by whose aid they may be directed to act honorably, than that they apprehend the action generally as licit. And in fact, who indeed would further require for the honorableness of an action that the agent also have before his eyes the reasons on account of which the action can be judged honorable? This investigation of reasons is left to philosophers and theologians, who otherwise often labor greatly in assigning them and are not rarely found disagreeing among themselves, as in the present matter also we perceive that they do not agree among themselves whether, for example, the remedy of marriage is licitly desired by reason of health or of avoiding in oneself the danger of incontinence. How, therefore, could this norm be proposed to the common condition of the faithful for acting honorably?

And to this must be said to pertain the things which the VV. also adduce from St. Alphonsus (*On Human Acts*, no. 44), where he writes: *For an actual relation of all words or works to the HONORABLE GOOD is not required;*

since this would be an unbearable burden and a matter entangled in six hundred scruples; but a virtual relation suffices. For it wholly abhors the truth that the Holy Doctor wished to signify that a consciousness of the honorableness of the action which someone is about to place is not necessary, and that a merely virtual consciousness suffices. Therefore, this meaning must be assigned to those words: that an actual relation or direction of the action to those intrinsic ends to which it is ordered by its nature is not necessary, but they are sufficiently intended virtually by the very fact that the action is generally known to be honorable, or even that nothing in that action is perceived as contrary to the order of reason.

Let us therefore conclude: 1. that the VV. demanded without any right that the opinion expressed in the Notes be turned toward the opinion of St. Alphonsus, if the latter is taken word for word; 2. but if the obscure meaning of his elliptical expression is aptly understood, as is fitting, the meaning of the Notes differs in nothing from the meaning of the Holy Doctor.

16. We shall now say some things concerning those matters which the VV. discuss through nine columns (pages 832-836) in the Article to which they inscribe the title: *The Doctrine of Father Ballerini on Pleasurable Acts in General Is Weighed.*

From the Note to no. 28, vol. I, where the distinction is touched upon between those acting for pleasure and those acting for PLEASURE ALONE, the VV. (page 833) adduce these words: *But the former* (namely, to act for pleasure) *involves no disorder of this kind* (namely, it does not positively exclude the further end of the work). *For first, pleasure, as St. Thomas says* (*Against the Gentiles*, book 3, chapter 26, no. 6), *is good and desirable if it follows a good operation; and it is proper to the virtue of temperance that it moderate the use of pleasurable things and withdraw from those which are contrary to reason, but not from those which are fitting according to reason* (see St. Thomas, II-II, question 141, article 1, reply to objection 1).

But the VV. oppose the things which follow from the same passage of St. Thomas: *If pleasure were the ultimate end, it would be desirable according to itself. But this is false.... For the pleasure which follows good and desirable operations is good and desirable; but that which follows evil operations is evil and to be avoided. Therefore, it has from ANOTHER that it is good and desirable.* And again (ibid.): *In natural things pleasure is for the sake of operation, and not conversely; for we see that nature has joined pleasure to those operations of animals which are manifestly ordained to necessary ends.... For unless pleasure were present, animals would abstain from the aforesaid*

necessary acts. And chapter 27: *For it has been shown that according to the order of nature pleasure is for the sake of operation, and not conversely.*

17. Reply 1. In the Note it is not denied that pleasure is good or not good, and therefore desirable or to be avoided, according as the operation from which the pleasure is drawn is or is not good. Consequently neither is it denied that pleasure has from ANOTHER that it is good and desirable. Therefore one must reply: Let the antecedent pass, and I deny the consequence; that is, nothing is inferred from that former text against the Note.

I said, *Let the antecedent pass*, because, since otherwise according to the same St. Thomas pleasure, as pleasure, is some good, the objected text of the same Holy Doctor needs some explanation. Francis de Sylvestris, commonly called Ferrariensis, supplies this for us in his Commentary on this passage of St. Thomas, where he discusses thus: *Something can be called good and desirable in two ways. In one way in the being of nature; in another way in the genus of morals. In the first way the goodness of a thing is considered absolutely according as it is in itself. In the second way it is considered in order to right reason; for it is called morally good*

that which is conformable and proportioned to right reason, and it is desirable according to right reason. Therefore this proposition, pleasure is not desirable according to itself but from the operations which it follows, must be understood in the genus of morals, but not according to the being of nature. For thus it is true that of itself it is not desirable, because of itself it does not express some good consonant with reason or discordant from it, but has from the operations that it is conformable or deformable to it. In the being of nature, however, IT IS GOOD AND DESIRABLE ACCORDING TO ITSELF; on account of which St. Thomas says in book 4 of the Sentences, *distinction 49, question 3, article 4, that pleasure, insofar as it is pleasure, names some good.*

And in fact, St. Thomas, in the place here cited, question 1, reply to objection 3, replies thus to an objection which is of this kind: *Every being, insofar as it is such, is good. Therefore that also which is the ultimate perfection of a being is universally good. But pleasure is the ultimate perfection of a being, for it perfects operation, which is second act. Therefore every pleasure is good.* To this objection, I say, he replies thus: *To the third it must be said that this reasoning does not prove pleasure to be good except insofar as it is pleasure.* And then, resolving the arguments of those who say that every pleasure is evil, he adds: *It must be said that the virtuous man does not flee every pleasure, but rather embraces his proper pleasure, which is to take pleasure in works of virtue; but he flees inordinate pleasures.* And again (ibid., question 3, reply to objection 4): *It must be said that the end of any thing is its most perfect operation; therefore all desire the pleasure by which operation is perfected, just as they desire their own perfect operation. And just as error occurs in the appetite for operation, because some insist upon foreign operations while abandoning their proper operations, as all the wicked who follow bestial operations while abandoning human ones, so also some follow foreign pleasures in place of their proper pleasures.* Thus the Holy Doctor.

Therefore, Reply 2: from the doctrine of St. Thomas, pleasure in the being of nature is good and desirable according to itself; but in the genus of morals it is good and desirable when it is consonant with the order of reason; and in this latter sense St. Thomas said that pleasure has from another that it is called both good and desirable. Therefore it is again permissible to conclude that that former text of St. Thomas objected against the Note is in no way pertinent. For in the Note the same thing is affirmed, since it treats of pleasure which is supposed consonant with the order of reason. But now to the other objected passage of St. Thomas.

18. The VV. thought great force to be present in this text, because in it St. Thomas affirms (above, no. 16) that according to the order of nature pleasure is for the sake of operation, and not conversely. Hence they construct the argument thus (page 833): *Pleasure in one acting rightly is for the sake of operation, or a MEANS TO THE END, but by no means operation for the sake of pleasure.*

Reply 1. I distinguish: that opinion of St. Thomas strikes one acting for PLEASURE ALONE, I concede; it also strikes one acting for pleasure, but not for it ALONE, I deny. For thus St. Thomas explains his mind in another place, which the VV. also allege (loc. cit.), namely, *Against the Gentiles*, book 4, chapter 83, where he says: *In this life it is inordinate and vicious if someone uses food and venereal things FOR PLEASURE ALONE and not for the necessity of sustaining the body,* etc. And again: *Therefore the order is preposterous and unbecoming if operations are exercised for PLEASURES ALONE.* But in the Note it is expressly said that the intrinsic ends of the operations, for example the sustenance of the body, are not excluded, even if someone eats for pleasure, however little he thinks while eating of that sustenance of the body. Otherwise, did not St. Alphonsus also write (above, no. 11): *Although someone approaching the table does not think of the preservation of life, but only of the pleasure of food ..., he does not sin on that account?* Therefore that opinion of St. Thomas does not strike the doctrine of the Note, just as it does not strike the doctrine of St. Alphonsus.

19. Reply 2. When the VV. wish to conclude from St. Thomas that pleasure in one acting rightly is for the sake of operation, or a means to an end, they do not appear sufficiently to have grasped the meaning of that opinion: that according to the order of nature pleasure is for the sake of operation, and not conversely.

Here that most faithful interpreter of St. Thomas, Ferrariensis (*Commentary on chapter 83, book 4, Against the Gentiles*), must be heard, who beautifully presents the force of that opinion thus: *It must be observed*, he says, *that when it is said that the pleasures of food and venereal things are not for their own sake but for operations, it is one thing to say that pleasures are for the sake of operations and another to say that they are sought for the sake of operations. For that they are for the sake of operations expresses their order according to the INSTITUTION OF BOTH BY THE AUTHOR OF NATURE and according to the intention of nature. For God, who instituted nature, ordered the aforesaid operations to the preservation of the individual and the species; but he added pleasures to these operations so that animals would apply themselves to operations of this kind from the appetite for these pleasures, and thus he willed pleasures to be for the sake of operations. But that pleasures are sought for the sake of operations expresses their order according as THEY TERMINATE THE ACT OF APPETITE; and then, if they are compared ... to the sensitive appetite, pleasures are not thus sought for the sake of operations, BUT, ON THE CONTRARY, OPERATIONS FOR THE SAKE OF PLEASURES, as St. Thomas says, I-II, question 4, article 2, reply to objection 2.*

Concerning this, elsewhere (*Commentary on book 3, chapter 26*) the same Ferrariensis says: *Therefore in this place St. Thomas speaks of that order in comparison WITH THE INTENTION OF THE ONE INSTITUTING nature and the order; but in the place alleged he speaks of the order itself, comparing it WITH THE SENSITIVE APPETITE.* And a little later: *There is a twofold intention of the one instituting nature in an order of this kind* (namely, the order between operations and pleasures); *one is first and principal, the other secondary. The first and principal is that individuals and species be preserved through operations, and for this pleasure is joined to the operations. The secondary is that they seek the operations from the appetite for pleasure ..., just as if we were to say that a law proposing rewards for studious operations first and principally intends that a man devote himself to studious works and orders the reward to this; but secondarily and accessorily intends that a man, enticed by the reward, seek studious operations for the sake of obtaining the reward.*

Therefore, according to the mind of St. Thomas, when it is said that pleasure is for the sake of operation and not conversely, this must indeed be understood of the intention of God instituting nature, because God joined pleasure to operations so that the operations would be sought from the appetite for pleasure. It is otherwise, however, if the order between pleasures and operations is considered according as they terminate the act of appetite. For thus pleasures are not sought for the sake of operations, but, on the contrary, operations are sought for obtaining pleasure. Therefore the VV. wrongly wrote that pleasure in the agent is for the sake of operation as a means to an end.

And the comparison adduced with a reward appointed, for example, for a more elegant elegy or painting shows this most clearly. For would it not be absurd to say that the poet or painter orders the reward to the work as a means to an end, and not conversely order his work to obtaining the sought reward?

20. But again, the assertion of the VV. that pleasure on the part of the agent is related to operation as a means to an end is shown in another manner to be foreign to the doctrine of St. Thomas. The Holy Doctor objects to himself (*Against the Gentiles*, book 3, chapter 26, objection 3): *Pleasure appears to be desired for its own sake in such a way that it is never desired for another. For it is foolish to ask someone why he wishes to be pleased. But this is the condition of the ultimate end, namely, that it is sought for its own sake.*

Now St. Thomas does not deny the antecedent of this argument, but, having conceded it, denies the consequence. *But the fact*, he says, *that men will pleasure not for another but for itself is not a sufficient sign that pleasure is the ultimate end.... For pleasure, although it is not the ultimate end, nevertheless accompanies the ultimate end, since pleasure arises from attainment of the end.*

But see these same things explained more clearly elsewhere by St. Thomas (book 4 of the *Sentences*, distinction 49, question 3, article 4, question 3, reply to objection 3). For he again objects to himself: *That which is desired only for itself and never for another is the ultimate end; but pleasure is of this kind, for it is foolish to ask why someone wishes to be pleased.* And the Holy Doctor replies: *To the third it must be said that, concerning things ordered to an end which are not joined to the end, we are accustomed to ask for what end they are done. But concerning those things which are joined to the end, such a question is not asked, because it is immediately apparent that they are desirable; and because pleasure is joined to perfect operation, which is the end, therefore it is not customary to ask why someone wishes to be pleased. And, moreover, pleasure expresses the resting of the appetite in something; hence to ask why someone wishes to be pleased is the same as to ask why he wishes his appetite to be brought to rest, which is the same as if it were asked why someone WISHES TO ATTAIN THE END OF THE WILL.*

Therefore, if according to St. Thomas pleasure is not sought for another, it is manifest that pleasure is not sought by the agent as a means to an end.

21. And plainly worthy of attention is the manner in which Ferrariensis (*Commentary on the cited chapter 26*) reconciles this doctrine of St. Thomas with another place where St. Thomas says that pleasure is sought for another.

Pleasure, says Ferrariensis, *accompanies the ultimate end, and from this it has that it is not sought by men for another, although it is not the ultimate end.* But he indicates the apparent conflict thus: *It has been said that pleasure in comparison with operation is similar to a perfection which is ordered to the species of a thing, and that the thing is the end of such a perfection; from which it appears that pleasure is sought for another. But here it is said that men will pleasure not for another.*

For resolving this difficulty, while we now omit other things, Ferrariensis premises these things: *Pleasure and the operation which it follows are related not as two goods* (book 4 of the *Sentences*, distinction 49, question 3, article 4), *but as one good, insofar as PLEASURE IS THE PERFECTION OF OPERATION. For just as from perfection and the perfectible there is made one perfect thing, so from operation and pleasure there is made one perfect operation, which is happiness. Hence, just as the ultimate and most perfect operation of man is not ordered to any other intrinsic perfection of man, so neither is the pleasure which accompanies and perfects it; therefore it is not customary to ask why someone wishes to be pleased.... But although pleasure is not sought for anything else separated from it*

as something to be acquired through it, it is nevertheless ordered to the operation which it accompanies as to an end, JUST AS EVERY PERFECTION SUPERADDED TO A SPECIES, WHICH PERTAINS TO THE PRESERVATION OR COMELINESS OF THAT SPECIES, IS ORDERED TO THE SPECIES ITSELF AS TO AN END, since it perfects the operation, as comeliness perfects youth; and it is established that this comeliness is for the sake of him in whom youth exists, and not conversely.

Therefore the meaning in which St. Thomas says that pleasure is for the sake of operation and not conversely finally comes back to this: that pleasure is ordered to operation as every perfection is ordered to the thing which it perfects, just as comeliness perfects youth and (as St. Thomas says elsewhere) health perfects man; wherefore we say that health is for the sake of man, but not conversely. Thus the Holy Doctor (I-II, question 33, article 3): *Pleasure perfects operation in two ways. In one way after the manner of an end, not indeed according as an end is called that for the sake of which something exists, but according as every good which supervenes completively can be called an end; and according to this the Philosopher says that pleasure perfects operation as a certain supervening end, insofar as upon this good which is operation there supervenes another good which is pleasure, which implies resting in a presupposed good. In a second way, on the part of the agent cause; not indeed directly, because the Philosopher says that pleasure perfects operation not as a physician perfects a healthy man, but as health does; but indirectly, insofar as the agent, because he takes pleasure in his action, attends to it more vehemently.* And in the reply to objection 3: *It happens that two things are mutually causes of each other, such that one is the efficient cause and the other the final cause of the other; and in this manner operation causes pleasure as an efficient cause, but pleasure perfects operation after the manner of an end.* Now this meaning has nothing in common with the other meaning which the VV. attach to this opinion of the Angelic Doctor, namely, that pleasure is related to operation as a means to an end.

22. Otherwise, there is also another meaning in which, according to St. Thomas, pleasure is for the sake of another; this can be seen indicated in passing in the cited Note, where mention is made of play and of the doctrine of St. Thomas on the virtue of temperance.

St. Thomas proposes a certain necessity of some pleasure thus (II-II, question 168, article 2): *Just as man needs bodily rest for the refreshment of the body, because he cannot labor continuously ..., so also it is on the part of the soul.... And therefore, when it extends itself beyond its measure into certain operations, it labors and is thereby fatigued, especially because in the operations of the soul the body also labors at the same time, insofar as the intellective soul uses powers operating through bodily organs.... But just as bodily fatigue is relieved through rest of the body, so also animal fatigue must be relieved through rest of the soul. But the rest of the soul is pleasure, as was held above; and therefore a remedy against animal fatigue is applied through some pleasure.* And, after recalling the response which St. John the Evangelist is said to have made to those who were scandalized because they had found him playing with his disciples, namely, that the spirit of man would be broken if it were never relaxed from its application, he adds: *Words or deeds of this kind, in which nothing except animal pleasure is sought, are called playful or jocose; and therefore it is necessary to use such things at times as a certain rest of the soul.... And therefore there can be a certain moral virtue concerning games ..., insofar as through this virtue man is restrained from immoderation in games.*

23. But since every moral virtue consists in a mean, St. Thomas, after showing (loc. cit., article 3) that one can sin against this virtue by excess, further shows (ibid., article 4) that one can also sin by defect. For to the question whether some sin consists in a defect of play, he replies: *It must be said that everything contrary to reason in human affairs is vicious. But it is contrary to reason that someone exhibit himself as burdensome to others, for example, when he offers nothing pleasurable and also impedes their pleasures.... But those who are deficient in play neither say anything ridiculous themselves, and are troublesome to those who do, because they do not receive the moderate games of others; therefore such persons are vicious and are called hard and boorish.*

Indeed, he adds (article 3, reply to objection 3) that these games are not rejected by austerity: *Austerity*, he says, *insofar as it is a virtue, does not exclude all pleasures, but those which are superfluous and inordinate.*

He nevertheless adds (ibid., corpus): *But because play is useful for rest and pleasure, while pleasure and rest are not sought for their own sake in human life but for the sake of operation ..., therefore deficiency in play is less vicious than excess in play.* And to this pertain also the things which the Holy Doctor had said (loc. cit., article 2, reply to objection 3): *The operations of play themselves according to their species are not ordered to some end; but the pleasure which is had in such acts is ordered to some recreation and rest of the soul.*

How pleasure from games is ordered to operation the Holy Doctor explains thus (*On chapter 3 of Isaiah*, at the end), where he discusses choral games: *Because it is impossible always to act in the active and contemplative life, therefore it is necessary at times to interpose joys among cares, lest the spirit be broken by excessive severity and so that man may more promptly devote himself to works of virtue.*

24. From this doctrine of the Angelic Doctor something can now be deduced without difficulty which also contributes to the principal argument of this Note. For from the foregoing it is necessary at times to interpose joys among cares and to offer a remedy against animal fatigue through some pleasure. And indeed the moderate use of pleasure is so far from being evil of itself that it is rather an act of virtue; and, as the same St. Thomas adds (loc. cit., on chapter 3 of Isaiah), in one who is in the state of grace, even choral play is an act meritorious of eternal life (see Note to no. 32, vol. I, question 6).

Since these things are so, it is now permissible to ask: does it involve any disorder that, for those ends concerning which St. Thomas spoke a little before, a remedy is sought from some pleasure which is known also to have been ordered by God the Author of nature to another end? St. Thomas indeed writes (II-II, question 141, article 4): *Because pleasure follows a natural operation, some pleasures are more vehement insofar as they follow operations which are more natural. But the most natural operations are those by which the nature of the individual is preserved through food and drink.* It is therefore asked: does it present any disorder that the pleasure of food and drink, which God ordained to the preservation of nature, is also employed for another end?

Certainly, the same St. Thomas, who had said (loc. cit.) that temperance especially concerns pleasures of this kind and had added (loc. cit., article 6) that temperance accepts the NECESSITY of this life as the rule of pleasurable things, namely, that it uses them only insofar as the NECESSITY of this life requires, nevertheless approves (ibid., reply to objection 2) that the temperate man desires other pleasurable things which

are not necessary for health or for a good condition, provided they are not impediments to these. And he adds (ibid., reply to objection 3) that temperance regards necessity according to the fittingness of life, which is considered not only according to the fittingness of the body but also according to the fittingness of external things. To this passage Cajetan adds (in his Commentary): *Thus every right use of pleasurable things removes some need either of the body, of duty, or of simply more perfect honorableness.... For, as is apparent in the text, the temperate man uses both the things necessary for the preservation and good condition of the body, and the things fitting according to means, duties, social intercourse, and honorableness.... For one who held a banquet not consonant with his own rank and that of the guests, according to means and honorableness, would not have sufficiently met the necessity of the fittingness of the present life.... Therefore, the necessity of the fittingness of the present life is the rule of temperance, according to which it also commands other virtues, for example liberality, urbanity, and any others which are sometimes needed.*

Therefore, the remedy and right use of the pleasure which is taken from food and drink extends much further than the institution of nature, which ordained that pleasure to the preservation of the individual, appears to demand. Therefore, just as according to St. Thomas, because it is impossible always to act in the active and contemplative life, and therefore it is necessary to interpose joys among cares, on an occasion of rejoicing, for example at weddings, the use of pleasure which is perceived from choral play is right; can and must not the same be said of the pleasure which is taken from a banquet for the sake of rejoicing? Certainly the evangelical Father, who said to his servants (Luke 15): *Bring the fatted calf, kill it, and let us eat and feast*, gave this reason: *But it was fitting to feast and rejoice, because this your brother was dead and has come to life again.* And to this also pertains the fact that the Lord, on the occasion of a wedding (John 2), so changed water into wine that the chief steward said to the bridegroom: *Every man first sets forth good wine, and when they have become intoxicated, then that which is worse; but you have kept the good wine until now.* Therefore, there is no disorder if pleasure which of itself and principally is ordained to sustaining life is employed for another honorable purpose extrinsic to this end.

What of the fact that, according to the common sense of the faithful, it also pertains to the joy of the more solemn feast days in the Church that one ought, according to the means and condition of each person, to be cheered by richer and more abundant feasts? And indeed we are plainly taught that this is most honorable and altogether consonant with the sense of the Church when we read that St. Gregory Nazianzen, in his letter to Helladius (in Migne, letter 120) and another to

Theodore (ibid., letter 121), gave thanks for the little gifts which had been sent to him by them when the solemnity of Easter recurred. Indeed, St. Basil also, in his letter to Amphilochius, Bishop of Iconium (in Migne, letter 232), does not hesitate to call these little gifts *tokens of the feast day*. *But when,* he says, *the tokens of the feast also arrive, what else must one call it except a feast of feasts, as the old law was accustomed to call the Sabbath of Sabbaths?* Moreover, among the little gifts sent to him he recalls also sweetmeats (*tragemata*); concerning this gift, however, he adds: *My age is not fit for gnawing, since my teeth have long since been worn away both by time and infirmity.*

It is therefore manifest that nothing inordinate is found in the fact that pleasure instituted and ordained by God the Author of nature to some special end is assumed for another honorable end whenever this in no way obstructs the end instituted by God and primary, namely, according to that saying of St. Thomas: *The temperate man*

desires other pleasurable things which are not necessary for health or for a good condition, provided they are not impediments to these.

25. Since these things are so, and since pleasure taken from a richer banquet according to the condition of each person is in no way opposed to the order of reason, whether the common occasion of joy requires this when certain feast days, both sacred and non-sacred, recur; and since the same reason of joy renders pleasures of this kind honorable also among private persons, if at some time the anniversary memory of a heavenly patron recurs, or the birthday of someone in the family is celebrated, or generally some cause of new joy has been brought either by health finally recovered after a most grave illness, or by a rich inheritance unexpectedly acquired, or by the unexpected return among one's own people from a most lengthy journey full of dangers, or from prolonged perils of war, or by accession to some new dignity or most noble office, etc., etc.; why, then, shall we say it is contrary to the order of reason if anyone in any way wearied by any cares, labors, business, studies, or anxieties seeks in moderation, in the aforesaid manner, some refreshment and rest of spirit, which according to St. Thomas is drawn from pleasure? And if even for this purpose alone he recreates himself by the enjoyment of this pleasure, as St. Thomas says (I-II, question 25, article 2), otherwise so observing the law of temperance that, as the same St. Thomas says, no impediment whatever is brought to the primary and natural end of the work, do we not now have that which the VV. otherwise denounce as condemned, namely, that someone can honorably use food and drink for pleasure or delight?

26. Moreover, since this has been said concerning the pleasure and delight of food and drink, why can it not also be said of the pleasure and delight which is sought from conjugal offices in the same circumstances as above? For how does this case differ from the preceding one when the pleasure sought from it for the necessary rest of a wearied spirit in no way impedes the end intended by nature according to the doctrine of St. Thomas? Indeed, if with St. Thomas you weigh, on the one hand, the necessity of some relief and rest from cares, studies, duties, business, and labors, which must be sought from some pleasure; and, on the other, the condition of very many to whom it is scarcely given to seek some honorable and easy pleasure elsewhere, it will readily appear how it can very commonly happen that the act of marriage, to which a certain desire for solace, pleasure, or delight leads, is also rendered wholly honorable by this end, namely, some necessary relief and rest.

This is not the end, you will say, for which God the Author of nature joined pleasure to a work of this kind. It is permissible to reply with the Salmanticenses (*On Matrimony*, chapter 3, no. 28) that no law commands that what is primary in a work be intended first, provided that what is intended is honorable and good, and especially if it is intrinsic to the work. But, as is apparent from the foregoing, it is honorable and good to seek the rest of a wearied spirit from pleasure, and it is intrinsic to the work to bring this rest through pleasure. Moreover, the Salmanticenses add this reason: that although from the intention of the agent an accidental end is intended primarily, nevertheless from the intention of the work the essential and primary end is always intended so long as it is not excluded.

And to the same matter Aegidius Coninck (disputation 25, no. 17): *Although every thing is principally instituted by God, as the Author of nature, for some certain end, nevertheless at least secondarily it is also instituted for any honorable ends for obtaining which it has an aptitude. Eyes, for example, were chiefly given to us for seeing, but secondarily also so that we may signify something to another when honorable utility demands this. Wherefore, with their primary end entirely omitted,*

we can use them for all honorable ends of this kind; because from no ground can any reason be shown which obliges us always to use any thing for obtaining its principal end, or principally to intend this end, especially when we do not positively impede it from following. But pleasure which is sought from the act of marriage for the rest of a wearied spirit and for animal recreation neither impedes nor excludes the ends intended by nature and otherwise is found entirely consonant with reason and the laws of temperance, as was said. Therefore it is honorably and consequently licitly sought and is assumed as a means to operation, insofar as man afterward, as St. Thomas says (above, no. 23), *may more promptly devote himself to works of virtue.*

27. A few things must be added here lest anything be omitted of those things with which the VV. filled those thirty-six columns.

To those things, therefore, by which it is shown in the Note, according to the doctrine of the Apostle and, after the Apostle, of St. John Chrysostom and St. Thomas, that there is in marriage an intrinsic end that it be a remedy for concupiscence, and consequently that this end is so far from being excluded by one who acts enticed by pleasure that he rather pursues and fulfills that very end, the VV. object two things.

First, they urge these things (page 828): *It is not licit, or it is not free from every fault, to use marriage merely for capturing pleasure, because pleasure is not an honorable end.* And for this they adduce the words of Roncaglia (!).

Reply 1. It can rightly appear hardly tolerable that the VV. added the word MERELY by their own effort, by which they insinuate that acting for pleasure alone is taught as licit in the Note, when the context and purpose of the entire Note tends to excluding that condemned opinion. Reply 2. The VV., therefore, rather condemn St. Alphonsus, who wrote (see above, no. 11) that he does not sin who, approaching the table, does not think of the preservation of life, but ONLY of the pleasure of food; in which words you truly see the exclusive particle *only*. But if, on account of the reverence due to the Holy Doctor, those words must be drawn to a right meaning, why do the VV. draw the words of others into a perverse meaning, in which no exclusive particle appears, but gratuitously intrude it themselves against the force of the context?

28. Secondly, the VV. urge (page 829) that two things appear to be confused in the Note which must altogether be distinguished, namely, to act for pleasure and to act as a remedy for concupiscence. And they add that these two ends are all the less to be confused because they are rather opposed to one another. *When someone*, they say, *intends NOTHING EXCEPT PLEASURE* (behold again the perverse opinion concerning one acting for pleasure alone gratuitously fastened upon our Note!), *the same thing happens to him as to a drinker who does not extinguish thirst by drinking but rather increases it. Thus, the more someone pursues pleasure, the more he desires to enjoy pleasure.*

Reply 1. Raphael Aversa responds well to these things (*On Matrimony*, question 21, section 4): *The act of carnal intercourse is licit for calming concupiscence. But concupiscence is an appetite for a pleasurable good, as St. Thomas says. Therefore concupiscence is calmed through the use of a pleasurable good, or through pleasure sought from a licit conjugal act.* How, therefore, do the VV. contend that pleasure sought from the conjugal work and a remedy for concupiscence are mutually opposed?

Reply 2. Therefore let the VV. condemn St. Thomas, who (see the text in the Note), because concupiscence chiefly incites men to venereal acts on account of the vehemence of pleasure, said it is necessary that concupiscence be yielded to in part, by ordering the act of generation according to reason, that is, with a legitimate wife and with the order of nature observed. Indeed, let them condemn the Apostle, who wrote: *Return again to the same, lest Satan tempt you because of your incontinence.* Indeed, let them also condemn the order of Divine Providence, which (see above, no. 19) joined pleasures to these operations so that FROM THE APPETITE FOR THEM animals would apply themselves to operations of this kind. Otherwise, if the Author of nature placed in man that concupiscence which, as St. Thomas says (I-II, question 30, article 3), is the appetite for a pleasurable good, he nevertheless at the same time placed reason, by whose order man moderates that appetite through temperance, which, as St. Thomas says (II-II, question 141, article 5), concerns the principal pleasures which chiefly pertain to the preservation of human life either in the species or in the individual.

29. And it is preferable here to add what the Salmanticenses hold thus concerning spouses enticed by pleasure to their proper office (*On Matrimony*, chapter 3, no. 33): *When the act is good of itself and its proper end is not excluded, a good end is already applied in it; and thus, although indifferent ends are applied as applications of the will to it, the act is not thereby vitiated or rendered evil through defect of an honorable end.... Wherefore an act is good if someone eats temperately, not attending to the end of eating but also not excluding it* (according to Martinet and the VV., however, above, no. 11, this would have to be called condemned doctrine!), *even if he is applied to such eating by taste and pleasure. And in our case, when someone is applied to marital intercourse by the pleasure to be taken in it, such an act is good, because it is an act of justice and a rendering of the debt, even if attention is not given to this but to taking pleasure, which happens more frequently, because the honorable end of that act is always retained and such pleasure is only an application of the will to it.*

Likewise Raphael Aversa (*On Matrimony*, question 21, section 4): *Nor is it persuaded that to have intercourse moderately for pleasure is a venial sin, because in human operations it is not culpable moderately to desire the pleasure instituted in them by nature when the operations themselves are licit and honorable of themselves.*

30. But to that which the VV. note (page 829, note 2), that marriage is the lowest remedy for concupiscence, Aversa replies (loc. cit.): *The act of carnal intercourse ... is licit for spouses for calming concupiscence. Nor are they bound to use other more perfect and*

difficult means for this other end; but it is sufficient if they use the means which is also licit and conceded to them. Otherwise it would be very harsh to oblige married persons to strive to subdue the flesh by abstinences, prayers, and other things of this kind rather than have intercourse with one another conceded to them through marriage.... And this must be extended so that conjugal intercourse is licit for someone not only when he probably fears that he may fall into the sin of incontinence; but even if, through the help of God, he hopes and trusts that he will abstain from sin, yet suffers or would suffer the stings of the flesh, he can use this remedy to extinguish them.

And Peter Catalani (*Moral Theology*, part 3, question 12, chapter 6): *Among the other ends for which marriage was instituted are numbered the generation of children ... and the calming of concupiscence. For it was fitting not only to provide for the preservation of the human race, but also ... to institute an opportune remedy for calming dishonorable couplings and movements of the flesh, as Paul wisely says in 1 Corinthians 7. Each end is honorable and licit for spouses;*

wherefore, if spouses have intercourse for any one of the aforesaid ends, they commit no sin, because to act for an end preordained by God cannot be illicit and dishonorable. And although spouses could use prayers, fasts, mortifications, and other suitable means for calming concupiscence, they nevertheless are not bound to use them, because it is a counsel to use them and not all receive this word. Therefore, for spouses to have intercourse for these ends will not be to depart from rectitude, since it is a means instituted by God and sufficiently commended by the Apostle Paul. Indeed, it will not be sound counsel to persuade spouses to abstain from intercourse unless they are of proven virtue and sanctity.

31. The VV. object (page 830) that, in the Note, the text of St. Thomas from lecture 1 on chapter 7 of 1 Corinthians is adduced in a mutilated form and that those things which contradict it are omitted. For the Holy Doctor proceeds: *In another way indulgence can be taken insofar as it regards fault ...; and according to this indulgence is referred to the conjugal act according as it has venial fault attached to it.... Hence it must be considered that the conjugal act is sometimes meritorious and without mortal or venial fault, for example, when it is ordered to the good of offspring ..., or when it is done for the sake of rendering the debt.... But sometimes it is with venial fault, namely, when someone is excited to the matrimonial act from concupiscence which nevertheless remains within the limits of marriage.... Therefore, in the first manner the act of marriage does not require indulgence; in the second manner it has indulgence insofar as someone consenting to concupiscence toward his wife does not become guilty of mortal sin.*

Moreover, elsewhere (*Supplement*, question 49, article 5, reply to objection 1), the Holy Doctor writes: *When nature alone moves one to the act of marriage, he is not altogether excused from sin except insofar as the movement of nature is ordered actually or habitually further to offspring, according as it is a good of the sacrament.* And in the reply to objection 2: *If someone through the act of marriage ... intends to avoid fornication in himself, there is some superfluity there, and according to this it is a venial sin.*

32. Reply. The difficulty concerning the meaning of the Apostle Paul must be resolved in one way, even according to St. Thomas, but the difficulty concerning the opinion of St. Thomas in another.

Therefore, if the meaning of the Apostle is asked, even from the interpretation of St. Thomas, the objection of the VV. is empty; and the reason is that the words objected have nothing to do with the interpretation of the Pauline opinion. And indeed this is the commentary of St. Thomas: "*But this I say according to indulgence,*" *that is, sparing your infirmity;* "*not according to command,*" *as though it were necessary for you unto salvation. For some things must be conceded to subjects on account of their infirmity, and they must not be compelled by command to goods. But the Apostle appears to speak unfittingly. For indulgence concerns only sin. Therefore, by the fact that the Apostle appears to have conceded marriage according to indulgence, he appears to express that marriage is a sin. But to this one can reply in two ways. In one way, so that indulgence is taken here for permission. But permission is twofold. One is of a lesser evil.... Such permission is not made in the New Testament on account of its perfection.... The other is permission of a lesser good, when, namely, man is not compelled by a precept to a greater good; AND IN THIS MANNER THE APOSTLE HERE INDULGES, that is, permits marriage, which is a lesser good than virginity, which is not commanded and is a greater good.*" Therefore the indulgence of which the Apostle speaks, according to St. Thomas, is referred to permission of a lesser good, but not to indulgence concerning any fault. Hence in the objected words which are immediately subjoined there, St. Thomas assuredly proceeds to resolve the objection proposed to himself, explaining further how indulgence can be referred to the conjugal act; but there he in no way expresses the opinion of the Apostle. And this is confirmed by those things which the Holy Doctor has below, saying: *Then when he says (the Apostle),* "*But let each one,*" *etc., he assigns the reason why he permitted marriage according to indulgence, namely, because not everyone has received from God the gift of such great virtue that he can contain himself entirely.*

Viva speaks well concerning this opinion of Paul (*On Matrimony*, question 7, article 1, no. 2): *If it were a venial fault to use such a means for avoiding incontinence, the Apostle could not grant an indulgence that the spouses should return to it.* And Coninck (*Disputation* 34, no. 7) in the same sense: *You will say: the Apostle says this according to indulgence; therefore he supposes there is some fault, because where there is no fault, we grant no indulgence. Reply. By denying the consequent and its proof. For to indulge does not there signify to remit faults, but indulgently to permit something. For the Apostle does not indulge them something past, but future; which is done*

with regard to faults only perversely. That is, no otherwise than we heard St. Thomas saying above: *Such permission* (namely, of a lesser evil) *is not made in the New Testament*.

33. Reply 2. But neither do the texts of St. Thomas objected by the VV. (above, no. 31) in any way strike the doctrine for the confirmation and explanation of which the authority of St. Thomas is adduced in the Note.

And certainly there are two things for the explanation of which the authority of St. Thomas is invoked in the Note. The first is that matrimony was divinely instituted also as a remedy for concupiscence. But this is proved by the words of St. Thomas there adduced: *He proposes* (the Apostle) *the second necessity, according to which* (matrimony) *was instituted as a remedy for fault*. Nor indeed is there reason why anyone should perhaps stumble over those words, *as a remedy for fault*. Behold how St. Thomas speaks more clearly a little afterward: *The second good* (namely, matrimony) *has insofar as it is a remedy for CONCUPISCENCE, which is confined to a determinate person, and this good is called fidelity.*

The other thing which is undertaken to be proved by the authority of St. Thomas in the Note pertains to the manner in which matrimony is a remedy for concupiscence, namely, that this consists in yielding to concupiscence itself through acts apt for generation in legitimate marriage. And for this purpose these words of St. Thomas are adduced there: *For because carnal concupiscence still remains after baptism, although it does not dominate, it incites men especially to venereal acts on account of the vehemence of pleasure; and because it is a matter of greater virtue entirely to overcome this concupiscence than can befit men, according to Matthew 19: "Not all receive this word"; it is necessary that concupiscence be yielded to in part and overcome in part; which indeed is done when the act of generation is ordered according to reason.* Then in the same place it is added how, according to St. Thomas, the act of generation is so ordered by reason that concupiscence is yielded to in part and overcome in part. And this is shown to be obtained when two conditions are observed, which St. Thomas indicates thus: 1. *That man use the act of generation according as it befits the generation and EDUCATION of children*; 2. *That in the human species there be not wandering and uncertain couplings, such as fornical couplings are, but that determinate men be joined to determinate women: which determination indeed is made through the law of matrimony.* It is therefore manifest that the texts of St. Thomas objected by the VV. (above, no. 31) prove not even the least thing. For confirming the proposed doctrine, therefore, the authority of St. Thomas was employed in the Note with the fullest right.

Moreover, regarding the texts adduced in the Note, the VV. (page 830, note 3) objected only this: that in the second text the words AND EDUCATION had been omitted; whence St. Thomas concludes that matrimony ought to be of a determinate man to a determinate woman. But it is briefly replied to this that it can appear strange that the VV. dwell seriously upon these things. For are not the words of St. Thomas adduced in the Note where it is said that the order of reason requires that in the human species there be not wandering couplings, but couplings of determinate men to determinate women? Those words certainly suffice for the purpose. For otherwise we leave the labor of gathering even those things which pertain less to the matter to those whose principal care it is that causes be judged from the immense bulk of the volume.

34. Yet another reply should be given to the texts objected above (no. 31), insofar as they appear to intimate that the pleasure sought in the conjugal act is not free from every fault. And especially those words appear to require this (*Lecture* 1 on 1 Corinthians): *But sometimes it is with venial fault, namely, when someone is excited to the matrimonial act from concupiscence which nevertheless remains within the limits of matrimony, as, namely, when he is content with his wife alone.*

I said, *especially those words*; for what the VV. object from the *Supplement*, question 49, article 5, reply to objection 1, is nothing. For the words objected from this place are these: *When nature alone moves one to the act of matrimony, he is not altogether excused from sin except insofar as the movement of nature is ordered ACTUALLY OR HABITUALLY further to offspring, according as it is a good of the sacrament.* But suppose, I ask, that you read there the following words: *Nor nevertheless does it follow that the movement of nature is evil, but that it is imperfect unless it be ordered further to some good of matrimony.* The Holy Doctor, namely, replies to the objection that the act of matrimony can be excused even without the goods of matrimony. Indeed, the objected words tell against the VV. who object to them. For to remove this imperfection of the matrimonial act, it suffices (as is said there) that the act be ordered actually or habitually to the goods of matrimony. But for the act to be called HABITUALLY ordered, it suffices that those ends not be positively excluded. Hence the doctrine of the Note which the VV. attack is confirmed: for an honorable act it suffices that its ends not be positively excluded, that is, however little they may be thought of while acting.

But regarding the last text objected by the VV. (above, no. 31), they themselves (page 832) note that not even St. Alphonsus admits that opinion of the Angelic Doctor, as being too rigid, and they transcribe these words of St. Alphonsus himself (book 6, no. 882): *But, with the pardon of the Holy Doctor* (whose opinions I have striven universally to follow in other matters), *the interpretation of St. John Chrysostom appears more proper, whose words I shall presently adduce and whom Estius, Salmeron,*

and Cornelius followed, namely, that the phrase "on account of fornication" is not understood of avoiding the fornication of one's spouse, but one's own. And since these things are so, an easy reply offers itself to this text of St. Thomas. For, on the one hand, it does not in any way weaken the doctrine which we constructed on the authority of the same St. Thomas; while, on the other hand, not much weight should be given to an opinion which even St. Alphonsus judged should not be admitted, as being (the VV. say) too rigid.

35. But the reverence due to the Angelic Doctor would be better consulted if a more apt interpretation and reason for the objected opinion were employed.

And in truth St. Thomas (*Lecture* 1 on chapter 7 of 1 Corinthians) does not explain that saying of the Apostle, *On account of fornication*, etc., in such a sense that it would be licit with

St. Alphonsus to oppose the interpretation of Chrysostom to the interpretation of the Angelic Doctor. Behold his words: *It has been said that it is good for a man not to touch a woman; but because all men are not fit for this good, let each man, on account of fornication, namely, to be avoided, have his own wife, that is, one determined for him, so that wandering and uncertain couplings, which pertain to fornication, may be removed. Hence also Proverbs 5: "Rejoice with the wife of your youth"; and afterward it is added: "Why are you seduced, my son, by a strange woman?"* Therefore the interpretation of that Pauline passage which St. Thomas presents agrees to a nicety with the interpretation of Chrysostom which you see in the Note, namely, he interprets Paul concerning the avoidance of one's own fornication, not that of another.

But this must also be held for another reason, namely, lest we make St. Thomas fight with himself, and indeed in the same context. For he had premised these things in the same place: *He proposes* (the Apostle) *the second necessity, according to which* (matrimony) *was instituted as a remedy for fault* (that is, concupiscence; above, no. 33). *For because carnal concupiscence still remains after baptism, although it does not dominate, it incites men especially to venereal acts on account of the vehemence of pleasure; and because it is a matter of greater virtue entirely to overcome this concupiscence than can befit men ... it is necessary that concupiscence be yielded to in part and overcome in part, which indeed is done when the act of generation is ordered according to reason.* But it is manifest that the Holy Doctor here speaks of the remedy for each person's own concupiscence; otherwise the use of this remedy could never occur without the sin of one or the other spouse.

But, you will say, how then do these things agree with the objected opinion of the same Holy Doctor, namely, that if someone through the act of matrimony intends to avoid fornication in himself, this is a venial sin?

36. I reply that this opinion can be reconciled without difficulty with the aforesaid doctrine of the Holy Doctor, if its reason is sought more diligently from the context; and from this inquiry it will also be apparent in what sense another objected text of the Holy Doctor (above, no. 34) is to be understood.

That these things may therefore be understood more clearly, observe how St. Thomas, after he had asked (*Supplement*, question 49, article 4) whether the act of matrimony is excused by the aforesaid goods, namely, the goods of matrimony, immediately in the following fifth article, from which the objected words were taken, asks whether the matrimonial act can be excused without the goods of matrimony. But what he means by a matrimonial act without the goods of matrimony is clear from the first objection of the following sixth article, where it is said: *It appears that whenever someone knows his wife, not intending any good of matrimony but pleasure alone, he sins mortally.* Therefore, with St. Thomas, a matrimonial act not excused by the goods of matrimony is the same as a matrimonial act had for pleasure alone.

And to this indeed pertains the second objection of the fifth article and therefore the reply of St. Thomas from which the objected words were taken. For the Holy Doctor thus objects to himself: *He who uses his spouse to avoid fornication does not appear to intend any good of matrimony; but such a one does not sin, as it appears, because matrimony was conceded to human infirmity for this purpose, that fornication might be avoided, as is apparent in 1 Corinthians 7; therefore even WITHOUT THE GOODS OF MATRIMONY his act can be excused.* The objection therefore supposes a matrimonial act without the goods of matrimony. But, this state of the question being supposed, it is easily understood why St. Thomas proposes two cases in his reply, namely, when a spouse wishes to avoid fornication in the other spouse, and when in himself. For in the first case he denies that every good of matrimony is absent, because there is the good of fidelity and the act of justice in rendering the debt; but not likewise in the second case; and since, with this good of matrimony also removed, by hypothesis no other good of this kind now remains, the hypothesis of a matrimonial act without the goods of matrimony returns, namely, an act which is had for pleasure alone, which St. Thomas for this reason (above, no. 18) had already said to be stained by venial fault. And the same St. Thomas clearly exhibits the character of this act when, in the following article, reply to objection 1, he writes: *It must be said that a man seeks meretricious pleasures in his wife when he attends to nothing else in her than what he would attend to in a*

harlot; which things the Holy Doctor refers entirely to the present hypothesis, for thus the objection has it: *whenever someone knows his wife, not intending any good of matrimony, but pleasure alone.* And in reality the matter stands thus when one deals with harlots; for neither the good of offspring nor the good of fidelity is sought there or attended to by the fornicator. Nor nevertheless does the Holy Doctor concede what the objection held, that one sins mortally if pleasure alone is attended to in one's wife without some other good of matrimony. For in the same article 6, in the body, he writes: *But if pleasure is sought within the limits of matrimony, so that, namely, such pleasure would not be sought in another than one's spouse, it is thus a venial sin.*

And from these things it also follows that it is by no means necessary to attribute to the Angelic Doctor that opinion which the VV. called too rigid, as though, namely, the Holy Doctor generally condemns as some sin an approach to one's spouse by which one finds a remedy for calming concupiscence in oneself, whereas, on the contrary, he himself acknowledges and teaches that matrimony was divinely instituted also for this end. For the Holy Doctor establishes only this, and most rightly, when someone approaches his wife for pleasure alone in such a way that no good of matrimony is attended to, no otherwise than one who approaches a harlot. And indeed, as we saw above (no. 34), according to the Holy Doctor it suffices that the good of matrimony be attended to actually or habitually, namely, that at least virtually that end or good be intended which renders the act of matrimony honorable. For this purpose Seraphinus Capponi, in his elucidations on this passage, alleges these words of St. Thomas: *If it is not then ordered, it has nevertheless been preordained by reason.* Therefore, for that act to have been preordained by reason is for it to be ordered habitually (see also above, no. 9). Therefore, according to St. Thomas, there is no inordination if a spouse, enticed by pleasure, approaches the other spouse, even if he intends the goods of matrimony only habitually, that is, by not excluding them, as they are excluded in the access of a fornicator to a harlot.

37. Hence, as I said in the preceding number, an easy solution is apparent to the difficulty which another text of the Holy Doctor objected by the VV. appears to introduce, where it is said that the conjugal act has indulgence insofar as someone consenting to concupiscence toward his wife does not become guilty of mortal sin (but of venial sin). For after the foregoing it is easily understood that in this place also the Holy Doctor discusses the matrimonial act without the goods of matrimony, that is, one had for pleasure alone.

That this may readily be clear, observe that according to St. Thomas there is a threefold good of matrimony, namely, the good of offspring, the good of fidelity, and the good of the sacrament. But since the good of the sacrament, as the Holy Doctor says (*Supplement*, question 49, article 5, corpus), makes matrimony itself honorable, but not its act, it remains that the act of matrimony must be rendered honorable by the goods of offspring or of fidelity, as the same Holy Doctor concludes there. With these things premised, let the context from which the objected words are taken be consulted (*Lecture* on chapter 7 of 1 Corinthians): *Indulgence*, says the Holy Doctor, *is referred to the conjugal act according as it has venial fault annexed to it.... Hence it must be considered that the conjugal act is sometimes meritorious and without every mortal or venial fault, as when it is ordered to the good of offspring to be procreated and educated for the worship of God, for thus it is an act of religion; or when it is done for the sake of rendering the debt, for thus it is an act of justice; but every act of virtue is meritorious if it is with charity. But sometimes it is with venial fault, namely, when someone is excited to the matrimonial act from concupiscence which nevertheless remains within the limits of matrimony, as, namely, when he is content with his wife alone.* Therefore in this place also a twofold case is discerned: the former, in which a good of matrimony appears; the latter, in which those goods of matrimony are lacking; for otherwise the reason for distinguishing one case from the other would be absent. But where the goods of matrimony are in no way attended to in the matrimonial act, one now intends the act of matrimony for pleasure alone, as was said above. Therefore, this passage also of the Angelic Doctor is by no means to be taken as a general rule concerning an act exercised on account of pleasure, but is to be restricted to one acting for pleasure alone in such a way that the goods of matrimony are not even virtually intended.

And let these things suffice, so that it may be concluded that the VV. did not write after sufficiently examining the matter when they said (page 832): *It can appear strange that Father Ballerini endeavors to present St. Thomas as favoring him; all the more because it certainly did not escape him that this last reply* (where, namely, St. Thomas appears to condemn the conjugal act for avoiding fornication in oneself), *as being too rigid, is not admitted even by St. Alphonsus himself.* We voluntarily omit many things which could easily be added from the same St. Thomas concerning this argument, lest this Note grow beyond measure.

2. The use of marriage with an adulterous mind is gravely illicit, as if one approaching his own wife should represent another woman to himself. - St. Ligorius, no. 913, and others commonly.

3. The use of marriage is licit for the sterile, both because no law to the contrary can be shown and because the sterile are of themselves fit to perform the conjugal act. If no generation

follows, this occurs altogether *per accidens*; and besides generation there are other honorable ends which render conjugal intercourse honorable.

4. The use of marriage is licit even for the aged, whose seed is no longer prolific, provided that they are able sufficiently to perform intercourse or have a hope, not empty, of performing it. For the same reasons which we adduced concerning the sterile favor the aged. It is further confirmed from the practice of the Church, which blesses the marriages of the aged. - See St. Ligorius, no. 954.

§ II. On the Liceity of the Conjugal Act with Respect to Circumstances

I. on the Circumstances of the Person

2. affinity from incest; 3. spiritual relationship; 4. bodily impotence.

909. **Principles.** - I. Any spouse bound by a vow of chastity, or impeded by affinity contracted through his or her own act, is forbidden under grave sin to seek the debt; nevertheless, he or she can, and indeed is bound to, render it to the other spouse who seeks it, since the other party cannot be deprived of his or her right. There are several who extend this same thing to the spouse who, outside necessity, baptized his or her own offspring. Nevertheless, the opinion which denies this is sufficiently probable, and several grave Doctors hold it, as St. Alphonsus says, book 6, no. 150.

II. Neither spouse can seek or render the debt if both are bound by a vow of chastity, or if both have contracted affinity or spiritual relationship through their own act; for each is impeded on account of the vow or sin. Some, however, as was said, deny that this latter impediment on account of spiritual relationship is incurred.

910. **Resolutions.** - 1. Not only can, but indeed is bound to, render the debt one who made a vow opposed to the right of the other after marriage had been entered; and even one who made it before marriage. For although he sinned gravely by contracting marriage, he nevertheless validly handed over to the spouse that which he had promised to God; otherwise the other spouse, ignorant of the vow, acquired a right to the thing by force of the valid contract.

2. One who, after marriage has been entered, vows to enter religion or to receive sacred Orders after the death of his wife can seek and render the debt, and does not need a dispensation; for vows of this kind do not oblige except after the dissolution of the marriage.

3. According to the more common and more probable opinion, a spouse bound by a vow or by the impediment of affinity (contracted after marriage had been entered) can seek the debt when he notices that the other spouse, not daring to seek it, is in danger of incontinence. He can also seek whenever the other seeks interpretatively; for example, when the woman is restrained by modesty and the man perceives, as St. Thomas says, her will to seek; because then it is rendering rather than seeking. - St. Ligorius, no. 931.

4. A spouse impeded by a bond, however, cannot seek the debt even to avoid incontinence; for the danger of incontinence is indeed a cause for obtaining a dispensation or suspension of the

vow, but not for seeking the debt. - Thus Sanchez and others. - Nevertheless, it does not appear illicit to him to warn the other spouse of his own danger and to ask that spouse to seek on this account thereafter. Likewise, probably make an exception if it is a question of impediments imposed by the Church, a dispensation cannot be obtained quickly, and great danger of incontinence lies in delay. - St. Ligorius, no. 930. Compare what we have said both concerning the impedient impediment of a vow and concerning the diriment impediments of spiritual relationship and affinity.

II. on the Circumstances of Manner or Position

911. ○ I. Rule. That position is entirely licit which nature itself primarily teaches, namely, that the woman be beneath and the man above. - Thus St. Thomas and others commonly. The reason is that the other positions are somewhat opposed to the order of nature, and consequently introduce some violation of order.

II. Rule. No position, however unnatural, is gravely illicit of itself, provided the conjugal act can be sufficiently completed. The reason is that any inversion of position, provided union can be completed, does not impede generation. - St. Ligorius, no. 917.

III. Rule. Every unnatural position, when a just cause is present, is free from all fault; but sometimes an unnatural position is easier, or even the only one possible; and indeed some greater facility or necessity can remove an inordination of this kind, which of itself is slight. - St. Ligorius, ibid.

912. **Resolutions.** - 1. Spouses do not sin at all who invert the position on account of danger of miscarriage during pregnancy, on account of the corpulence or curvature of the man, on account of the excessive fatigue of the woman, or even on account of frigidity, when they are more aroused in an unnatural position, etc.

2. Whatever the position which alone is possible may be, it is in no way condemned, although a not inconsiderable loss of semen should follow; because this part of the semen is not necessary for generation and is lost accidentally, against the will of the spouses.

3. A prudent Confessor must take care not to ask questions about the various manners of intercourse, which are not only useless but also full of scandal. Hence, if the penitent raises a doubt about these matters, it will be sufficient for the Confessor to know whether complete pollution occurred outside the due vessel. I said, if he raises doubts, or if the penitent furnishes even an occasion for doubting; for no one fails to see that questions of this kind, in a matter so slippery, are never to be asked unless a manifest necessity is present [1]. - St. Ligorius, no. 917.

[1] It is the very common opinion of the Doctors that both the danger of scandal which the Confessor can occasion to himself and to the penitent, and even to others (for penitents not rarely speak with others about the statements and questions of Confessors), and also the reverence due to the Sacrament, ought to cause him to abstain from further inquiry by questions in a matter so shameful of itself, even if perhaps he fears that the confession will not be sufficiently integral on account of some unmentioned circumstance which perhaps even appears to change the species; but in necessary matters he should use those forms of words which are held to be as becoming as possible. Moreover, let the Confessor remember that an imprudent, importunate, and shameless manner of speaking about this matter has not rarely given just occasion not only for suspecting evil of him, but also for denouncing him before the Ordinaries as though, in the act of confession, as Gregory

XV says (in the Constitution *Contra sollicitantes*), he had uttered shameful discourse; and indeed the judges have been accustomed to proceed both against those who have so offended from malice and also against those who have so offended from mere imprudence. On this argument see Joseph Frassinetti in Dissertation X, entitled *On the Integrity Necessary for Confession* (*Compendium of Moral Theology*, vol. 2).

III. On the Circumstances of Time

These circumstances principally concern the time of pregnancy, nursing, menstruation, illness, feast days, and Holy Communion.

913. ○ 1. At no time is the conjugal act of itself forbidden under grave sin, because no law is found by which the work of marriage is ever prohibited by reason of time. I said *of itself*, because perhaps at times, by reason of circumstances, proximate danger of miscarriage or of health could be induced. But this is exceedingly rare and cannot easily be foreseen in certain cases.

2. Indeed, according to most Theologians, the conjugal act is never forbidden even under light sin by reason of time; the reason is that no law can be assigned by which it is ever prohibited even under light sin. Nevertheless, St. Ligorius, no. 924, is more pleased by the opinion [2] which does not excuse from venial fault if intercourse takes place during pregnancy, unless danger of incontinence or another honorable cause is present, which otherwise can scarcely ever be absent.

[2] These things and other things of this kind are recalled for mere erudition; for as regards practice, the common doctrine, which St. Alphonsus also most keenly defends, is that the uncertain opinion of certain persons is insufficient in a case for establishing either a grave or a light obligation. Therefore the Confessor neither ought nor can urge plainly uncertain obligations of this kind; all the more because in this question St. Alphonsus himself, no. 882 (to which place he refers), refutes the reason upon which this opinion rests; and moreover, in order that the Confessor might know whether occasion for this obligation is given by the circumstances, he would have to mingle lengthy discourses and questions concerning a matter which, according to the opinion of all, he must take the greatest care not to touch unless grave necessity is present.

3. The more common opinion teaches that intercourse had during menstruation is not excused from venial sin on account of the indecency which it appears to present, unless some cohonesting cause is present, namely, to avoid dissensions or to guard against incontinence, etc. - St. Ligorius, no. 925. But a prudent Confessor will abstain from every question in this matter, since there is nothing which must necessarily be declared by the penitent [3]. They commonly hold the same, by parity of reason, concerning intercourse had by spouses at the time of purgation, or in the days following childbirth.

[3] The question would concern a light fault; but light faults are not necessary matter of Confession, and this even when the light fault is certainly established. But here too there is question of a mere opinion, and there are those who think equally probable the opinion which denies that there is fault in this, especially after it has now been shown that the physiological reasons upon which the opinion of the ancients rested lack foundation, as the distinguished Lecompte makes evident (*De l'ovulation spontanee*, part 2, section 2). See, therefore, what was said in the preceding note.

914. ○ 4. The act of marriage during nursing is not illicit, because there is no prohibiting law, nor, according to the testimony of experience, is there any at least proximate danger of corrupting the milk. Hence there is no reason why spouses should be

bound for so long a time to abstain from the use of matrimony with a continual danger of sinning. Thus most commonly says St. Ligorius, no. 911.

5. The conjugal act during illness, at least for the most part, is illicit neither under grave nor under light sin, because frequently no harm thereby befalls the spouses; but the exertion which accompanies the act, at least commonly speaking, cannot greatly influence the illness [4].

[4] This appears to have been said too generally, and in particular cases both the inconvenience or harm of the sick spouse and the danger of incontinence in the other spouse will have to be weighed. See below, no. 915, III, and no. 916, resolution 6.

6. According to the more common opinion, it is not illicit on Sundays and even on more solemn Feast days, both because no law opposes it and because marital intercourse does not remove spouses from observing the Feasts of the Church. Most of the Holy Fathers who are objected to the contrary appear to speak of counsel rather than of precept. Hence you will also deduce that there is no reason why use of this kind should be prohibited during Advent or Lent. - Thus commonly. - St. Ligorius, no. 933.

7. Finally, of itself it is not prohibited on the day of Holy Communion, although the spouses approach it from piety alone, provided that they act for an honorable end [5]. - Thus commonly. - St. Ligorius, no. 922, and book 6, no. 273. - Lugo. - Sanchez and others, who teach that abstaining from intercourse on the day of Communion, whether before or after Communion, pertains to mere counsel, provided it is not had immediately after Communion has been received nor for the sake of pleasure alone.

[5] You will scarcely understand what these words mean; for it is never licit to do anything without an honorable end, whether on the day of Communion or on other days. You plainly see scraps of singular opinions concerning the ends of matrimony. I say the same concerning the exception added below, *for the sake of pleasure alone*; concerning which see the observations at no. 908. And if you finally determine that the act is of itself free from fault, you will conclude that this also pertains to mere counsel and not to a precept, either grave or light.

** Regarding this little Note, the VV. (page 827) write: *Thus, in Father B.'s judgment, THE CONJUGAL ACT EXERCISED FOR THE SAKE OF PLEASURE ALONE is sufficiently honorable; and to abstain from intercourse on the very day of Communion, when it would be had for the sake of pleasure alone, pertains not to any precept, whether grave or light, but to mere counsel. But what must be thought concerning this doctrine we shall see below.* Now the things which the VV. add below concerning this same little Note are contained in these words (page 837): *We scarcely understand how, given the condemnation of the aforesaid proposition, Father B.'s opinion can be sustained. For it could be asked what difference there is between these two propositions: To act FOR THE SAKE OF PLEASURE ALONE, and to act ON ACCOUNT OF PLEASURE ALONE. Father Ballerini says the former is licit in the Note to no. 914; but, this being posited, by what reason the latter ought to be called illicit and condemned, let others judge.*

Reply. I deny the supposition; that is, I deny that acting for the sake of pleasure alone is said to be licit in the little Note; for only these words are read there: *Concerning which see the observations at no. 908.* But in the Note to no. 908 only this is said: *The Author* (Gury) *wished through these words to signify that even this slight inordination or fault of one acting on account of pleasure alone is scarcely ever present in reality.* Therefore, contrary to manifest truth, the VV. say that Father Ballerini hands down as licit that acting for the sake of pleasure alone, or on account of pleasure alone; for Father Ballerini openly supposes, indeed affirms, that fault is present in it.

But the reason why it is said in that Note to no. 908 that fault of this kind is scarcely ever present is this and no other: namely, Father Gury (no. 908) had written: *The use of marriage is illicit if it is done for pleasure alone, that is, by expressly excluding other ends.* But in the Note it is observed that it can scarcely happen that ends intrinsic to the conjugal work are positively and entirely excluded. Therefore, in the Note it is not denied, but rather supposed, that acting on account of pleasure alone is illicit; only this is added: that it scarcely ever happens that the other ends are positively excluded, and therefore it scarcely

ever happens that the work of marriage is done on account of pleasure alone. But this is not to say that acting for the sake of pleasure alone, or acting for the sake of mere pleasure, is licit.

Therefore, also those things which the VV. add, namely, that in Father Ballerini's judgment the conjugal act exercised for the sake of mere pleasure is sufficiently honorable, and that to abstain from intercourse on the very day of Communion, when it would be had for the sake of mere pleasure, pertains not to any precept, whether grave or light, but to mere counsel: all these things, I say, the VV. fasten upon Father Ballerini's Notes contrary to manifest truth.

Article II. On the Obligation of the Conjugal Act

915. **Principles.** - I. There is an obligation of justice, grave of itself, to render the debt to the other spouse who seriously and reasonably seeks it. The reason is that, from the very nature of the matrimonial contract, spouses transfer to one another power over their bodies in order to conjugal use. It is also deduced from the words of the Apostle, 1 Corinthians 7:3: *Let the husband render the debt to the wife, and the wife likewise to the husband; the woman does not have power over her own body, but the husband; and likewise the husband does not have power over his own body, but the woman.*

II. Of itself no obligation to seek the conjugal debt urges. The reason is that neither spouse is bound to use his or her right, and each can remit it. Accidentally, however, there can be an obligation of seeking from charity or another virtue, especially in the man; for example, if he judges that the other party is placed in danger of incontinence on account of modesty in seeking, or if the request is necessary for fostering or restoring conjugal love, etc. - See St. Ligorius, nos. 928, 929.

III. The obligation to render the debt ceases when the right to demand it ceases; but the right is extinguished chiefly in the following cases, namely: 1. if one of the spouses has committed adultery; 2. if the one seeking lacks the use of reason, because that person's request is not human; 3. if the one rendering can reasonably fear harm or grave danger to health, because spouses are not judged to have obligated themselves to render the debt with so great an inconvenience; 4. if the one seeking, on account of incest committed with the blood relatives of the other in the first or second degree, or for another cause, has lost the right of seeking [1].

[1] Perhaps the loss of a right over the body of the other is here confused with an illicit use of the right on account of some circumstance. Therefore these things do not agree with those said above, no. 909, where it is established that the spouse who contracted affinity on account of incest can, indeed is bound to, render the debt to the other.

916. **Resolutions.** - 1. Spouses are bound to cohabitation, nor can one be absent for a long time without the consent of the other or without necessity; for this obligation follows from the obligation itself of rendering the debt. But just causes for being away for a long time are the public good, the support or protection of the family, and the avoidance of injury from enemies, etc. But a husband who must remain elsewhere for a long time ought to bring his wife there, if he conveniently can, so that she may cohabit with him. - St. Ligorius, no. 938.

2. A spouse sins gravely by denying the debt whenever there is danger of incontinence or of grave vexation in the other party. Likewise, if the spouse denies it to the other who seriously seeks it. It is otherwise, however, if the other party benevolently remits it or seeks it remissly.

3. One who denies does not sin when the other seeks immoderately, for example, after the third or fourth time in the same night; nor if the spouse delays for a short time, namely, until night, or if from night the spouse delays until the morning, always excluding, however, danger of incontinence. - St. Ligorius, no. 940.

4. Wives are to be reprehended who deny the debt to their husbands without sufficient cause, even if they seek it remissly; or who do not grant it unless compelled and harshly and contumeliously reproach the husband for his requests.

5. A wife is not excused from rendering the debt on account of the ordinary inconveniences of childbirth, pregnancy, or nursing, nor on account of pains which are indeed grave but brief in time, nor on account of prolonged but moderate pains, for example, of the head for several months after childbirth, nor on account of health somewhat weakened; because all these things are annexed to the matrimonial condition. It is otherwise, however, if danger of life or of a most grave illness would truly have to be feared according to the judgment of a prudent physician. - St. Ligorius, no. 952.

6. There is no obligation to render the debt to the other spouse laboring under a disease grave in itself and contagious, such as plague, venereal disease, or something similar. Likewise, those laboring under a strong fever or another grave illness are excused from rendering the debt on account of notable weakness of the body. - St. Ligorius, no. 950.

7. A spouse is not excused from rendering the debt on account of fear of more numerous offspring; for the procreation of offspring pertains to the principal end of matrimony, whence that inconvenience is intrinsic to matrimony itself. - St. Ligorius, no. 941.

Article III. On the Sins of Spouses

917. ◦ Sins can be committed between spouses by reason of the conjugal act, either by excess, that is, by performing acts useless for generation, or by defect, by not completing the essential act, or by staining the marriage bed with the crime of onanism.

Hence there are two sections.

§ I. On the Sins of Spouses by Excess

Three kinds of acts are distinguished which, besides intercourse but on its occasion or pretext, can be exercised by spouses. 1. Some are harmful to generation, such as sodomy and pollution, and are against nature.

2. Others are useful, such as touches exciting nature and fostering love. 3. Others are neither harmful nor useful, and are said to be besides nature.

918. **Principles.** - I. Whatever is necessary for completing the conjugal act, or useful for exercising it more easily, quickly, or perfectly, is entirely licit for spouses. The reason is that he who has a right to a thing also has a right to the necessary or useful means not otherwise prohibited; and for those to whom the principal is licit, the accessory and the means ordered to it are also licit.

II. Whatever in the conjugal act harms generation, or of itself induces an effusion of the generative substance outside natural union, is gravely illicit. The reason is that such voluntary effusion is not licit except in order to generation, and therefore matrimony gives the faculty only for an effusion of this kind which can of itself serve generation; but otherwise, if men could enjoy that pleasure without the consequent burden of supporting and educating offspring, the generation of children would easily be placed second, indeed would deliberately be avoided, and thus society itself would incline toward destruction.

III. Whatever does not indeed harm, but of itself is less necessary or less useful for the act of generating, cannot be imputed as more than a light fault; but other ends intrinsic to acts of this kind excuse from it, namely, that conjugal affection be preserved and fostered, or at least that concupiscence be calmed [1]. Yet there is no need expressly to intend these ends; rather, as was said above, it suffices that they not be positively excluded.

[1] Compare what was said above in the Note to no. 908, where, from the doctrine of Chrysostom and St. Thomas interpreting Paul the Apostle, it was shown that the gain and fruit of marriage especially consists in this: that the ardor of concupiscence be extinguished and thus a chaste life be led. Concupiscence is extinguished when marriage provides the means by which the appetite for pleasure can be satisfied honorably. A chaste life is led when satisfaction of that appetite is not sought outside the legitimate marriage bed.

919. **Resolutions.** - 1. All honorable kisses between spouses are free from fault, as are touches upon parts both honorable and even less honorable (provided they are done cautiously), for the sake of demonstrating conjugal affection or fostering love, even if involuntary pollution should sometimes accidentally follow; because all honorable signs of love, even tender ones, as means to an end, are licit to those who from the matrimonial bond ought to become one heart and one flesh. - St. Ligorius, no. 934, and others commonly.

2. Less honorable touches and looks are also free from fault of themselves if they are referred immediately to intercourse. Indeed, the same must be held even if they were simply dishonorable but necessary or useful for exciting nature; for then they are a certain preparation for and, as it were, beginning of intercourse. But if the acts by which a spouse disposes himself or herself for the conjugal act are such that of themselves they easily provoke pollution, they can be culpable if diligence to avoid it outside intercourse is lacking [2]; and the omission of diligence, where it is of such a kind that through it one is judged nearly to will pollution outside the vessel, can even be a grave fault; but if, due diligence having been employed, such pollution follows beyond the intention, there will be no fault [3].

[2] For this reason the Doctors warn that these things are especially to be avoided if spouses are in a place where they cannot have intercourse. Sanchez (*On Matrimony*, book 9, disputation 45, no. 35) indicates two examples of touches which of themselves easily provoke pollution, and St. Alphonsus also indicates one of them (book 6, no. 934).

[3] This doctrine must be kept before one's eyes also with regard to the case which the Author presently subjoins, namely, regarding imperfect acts which are exercised between spouses without the intention of intercourse. And the Author indeed indicates only the opinion which does not condemn these acts as gravely guilty. But another opinion, itself sufficiently common (see St. Alphonsus, book 6, no. 934), must not be passed over in silence, which excuses these acts from every fault even in the one seeking, if pollution is not intended and there is no danger of consent to it, and provided that *some grave cause is present, for example, to foster mutual love ... or to avert the jealousy of the other.* And he adds (ibid.) that, probably, even immodest touches on the part of the one rendering (unless they are such that they appear to be an inchoate pollution) are licit, although danger of pollution is present in either spouse, because then the one rendering attends to a licit thing.

But according to the common opinion, which St. Alphonsus also follows (loc. cit., no. 933), these things hold even when intercourse would be entirely forbidden to the spouses, or even would be impossible on account of impotence. And regarding this latter case, when spouses are to be called truly and entirely impotent, we have already made observations above (in the Note to no. 855). But regarding the former, the cause why the use of marriage is forbidden must be considered. For the stated rule will be true if it is forbidden on account of affinity contracted through a crime with one's own wife; but it is otherwise if on account of the nullity of the marriage.

And regarding these imperfect acts, those things which Diana has (*vol.* 2, tract 6, resolution 205, no. 2) must be recalled: *The Doctors commonly note*, he says, *that when the danger of pollution has ceased in both spouses, the husband does not sin mortally if he breaks off intercourse begun before seminal emission, lest offspring be generated, provided that he does this with the wife consenting or not reasonably unwilling. Indeed, if there is a just cause for impeding seminal emission, for example, on account of poverty and the multitude of offspring, and nevertheless a cause for lying together in order to calm concupiscence, every fault is absent if mutual consent is present.... Hence infirm spouses are not to be condemned even of venial fault who, in order to calm concupiscence, begin intercourse and voluntarily by no means complete it; and this case can frequently occur.* And immediately afterward (resolution 207) he proposes this case: *A certain man began intercourse with his wife, and afterward, on account of danger of illness, withdrew himself with her consent; but pollution sometimes followed from this. It was asked of me whether such contact was licit. I replied affirmatively, because it is not a sin to attend to a licit thing and an honorable action, although the pollution which will follow is foreseen, provided danger of consent is absent, as it was in the case concerning which I was questioned; because then the pollution is not willed in itself, as is supposed, nor can it be said to be willed in its cause, because I am not bound to omit that action lest pollution follow, when a just cause stands.* You have the reason for this resolution more clearly proposed in the doctrine of St. Alphonsus which we reported elsewhere (vol. 1, Note to no. 412). See also Sporer (*On Matrimony*, no. 500), where concerning a similar case which he takes from Gobat (*Experimental Theology*, tract 10, nos. 668, 669), he thinks the same with Diana and others and observes that it is a very practical and frequently occurring case.

** The VV. here object (page 828, note 1) to these words of St. Alphonsus (book 6, no. 918):

Nevertheless, I think that in no way can they (the spouses) *be excused at least from venial sin, whatever Sanchez with others may say.*
Reply. The Doctors, as even St. Alphonsus acknowledges, do not agree among themselves whether in the case some fault, even venial, intervenes. Therefore, it is not certainly established that there is some law which is thus violated, and consequently no convincing reason is present why the act in question should be condemned as venial fault. But according to the doctrine so strongly inculcated by St. Alphonsus, we neither can nor ought to call something illicit or instill a consciousness of sin when the sin is not established. Therefore, it is fitting that the VV. also not prohibit others from preferring in the case the opinion of other Doctors opposed to the opinion of St. Alphonsus.

Moreover, these words are read in the Note: *You have the reason for this resolution more clearly proposed in the doctrine of St. Alphonsus which we reported elsewhere* (vol. 1, Note to no. 412). Why, I ask, did the VV. think that no account should be taken of this citation? In that place the Holy Doctor Alphonsus discusses the guilt of those actions which are a cause of carnal movements, indeed even of pollution, and specifically a proximate cause or one gravely influencing; and concerning causes of this kind he writes these things: *An exception is made, however, if the aforesaid actions are performed from a cause necessary, useful, or fitting for the soul or body; for then the pollutions arising from them, even foreseen, are not sins, provided consent or danger of it is absent. Thus COMMONLY Silvius*, etc., from St. Thomas. But, as is apparent from the texts of Antoninus Diana adduced in the Note, a just cause is supposed to be present in the case. Therefore, the VV. ought to permit us to prefer St. Alphonsus thinking with the COMMON opinion of the Doctors to St. Alphonsus wherever perhaps he appears to depart from his own doctrine and from the common doctrine of others.

3. Spouses do not sin gravely, even if, from touches had without the intention of intercourse, there arises a commotion of the spirits or of the members which serve generation, or a distillation follows, although these things would be mortal sins in the unmarried; the reason is that, apart from the crime of voluntary pollution outside the vessel or of sodomy, nothing is done against the good of matrimony [4]. - Thus commonly. - St. Ligorius, no. 934. - Sanchez, etc. But the light fault which can be present in acts of this kind is easily excused on account of ends intrinsic to matrimony itself or other extrinsic ends, for example, because they are suitable for fostering affection or for calming concupiscence.

[4] Not without reason does the Author either establish or suppose this general principle: that apart from that inordination which is against nature, scarcely anything can intervene among spouses in this matter which can certainly be condemned as a grave fault. For indeed among these or those Authors you will find now these acts, now others, represented as gravely guilty; but in these you have merely certain particular opinions, and these deduced not from solid and certain principles but rather from fanciful apprehensions. Some, namely, have recourse to indecency and baseness, and, conducting the matter almost by exclamations and declamations, proclaim it a horrible, unspeakable, most shameful thing, etc.; as though either the character of sin in general or the gravity of fault were to be sought from the character of indecency in that kind of matter in which even those things which are most licit, indeed commanded, are by the guidance of nature itself to be committed in secrecy and darkness on account of indecency. Others have recourse to the character of unbridled lust; as though lust does not show itself most unbridled in that in which the end of marriage is consummated, or as though matrimony was not also instituted for this reason, that it might be a remedy for unbridled lust (see St. Thomas above in the Note to no. 908); or as though matrimony could be a remedy for lust otherwise than that the vehement appetite for pleasure be satisfied, with this law alone finally placed upon it, which St. Thomas also intimates (loc. cit.), that it neither run outside legitimate matrimony nor oppose the end of nature! And certainly, unless sin is committed against one or the other of these, a solid reason on account of which any other inordination can certainly be accused of grave sin nowhere clearly appears.

With this principle therefore established, as is fitting, a most expeditious method is supplied to the Confessor, both to provide for the sanctity of the Sacrament and for the salvation of penitents.

For the sanctity of the Sacrament requires that discourse concerning these things not be introduced unless necessity urges; whence it follows that the Confessor ought to be most averse to investigating these things and consequently to employ scarcely any question besides perhaps this general one: whether any scruple in any way keeps the mind anxious; yet even this ought not to be asked without cause. Nevertheless, it is necessary that he reply if he is questioned. But that the reply may be most expeditious and may so satisfy necessity that, out of reverence for the Sacrament, it does not touch what ought not to be touched, nothing will be more apt than the proposed norm.

The salvation of penitents then requires it; for they certainly can be distressed by scruples, and indeed concerning acts of this kind which the mind shrinks from expressing in words and concerning which the Confessor ought never to ask. But for removing all scruples and, together with them, the necessity of expressing those things which can neither be named by penitents nor ought to be by the Confessor, the proposed norm is most useful. For once it is signified to the penitent that, where nothing is positively opposed to the end of matrimony or generation, nothing is had among spouses in this matter which is a mortal sin, and therefore which is necessary matter of Confession, although light faults can intervene for various causes, it is apparent that all the aforesaid inconveniences are most effectively met.

The inconveniences regarding the past are met; for as soon as the penitent has confessed generally, as usually happens first, that he has offended in some respect in this matter, while the Confessor by means of a generic question has learned that, in the persuasion of the penitent, something grave intervened, then, cutting off at once every other investigation, he will easily settle the matter, being content, namely, with a general confession either of a sin against nature, if either of the aforesaid was present, or generally of grave guilt against conscience; and, having asked the number if there is need, he will judge that the necessity of confession has been satisfied.

The inconveniences regarding the future are met, both because, when that norm is employed, the danger of sinning gravely solely on account of an erroneous conscience is averted, and because an easy manner of confessing is handed down to penitents if they need it. And as regards light faults, there are three things concerning which the penitent can usefully be admonished: 1. that the spouse who cannot refuse certain things without offense to the other is excused from these faults when he or she conducts himself or herself in a somewhat passive manner, namely, not demanding them but merely consenting or permitting them; 2. where this excuse is not present and the penitent prefers to confess these light faults (for it is not necessary to confess venial sins), an entirely general formula of some light fault in performing the conjugal office is to be used in confession, nor is it ever to be specified what kind those acts were; for the sanctity of the Sacrament and the danger inherent in this matter altogether require that only what is sufficient be expressed and nothing superfluous; 3. if perhaps the penitent falls in with a Confessor so imprudent that he asks something further by investigating, the penitent can, indeed ought, modestly to reply that there is nothing which he adds concerning that matter.

Since discourse has now arisen concerning the necessary caution of the Confessor regarding this matter, it is well to subjoin here what the dignity and sanctity of the Sacrament dictates should be answered to a woman soon to marry and very

solicitous to avoid every sin in conjugal offices, who questions the Confessor about this matter. Gobat, after others, replies to this question thus (*Experimental Theology*, tract 10, case 17, nos. 648, 649): *If a girl of this kind has a mother surviving, she should be commanded in kindly words to question her mother rather than*

the Confessor (or also other women related in any degree, Burghaber adds).... *If she lacks a mother, or out of modesty does not dare to ask her, let it be said to her that she should obey her husband as her head even in those matters. If he perhaps seeks something concerning which she doubts whether it is licit, let her modestly beg to be excused; if by begging she accomplishes nothing, because the husband asserts that he already knows what the laws of marriage permit, then let her obey, certain that she will not offend God while in doubt she obeys her husband as her superior; then, at the next opportunity, let her herself ask the Confessor whether that in which she obeyed is licit for spouses or not.*

920. ○ 4. A wife who excites herself by touches to seminal emission immediately after intercourse in which the husband alone emitted semen does not sin gravely; indeed, according to the more common and more probable opinion, she does not sin even lightly: 1. because the seminal emission of the woman pertains to completing the conjugal act, so that the spouses may properly be one flesh; and just as the wife can prepare herself by touches for intercourse, so also can she complete it; 2. because if women after such irritation were bound to restrain their natural movements, they would be continually exposed to great danger of sinning. - St. Ligorius, no. 919.

5. Touches of oneself from venereal pleasure, while the other spouse is absent, according to the opinion of many cannot be excused from grave sin even when pollution or proximate danger of it is excluded. The reason is that a spouse does not have the right of using his or her own body in order to fulfill pleasure with oneself, but only in order to intercourse. - Lacroix, no. 339, etc.; St. Ligorius, no. 936. - Nevertheless not a few others cited by St. Alphonsus himself say that, when danger of pollution is excluded, this does not exceed venial fault. St. Alphonsus judges the first opinion more probable and to be counseled [5].

[5] When St. Alphonsus says that this opinion is to be counseled, he in no way signifies that the opinion concerning grave guilt in these acts is to be instilled into penitents by the Confessor; for he openly and vehemently rebukes and condemns (see Note to no. 152, vol. 1) those who instill a consciousness of mortal sin where they are not most certain of the matter. St. Alphonsus therefore intends this alone: that penitents are to be deterred with the greatest care from acts of this kind. Concerning this question Andreas Mendo is to be seen (*Statera Opinionum*, dissertation 5, question 19), where for the opinion denying grave guilt in these acts he reports *ad hominem* arguments (no. 152) to which it is certainly difficult to give a fitting reply.

6. Morose delight concerning intercourse which has been had or is to be had remotely, with danger of pollution excluded, according to the common opinion is only a venial sin. 1. It is some sin, because in this pleasure not referred to proximate intercourse an inordination is found, since an honorable end is lacking and the genital spirits are moved in vain, at least inchoatively. 2. It does not exceed venial sin, because, since intercourse is licit of itself for spouses, it cannot be gravely illicit to delight in it [6]. But a simple thought about these things to be had or already had is not illicit. - St. Ligorius, no. 937. - Voit, no. 110. - Indeed, neither desire for future intercourse nor approval of past intercourse is illicit of itself, because desire for a licit thing cannot be illicit. - See *Cases*, no. 1102.

[6] St. Alphonsus (book 6, no. 937) adduces for this matter that saying of St. Thomas (*On Evil*, question 15, article 2, reply to objection 17): *Delights in goodness and malice follow the delightful operations; and therefore, just as carnal union is not a mortal sin for a*

married person but is a mortal sin for an unmarried person, so also there is a similar difference concerning delight and consent to delight. For consent to delight cannot be a graver sin than consent to the act, as is apparent through Augustine.

But this argument proves not only that consent to delight (for this is what morose delight means) is not mortal, but that it is not even a venial sin. And the reason adduced by the Author also leads directly to this, namely, that it cannot be gravely illicit to delight in a licit thing; for why will it be illicit in any degree to delight in a licit thing when, as St. Thomas says, the goodness or malice of delight is derived from the good or evil thing in which one delights? See the things adduced from St. Thomas concerning morose delight in the Note to no. 169, vol. 1.

** The VV. transcribe (page 827) the sixth Resolution of the Author, to which this Note is appended, and add: *Yet these things, reported with sufficient fidelity from St. Alphonsus, do not please Father Ballerini; hence he attempts to demonstrate that the aforesaid opinion is entirely opposed to the doctrine of St. Thomas and consequently to the authority of St. Alphonsus himself invoking the Angelic Doctor.* Then, having copied this Note of ours, the VV. subjoin (page 828): *With these things set forth, it is fitting to examine what must be thought concerning the aforesaid doctrine of Father B.* But afterward the VV. omitted to say what must be thought concerning the present Note.

It will therefore be useful to observe here that the Note is not referred to the doctrine of the Author or of St. Alphonsus, but to the reason or argument by which they wished to prove that delight of this kind is not a grave sin. For, as is manifestly shown in the Note, delight in an honorable act of itself can be illicit neither gravely nor lightly. Therefore some guilt must be derived from elsewhere. Hence Gury repeats the fault because an honorable end is lacking and the genital spirits are moved in vain, at least inchoatively. This reason brings the matter to this point: that if some honorable end or just cause of the delight perceived from a conjugal act thought about were present, even that venial guilt could now be absent, and consequently guilt would be absent from the carnal movements arising beyond the intention, since in the case (see above, Note to no. 919, resolution 2) they would be permitted for a just cause.

§ II. On Onanism in Particular

921. ◦ Onanism consists in this: that a man, after intercourse has begun, withdraws himself before seminal emission and sheds the semen outside, in order to impede generation. Everyone sees of himself that this is to indulge lust and at the same time to be unwilling to assume the burdens of matrimony.

It takes its name from Onan, the second son of the patriarch Judah, who, after the death of his brother Her, was compelled according to custom to marry his widow Tamar, that he might raise up seed for his brother; but *going in to his brother's wife, he spilled his seed upon the ground, lest children should be born in his brother's name. And therefore the Lord struck him, because he did a detestable thing.* Genesis 38:9, 10.

922. **Statements.** - I say I. Voluntary onanism is always a mortal sin, as being against nature, and therefore it can never be licit for spouses. The reason is: 1. because it plainly fights against the primary end of matrimony, and of itself tends toward the extinction of society, and therefore overturns the natural order; 2. because it was strictly prohibited by the Supreme Legislator and Author of nature, as is gathered from the text of Genesis just related; 3. it is moreover established from proposition 49 condemned by Innocent XI, which reads thus: *Mollities is not prohibited by natural law....* Hence thus: Onanism is true and properly so-called *mollities*, or pollution outside the licit use of matrimony; therefore, etc. This is confirmed by several Decisions of the Sacred Penitentiary and the Holy Office, to be reported below under nos. 927, 928, and 929.

I say II. An onanistic husband can never be excused from grave sin, and therefore is never to be absolved unless he sincerely grieves for his sin and proposes to avoid it in the future. The reason is apparent from what has been said.

I say III. A wife can be excused from sin if, for a grave cause, she renders the debt to an onanistic husband, provided that she does not inwardly assent to his sin and outwardly shows her repugnance by serious admonitions or other signs of displeasure. The reason is: 1. because she attends to a licit thing and uses her right, of which she cannot be deprived on account of the malice of the husband; nor does she properly cooperate in the sin of another, since she conducts herself only passively, and the intrinsically evil action consists only in the act of the husband then withdrawing against the order of nature; 2. because she is not bound by charity to impede the sin of her husband with grave inconvenience to herself; 3. because it is apparent from the responses by which the Sacred Penitentiary declared that a woman of this kind is not to be disturbed. - See the decisions to be reported below under no. 931.

923. **Resolutions.** - 1. A woman sins gravely who induces a man to abuse matrimony even indirectly or tacitly, for example, by complaining about the number of children, the labors of childbirth, or the education of the children, or by repeatedly saying that she will die in the next childbirth, etc. *A fortiori*, she sins gravely if, against the will of her husband, she withdraws herself from intercourse begun before seminal emission.

2. Likewise, a woman sins gravely by inwardly consenting to the detestable action of her husband [1], even if outwardly she shows repugnance. For sin must always be held in hatred.

[1] Understand this if she approves the evil work itself and rejoices in it as such in itself. For an inefficacious complacency not concerning the evil work in itself, but only concerning an effect which follows from it, does not of itself contain guilt, as all the Doctors establish in the Treatise *On Sins*. See vol. 1, no. 173, resolution 4. And this must be carefully observed, lest a wife be vexed without cause who, while she efficaciously detests the crime of her husband (and the efficacy of this detestation is proved from the fact that, if the option were given her, she would never will this abuse), could otherwise rejoice in immunity from the inconveniences and dangers which accompany gestation, childbirth, etc.

3. A wife is bound, at least ordinarily, to admonish an onanistic husband concerning the obligation of acting rightly, and, insofar as lies in her, to turn him away from a perverse manner of acting. Nor is it sufficient that she has admonished him once, but she ought sometimes to repeat the admonitions, unless she is certain that a new admonition will profit nothing. Nevertheless, even then she ought in some manner to manifest her repugnance, lest she appear willingly to consent to the sin of her husband. - Thus commonly, and the Sacred Penitentiary, when consulted, replied in this manner.

4. It will also be the duty of the wife to move her husband by caresses, various signs of love, entreaties, and exhortations either to complete the act rightly or to abstain from it altogether [2]. Experience establishes that very many onanistic husbands, thus drawn by their wives, have returned to better conduct.

[2] ** This abstinence will be all the less grave and troublesome to the husband, and therefore the wife will be able to obtain it from her husband all the more easily, when the spouses know that it is not necessary that abstinence of this kind be perpetual, and when, on the contrary, they have ascertained that not even prolonged abstinence is finally demanded of them. And certainly it is usually almost this cause which impels to this unspeakable abuse: that parents bear it ill if they must be burdened with more numerous offspring. But after more accurate studies of physiology, it is now established that there are fixed times in which the effect of generation can or cannot be hoped for from conjugal intercourse; and it is now held as ascertained that this effect cannot be hoped for from the fourteenth day after menstruation has begun until the end of the following period, that is, until the next recurrence of menstruation. Therefore, since it is clear that, in comparison

with the most grave evil which is evident in continual abuse of matrimony against nature, and therefore in that perpetual state of sin in which the husband lies immersed, the inconvenience of that moderate abstinence which suffices for averting so great an evil and at the same time provides both for the infirmity of the flesh and for a just fear of more numerous offspring can and ought to appear lighter even to the husband himself, one certainly must not despair or doubt that the solicitous care of a pious wife will lead her husband to sounder counsels. Moreover, if it is licit for spouses by the common consent of both to observe perpetual continence; if it is licit for spouses to observe continence and defer the consummation of matrimony for twenty or thirty years, or even until that age at which no hope of offspring now remains; and again, if for another legitimate end of matrimony, although every hope of offspring is absent, it is nevertheless licit for a just cause and with the order of nature preserved to use conjugal rights, both when the wife labors under certain sterility and when on account of advanced age she has become altogether incapable of conceiving; what, finally, prevents spouses from observing continence for the end stated above according to the aforesaid norm and limits? Or by what law, finally, shall we say that they are bound to have intercourse at another time?

924. **Questions. - QUESTION 1. How ought the Confessor to conduct himself with spouses who are entirely silent concerning the use of matrimony?**

Reply. This difficulty of daily practice is not so easily resolved, especially in our times, in which the plague of onanism rages everywhere. Hence the manner of acting among Confessors varies. Some judge that spouses ought generally to be questioned concerning the use of matrimony, because the abuse of matrimony is most common, nor in a matter so opposed to the law of nature can good faith ordinarily be presumed. Others, on the contrary, think that all questions are entirely to be omitted, because spouses, although in reality guilty of onanism, are perhaps in good faith, and when this has been expelled they will nevertheless continue in the depraved habit of sinning; and therefore they will no longer be capable of absolution and will be excluded from receiving the Sacraments. We judge that one must recede from both these extremes and follow a middle way. For, on the one hand, in a matter so difficult and dangerous it is by no means fitting that the Confessor propose numerous and minute questions to married persons. Indeed, unless there is grave probability that the penitent is stained by a sin of this kind, he ought to preserve profound silence. On the other hand, the Confessor cannot always abstain from every question, since by reason of his office as judge he ought of himself to procure the integrity of the confession whenever he gravely suspects that the penitent is not satisfying his obligation [3]. Nor should you say that the Confessor is excused from the obligation of questioning by reason of the most grave inconvenience which occurs in the present case; for penitents can generally be questioned without so great an inconvenience if he proceeds cautiously and prudently, for example, by inquiring in a general manner whether anything stings the conscience concerning the sanctity of matrimony. But if they deny it, generally they are not to be pressed by further questioning. This doctrine is confirmed by a recent Decision of the Sacred Congregation of the Inquisition on May 21, 1851. For it had been asked what theological note the following proposition merited: *It is never expedient to question spouses of either sex concerning this matter* (onanism), *even if it is prudently feared that the spouses, whether the husband or the wife, abuse matrimony.* The reply was: *The proposition, as it stands, is false, too lax, and dangerous in practice.* - See below, no. 930.

[3] This reason is of little efficacy in this place. For either the Confessor supposes that the penitent is in good faith, and according to the things premised by the Author himself the reason of procuring the integrity of Confession does not require that the penitent be disturbed from good faith; or he doubts the good faith of the penitent, and then, since the question does not concern sins whose omission can be attributed to forgetfulness, the questioning will easily turn out either harmful, if the penitent was in good faith, or useless, if in bad faith the penitent preserves silence concerning that matter. On this argument see Frassinetti in Dissertation X, cited elsewhere, *Dell'integrita della Confessione*.

925. ○ **QUESTION 2. Can a wife seek the debt from an onanistic husband?**

Reply. More probably, affirmatively, for a grave cause, for example, if she herself is exposed to danger of incontinence; because she has a right to intercourse and is excused from the sin of cooperation. Thus St. Ligorius, no. 947 [4]. The Major Penitentiary, Cardinal de Gregorio, likewise declared this in an admonition concerning the aforesaid responses of the Sacred Penitentiary, although he adds that the Sacred Penitentiary refused to give a decision concerning this matter.

[4] Behold the opinion of St. Alphonsus: *The wife will have a just cause for seeking if she herself were in danger of incontinence, or if she would otherwise have to be deprived of her right of seeking more than once or twice, with a perpetual scruple whether it is a sufficiently grave inconvenience for her to contain herself then or not. See the things said in a similar case, book 2, no. 53, at "But if."* This other passage of St. Alphonsus explains his mind even more clearly. And the Confessor ought to observe these things well, so that he may know when there is occasion for declaring the obligation and when occasion is given him only for employing counsels and exhortations.

926. ○ **QUESTION 3. Does a wife sin by furnishing internal consent to the pleasure when she can permit the conjugal act to an onanistic husband?**

Reply. Negatively, provided that she does not furnish assent to the sin of her husband. The reason is that, since she does not sin at all by permitting an act of this kind, neither does she sin by admitting the pleasure arising from it, although she foreknows that the husband will not complete intercourse; for that act is honorable and licit in itself for the woman, and it is not owing to her that it is not completed in the due manner. - See *Cases*, no. 1104.

Decisions — Of the Sacred Congregations concerning Onanism

927. **FIRST CONSULTATION.** - The Bishop of N. most humbly petitions for the solution of this doubt:

1. Can a woman be absolved who indeed would suffer her husband if he acted rightly in conjugal intercourse, but vehemently desires that the husband withdraw himself because that woman fears having offspring?

2. Can a woman be absolved who, in conjugal intercourse, could by her caresses obtain from her husband that he not withdraw himself, and does not do so because that intercourse displeases her?

RESPONSE. - The Sacred Penitentiary, having weighed the doubts proposed by the Venerable Father in Christ, the Bishop of N., replied: Negatively. Given at Rome in the Sacred Penitentiary on May 27, 1847.

928. **SECOND CONSULTATION.** - It is asked of the Apostolic See what theological note the following three propositions merit, namely: 1. *For honorable reasons it is licit for spouses to use matrimony in the manner in which Onan used it.* 2. *It is probable that this use of matrimony is not prohibited by natural law.* 3. *It is never expedient to question spouses of either sex concerning this matter, even if it is prudently feared that the spouses, whether the husband or the wife, abuse matrimony.*

RESPONSE. - The Sacred Congregation of the Inquisition, May 21, 1851. To the first: The proposition is scandalous, erroneous, and contrary to the natural law of matrimony. To the second:

The proposition is scandalous, erroneous, and otherwise implicitly condemned by Innocent XI in proposition 49 (see this proposition above, no. 922). To the third: The proposition, as it stands, is false, too lax, and dangerous in practice.

929. **THIRD CONSULTATION.** - The petition of the Most Illustrious Lord Bouvier, Bishop of Le Mans, concerning the manner of acting of Confessors with spouses in relation to onanism.

Most Blessed Father, the Bishop of Le Mans in France, prostrate at the feet of Your Holiness with the greatest reverence, humbly represents the things which follow.

Almost all younger married couples do not wish to have more numerous offspring, and nevertheless are morally unable to abstain from the conjugal act.

When questioned by the Confessor concerning the manner in which they use the rights of matrimony, they commonly tend to be gravely offended; and when admonished, they neither abstain from the conjugal act nor can they be determined to an excessive multiplication of offspring.

Then, murmuring against the Confessors, they abandon the Sacraments of Penance and the Eucharist, give bad example to their children, servants, and other faithful of Christ; hence a lamentable detriment to Religion arises.

The number of those who approach the sacred Tribunal of Penance in many places decreases from year to year, especially on account of this cause, as most parish priests more conspicuous for piety, learning, and experience acknowledge.

Therefore, many say: How, then, did Confessors act formerly? No more children than today were commonly born from individual marriages, spouses were not more chaste, and nevertheless they did not fail in the precepts of annual Confession and Paschal Communion.

All freely admit that infidelity toward the other spouse and an attempt at abortion are a very great sin. But they can scarcely, indeed scarcely at all, be persuaded that they are bound under mortal sin either to observe perfect chastity in matrimony [5] or to incur the danger of generating innumerable offspring.

[5] This is not to be understood as though there were not many things which certainly are not licit for those who are bound to observe perfect chastity and yet are licit for spouses, even if for some cause they abstain from perfect intercourse, as is apparent from the things said above (see article III, *On the Sins of Spouses*). Compare also St. Alphonsus (book 6, no. 933).

The aforesaid Bishop of Le Mans, foreseeing that enormous evils will arise from this and disturbed by anxiety, solicitously asks of Your Blessedness:

1. Do spouses who so use matrimony as to prevent conception exercise an act morally evil of itself?

2. If the act is to be held as morally evil, can spouses who do not accuse themselves of it be considered as constituted in that good faith which excuses them from grave fault?

3. Is the manner of acting of Confessors to be approved who, lest they offend married persons, do not question them concerning the manner in which they use the rights of matrimony?

930. **RESPONSE.** - The Sacred Penitentiary, having maturely weighed the proposed questions, replies to the first: Since the whole inordination of the act proceeds from the malice of the

husband, who, instead of consummating, withdraws himself and sheds outside the vessel, therefore, if the woman after due admonitions accomplishes nothing, while the husband insists by threatening blows or death, she will be able, as approved Theologians teach, simply to permit it without sin, and this for a grave cause which excuses her; because charity, by which she is bound to impede it, does not oblige with so great an inconvenience.

But to the second and third it replies: Let the aforesaid Confessor recall to mind that adage, *holy things are to be treated holily*; and let him also weigh the words of St. Alphonsus de Liguori, a man learned and most skilled in these matters, who in *The Practice of Confessors*, section 4, no. 41, says: *But concerning the sins of spouses with respect to the conjugal debt, ordinarily speaking, the Confessor is not bound, nor is it fitting, to question anyone except wives, whether they have rendered it, in the most modest manner possible.... Concerning other matters let him be silent unless he has been questioned.* Nor should he omit to consult other approved authors. Given at Rome by the Sacred Penitentiary on June 8, 1842.

931. **FOURTH CONSULTATION. - Question. Bertha has a husband whom she knows by constant experience to be an onanist. In vain has she tried every means to withdraw him from so unspeakable a crime. Indeed, most grave or at least grave evils now probably threaten her, so that she must either incur these evils or flee from her husband's house unless she permits the abuse of matrimony at least sometimes, etc.**

RESPONSE. - Since in the proposed case the woman indeed does nothing against nature on her own part and attends to a licit thing, while the whole inordination of the act proceeds from the malice of the husband, who, instead of consummating, withdraws himself and sheds outside the vessel; therefore, if the woman after due admonitions accomplishes nothing, while the husband insists, threatening blows or death or other most grave evils, she will be able (as approved Theologians teach) to conduct herself permissively without sin; since in these circumstances she simply permits the sin of her husband, and this for a grave cause which excuses her, because charity, by which she is bound to impede it, does not oblige with so great an inconvenience. Given at Rome in the Sacred Penitentiary on February 1, 1823.

There also exist other responses of the Sacred Penitentiary which are entirely consonant with the preceding; Gousset reports them in the work *Justification de Saint Liguori*, page 272.

End of the Treatise on Matrimony.

Treatise On Censures

Censures are to be considered both in general and in particular.

Chapter I. On Censures in General

We must treat: 1. of the nature and division of censures; 2. of the principle or author of censures; 3. of the subject of censures; 4. of absolution from censures.

Article I. On the Nature, Division, and Conditions of Censures

I. On the Nature of a Censure

932. ○ A censure is commonly defined thus: It is a spiritual and medicinal penalty by which a baptized man, delinquent and contumacious, is deprived through ecclesiastical power of the use of certain spiritual goods.

It is called: 1. a *penalty*, because it supposes fault; 2. *spiritual*, both because it is imposed by spiritual power for the spiritual utility of Christians and because it immediately takes away spiritual goods; 3. *medicinal*, because it is imposed for this end, that the soul may return to better conduct [1]; 4. upon a *baptized man*, because those who are not baptized are not subject to the power of the Church, while power is exercised over subjects; 5. *delinquent and contumacious*, because a penalty is inflicted only upon one who is delinquent, while medicine ought not to be offered except to those whose contumacy needs so great a remedy; 6. *is deprived of the use of certain spiritual goods*, namely, goods which are subject to the power of the Church, such as public prayers, the Sacraments, etc.

[1] Although the correction of the delinquent is despaired of, a censure can be imposed both in vindication of the offense and lest others be infected by communication with the wicked (Salmanticenses, *On Censures*, chapter 1, no. 10). Hence, when the end of correction ceases, the other ends do not thereby cease (Coninck, disputation 13, doubt 1, no. 9).

Hence a censure differs: 1. from deposition and degradation, which are not medicinal nor imposed for a time, but only as punishment and permanently; 2. from irregularity, which can be contracted even on account of a defect of mind or body alone, without any fault, and therefore of itself is not a penalty but only a canonical impediment, although, when inflicted on account of certain crimes, it can also have the character of a penalty.

Hence it is also apparent that a censure does not endure perpetually but reaches its end with the amendment of the delinquent; for then he ought to be loosed from the bond of the censure.

Suspension and interdict sometimes assume the nature of a censure and sometimes of a vindicative penalty. But you will recognize them to be a vindicative penalty both if they are imposed on account of a merely past offense and if they are inflicted perpetually or even for a determinate time, for example, for two or three months [2].

[2] Therefore, one who violates interdicts or suspensions of this kind does not incur irregularity.

II. Division of Censures

933. ○ Various censures are distinguished, namely:

1. Excommunication, suspension, and interdict, concerning which we shall speak specifically.

2. Censures *latae sententiae* or *ferendae sententiae*, according as the Superior establishes that they are to be incurred by the very fact by which someone violates the law, or are to be inflicted only after the sentence of an ecclesiastical judge.

3. Censures imposed *a iure* or *ab homine*, according as they are imposed after the manner of a judicial mandate or precept, whether upon one or upon several. If a censure affects determinate persons, it is *particular*; but if it is imposed generally and without determination of persons, it is *general* [3].

[3] These things are somewhat obscure. Suarez speaks more clearly (*On Censures*, disputation 3, section 1, no. 2): *A man can impose a censure in two ways. In one way, by making a stable and permanent law which obliges under this penalty, which its transgressors incur by the very fact. In another way, a man can impose a censure by pronouncing a sentence or by commanding something in a singular action or business, in which no right or permanent statute is established, but a transitory mandate. Therefore, when a censure is imposed in the first manner, it is said to be a iure, because ... such a censure is now contained in the law itself. But when a censure is imposed in the latter manner, it retains, as it were, the common name and, almost by antonomasia or accommodation, is called a censure ab homine. And in this sense that division is common among all theologians and canonists.*

But they differ from one another in two ways. For: 1. a censure imposed *a iure*, when the author who imposed it dies, persists after the manner of all laws. But one imposed *ab homine*, since it depends upon his jurisdiction and authority, ceases when these cease through his death or removal from office. Understand this to mean that it is no longer incurred; for if someone has incurred it, the bond is removed only by absolution. 2. A censure imposed *a iure* can never be imposed for past offenses; but a censure *ab homine* is imposed not only for future offenses but also for past ones, for their satisfaction and correction (Schmalzgrueber, book 5, title 39, no. 9).

Moreover, a twofold mode of censures *ab homine* is usually distinguished, namely: 1. by way of mandate, when a Prelate mandates or commands something; or prohibit something with the sanction of a censure annexed; and this mode regards future actions, as is apparent; 2. by way of sentence, when a judgment is instituted concerning some fact and a sentence is pronounced judicially, namely by imposing a censure, etc.; and this mode regards a past fact.

But either mode can be such that the censure is particular, namely, concerning some particular fact or certain persons, or general, which is imposed without determination of any singular fact or at least of a person.

St. Alphonsus (book 7, no. 6) thinks that the censures which a Bishop imposes in a diocesan Synod are to be held as imposed by way of statute, and therefore, as imposed *a iure*, persist after the death of the Bishop; but those imposed outside the Synod are imposed *ab homine* and therefore cease through the death of the one imposing them.

4. Reserved or non-reserved censures, according as the Superior has reserved absolution from them to himself or has permitted ordinary Ministers to absolve from them. Some are reserved to the Pope, while others are reserved to Bishops. Censures *ab homine* are always judged reserved unless they have been imposed by a general sentence.

5. Notorious or occult censures, according as it is publicly established that someone has incurred them on account of a fact which is so known that it can no longer be concealed, or otherwise.

6. Just or unjust, valid or invalid censures, according as the Superior has or has not consulted justice, truth, and law in imposing the censure.

III. Conditions of Censures

934. ○ For the validity of a censure it is required that the sin upon which it is inflicted be mortal, external, consummated, not merely past, and joined with contumacy.

1. *Mortal*; for a censure, since it is a most grave penalty, requires mortal fault [4].

[4] It is the common opinion of the Doctors, as can be seen in St. Alphonsus (book 7, no. 30) and Schmalzgrueber (book 5, title 39, no. 59), that some light censure, for example, minor excommunication, some light suspension, or some light personal interdict, can be imposed on account of light fault. St. Alphonsus adds, if the censure is imposed for a brief time; but then it will not properly be a censure, but a certain disqualification, as was said above, no. 932. Moreover, the Author speaks of major excommunication and of suspension and interdict as they are commonly imposed, namely, from every use; these, according to the common opinion of all, cannot be imposed on account of light fault. Nevertheless, a fault must be understood as light when it is such both in itself and by reason of the end; for the character or end gravely intended, or scandal or danger, can cause a thing light of itself nevertheless to be capable of a grave precept. See Suarez (*On Censures*, disputation 4, section 6, no. 12), Lugo (*On Justice and Right*, disputation 16, no. 61), Lessius (book 2, chapter 12, no. 54), Sanchez (*On the Decalogue*, book 7, chapter 21, nos. 28, 29).

2. *External*; for the Church judges in the external forum, to which censures pertain, and not concerning merely internal things [5].

[5] Not only must the sin be external, but also grave by reason of the external act.

3. *Consummated in deed*, in its own genus [6]; because penal laws are to be interpreted strictly according to the rule of Law: *It is fitting that odious things be restricted and favors amplified.* - Except where the legislator expresses the contrary. *external sin on account of which the censure is to be contracted must be complete in its own genus according to the proper meaning of the words which are contained in the precept or law.* To this pertains the rule that, for a censure to be incurred, that effect which the legislator intends to prohibit under censure must be complete. Therefore, if the words, carefully inspected, signify that the ultimate effect is prohibited, for example, homicide, the censure is not incurred unless that final effect follows, namely, death. But when the action itself or the attempt is principally prohibited under censure, then, when it has been posited, the censure is immediately incurred even if the effect does not follow. See Bonacina (*On Censures*, disputation 1, question 1, point 4, nos. 12, 13) and Croix (book 7, no. 59).

[6] Schmalzgrueber (book 5, title 39, no. 64) proposes this condition more clearly, so that it needs no exceptions: *In order that a censure be incurred, the sin*

But according to the more probable opinion, one who has revoked counsel or a mandate before execution does not incur the censure (Suarez, *On Censures*, disputation 44, section 5, no. 13; St. Alphonsus, book 7, no. 40). But regarding one who, although he wished and attempted, was unable to signify the revocation of the counsel or mandate to the mandatary or executor, or who repents after the cause, for example of death, has been posited but before the effect which he could not impede has followed, according to the opinion of Cardinal de Lugo (*On Penance*, disputation 16, no. 453) and Suarez (*On Sins*, disputation 3, section 4, nos. 3, 7, 8), it is certain that he incurs the censure; nor does there appear to be any force in the reason which St. Alphonsus (book 7, no. 40, and book 4, no. 149) brings to the contrary from the Salmanticenses.

** 1. Against this Note the VV. write fourteen columns (pages 841-848), and they contend two things (pages 846, 847), namely: 1. that Suarez in no way holds the opposite opinion and is in no way opposed to St. Alphonsus; 2. that Lugo hands down an entirely singular doctrine.

2. And as regards the first point, the VV. restrict the question to those things which Suarez discusses (*On I-II*, tract 5, *On Sins*, disputation 3, section 4), where he asks at what time someone is judged to sin by a sin of omission; and the VV. transcribe almost that entire disputation throughout four columns (pages 844-846). But there are two things upon which they insist. First, when Suarez (no. 7) premises: *You will ask whether it can happen that the will which is the cause of the omission as such is a fault, and yet the omission which afterward follows is in no way a sin; for example, if someone, before the omission follows, repents of the prior fault and of the cause given, but nevertheless cannot impede the effect*; he replies to this question (no. 8) that each manner of speaking is probable. Hence the VV. (page 846) conclude, as it appears, that the opinion of St. Alphonsus was probable

to Suarez. Second, the VV. observe (page 846) that although Suarez affirms that the guilty person, however penitent, can justly be punished, nevertheless this is said only concerning irregularity and not concerning excommunication. For thus Suarez says (loc. cit., no. 7): *However much that man afterward repents, he is justly punished on account of that act and remains irregular; therefore that exterior act has the character of sin.* But the VV. there give this reason for the distinction which they devise for the present matter between irregularity and censure: that *irregularity is a vindicative penalty ..., but the penalty of excommunication is medicinal.* And concerning this latter they subjoin: *If* (the penitent guilty person) *did what he could and was unable to impede the execution, he does not incur excommunication, because contumacy, which is necessarily required for incurring every censure, is absent.*

3. Reply to the first. That Suarez says each manner of speaking is probable concludes nothing at all for the case of the VV. For the question concerns a mere denomination; and, as the same Suarez (no. 3) had said, perhaps the disagreement concerns the name. But otherwise, as the VV. themselves acknowledge, whether that omission of which there is question is called a sin or is not called a sin, the opinion of Suarez is certain that the guilty person is justly punished for that omission. Therefore, the VV. insist in vain upon these probable manners of speaking when the penalty is inflicted not probably but certainly.

4. Reply to the second. That Suarez, when he says that the guilty person is nevertheless justly punished, ought to be understood concerning irregularity alone and not concerning the penalty of excommunication is manifestly false. For in the preceding things (no. 3) Suarez openly indicates that, in the case, if the omission had truly followed and if the penalty of excommunication or irregularity had been imposed upon such omission, the guilty person would incur it. Therefore, when he afterward (no. 7) names only irregularity, he does this merely by way of example and not to the exclusion of other penalties and consequently of censures, if any have been imposed upon an omission of this kind.

5. But the reason on account of which the VV. say that in the case the guilty person, if he repents of the cause posited, indeed incurs irregularity but not excommunication, finally rests only upon a preposterous notion of the contumacy necessary for incurring censures, which notion they then gratuitously fasten upon Suarez. For contumacy in the present question does not consist in this, that after violating a law commanding under censure someone perseveres in the same evil will, but entirely in this, that someone knowingly and willingly has contemned the law and the censure by disobeying. Reiffenstuel aptly says (book 5, title 39, no. 14): *When it is said that contumacy is required for incurring a censure, it is not to be understood as though express and formal contumacy were required; for virtual contumacy and interpretative contempt of the Church suffice, CONSISTING IN THIS: THAT SOMEONE KNOWS THAT SOMETHING IS PROHIBITED UNDER CENSURE BY A LAW OR BY A LEGITIMATE ECCLESIASTICAL SUPERIOR, AND NEVERTHELESS PRESUMES TO DO IT.* Nor does Suarez speak otherwise (*On Censures*, disputation 4, section 3, no. 10): *If the law commands absolutely and imposes a censure against transgressors, then that voluntariness which suffices for sinning deliberately and in a human manner against that law and for contumacy toward the censure is sufficient for incurring such a penalty imposed by the law itself. This rule appears manifest from the terms; because just as that law absolutely prohibits such an offense, so it absolutely pronounces the censure; therefore by force of such a law no more, nor another mode, of voluntariness is required for incurring the censure than for sinning against the law itself. Therefore, just as it does not pertain to the character of sin that the sinner afterward persevere in the evil will, so neither is anything more required for incurring the censure than contumacious disobedience in transgressing the law itself.*

6. But there is no need to dwell upon more things when we have the present question resolved by Suarez no less than by Lugo and others. For, discussing (*On Censures*, disputation 20, section 3, no. 16) one who has an obligation to pay a pension within a month, and is now at the beginning of the month able to pay but, caring nothing about payment of the pension, spends everything and thus becomes unable to pay, he establishes these things: *I say, therefore, that this man is not excused from incurring excommunication if, after the prescribed term has elapsed, he does not pay the required pension. The reason a priori is that he truly acts against the precept and consequently is contumacious; just as one who renders himself unable to recite acts against the precept concerning reciting the office.*

7. But that he is not excused from incurring the censure however much he repents, Suarez continues and explains thus (no. 17): *But it must be recalled that in cases of this kind one time is that at which the offense is committed before God, and another that at which excommunication is incurred. For someone commits the offense at the*

time at which he becomes unable to pay according to the appointed term; but he does not incur excommunication until that term itself actually ends with the obligation unfulfilled, because the censure is not contracted until the omission of the precept has been externally consummated. But although the cause of the omission was posited earlier, and therefore the offense was then especially committed, nevertheless the omission itself was not consummated until the appointed term; and therefore until that time excommunication is not incurred, from which inability

cannot then excuse him; because, since this inability was voluntary, it does not render the omission involuntary, but LEAVES IT SINFUL AND CONTUMACIOUS BY FORCE OF THE PRIOR CAUSE, EVEN IF PERHAPS IT NOW DISPLEASES HIM, WHICH IS NOT SUFFICIENT TO IMPEDE EXCOMMUNICATION.

8. But Suarez had explained in the place cited above (*On I-II, On Sins*, disputation 3, section 4, no. 8) how it can happen that even by the penalty of excommunication one is punished as guilty who has already been touched by sorrow for his sin, where he establishes that an omission culpable in its cause is better called a sin, even if the guilty person, before the omission itself follows, has so repented that he is now constituted in grace, as certain persons (ibid., no. 7) objected to the contrary: *It ought to be said*, says Suarez, *that the PENALTY is imposed upon the external action not only because it is a sin when it occurs, but because it is culpable of itself and has an evil will as its cause, even if accidentally it should happen not to be a sin on account of a change of will; but perhaps those things would more properly be called sins because they proceed from a free and defective cause insofar as one is bound to avoid them. Nor does the subsequent will matter, because it is not the principle of the omission which follows, but another prior will which preceded. But the external action or omission is denominated a sin from the will from which it proceeds; hence at the same time the same omission both is willed as an effect by the will which is its cause and is unwilled after the manner of an object; and the first will is "I will"; the second is "I would not will the effect to follow." To the confirmation I reply that this omission has a twofold relation: one to the preceding depraved will, of which it is the effect; the other to the present circumstances and will; and as such it receives diverse denominations. Nor is it unfitting that the same external act be denominated good and evil from diverse wills.* But the penalty concerning which Suarez speaks here is not irregularity alone, as the VV. said, but also censure, as was shown above.

9. Therefore, let it be concluded that the VV. did not rightly assert that Suarez in no way holds the opposite opinion and is in no way contrary to St. Alphonsus. Let us come to Cardinal de Lugo.

How consonant his doctrine is with those things which we have just reported from Suarez is apparent from the things which he replies (*On Penance*, disputation 16, no. 445) to those objecting (no. 442) that it can happen that a man is already justified through contrition or confession when the effect of the prior evil will is posited DE NOVO; therefore that effect does not suffice for giving a new denomination of sinner. Lugo therefore replies thus: *However much the past will is in fact retracted, nevertheless, if the effect of death afterward follows, he who gave the poison will no less incur irregularity or excommunication, ACCORDING TO THE COMMON OPINION OF ALMOST ALL, than if the will had not been retracted; because through that retraction it is not removed that the effect which followed was voluntary, as proceeding from the will.*

10. And a little afterward (no. 446) he adds a clearer explanation thus: *That effect* (namely, the death which followed from the poison) *is voluntary and free denominatively insofar as it had its origin from a prior free will, not insofar as it now depends upon a will not retracted. And the reason is clear:*

because denial of retraction does not cause the will now to influence the effect more, nor does retraction cause the will to influence less; for the whole influence on the part of the will was to posit the cause, which it now cannot remove. Therefore, since retraction does not diminish the positing of the cause, nor does the absence of retraction add strength to the cause already posited, it follows that the will influences the subsequent effect in the same manner whether it retracts or does not retract; because it influences in no way according to the present state, but only according to the past state, as it is past.

Hence it is permissible to conclude two things. For: 1. Lugo, as is apparent, testifies that in the case excommunication is incurred according to the common opinion of almost all. What, then, is this which the VV. affirm (page 847), that Lugo here hands down an entirely singular doctrine? 2. Therefore empty is the reason of those who excuse the penitent guilty person from incurring a censure because the effect is not imputable after the cause has been retracted. This reason would indeed prove, contrary to what even St. Alphonsus after others teaches, that not even irregularity is incurred.

11. And this is what Lessius also observes, where he writes (book 2, chapter 13, no. 17): *If the revocation of the mandate does not become known to the mandatary, the one mandating is bound, when the effect follows, no less than if he had not revoked; because by force of the mandate the harm was done. Hence he also incurs censures and irregularity if perhaps these have been imposed upon the one mandating. Nor does it matter that he is now in the state of grace; because although such a censure is not contracted except through mortal sin, nevertheless it is not necessary that the fault of that sin then be committed, but it suffices that it has been committed and that its effect or the external work then occur by force of it, as happens in the proposed case.*

12. But Coninck (disputation 14, no. 183) had already answered the little reason which the VV. appear to esteem greatly, namely, that the guilty person, employing every diligence to impede the effect, has put off contumacy. *Even when*, says Coninck, *after all diligence of this kind has been employed it nevertheless remains established that the other* (the mandatary) *was still truly moved by the authority or reasons of the one mandating or counseling to perpetrate the crime ..., in that case, I say, he would truly incur*

the penalties established for those mandating or counseling such a work; because such penalties are generally established for those who mandate or counsel such a crime when the effect follows; but in this case such persons would truly have done this; therefore they would incur those penalties. Nor does it matter that the one mandating is now truly penitent for having mandated this, or that through contrition or confession he is in the state of grace ...; because, notwithstanding all these things, just as in that case he will truly be the cause of the injury, so he will incur those penalties; just as one who had mandated that a cleric existing elsewhere be mutilated, and afterward, penitent for the deed, contrite and confessed, seasonably sent even twenty messengers to revoke the mandate and impede the crime by any means, however much diligence he employed for this, if nevertheless those messengers, even from pure malice and fraud, failed to notify the revocation to the mandatary, when the effect followed the one mandating would incur excommunication, irregularity, and the obligation of restoring the harm which the cleric suffered, as all acknowledge. Note this: AS ALL ACKNOWLEDGE. How, then, do the VV. write that Lugo here hands down an entirely singular opinion?

13. But the VV. appear to have wished by these words not indeed to deny that the doctrine of Lugo set forth thus far was common to others, but to have ascribed to Lugo another certain portent of doctrine which everyone would truly call altogether singular and at the same time would vehemently marvel at. For they attribute to Lugo that he asserts that excommunication is incurred when the mandate is given; but that the one mandating is freed from excommunication when he repents before the effect follows, and then afterward falls again into excommunication when the effect follows!!! Thus they write (page 847): *According to his*

(Lugo's) opinion, the one mandating or counseling homicide, at the time at which he gives the mandate or counsel, would incur excommunication but not the penalties annexed to excommunication, because the Church does not will to punish him unless the condition of the effect following has been posited. But if meanwhile he performed true penance for the offense committed, he would be freed from the bond of excommunication; nevertheless, when the effect followed, he would incur excommunication DE NOVO, and indeed this time with the annexed penalties. Thus they write.

14. But indeed you will ask: where in Lugo's books did the VV. espy this new monster of doctrine? Yet at hand is the passage of Lugo which the VV. themselves report from disputation 16, *On Penance*, no. 453. Thus Lugo there: *They object secondly: Because the censure is incurred now when the effect is posited, and not before; but this is not incurred except on account of sin; therefore a sin is also posited now. - It is replied by denying the consequent; for the censure is incurred now on account of a past sin which the Church nevertheless does not will to punish unless the condition of the effect following has been posited. Hence it can also happen that a censure is incurred by one who has already been justified from the past sin through contrition or through attrition with the Sacrament, because a censure is a penalty by which the Church can still justly punish a man on account of a past sin. And just as one excommunicated, although justified through contrition, still remains excommunicated until he is absolved, so one who is now contrite can incur excommunication DE NOVO on account of a past sin. And indeed, on account of the censure or reservation, it will sometimes be necessary in confession, only after the effect has followed, to explain also the effect which followed.* Thus far Lugo.

How the VV. saw those portents in these words can scarcely be divined. For: 1. Lugo, when he concedes the antecedent of the objection and denies the consequent, thereby affirms that excommunication is not incurred before the effect has followed; how then do the VV. fasten upon Lugo that the censure is incurred when the mandate is given? 2. Lugo expressly says here that excommunication is not removed except through absolution, however much the guilty person has already been justified through contrition; how then do the VV. fasten upon Lugo that through penance the guilty person is freed from that imaginary excommunication and afterward incurs another excommunication when the effect follows? 3. Lugo recalls no other penalty here by which the guilty person is justly punished by the Church except the penalty of censure; how then do the VV. invent penalties annexed to excommunication which Lugo asserts are not incurred when the mandate is given but only after the effect has followed?

But the VV. themselves candidly disclose the origin of these phantasms. For after premising the words above (no. 13), they subjoin: *We do not see how this opinion* (of Lugo) *can be explained otherwise, since he expressly says DE NOVO*; namely, the VV. explain that phrase *de novo* as though it there signifies *again*. But everyone knows that *de novo* is also used for *newly* or *anew* (see the lexicon under *Nove*), that is, to designate that which had not occurred before. And indeed one could see that this phrase *de novo* was employed in this sense in Lugo himself a little before the text adduced (see above, no. 9), where he writes: *When the effect of the prior will is posited DE NOVO*; for it cannot be understood of an effect posited again, but of an effect newly or only now finally posited. Against these portentous phantasms let it suffice to remember that saying: What can excessive fervor in disputing not do?

15. I would not wish to omit here that those words of the Note under discussion, *nor does there appear to be any force in the reason which St. Alphonsus brings to the contrary from the Salmanticenses*, are not, I say, our words, but those of John de Dicastillo.

He himself wrote thus concerning this question (*On Censures*, disputation 1, no. 291): *But if, before* (the revocation by the one mandating) *comes to the knowledge of the mandatary, the latter perpetrates the offense, the one mandating incurs the censures.... Nor does it matter that perhaps he is now*

in the state of grace; because although a censure and irregularity are not contracted except on account of mortal sin, nevertheless it is not necessary that the fault endure when they are contracted; but it suffices that it has been committed and that the effect or external work then occur by force of that fault, as we said concerning one who wounds unto death, etc. And again (disputation 2, no. 344), where he recalls the opposite opinion: *Filliuccius adds that one is excused from a censure to be imposed who, when the appointed term arrives, is sorry for the fault committed. This limitation rightly displeases others; for it matters little that someone is now sorry, provided that he previously gave a sufficient voluntary cause for the omission. For a censure is often incurred even if, at the time of incurring it, someone has already been contrite for the sin and constituted in grace. Thus one who cast a missile at a cleric or administered poison to him, even if he becomes contrite for the sin before the effect follows, incurs excommunication and irregularity, because he voluntarily gave cause for such killing and striking. Let Suarez, etc., be read.* But concerning the opposite opinion of Filliuccius, at the end he says most expressly that IT IS PROVED BY NO SUITABLE FOUNDATION.

4. *Not merely past*; because a censure is a medicinal penalty and therefore cannot be imposed upon those who have already returned to better conduct. Therefore, for a sin to be called merely past in the case, it is necessary that it cease so entirely that it is in no way joined with any present disobedience and contumacy. See St. Alphonsus (book 7, no. 54).

5. *Joined with contumacy against a law or* precept. The reason is that the principal end of a censure is to break obstinacy. - See St. Alphonsus, no. 30 and following [7].

[7] Therefore, it is not sufficient that the sin be contrary to natural or divine law unless it is also contrary to some law of the Church. For through censures contumacy against a law of the Church is punished, and indeed against a Church threatening a censure upon the contumacious.

935. ◦ Resolutions. - 1. One who is excused from grave fault on account of some circumstance is also excused from a censure, although the matter is grave in itself.

2. If something altogether light is commanded under censure, the censure is not incurred, provided that the thing which appears light under some respect does not become grave from another source.

3. A Superior who imposed a censure on account of any grave fault whatever would act imprudently and illicitly, but nevertheless validly; for the end of the Church is to punish only the graver crimes [8].

[8] The Council of Trent (session 25, chapter 3, *On Reformation*) has these words: *Although the sword of excommunication is the sinew of ecclesiastical discipline and very salutary for keeping peoples in their duty, nevertheless it must be exercised soberly and with great circumspection; since experience teaches that, if it is inflicted rashly or for light causes, it is more despised than feared and produces ruin rather than salvation.*

4. The excommunication which is said to be imposed upon harmful animals, for example, upon locusts, is not excommunication properly so called, but an adjuration or a prayer made for their destruction, lest they do harm.

5. Likewise, when the dead are said to be excommunicated, this must be understood of a certain execration or declaration of the excommunication which they incurred before death and in which they died [9].

[9] Therefore, absolution imparted to excommunicated persons who have died with signs of repentance is extended directly not to them but to the living, insofar as the latter are released from the obligation not to communicate with the deceased in burial and public prayers. See Schmalzgrueber (book 5, title 39, no. 39).

936. ○ Questions. - **QUESTION 1. How is a censure *latae sententiae* distinguished from a censure *ferendae sententiae*?**

Reply 1. Generally, a censure will be *latae sententiae*: 1. if the words by which it is expressed exclude the action or ministry of anyone else, for example, if it is imposed with these words: *by the fact itself, by the law itself, by that very fact, without another sentence*;

2. if the words are in the present or past tense, for example, *we excommunicate, we have excommunicated*, etc.; 3. if the words are in the imperative mood, for example, *let him fall under excommunication, let him remain suspended, interdicted*, etc. - St. Alphonsus, no. 7.

Reply 2. But a censure is to be held as *ferendae sententiae*: 1. if the words by which it is imposed demand the work and ministry of another, for example, *let him be excommunicated by the Bishop*; 2. if they are only comminatory, for example, *we command under threat of anathema*, unless something else is gathered from the circumstances; 3. if they express the future tense, for example, *he will be excommunicated, he will be an excommunicated person*, etc. [10].

[10] If the words are ambiguous, rule 49 of the Law in the *Sext* can be followed: in doubt concerning penalties, the more benign interpretation is to be made. Common opinion.

937. ○ **QUESTION 2. Is one who doubts whether he has incurred a censure to be judged to have incurred it?**

Reply. Negatively, whether you doubt that you sinned gravely or that the case falls under the censure. The reason is that, according to the commonly received axiom and the very rule of Law, odious things are to be restricted. Thus commonly. Nevertheless, you incur the censure if the doubt concerns the gravity of the matter itself, both considered in itself and in view of the end, etc. For then this matter is to be regarded as grave, since it is such in the judgment of the Superior who imposed the censure and, moreover, in doubt the presumption favors the Superior. - St. Alphonsus, no. 32; Salmanticenses, chapter 1, no. 207, etc. [11].

[11] For other resolutions according to the diversity of the doubt, see St. Alphonsus (book 7, nos. 67, 68).

QUESTION 3. Is someone bound by a censure which he knows to be manifestly unjust?

Reply. Negatively, whether the Superior, relying upon a false presumption, condemned an innocent person as guilty, or omitted the legal forms, or exceeded the limits of his jurisdiction. - St. Alphonsus, no. 68. - Nevertheless, the danger of error in one's own cause must be carefully avoided [12].

[12] Nevertheless, if it is not publicly established that the censure is null, it must be observed on account of scandal (see St. Alphonsus, book 7, no. 68).

938. ○ **QUESTION 4. Does ignorance excuse from a censure?**

Reply 1. Ignorance of fact certainly excuses, namely, when someone does not know that he is positing an act prohibited under censure. Thus, for example, if someone strikes a priest whom he thinks to be a layman, he does not incur the censure imposed upon those who strike clerics. The reason is that the censure must be known to the sinner in order that he be contumacious. Thus in Canon Law, chapter *Si vero aliquis*, *On the Sentence of Excommunication*. - St. Alphonsus, no. 43.

Reply 2. Ignorance of an ecclesiastical law commanding or prohibiting something under censure also excuses. This is evident from the same reasons just given; for one who is ignorant of the law of the Church cannot be called contumacious against the Church, as is apparent from Canon Law, *Sext*, book 1, title 2, *On Constitutions*, chapter 2, where it is said: *We do not will the ignorant to be bound, provided, however, that the ignorance was not crass or supine.* - St. Alphonsus, ibid.

939. ○ **QUESTION 5. Does vincible ignorance excuse from a censure?**

Reply 1. Affirmatively, if it is not gravely culpable; because then the ignorant person cannot be called contumacious against the Church. Thus all.

Reply 2. Negatively, however, if that ignorance is gravely culpable; because then it can be called crass; moreover, crass ignorance does not excuse from a censure, as is evident from the cited Canon Law. - St. Alphonsus, book 7, no. 43, and others commonly [13]. Otherwise, however, ignorance does not prevent someone from being contumacious against a law of which he is culpably ignorant. Except, however, if it is said in the decree of censure: *whoever shall have done this knowingly, deliberately, rashly* [14], *whoever shall have presumed*, etc. For these words demand a perfect and direct voluntary act and certain knowledge of the censure. - St. Alphonsus, no. 46. Many nevertheless contend that gravely culpable ignorance excuses from a censure, although it does not excuse from mortal sin; because gravely culpable ignorance can exist without therefore having to be called crass.

[13] It is scarcely apparent why St. Alphonsus (book 7, no. 45) called this opinion common, when the Salmanticenses, from whom he borrowed this opinion, cite more Authors for the opposite than for it (*On Censures*, chapter 1, no. 196); indeed Suarez himself (*On Censures*, disputation 4, section 10, no. 12) admits that other modern authors departed into another opinion. But the reason given by Suarez, if it is to be called a reason, is of no weight. Therefore, nothing ought to prevent someone from safely following the opposite opinion, which the Author presently subjoins.

** Against this little Note the VV. write (page 849): *A marvelous argument! As though the Salmanticenses had intended to compile an exact catalogue of Authors!* And then, besides the four cited by the Salmanticenses for the opinion of St. Alphonsus, they add Laymann, Bonacina, Bossius, Molina, Salas, Filliuccius, Reginaldus, and Alterius.

Reply. Let the antecedent pass; and I deny the consequent. For the question is whether the opinion of St. Alphonsus is to be called common. Moreover, even after those eight are added, would this opinion be called common? For the Salmanticenses (*On Censures*, chapter 1, no. 196) cite eight for the opposite, namely, Tanner, Caelestinus, Diana, Henriquez, Peter de Ledesma, Palaus, Sanchez, and Avila. Add also that, among those cited by the VV., Filliuccius (*On Censures*, chapter 8, no. 262), contrary to what St. Alphonsus holds, supposes ignorance mortally culpable which nevertheless is not crass or supine; add that Bonacina (*On Censures*, disputation 1, question 2, point 1, no. 10) calls the opinion of Sanchez not improbable, whom St. Alphonsus admits to be opposed to himself. Therefore, even if we insist upon these citations alone, is not number now balanced by number?

But other Authors can easily be added to those cited by the Salmanticenses against the opinion of St. Alphonsus. Thus, for example, Pirhing (book 5, title 39, no. 46), Dicastillo (*On Censures*, disputation 2, no. 298), Babenstuber (tract 4, disputation 1, article 3, no. 10), Tamburini (*Decalogue*, book 2, chapter 1, section 7, no. 22), Mazzotta (tract 8, disputation 1, question 2, chapter 3, section 2), Reuter (part 1, nos. 22 and 267), and, lest we seek others, Portellus, Serra, Quintanadvenas, Praepositus, and Barbosa in Diana (volume 5, tract 1, resolutions 33 and 35). Let us conclude, therefore, that the foundation is weak upon which the opinion of St. Alphonsus is called common. But let us come to the reason.

Since it is said in the little Note that the reason brought by Suarez is of no weight, the VV. subjoin (page 850): *If someone judges the reasons brought by Suarez and other Authors to be of no weight, there is surely nothing by which he would be prevented from embracing the opposite. But the authority alone of Father B., who does not even adduce those reasons and nevertheless condemns them, is by no means sufficient; for no title is known to us by which he could claim this prerogative for himself.*

Reply. Father B. claims no other prerogative for himself except that he advance nothing on his own authority, as he has professed more than once. Accordingly, behold Laymann, who writes concerning this question (book 1, tract 2, chapter 4, no. 5): *But it appears to be a question of name.* Namely, the entire controversy depends upon the sense in which crass or supine ignorance is taken. On this matter, behold Sanchez (*Decalogue*, book 1, chapter 16, no. 7), who writes: *Vincible ignorance which is not affected is one thing when only mortally culpable, but another when crass or supine.* Suarez, on the contrary (*On Censures*, disputation 4, section 10, no. 12): *Every ignorance which suffices for mortal transgression or disobedience is to be called crass or supine.*

But how does Suarez prove his thesis? Entirely by this argument (loc. cit.): *Other modern Authors ... appear to distinguish degrees in that very ignorance which suffices for mortal sin, so that below a certain degree it is not crass or supine but only vincible, although mortal, and therefore excuses; but beyond that degree it is now crass or supine and does not excuse. But certainly the distinction of such degrees is founded upon no law and can be explained by no reason.*

Therefore, the entire force of the argument resides in this: that the distinction of degrees cannot be explained. But does not Suarez himself admit this distinction of degrees? For he himself writes thus (*On I-II*, tract 2, disputation 4, section 1, no. 14): *Because there can be more and less in this negligence, according to this various degrees of this ignorance are customarily distinguished.* Hence Laymann also (loc. cit.): *I admit this*, he says, *that among ignorances crass in the mind of Suarez there is a certain latitude, namely, one very crass and altogether supine, another less crass, all of which nevertheless can be mortal.* Therefore, since, by Suarez's own admission, various degrees are distinguished among gravely culpable ignorances, to what does his argument finally amount, that the distinction of degrees cannot be explained?

Suarez insists: *For who shall say that negligence sufficient for sinning mortally is crass in such a degree, but not in such another; or by what reason can these degrees be discerned?*

Reply. Another will answer *ad hominem*: Who shall say that negligence sufficient for sinning mortally exists in such a degree, but not in such another; or by what reason can these degrees be discerned? Certainly, if it can sometimes be determined when ignorance is grave, and therefore, according to his opinion, crass, it will be possible to determine in the same manner when, among mortal ignorances, as Laymann says, ignorance is very grave and when less grave.

And behold the reason why it was said in the Note that the reason brought by Suarez is of no weight. For, finally, as Laymann says, it is a question of name. And just as it pleased Suarez, on account of that very slight little reason, to define as crass any ignorance however grave, so it seemed to others that only that ignorance should be called crass or supine which was distinguished by some greater gravity. *Crass and supine ignorance*, says Barbosa (*Collections*, volume 4, on book 1 of the *Sext* of the Decretals, title 2, chapter 2, no. 7), *is called that which proceeds from THE GREATEST NEGLIGENCE, as happens when someone has employed no diligence or only slight diligence*, etc. And from this he proves that Bonacina called the opinion of Sanchez and Navarre not improbable. And as to what Suarez cites for his own purpose from law 15, ff. *On Contracting a Purchase*, where a supine man is named, as though, namely, every ignorance which does not excuse from a grave obligation, for example, of restitution, were now to be called supine, the gloss explains it thus from other texts of Law: *A supine man is one MOST negligent*; which is apparent from law 9, ff. *On Ignorance of Law and Fact*, where it is read (section 2): *But ignorance of fact only then does not harm anyone if THE GREATEST negligence is not charged against him.* Moreover, does Suarez himself think that it is necessary for grave fault of ignorance that the negligence be the greatest? Hence Sanchez (loc. cit.), after distinguishing mortally culpable ignorance from crass and supine ignorance, well adds: *Suarez denies this division, saying that every mortally culpable ignorance is crass or supine.... But I believe this division to be true.*

I am led first because crass or supine ignorance is that which proceeds from the extensive fault of the ignorant person, namely, one who has employed no diligence or very slight diligence for knowing. And thus not every negligence, but the greatest, is what can constitute crass ignorance, as I proved from many sources in book 9, On Matrimony, disputation 32, nos. 32 and 33. Hence Valentia very well says that this ignorance exists when the ignorant person, although he could very easily overcome it, employed no diligence. But in order that ignorance be vincible and not excuse from mortal sin, such great negligence is not required; rather, as we shall say according to the mind of all in nos. 34 and 36, it is required that the moral diligence necessary according to the quality of the business was not employed. Secondly, because, in the matter of an unformed confession, the Doctors not to be condemned (Canus, Soto, Henriquez, Bartholomew de Ledesma, Peter de Ledesma, and many others) *think that it will be valid when a sin has been tacitly omitted or when a sufficient examination was not previously made from mortal negligence or ignorance, provided that it was not excessively crass or supine. And Soto explains this crass*

ignorance, from which an unformed confession is rendered altogether invalid, as existing when almost no diligence was employed for recalling sins, which is the definition of crass ignorance. Sanchez draws a third argument from the Doctors, where they say that culpable ignorance perhaps excuses from the excommunication of particular Prelates, provided that it is not crass or supine, but not from censures of the common law. There they plainly speak in the former member of mortally culpable ignorance. For otherwise they would ineptly say that it does not excuse from excommunication of the common law; and still more ineptly would they use the particle perhaps, as though doubting whether it excuses from excommunication by particular Bishops, when it is clearer than the midday light that no excommunication is contracted except on account of mortal fault.

And let these things suffice so that it may be evident that it was not without cause said in the little Note: 1. that it is scarcely apparent why St. Alphonsus called his opinion common; 2. that the reason brought for it by Suarez is of no weight.

[14] Sanchez rightly notes (*On Matrimony*, book 9, disputation 32, no. 38) that Suarez, who (*On Censures*, disputation 4, section 10, no. 3) here takes temerity for imprudence by which an ignorant person exposes himself to the danger of acting against the law; for temerity in reality designates an act posited against express knowledge of the law.

And indeed this observation of Sanchez appears to apply equally to affected ignorance; which nevertheless the same Sanchez, less consistently with himself, teaches to excuse in *On the Decalogue*, book 2, chapter 10, no. 38, but denies to excuse in *On Matrimony*, book 9, disputation 32, nos. 39, 40. The Doctors also differ on this question, as may be seen also in St. Alphonsus (book 7, no. 48), who says that he adheres to the negative opinion as though it were more common; but if you count the Authors cited for each opinion by the Salmanticenses (*On Censures*, chapter 1, no. 199), you will find more in reality for the affirmative. Hence, whether you consider authority or reasons, concerning which see Roncaglia (*On Censures*, question 5, chapter 5, question 1, reply 4), Bonacina (*On Censures*, disputation 1, question 2, part 1, no. 11), and the Salmanticenses (loc. cit.), you conclude that in an uncertain matter the general principle is to be employed, and that one is in possession of the right to enjoy spiritual goods where the opposite is not demonstrated.

** The VV. censure two things in this Note (pages 850-855). First (page 853), just as concerning the preceding Note, they complain that it is said that more Authors are cited by the Salmanticenses for the affirmative opinion than for the negative opinion.

Reply. Do the VV. perhaps think it wrong that readers be warned if at some time a doubt arises whether an argument drawn from authority may perhaps need some critical examination? Indeed, the Salmanticenses expressly cite only ten, and tacitly others in Diana, for the affirmative; but for the negative, seventeen are expressly recalled in St. Alphonsus, and tacitly others in Bossius and the Salmanticenses. But, for example: 1. Kazenberger, namely, the Author of the additions to Sporer, whom St. Alphonsus cites for the negative, writes thus (*On Censures*, chapter 3, no. 39): *It is probable and safe that even affected ignorance in such a case excuses from incurring a censure, as Sporer teaches with Sanchez, Bonacina, and Tamburini, tract 2 on the First Precept of the Decalogue, chapter 5, no. 42.* And since Palaus actually holds thus (tract 2, disputation 1, point 18, no. 1), whom St. Alphonsus nevertheless cites for himself, there now accede to the affirmative, besides the Salmanticenses themselves, as St. Alphonsus testifies, Sporer, Kazenberger, Palaus, and in addition Tamburinus (*Decalogue*, book 2, chapter 1, section 7, no. 27), who are not named by the Salmanticenses. 2. To these must also be added Filliuccius (tract 22, chapter 7, no. 205), who is not well cited by St. Alphonsus for the negative, and with Filliuccius also Tanner and Roncaglia, whom St. Alphonsus rightly numbers among those affirming; and Merolla must also be numbered with these (disputation 1, chapter 2, from no. 645), who treats this controversy more fully and solidly. And this light specimen, without our dwelling longer upon these things, sufficiently shows that it is not futile for Arguments sought from authority to be recalled to some weighing, especially since St. Alphonsus himself indicates that he was moved to prefer the negative opinion by authority rather than by reason, saying: *I do not dare call this second opinion* (the affirmative) *improbable; but I adhere more to the first, at least as the more common.*

The other thing which the VV. censure is that it is said in the Note that Suarez is noted by Sanchez because he takes temerity for imprudence; consequently they observe (page 852) that mere imprudence OF ITSELF never induces mortal fault.

Reply. The VV. rightly say, mere imprudence OF ITSELF. But it is not so understood by Suarez, who derives the gravity of this lack of consideration in acting from the dangers into which one acting without consideration casts himself. Hence Sanchez writes thus concerning this matter (*On Matrimony*, book 9, disputation 32, no. 38): *I do not approve what Suarez says ..., where he thinks that one is called a rash violator if, when he has a suspicion or doubt concerning such a law, he employs no diligence to know whether that law exists; because otherwise he rashly exposes himself to the danger of transgressing it, and if it happens that he violates it in reality, he will be called a rash violator. But this does not please me; because although he is called rash, by reason of the danger to which*

he exposes himself, for contracting mortal fault, nevertheless laws punishing a rash violator demand something more, as I proved. Otherwise every person culpably ignorant of law would then be punished; because every culpable ignorance of law or fact necessarily supposes that some doubt concerning it preceded.

Namely, temerity is sometimes taken for an inconsiderate facility in acting, but sometimes temerity is said to exist when we do something by our own will and apart from the authority of the one commanding. To this pertain the things contained in chapter *Eum qui* 18, *On Prebends*, in the *Sext*: *Moreover, so that violent men who by their own authority* (or, more truly, *temerity*) *do not fear to occupy ... any ecclesiastical benefices whatever, even if they are not restrained by love of virtue, may at least be restrained by fear of penalty from THE AUDACITY OF THEIR TEMERITY; by that very fact*, etc. And this is what Sanchez intends to intimate when he says that laws punishing a rash violator demand something more. Hence Merolla (disputation 1, chapter 2, no. 235) well adds against that interpretation of Suarez: *Temerity properly, beyond precipitation and imprudence, requires contempt; for the word rashly properly imports doing something with contempt of the law, and thus it proceeds from that root of pride*

which refuses to be subject to rule, as St. Thomas, II-II, question 55, article 3, reply to objection 2, and Cajetan there very well teach; he says that this is very much to be noted for interpreting Canons which inflict penalties upon those rashly doing something, and that these are to be understood of this proper temerity. Finally, the VV. by no means ought to despise the words of St. Alphonsus, where he expressly says (book 7, no. 61): TEMERITY REQUIRES TRUE KNOWLEDGE, according to the things said in book 1, no. 174. That citation, however, became fallacious when, after the edition of the year 1757, the order of numbers in book I was changed.

940. ○ **QUESTION 6. Does grave fear excuse from a censure?**

Reply. Affirmatively, generally speaking. The reason is that ecclesiastical penal laws do not appear to press with so great a rigor. For since ecclesiastical laws themselves cease to oblige where very grave fear presses, the penalty annexed to them must also fall [15]. The difficulty is greater where there is question of precepts of natural law, from fulfilling which grave fear cannot excuse. But even in this case contumacy against the Church is absent. For a censure is not incurred on account of a violation of divine law, but on account of a culpable transgression of ecclesiastical law [16]. - St. Alphonsus, no. 46.

[15] Schmalzgrueber well adds the reason (book 5, title 39, no. 79), that the delinquent thus cannot be held as contumacious and a contemner of ecclesiastical power, since he sins from the infirmity of nature rather than from the malice of an obstinate will.

[16] This doctrine nevertheless has exceptions. Reiffenstuel writes thus concerning the matter (book 5, title 39, no. 34): *When observance of a human law appears morally necessary for conserving the public good, or if its violation tends toward contempt of the faith, or of the law, or of ecclesiastical power, one who, from grave fear even of life, transgresses a law placed under censure is not excused from it ...; because, since in such cases no fear excuses from observance of ecclesiastical law ..., so neither does it excuse from the censure.*

941. ○ **QUESTION 7. Is it required that an admonition of the delinquent precede the censure?**

Reply 1. No admonition is required for censures imposed *a iure*, because the law itself, promulgated and known, sufficiently admonishes the subjects. Thus all [17].

[17] Although a censure *a iure* is *latae sententiae*, nevertheless, if the offense is occult, some juridical admonition or citation is prerequisite for denouncing or declaring someone contumacious as bound by the censure. Otherwise the declaration will be neither licit nor valid.

But when a censure *a iure* is *ferendae sententiae*, St. Alphonsus indeed holds as more probable against several others (book 7, no. 55) that no admonition is prerequisite. But it must be said candidly both that the Authors cited by him are adduced beside the point and that his opinion is fortified by no solid reason.

** Against the second part of this little Note the VV. oppose eighteen full columns (pages 853-863). They contend that St. Alphonsus both rightly cited for his opinion the Authors whom he adduces and fortified it with most weighty reasons. For

clarity of the matter, please retain the state of the question treated in the little Note, namely, when a censure A IURE IS FERENDAE SENTENTIAE; and thus let us come at once to the first head.

St. Alphonsus, therefore (book 7, no. 55), denies that an admonition is necessary when a judge executes a sentence imposed by law by inflicting a censure upon the guilty. For this, and nothing else, is intended by the question proposed. But for that negative opinion he cites Busembaum, Sanchez, Filliuccius, and Bonacina; he also adds Palaus as holding it probable.

As regards Busembaum, therefore, the VV. urge these words cited by St. Alphonsus (loc. cit., no. 51): *Understand this, however* (namely, that an admonition must necessarily be premised), *of a censure imposed ab homine by a particular sentence, because one which is imposed a iure, or by a general sentence, or even by a special sentence, YET WITH RESPECT TO A FUTURE ACT, does not need another admonition, since the law or sentence itself sufficiently admonishes.* Therefore, let those words be noted: *yet with respect to a future act*. But in the present case the question is whether a judge, before he executes the sentence established by law by inflicting a censure, ought or ought not to admonish the one who sinned against the law. Therefore, the question concerns not a future act, of which Busembaum speaks, but a past one. Consequently, the cited text of Hermann Busembaum does not pertain to the matter.

As regards Sanchez, St. Alphonsus cites book 2, disputation 24, no. 28. Yet even the Salmanticenses themselves (*On Censures*, disputation 1, no. 90) warn that Sanchez is wrongly cited here because he does not speak there of a censure imposed *a iure*, but of one imposed *ab homine*. *We suppose*, they say, *that if a precept has been imposed BY THE JUDGE HIMSELF under the penalty of a censure to be imposed, he will be able by that very fact to excommunicate its transgressor, with no admonition premised.... In this case Sanchez spoke, book 2, On Matrimony, disputation 24, no. 28, who is customarily cited for the opinion asserting that an admonition is not required WHEN THE LAW THREATENS A CENSURE.... But Sanchez does not speak in this sense, but in the one which we have stated.* And in reality this is manifestly apparent from the state of the question proposed there by Sanchez (no. 26), namely, when the judge commanded the bridegroom that within a certain time he either enter religion or consummate the marriage under penalty of excommunication. Therefore, the citation of Sanchez also does not pertain to the matter; wherefore the VV. also (page 856) finally say that this citation must be attributed to inadvertence.

The same must be said of the citation of Palaus, unless perhaps it must be said that this question is treated so confusedly by Palaus that nothing can be drawn from him. St. Alphonsus cites disputation 1, point 5, no. 6. But in this place Palaus writes thus: *There is a doubt whether, if some deed is prohibited or commanded to you under an excommunication or suspension to be imposed, the judge can pronounce a sentence of excommunication or suspension upon you when disobedient, with no other admonition. Abbas in chapter Cum sit Romana, no. 28, On Appeals; Sanchez, On Matrimony, book 2, disputation 24, no. 28; Filliuccius, On Censures, chapter 4, no. 95; Bonacina ...; Stephanus Davila, etc., affirm it as sufficiently probable.* But if the words by which the question is proposed are inspected, you would more quickly say that Palaus treats of a censure imposed *ab homine* than of one imposed *a iure*. The citations of Abbas and Sanchez also confirm the same. Therefore, either these things do not pertain to the matter, or nothing can be gathered from this confused manner of disputing. But whatever the question is finally understood to mean, what the opinion of Palaus is appears from the following words (ibid., no. 7): *But it is far truer that the aforesaid censure threatened against you cannot be inflicted without a new admonition.*

Let us come to Bonacina. His words (*On Censures*, disputation 1, point 9, nos. 3-4), if the manner in which he establishes the question is inspected, leave the reader uncertain whether there is question of a censure *a iure* or *ab homine*. *There is a doubt*, he says, *whether, in censures threatened for future faults, an admonition distinct from the publication of the law or edict enacted under penalty of excommunication is required.* These words can be understood both of a censure *a iure* and of a censure *ab homine*. But the solution of the question removes the doubt. *The opposite seems truer to me*, he says, namely, that an admonition is not required. *The reason is that there is sufficient admonition on the part of the judge and sufficient contumacy on the part of the delinquent who knows the prohibition under penalty of a censure to be imposed.* But those words, *sufficient admonition on the part of the judge*, in no way agree with a law established *a iure* by a perpetual statute. This is confirmed because Covarruvias, part 1, section 9, no. 5, is there taken up for refutation. But Covarruvias does not there dispute concerning a censure *a iure* and *ferendae sententiae*, but plainly speaks first of a censure *ab homine* and then of a censure *a canone*, but *latae sententiae*.

Of those cited by St. Alphonsus, Filliuccius remains. But, first, it is in no way evident whether he disputes concerning a censure *a iure* or *ab homine*. For he asks generally (*On Censures*, chapter 4, no. 92): *Is an admonition required in a censure ferendae sententiae?* Then, as Bonacina admits (loc. cit.), Filliuccius would favor that opinion only in part. For he thus defends the opposite (loc. cit., no. 94): *I say first that, speaking absolutely and regularly, the second opinion appears truer, namely, that an admonition must be premised.* But he would favor the other opinion in that part in which that doctrine labors most, namely,

when there is question of a censure to be imposed for a crime which is in no way extended into the future, requires no satisfaction, reparation, or restitution, and, in a word, is a merely and altogether past crime, for example, if entrance into some chapel on a certain day is prohibited to men, as he himself says at no. 92, under penalty of excommunication to be imposed.

I said that this doctrine labors most; for, as Palaus well says (*On Censures*, disputation 1, part 5, no. 7), it belongs to the nature of a censure that it be imposed for the prevention of an offense, as is a censure *latae sententiae*, or for correction, because it is a medicinal penalty. But if it could be imposed for an offense already committed, it would be not so much medicine as punishment and vengeance, and would often punish a delinquent already corrected. And to the same purpose Suarez says (disputation 3, section 10, no. 21): *From this I infer that, if an offense is such that it is in no way extended into the future but, as soon as it is consummated, passes away altogether, leaving no obligation of restoring or satisfying with respect to men, but only with respect to God, such an offense cannot be prohibited by law under threat of a censure ferendae sententiae, but the censure must either be imposed by the law itself or not at all.* And indeed the VV. add (page 857) that St. Alphonsus also agrees with Suarez in this doctrine.

Let these things suffice to establish that it was not gratuitously said in the little Note that the Authors cited by St. Alphonsus are adduced beside the point.

But as regards the reasons, the matter is resolved very briefly by the Doctors, because the text of the Law in chapter *Reprehensibilis* 26, *On Appeals*, is manifest. For Alexander III says there: *We establish that Prelates also shall not pronounce a sentence of suspension or excommunication upon their subjects unless a canonical admonition has been premised, except perhaps when the fault is of such a kind that by its very nature it induces the penalty of suspension or excommunication.* Therefore, since Prelates are generally and strictly forbidden to impose a censure unless a canonical admonition has been premised, and it is merely excepted when there is question of a fault which by its own kind, that is, by the law itself or by the fact itself, induces the penalty of suspension or excommunication, the rule now applies that an exception confirms the rule in the contrary case; and therefore, whenever the censure is not *latae sententiae*, a canonical admonition is always required.

The VV. reply (page 857): *We answer that this assertion*, namely, of the little Note, *is false, and that the doctrine of St. Alphonsus is fortified not only by solid but by most weighty reasons. For: 1. the Holy Doctor in the case always requires the citation of the guilty party for declaring the censure; and 2. he agrees entirely with Suarez that sentence is not to be pronounced upon a repentant guilty party.* but a DECLARATION and a citation FOR DECLARING a censure have place when the guilty party had already incurred the censure by the fact itself.

Reply to 2. For this very reason Suarez, contrary to what St. Alphonsus judged, requires an admonition beforehand. And these things, like certain other things which the VV. heap up in the same place in order to show that St. Alphonsus agrees with Suarez and other Doctors, prove only this: that the general thesis of the Holy Doctor, by which he denies the necessity of an admonition in the case, coheres less well with other doctrines of his.

Reply 2. But an admonition is required for censures to be imposed *ab homine*. The reason is that one is not contumacious who was not previously admonished concerning the precept and the penalty annexed. Indeed, by Canon Law a triple admonition is required, or at least one in which it is expressed that it is to have the force of three. Except 1. If there is question of a censure *ab homine* through a general sentence, or even a special one with respect to a future act;

Reply to 1. These things do not pertain to the matter. For here the question concerns a censure *ferendae sententiae*, namely, when the judge or Superior pronounces a sentence by which he imposes a censure which the guilty party had not yet incurred; for then an admonition is not necessary, since the decree concerning the censure to be imposed takes the place of an admonition [18].

[18] The resolution will be clearer if, according to the things said in the preceding note, you distinguish censures to be incurred by the fact itself from censures *ferendae sententiae*. For in this second case, especially if the crime in some way extends into the future, the opinion which judges an admonition necessary is truer. See Suarez (*On Censures*, disputation 3, section 9, no. 4).

But concerning the solemnities to be observed in an admonition, see Suarez (cited disputation 3, section 9 and following) and Bonacina (*On Censures*, disputation 1, question 1, part 9). Observe this, however: Palaus (*On Censures*, disputation 1,

part 5, no. 9), from whom Schmalzgrueber (book 5, title 39, no. 28) and Reiffenstuel (same title, no. 25) afterward copied, asserted the necessity of making the admonition in writing, as though this were provided in chapter *Medicinalis* 1, *On the Sentence of Excommunication,* in the *Sext*; St. Alphonsus likewise, through a slip of the eye, thought that he had found this opinion among the Salmanticenses, who in reality teach the opposite. But in chapter *Medicinalis* the discussion is not about the admonition but about the sentence of excommunication; therefore the entire foundation of that opinion falls, which in any case is contrary to the common opinion of the other Doctors.

** The VV. attack this little Note in eight columns (pages 863-867). Passing over those things which do not pertain to the matter, we shall pursue those which touch the little Note.

1. First, therefore, the VV. write (page 863): *Father Ballerini undeservedly attacks Palaus, Schmalzgrueber, and Reiffenstuel.* And they give the reason (page 865), saying: *Neither Palaus nor the two most illustrious Canonists cite chapter Cum medicinalis for this purpose.*

2. Reply 1. The little Note does not say that the two most illustrious Canonists, Schmalzgrueber and Reiffenstuel, cited that canon for this purpose, but that they copied those things from Palaus. And Reiffenstuel in reality writes thus (book 5, title 39, no. 25): *In order that this admonition be made legitimately, it must be made in writing, AS PALAUS WILLS, tract 29, disputation 4, point 5, no. 9.*

Reply 2. Schmalzgrueber (book 5, title 39, no. 28) has thus: *This admonition must be made in writing, which writing must contain the cause for which the censure is imposed and must be delivered to the guilty party upon whom it is imposed; but if the judge* (unless he is a Bishop), *without an urgent cause, has inflicted excommunication by word alone and not in writing, he is suspended by the law itself for a month from entrance into the church and from divine offices; and if during that time he intrudes himself into divine things, he becomes irregular, as is contained in chapter Cum medicinalis 1, this title, in the Sext. PALAUS, cited point 5, no. 9.*

Whether these things were not copied from Palaus, let the impartial reader judge. Thus, therefore, Palaus (loc. cit.): *This admonition must be made in writing containing the cause for which the censure is imposed, which writing must be delivered to the guilty party upon whom the censure is imposed. But if the judge* (unless he is a Bishop), *without an urgent cause, has pronounced excommunication by word alone and not in writing, he is suspended by the law itself for a month from entrance into the church and from divine offices; and if within that time he intrudes himself into divine things, he becomes irregular. ALL OF WHICH ARE CONTAINED*

IN CHAPTER 1, ON THE SENTENCE OF EXCOMMUNICATION, IN THE SEXT. Therefore, what is asserted in the little Note, that Schmalzgrueber copied these things from Palaus, meets the eye, since one repeats the words of the other almost to the letter.

3. But that it is not gratuitously said in the little Note that Palaus asserted the necessity of making the admonition as though it were provided in chapter *Medicinalis* is apparent from his reported text, when he plainly says: *All of which are contained in chapter 1, On the Sentence of Excommunication, in the Sext.* And indeed whether Palaus cited chapter *Cum medicinalis* for this purpose, as the VV. say, might perhaps be judged doubtful if nothing were seen in that chapter of those things which Palaus transfers to the manner of making an admonition. But the contrary is true. For all those things, *the admonition must be made in writing, which writing must contain the cause for which the censure is imposed and must be delivered to the guilty party,* plainly appear to have been taken from the aforesaid chapter, where it is read: *let him pronounce the excommunication in writing, and let him expressly write down the cause of the excommunication ...; but let him be bound to deliver a copy of such writing to the excommunicated person,* etc. Therefore it is sufficiently manifest that Palaus transferred to the admonition those solemnities which in chapter *Cum medicinalis* are prescribed for pronouncing excommunication. And this is also confirmed by the fact that Palaus, when he afterward writes in the same place about excommunication, entirely omits the solemnity of delivering the writing to the guilty party, because, namely, he also took this as though it were said of the admonition.

4. Now concerning the other part of the Note, where it is said that it happened through inadvertence that St. Alphonsus attributed to the Salmanticenses the opinion concerning an admonition to be made in writing.

On this argument the Holy Doctor has merely these words (book 7, no. 56, at the end): *The admonition must be made by the judge himself or by another in his name. And if the censure is imposed for the benefit of a party, the citation must be made at his instance. Thus Suarez, disputation 3, section 11, no. 1; Bonacina, no. 4; and the Salmanticenses, chapter 1, no. 95, with others. The admonition must also be made in writing unless the judge proceeds by virtue of his office, as he is sometimes bound to do on account of the common good, from chapter Venerabilibus, section Porro, On the Sentence of Excommunication, in the Sext. For then it suffices if the admonition is made orally, yet in such a manner that it can be proved in court. Thus the Salmanticenses, chapter 1, no. 95, with Gibalinus and Cornelius, from chapter Sacro, On the Sentence of Excommunication,* etc.

5. But if you compare these things with the text of the Salmanticenses, from whom St. Alphonsus admits that he took them, you must certainly suspect, if not the inadvertence of one transcribing compendiously, at least a typographical error in the words of St. Alphonsus. Yet no edition is free from this error, since the same thing recurs everywhere from the first edition of the year 1748 down to the latest editions of our age. And indeed, for greater evidence of the matter, we shall join to the text of the Salmanticenses (chapter 1, *On Censures*, no. 95) the text of Suarez (*On Censures*, disputation 5, section 11, no. 1), since both the Salmanticenses and St. Alphonsus cite him, and it will be apparent that the Salmanticenses copied their material from him.

6. Thus, therefore, Suarez (loc. cit., no. 1): *From the things which have been said concerning this admonition, it follows that it must be made by the authority and in the name of the judge himself who is to impose the censure. The reason is manifest, because the admonition must be such that, if someone does not obey, he is rendered contumacious and disobedient; which cannot be unless the admonition is made by the authority of the Superior. The Canonists add another reason: that this admonition has the force of a citation; but a citation, in order to be of any moment, requires the authority of the judge.*

7. These same things, but a little more obscurely and intricately, the Salmanticenses express thus (loc. cit.): *It is answered that the admonition must be made by the judge himself or in his name, because it has the force of a citation, which citation must be made in the name and by the authority of him by whom the censure is imposed; and because a censure is not incurred*

except through disobedience and contumacy against the mandate of the Superior, which contumacy does not exist unless the admonition is made in his name. In these words the Salmanticenses, certainly intricately and obscurely, bring from Suarez two reasons why an admonition must be made in the name and by the authority of the judge.

8. But St. Alphonsus, omitting those two reasons, merely has this: *The admonition must be made by the judge himself or by another in his name.*

9. Suarez continues (loc. cit.): *They* (the Canonists) *also add that, when a censure is to be imposed for the benefit of some private person, then the admonition ought to be made at his instance, because it has the force of a citation; and a citation, in order to be valid, must be made at the instance of the party, because the judge ought not to interpose his office on his own motion for private advantage.... But if the censure is imposed for the common good, in which case the judge can proceed by virtue of his office, then he can also admonish by virtue of his office, just as he can also cite by virtue of his office; and this is taken from chapter Venerabilibus, section Porro, On the Sentence of Excommunication, in the Sext.*

10. The Salmanticenses also present this part, certainly most clear in Suarez, compendiously and very obscurely thus (loc. cit.): *And when a censure is imposed for the benefit of some private person, the admonition must be made at his instance. But if a censure is imposed for the common good, the judge on his own motion* (perhaps, *the judge*) *can proceed to the admonition, because by virtue of his office he is bound to this, chapter Venerabilibus, section Porro, On the Sentence of Excommunication, in the Sext.*

But what metamorphosis these things underwent in the text of St. Alphonsus will appear a little later.

11. Finally, Suarez adds (loc. cit., no. 2): *It is further added in chapter Sacro, On the Sentence of Excommunication, that this admonition must be made in the presence of suitable persons through whom the admonition can be proved if necessary. Hence Abbas infers that it is not necessary for this admonition to be made in writing, for*, he says, *the presence of persons is required for that reason.*

12. But the Salmanticenses present this last part thus (loc. cit.): *It is not required that the admonition be made in writing; nevertheless, it must be made before suitable witnesses through whom it can be proved in the external forum: chapter Sacro, On the Sentence of Excommunication; Diana, part 5, tract 9, resolution 19* (in the coordinated edition, volume 5, tract 1, resolution 5, no. 2); *Gibalinus, no. 10; Cornejo, doubt 2, question 7.*

13. But this last part of the Salmanticenses, mingled by an unfortunate confusion with the preceding one above, no. 10, is seen thus in the text of St. Alphonsus: *The admonition must also be made in writing unless the judge proceeds by virtue of his office, as he is sometimes bound to do on account of the common good, from chapter Venerabilibus, section Porro, On the Sentence of Excommunication, in the Sext; for then it suffices if the admonition is made orally, yet in such a manner that it can be proved in court. Thus THE SALMANTICENSES, chapter 1, no. 95, with Gibalinus and Cornelius, from chapter Sacro, On the Sentence of Excommunication.*

But from the comparison most manifestly made, it appears that those things which the Salmanticenses, above no. 10, after Suarez, above no. 9, had said concerning the judge who ought not to proceed to an admonition on his own motion except when the censure is to be imposed for the common good, these things, I say, were transferred in the text of St. Alphonsus to the judge, who ought not to make the admonition IN WRITING unless he proceeds by virtue of his office on account of the common good; concerning which, certainly, there is neither word nor syllable among the Salmanticenses and Suarez.

Consequently, according to the text of St. Alphonsus, the admonition would then have to be made in writing only when the judge did not proceed to admonition except at the instance of some private person, as the VV. themselves explain in reality (page 864), contending that this is drawn from the Salmanticenses. But from the very fact that no trace of such a theory can be found in any Author and that at the same time no reason whatever for such a distinction can be devised, it is permissible to conclude what is intimated in the little Note: that from a mere slip of the eye or through inadvertence St. Alphonsus could have thought that he had found that opinion among the Salmanticenses.

Except 2. If there is question of that suspension and interdict which are not censures properly so called and medicinal, but are imposed only by way of penalty. - St. Alphonsus, no. 52, etc. - See *Cases*, no. 1419.

Article II. On the Principle or Author of Censures

942. ○ Principles. - I. The Church enjoys true power to impose censures. This is proved from Sacred Scripture. For Christ handed over to His Church the power of casting out from her bosom delinquent and contumacious children by those words in Matthew 18:17: *If he will not hear the Church, let him be to you as a heathen and a publican. Amen I say to you: whatsoever you shall bind upon earth shall be bound also in heaven.* But this power includes the faculty of imposing censures, as is clear to all. It is established, moreover, from the universal and perpetual practice of the Church, and also from innumerable Councils, especially from the Council of Trent, session 25, chapter 3, *On Reformation*.

II. By ordinary right, all and only ecclesiastical Superiors having jurisdiction in the external and contentious forum can impose censures. This is apparent from the cited words of Christ in Matthew: *Whatsoever you shall bind*, etc. For by these words Christ gave to the Prelates of the Church, in the person of the Apostles, all power for the good and right administration of the Church. It is also established from several places in Canon Law.

III. By delegated power, all and only clerics to whom it has been granted by a Superior having ordinary jurisdiction can impose censures. The reason is that every cleric, and only a cleric, is capable of the ecclesiastical jurisdiction required for imposing censures. - See St. Alphonsus, no. 9 and following.

943. ○ Rules. - 1. By ordinary right, the Pope and a General Council can impose censures with respect to the universal Church; Archbishops, both in their own dioceses and in the dioceses of their Suffragans during visitation, and also when there is question of a cause brought before their tribunal, because then they possess jurisdiction over the Suffragans; Bishops with respect to their own diocese, provided that they have been elected and confirmed, even if not consecrated [1]; Vicars General of Bishops [2], for they constitute one tribunal with the Bishops themselves; Legates in the territory of the legation, and Cardinals in the church of their own title; provincial Councils in their provinces; Generals, Provincials, and local Superiors of religious Orders according to their various statutes; the Chapter of a cathedral church while the see is vacant and before the election of the capitular Vicar, who thereafter will enjoy such power exclusively. - St. Alphonsus, ibid.

[1] See St. Alphonsus (book 7, no. 10) and chapter *Transmissum* 15, *On Election*. Compare also Gonzalez on this chapter.

[2] St. Alphonsus (book 7, no. 10) adduces Sayrus, Ugolinus, and others in Croix (book 7, no. 24) as dissenting. But this is a mere error either of Croix or of another from whom Croix copied. For the cited Doctors deviate in nothing from the common opinion.

2. Pastors cannot by ordinary right [3] impose censures, because they do not have jurisdiction in the external and judicial forum, but only administration for the right order of the parish. - St. Thomas, *On IV Sentences*, distinction 18, question 3, article 3.

[3] The Author adds, *by ordinary right*, because it has seemed to some that pastors once exercised this right. But the texts of the law from which they draw this demonstrate nothing of the kind. See Schmalzgrueber (book 5, title 39, no. 20).

3. Laymen and women cannot impose censures even by delegation [4]. Hence Abbesses of nuns cannot impose them by their own authority, but can only obtain a decree by which their mandates must be observed under penalty of censure. - St. Alphonsus, no. 12.

[4] The Doctors nevertheless agree that the incapacity of a layman is only of ecclesiastical law. See St. Alphonsus (book 7, no. 12) and Schmalzgrueber (book 5, title 39, no. 3). Therefore, the Supreme Pontiff can delegate this power to a layman, just as he can dispense so that a layman may be assumed by a Bishop as Vicar.

With respect to women, St. Alphonsus (book 7, no. 12), after the Salmanticenses (*On Censures*, chapter 1, no. 48), judged it more probable that incapacity for jurisdiction is of divine law. Others, on the contrary, think it more probable that it is of merely human law, and therefore that the Pontiff, from the plenitude of power, can delegate to them the faculty of imposing censures. Besides others whom the Salmanticenses cite (loc. cit., no. 47), this opinion is held by Sayrus, Suarez, Laymann, Palaus, Pirhing, and Croix in Schmalzgrueber (book 5, title 39, no. 16), who adheres to them.

** It is scarcely apparent why the VV. thought they should linger over this controversy (pages 867-868). *Since Father B.*, they say, *touched this question as merely speculative, we also shall touch it briefly.* But the reason why Father B. subjoined this Note is sufficiently manifest. Father Gury had written concerning this matter as though it were clearly and indubitably established. Therefore, it was not beside the point that the genuine state of the question should be indicated. For otherwise have they themselves added anything which either brings some greater light to this question or counsels that the judgment rendered concerning it in the Note should be reformed? Finally, they bring forward three things.

1. To the five Authors whom the Salmanticenses report for the opinion more acceptable to St. Alphonsus, the VV. add the Salmanticenses themselves and three others, among whom is Concina. You would say, namely, that they feared the small number of those Authors compared with the seven cited for the opposite opinion among the Salmanticenses, to whom another four were added in the Note. But in writing the Note there was in reality no concern for this matter. And if there had been some solicitude about it, indeed several are found in Dicastillo (*On Censures*, disputation 1, nos. 126-128) and Diana (volume 3, tract 1, resolution 75; otherwise, part 8, tract 4, resolution 39), among whom Cardinal de Lugo is also numbered, by whom this number could easily have been more than doubled.

2. The VV. then bring forward certain words of St. Thomas from his Commentary on book 8 of the *Ethics*, chapter 7. - But perhaps with too little deliberation. For there it is read: *But some use of the keys is committed to a woman, as to have correction over subject women.* Soto (*On IV Sentences*, disputation 20, question 1, article 4) adds to these words the following others from the same St. Thomas (*On IV Sentences*, distinction 25, question 2, article 1, reply to objection 1): *Nevertheless, concerning Abbesses it is said that they do not have ordinary prelacy* (Soto reads, *jurisdiction*), *but as though by commission.* From these texts others deduce a conclusion contrary to what the VV. judge.

3. Finally, the VV. transcribe the text of Suarez (*On Censures*, disputation 2, section 3, no. 7) in this manner: *I add, moreover, that it is one thing to speak of the, so to say, absolute power of the Supreme Pontiff, and another of the ordinary ecclesiastical law. For in the former manner perhaps it is not repugnant for the Supreme Pontiff to grant this power* (of imposing censures) *to some woman, which Paludanus holds, and Soto, Navarre, and Ugolinus do not dissent. For this is not contrary to divine law; and therefore there is nothing why the Pontiff, from absolute power,*

cannot do this, just as he can also grant this jurisdiction to a layman. For what purpose these things are brought forward here by the VV. can scarcely be understood. For the question touched in the Note is whether the incapacity of a woman for this office is

of divine law or only of positive law. Therefore, since Suarez says most clearly, *there is nothing why the Pontiff, from absolute power, cannot do this, just as he can also grant this jurisdiction to a layman*, he manifestly contradicts St. Alphonsus, who contends that it is more probable that this incapacity of a woman is of divine law. And indeed the final words of Suarez are most worthy of notice: *Just as the Pontiff can also grant this jurisdiction to a layman.* For, as Dicastillo writes (loc. cit., no. 152), *Concerning laymen lacking every Order and even tonsure, the common opinion of the Doctors is that they are not by divine law incapable of this jurisdiction of the external forum.* Moreover, for another reason it was of interest to the VV. to omit this text of Suarez. For since Suarez also testifies that Soto does not dissent from this opinion, it follows that Soto is not rightly cited by St. Alphonsus for his own opinion.

4. Delegated power ceases with the death of the one delegating [5], unless the cause has already been begun by the delegate, at least through citation. But one delegated to impose censures cannot subdelegate another [6], unless he has express permission from the one delegating, or unless at least he has been delegated for any causes whatever.

[5] Because, namely, there is question of a cause of justice; for otherwise it must be said in causes of grace.

[6] Except delegates of the Roman Pontiff, from chapter *Si pro debilitate* 5, *On the Office of a Delegate*. But concerning what is required by ordinary law in order that someone can be delegated, see Schmalzgrueber (book 5, title 39, no. 14).

944. ○ Questions. - **QUESTION 1. Can heretical, excommunicated, and suspended Bishops validly impose censures?**

Reply 1. Affirmatively, if they are occult heretics, excommunicated persons, or suspended persons. The reason is that the Church, for the common good, does not take away from them the use of jurisdiction. Nevertheless, they act illicitly whenever they impose censures. - Thus commonly the Theologians with St. Alphonsus, no. 12.

Reply 2. Negatively, if they are excommunicated persons to be avoided, or not tolerated, because then they are deprived of all ecclesiastical jurisdiction. But what if they are indeed notorious, but not persons to be avoided? It appears that they can nevertheless validly impose censures, because, they say, this is gathered from the Constitution *Ad evitanda* of Martin V, where it is enacted that an excommunicated person who is tolerated is not to be avoided, in those things which pertain to public office, even by those who know it. - See St. Alphonsus, ibid.

945. ○ **QUESTION 2. Can a Bishop impose a censure if he is outside the diocese?**

Reply 1. Affirmatively, if the censure is imposed by way of precept or statute for preventing future crimes. - St. Alphonsus, book 7, no. 21.

Reply 2. Affirmatively, even if the censure is imposed by way of a sentence which nevertheless does not require cognizance of the cause and judicial proceedings; or even if it requires judicial proceedings, provided permission has been granted by the Ordinary of the territory.

Reply 3. Negatively, if the censure must be imposed with judicial proceedings and the Ordinary of the place refuses permission. Except if the Bishop was expelled by force from his own territory; for then it suffices that permission was sought from the Ordinary of the place, although it was not obtained. - See Schmalzgrueber, book 5, title 39, no. 26.

QUESTION 3. Conversely, can a Bishop existing in his own diocese impose a censure upon a subject existing outside the diocese?

Reply 1. Affirmatively, if there is question of a crime committed in his own diocese. The reason is that otherwise the delinquent could be punished by no one; and although he has departed, he nevertheless does not cease to be subject to the jurisdiction of his own Bishop. Nor is it an objection that the citation cannot be made outside the territory; for it suffices for incurring the censure that the guilty party be cited at his own home or in a public place. - St. Alphonsus, no. 22.

Reply 2. Indeed, a Bishop can impose a censure upon a subject sinning outside the diocese if there is question of a matter pertaining to his diocese. Thus clerics who, when commanded to come to the Synod, do not obey can be excommunicated; otherwise, however, at least more probably, if the crime were consummated outside the territory [7]. Except if there is question of a censure imposed against someone by way of a special precept for preventing a crime, as St. Alphonsus more probably teaches, book 7, no. 23, and Laymann confirms with valid reasons, book 1, tract 5, part 1, chapter 4, no. 7. - St. Alphonsus, ibid.; Suarez; Salmanticenses.

[7] Since laws affect a territory, and therefore one who dwells outside it is not bound by the laws of his homeland, consequently one who sins outside the territory is not subjected to censures imposed by general statutes. This is plainly confirmed from chapter *Ut animarum* 2, *On Constitutions*, in the *Sext*. And since an exempt place, although situated within the boundaries of the diocese, is compared in this respect with places situated outside the territory, therefore, as the common doctrine holds, one sinning in an exempt place does not incur diocesan censures. See Laymann (book 1, tract 5, chapter 4, no. 6) and Schmalzgrueber (book 5, title 39, no. 49).

946. ○ **QUESTION 4. Can a Bishop bind by censure another's subject sinning in his diocese?**

Reply. Affirmatively. The reason is that every delinquent acquires the forum of the place in which he sins. Thus from Canon Law, book 2, title 2, *On the Competent Forum*, chapter 3. Although a Bishop more probably cannot impose a censure upon a stranger before admonition, he can nevertheless do so after the latter has sinned in the place and the Bishop has cited him [8]. - St. Alphonsus, no. 26, and book 6, no. 591.

[8] These things, as is apparent, are said of censures *ab homine* through a sentence. For if there is question of censures inflicted by a special law of that place upon those sinning either against the common law or against the proper laws of that place, according to the more common opinion, which exempts strangers and travelers from the obligation of observing the proper laws of those places, they do not incur them. But you would wrongly urge with certain persons (see St. Alphonsus, book 1, no. 156, doubt 2, and book 3, no. 332, section *An autem*) any probability whatever of the opposite opinion, namely, of the opinion which subjects travelers to the aforesaid laws. For probability is not sufficient for imposing an obligation, and much less for undergoing penalties. See Lugo, *Moral Responses*, book 6, doubt 22, nos. 3-5.

But the cases in which a traveler acquires a forum by reason of the offense and can be punished by censures may be seen in the same de Lugo (loc. cit., no. 6) and Suarez (*On Censures*, disputation 5, section 5, nos. 12, 13).

** The VV. here oppose twelve full columns (pages 868-874), something which could scarcely appear credible to one inspecting the character of this little Note. But perhaps the reader will be all the more astonished when he sees that with so great a mass they fight almost nothing but mere shadows.

1. For first, as though an opinion obliging strangers to observe the laws of a place where they remain briefly and precariously were fastened upon the Holy Doctor Alphonsus in the Note, behold the VV., after reporting his texts both from book 7, nos. 26 and 27, and from the places indicated in our little Note, seriously conclude (page 871): *St. Alphonsus does not generally urge for foreigners the obligation of obeying the special laws of a place unless ... they have contracted there a quasi-domicile.*

Reply. I deny the supposition. Indeed, for this very reason, within that parenthesis in the little Note, the reader is sent to read St. Alphonsus, book 1, no. 156, and book 3, no. 332: because there the Holy Doctor defends the more common opinion which exempts strangers and travelers from the obligation of observing the proper laws of those places; from which

thesis, as from a foundation, it is deduced in the little Note that those strangers do not incur the censures of which it speaks. Wherefore, entirely without cause, the VV. afterward repeat in the same place: *Therefore neither the Holy Doctor nor another with him WRONGLY URGES OBLIGATIONS!* As though those words of the little Note, *But you would wrongly urge with certain persons the probability of the OPPOSITE opinion*, were referred to St. Alphonsus, when they are manifestly referred to the opposite thesis which the Holy Doctor rejects in the cited places. And, what may appear amusing, the VV. immediately add in the same place: *But rather Father Ballerini wrongly confuses the questions!*

2. But from the same preconceived opinion, that those words of the little Note, *But you would wrongly urge with certain persons*, etc., attack the opinion of the Holy Doctor, the VV. in the same place thus assail the following part of that little Note: *As regards that principle recalled again here by Father Ballerini, namely, that any probability whatever does not suffice for imposing an obligation ..., it appears clearer than light that the aforesaid principle is false whenever, AS IN THE PRESENT QUESTION, it is extended to a probability NOTABLY AND CERTAINLY GREATER than the opposite.*

Reply. Again, first, I deny the supposition; because in the little Note this is said most plainly of whatever probability may be attributed to the opposite opinion of Suarez or others, which binds strangers to the laws of the place and consequently subjects them to the proper censures of the same place. This opinion is rejected elsewhere in the Notes to this compendium (see Note at no. 94, volume 1, page 87), and there it is again insisted against it that the mere probability of this opinion does not suffice for inducing an obligation. But this is by no means asserted against the more common and more probable opinion exempting strangers from this obligation, which St. Alphonsus also defends; and for this reason St. Alphonsus is cited in Gury's text (book 6, no. 591), where the Holy Doctor writes: *Foreigners are not subject to these censures unless they have contracted a domicile or quasi-domicile in the place where they were imposed*; and he had premised the reason there: *because excommunication cannot be imposed except upon subjects and the contumacious.*

3. But, moreover, a certain excessive fervor for contradicting and attacking caused the VV. here to contradict St. Alphonsus also. Let us resume their statements: *The principle recalled here by Father B., namely, that any probability whatever does not suffice for imposing an obligation, is false whenever, AS IN THE PRESENT QUESTION, it is extended to a probability NOTABLY AND CERTAINLY greater than the opposite.*

Let us even prescind from the confusion which these words of the VV. introduce. But what finally is this *notably and certainly greater probability*? If you consider the purpose of the VV. refuting the little Note, you will certainly conclude that they designate the probability to which the force of inducing an obligation is denied in the little Note; for on that account this principle is insisted upon in the little Note. But this is none other than the probability of the opinion which subjects strangers to the laws and censures of the place. Therefore, according to the VV., does the opinion which obliges strangers to the laws and censures of a place have a probability notably and certainly greater than the opposite? Yet, apart from the fact that this would be asserted against the more common opinion of the Doctors, the VV. would thus now attack St. Alphonsus, who holds as more probable the opinion exempting strangers from the aforesaid laws and censures. It remains, therefore, that by those words the VV. designate not the opinion which obliges strangers, but the more common opinion, as it is called in the little Note, which exempts strangers and travelers from the obligation of observing the proper laws of those places. For they expressly say that this notably and certainly greater probability is so present IN THE PRESENT QUESTION that it excludes the principle employed here by Father Ballerini. Therefore, it is necessary that they attribute this greater probability to one or the other opinion, namely, either to that obliging strangers, as we said, or to that exempting them from this obligation. But they neither attribute it, nor can attribute it, to the obliging opinion, as we have seen, without attacking both St. Alphonsus and the more common opinion of the Doctors. Therefore, it remains that they contend that this greater probability pertains to the opinion which exempts strangers from the obligation in question.

4. But thus the VV. do not attack Father Ballerini, and, on the contrary, again attack the Holy Doctor Alphonsus. They do not attack Father Ballerini, I say; for what is contended in the little Note they themselves strikingly confirm when they assert that the opinion which in the case exempts strangers from observing the laws of a foreign territory, and therefore from incurring the proper censures of that territory, is notably and certainly more probable; and, on the contrary, they concede scarcely any probability to the opposite opinion which binds the same strangers to the aforesaid laws and censures.

5. But thus the VV. again attack the Holy Doctor Alphonsus. For they contend that the opinion in question is both notably and certainly more probable. Yet, as the illustrious Father Haringer, a distinguished theologian of the Congregation of the Most Holy Redeemer, testifies (in the Note to no. 40 of the Treatise on Conscience of St. Alphonsus), *A notably more probable opinion approaches very closely to moral certitude, and is no longer strictly doubtful, but morally or quasi-morally certain, and THE OPPOSITE BECOMES SLIGHTLY PROBABLE*; or, as St. Alphonsus says (loc. cit., no. 56), *the opposite remains EITHER*

SLIGHTLY OR AT LEAST DOUBTFULLY PROBABLE. Therefore, while the VV. proclaim that the opinion exempting strangers, etc., is certainly and notably more probable, they consequently contend that the opposite, which binds strangers to those laws and censures, is slightly or at least doubtfully probable. Yet this is precisely what again openly conflicts with the opinion of St. Alphonsus. For even the VV. themselves (page 870) cite the text of St. Alphonsus from book 1, no. 156, in which the Holy Doctor admits that this opinion is sufficiently probable. For he writes thus: *This opinion*, which obliges strangers, *IS SUFFICIENTLY PROBABLE; but the second, which says that a stranger is not bound by the laws of the place*, etc., *APPEARS more probable.* There, moreover, we see the Holy Doctor asserting the greater probability of the latter opinion somewhat doubtfully, *appears*, whereas, on the contrary, the VV. proclaim it notably and certainly more probable and therefore morally or quasi-morally certain. But again the VV. themselves (page 869) transcribe another text of the Holy Doctor, from book 3, no. 338, where that same opinion is furthermore called by St. Alphonsus *deservedly probable*. Thus the Holy Doctor: *Suarez, Pontius, Joseph de Januario, and Salas in Palaus affirm*, namely, that strangers are bound, etc., *WHO DESERVEDLY CALLS IT PROBABLE with Sanchez and the Salmanticenses.... Sanchez with Toledo, Azor*, etc., *nevertheless more probably deny it*. Therefore, while the VV. will that what St. Alphonsus teaches to be both sufficiently probable, which the Holy Doctor again has both in book 7, no. 27, and in *The Apostolic Man*, tract 2, no. 41, and deservedly probable should be held as slightly or doubtfully probable, it is manifestly apparent that they also attack the doctrine of St. Alphonsus.

6. Moreover, another argument that the VV. here pursue shadows is found where they write (page 871): *But the more common opinion does not exempt from the obligation of observing local laws all strangers, as FATHER BALLERINI SUPPOSES, but only those who do not have the intention of remaining for the greater part of the year.*

Reply. From where the VV. could have taken occasion to imagine that, according to Father B., those also are exempted from this obligation who have the intention of acquiring a quasi-domicile through that long stay, who can finally divine? Indeed, in the text of Gury, to which the little Note is subjoined, there is question of another's subject, who is there rightly called a traveler; but the nature of the matter itself demands that the discussion in the Note be about exactly the same subject. Why, therefore, do the VV. contend that the same word *traveler* has in the little Note so broad a sense, which is otherwise contrary to common usage? Has Father B. at least elsewhere attributed to this word so broad, unusual, and improper a sense that it embraces also those who, while contracting a quasi-domicile, now become subjects? Therefore, here also the VV. pursue shadows. Let us come to another head.

7. The VV. write (page 873): *We do not understand how the things which Suarez teaches here can be reconciled with the assertions of Father Ballerini.*

Reply. Suarez (*On Censures*, disputation 5, section 5, no. 12) is cited in the little Note in order to indicate the case in which a traveler acquires a forum by reason of an offense and can be punished with censures. For Suarez thus proposes in no. 12 the case which he resolves in no. 13: *The objection stands thus: If a stranger commits an offense in another's territory, by that offense he also becomes so subject that proceedings can be taken against him where he sinned; and nevertheless, even if a censure is imposed by sentence in that territory on account of that offense, he does not incur it, although such a sentence embraces all subjects.* But to these things he answers there thus in no. 13: *Since two things can be considered in a statute or jurisdiction, namely, directive force and coercive force, by reason of an offense a man cannot become subject first and immediately in relation to directive force, but in relation to coercive or punitive force; for he is said to become subject because he can justly be punished where he sinned. Consequently, however, he can be obliged according to directive force to all those things to which a just judge can oblige a guilty party, but not to other things, precisely by force of that subjection.* But from this it follows that, if this guilty party is obstinate and contumacious against such a just mandate of the judge, namely, of the Bishop, he can also be compelled by him through censures. And indeed, suppose, for example, that what is intimated in chapter *Si seduxerit* 1, *On Adultery and Defilement*, happens, in which the guilty party is condemned either to marry the seduced virgin or to provide a dowry for her. The Bishop can certainly cite the guilty party by reason of the offense, although he is a stranger and nevertheless made a subject, and, when he has been convicted, condemn him to the aforesaid penalties. Behold, therefore, the case concerning which Suarez treats, namely, when the judge can compel a stranger, even by censures, both to appear before him or obey the citation and consequently either to pay the dowry or to marry the young woman, as St. Alphonsus also intimates (book 7, no. 26, at the end).

8. But to the texts of Suarez with which the VV. fill four columns (pages 872, 873), the obvious response is at hand: all those things do not pertain to the matter. Namely, the context of that section 5 looks to whether one acting in another diocese contrary to the general sentence of his own Prelate is bound by his censure; and Suarez (no. 14), according to his own opinion, which he nevertheless does not deny elsewhere to be merely probable, that local laws oblige not only subjects but also travelers, answers affirmatively. But the citation of Suarez in the little Note did not look to this, but to those things which the same author incidentally has in nos. 12 and 13 concerning a censure which is *ab homine*, and which we reported

above. And to the same point pertain those things also which Suarez had likewise incidentally said in the same section 5, for example, no. 10: *An offense alone can make one a subject in relation to a future judgment and consequently with respect to all those things which can be ordained to the punishment of that offense.* And again, no. 11: *Although an offense committed in a territory constitutes a man a delinquent of that forum, and, the forum being supposed, he can be cited and become contumacious.* Therefore, the VV. have that by which they may understand how those things which Suarez has in that section 5 can be reconciled with the assertions of Father Ballerini.

9. Moreover, perhaps with more useful labor the VV. would have inquired how what St. Alphonsus has in this same question (book 7, no. 27) is reconciled with the doctrines of Suarez, where he writes: *If a censure is imposed by way of a general statute for future offenses ..., then it binds even foreigners if they are there with the intention of remaining for the greater part of the year; otherwise, if they remain there in passing. Thus the Salmanticenses with SUAREZ*, etc. After these things the Holy Doctor then continues: *This opinion is more probable to me, but I do not think it improbable that travelers are bound by the censure both in the first and in the second case, even if they are somewhere for a brief time, because it is sufficiently probable that travelers become subjects if they remain in some place even for a brief time, according to the opinion reported in book 3, no. 332.*

In this place, as is apparent, Suarez is cited by the Holy Doctor for the opinion which he calls more probable to himself, namely, that travelers are not bound by the censure because, if they remain somewhere for a brief time, they do not become subjects. Yet the same Holy Doctor writes thus in the place to which he refers, namely, book 3, no. 332: *Are travelers bound to hear Mass which must be heard from a particular precept of the place where they are, even if they remain there for one day? SUAREZ affirms* (*On Religion*, book 1, chapter 14, no. 9), *Pontius*, etc. *Sanchez*, etc., *nevertheless more probably deny it.* But let us now omit the erroneous citation of Suarez, which recurs in the Holy Doctor also in book 1, no. 156, namely, *On Religion*, book 1, chapter 14, no. 9; for it labors under a twofold defect, both because Suarez's *On Religion* has ten treatises, each of which has several books, and because that opinion is found in none of the first ten books but is found in tract 2, book 2, chapter 14, no. 8. But what is principal: how is Suarez cited by St. Alphonsus in book 7, no. 27, for the more probable opinion which exempts travelers who remain somewhere for a brief time from observing laws and incurring local censures, and then in book 3, no. 332, the same Suarez is cited for the opinion which subjects travelers to a local precept even if they remain there for one day?

10. But there is also another thing which requires an explanation from the VV. in the same no. 27 of book 7. For the Holy Doctor, as we have seen, writes there: *I do not think it improbable that travelers are bound by the censure both in the FIRST and in the SECOND case, even if they are somewhere for a brief time, because it is sufficiently probable that travelers become subjects if they remain in some place even for a brief time, according to the opinion reported in no. 332.* But the first case there is this: *If a censure is imposed by way of a particular precept or sentence in a particular case, namely, if excommunication is imposed against those who do not reveal thieves, this does not bind foreigners because a particular precept cannot bind non-subjects.* Therefore, St. Alphonsus does not judge it improbable that even the aforesaid excommunication is incurred by strangers because, as he says, it is sufficiently probable that travelers become subjects according to the things reported in book 3, no. 332. Yet Suarez, whom otherwise the Holy Doctor cites here in the first place and whose numerous texts the VV. report, on the contrary absolutely denies that an excommunication of this kind is incurred by foreigners. For thus Suarez says (*On Censures*, disputation 5, section 5, no. 10), as the VV. themselves report: *A sentence of this kind, although general, is directly imposed upon persons in order to restrain and punish their contumacy; and therefore it is not extended to strangers, who, although they remain in another's territory, are simply not subjects there, nor does there intervene any title by which they become subjects.* He then gives the reason for this resolution in the same place, no. 15.

11. Likewise the VV. report (page 868) those things which St. Alphonsus has in book 7, no. 26, and they are of this kind: *For this reason Croix, book 7, no. 32, thinks, against the Salmanticenses, chapter 1, no. 37, with Pignatelli and Gibalinus, who cites a Declaration of the Sacred Congregation, that a Bishop can excommunicate even his Archbishop sinning in the Bishop's diocese.* But the reason premised by St. Alphonsus is that by reason of the offense that Archbishop becomes a subject of the Bishop. Yet: 1. It is not true that the Salmanticenses are of the opposite opinion. For, indeed, when the Salmanticenses establish in the cited place, no. 37, that a non-subject can be excommunicated by a Bishop by reason of an offense committed in his territory, they except: *unless such a guilty party was his Superior, as his Archbishop or Patriarch*; but afterward, no. 39, they add the limitation: *if he does this by his own authority.* Concerning which below: *We said in the conclusion, by his own authority, because an equal or inferior can indeed by delegation of another Superior excommunicate his own Superior.* 2. On the contrary, the doctrine of St. Alphonsus, which is taken from Croix, is expressed in words too general, namely, that an Archbishop can become subject to his Suffragan by reason of an offense; for it must be restricted by those limits which Gibalinus skillfully adds (*On Censures*, disquisition 4, question 1, no. 4), namely, that this happens only when the Superior has sinned within another's diocese

against a law sanctioned BY SOME OTHER SUPERIOR OF BOTH and promulgated in the jurisdiction of that inferior; for example, if laws concerning the administration of some orphanage, hospital, or University were so sanctioned by the Pontiff that it pertained to the Bishop to restrain disturbers even through censures. 3. In the text of St. Alphonsus, a Declaration of the Sacred Congregation ascribed to Gibalinus is adduced for this doctrine; but this is not true, nor did Croix say this, for Pignatelli, not Gibalinus, adduces it, and Croix attributes it to Pignatelli. Moreover, Pignatelli (*Consultations*, volume 1, consultation 170, no. 8), contrary to what St. Alphonsus after La Croix intimates, in no way speaks of an Archbishop who can be excommunicated by his Suffragan, but merely has these words: *Thus also a Bishop offending the jurisdiction of another Bishop in the latter's diocese is made a subject, so that proceedings can be taken against him with censures, as the Sacred Congregation of the Council judged after Alterius ... in a certain case of Bari on 27 February 1627.* These things fit our case less well, when a Bishop against his own Metropolitan or Patriarch not so much defends his own jurisdiction as protects, as delegate, a law of the Pontiff coercing even through censures.

12. Finally, I would not omit here a little Note which the VV. incidentally add (page 872), where they write: *We observe here in passing that the texts of St. Antoninus, St. Raymond, Gerson, and Gabriel Biel which Father Ballerini adduces in the Annotation to no. 152, volume 1, to prove that mortal sin is not to be asserted unless it is certainly established, must be received with a grain of salt, as they say. For a twofold certitude can be had, one direct and the other indirect from reflex or concomitant principles* (compare above, *On the System*, page 103, at II); *in which place there is discussion of that certitude which arises for that side for which a certainly more probable opinion stands*.

Reply. Of what kind this grain of salt should be with which, according to the VV., the opinions of the aforesaid Doctors are to be sprinkled, someone will perhaps divine with difficulty. Indeed, according to the things cited above, no. 6, from the illustrious Father Haringer, *A certainly more probable opinion approaches very closely to moral certitude, and is no longer strictly doubtful, but morally or quasi-morally certain.* Therefore, is this the grain of salt which the VV. require: that those opinions of the Doctors are to be understood such that mortal sin is not to be asserted unless it is established as morally or quasi-morally certain? Yet, unless I am wholly deceived, it did not seem necessary for this grain of salt to be supplied by the VV. For in moral matters the certitude which is admitted and received is ordinarily none other than an assent of mind of such a kind as excludes a prudent fear of erring. Indeed, according to certain passages of St. Alphonsus, this grain of salt can appear altogether superfluous. And indeed, let the things which the Holy Doctor writes in book 6, no. 604, concerning a Confessor having an opinion diverse from the opinion of the penitent be weighed, please. *That the penitent*, he says, *wills to follow this or that opinion is irrelevant to the judgment of the Confessor unless the latter judges the opinion of the penitent TO BE EVIDENTLY FALSE.* And again in the same place: *When, on the one hand, the penitent forms for himself a judgment concerning the uprightness of some action, and otherwise the Confessor does not have EVIDENT CERTITUDE concerning its falsity, he is bound to absolve him.* And again in the same place: *But whenever the opinion of the Confessor IS NOT EVIDENTLY CERTAIN ..., then he not only can but is also bound to absolve the penitent*. Moreover, let these things be compared with those which the same Holy Doctor writes in the *Moral System*, no. 84. For there he reports these words of Cabassut: *Every Confessor ought to absolve that penitent who does not wish to abstain from a work which, according to probable authority, is licit, although according to the probable authority of others which the Confessor himself follows it is held as LESS probable*; moreover, to these final words of Cabassut the Holy Doctor adds within parentheses: *It must be understood, NOT NOTABLY LESS*. Therefore, the Holy Doctor manifestly had previously called evidently false that which he here calls notably less probable. And this is confirmed from those things which we read thus in the edition of the year 1757 (book 1, tract 1, no. 25): *But what Busembaum says, that the Confessor ought to absolve the penitent even if he judges his opinion false, must be understood unless he judges it ALTOGETHER FALSE.*

Therefore, according to St. Alphonsus, notably less probable is equivalent to ALTOGETHER FALSE; and therefore, conversely, notably or certainly more probable is equivalent to evidently certain or altogether true. Nor is it permissible to think that St. Alphonsus, when he absolutely determines the same question, although in diverse places, would so openly cohere less with himself. Therefore, what the VV. observe, that the statement of the Doctors that mortal sin is not to be asserted unless it is certainly established must be received with a grain of salt, that is, must be understood also when mortal sin is certainly more probably established, can deservedly appear altogether empty; since certainly more probable, according to the interpretation of St. Alphonsus and the illustrious Father Haringer, finally means the same as morally certain, indeed evidently certain.

Moreover, it would be more helpful to observe this here: it is indeed opportune that the VV., as readers of the moral works of the Holy Doctor Alphonsus, warn what sense certain forms of speaking have or can have in the same Holy Doctor; but perhaps it is not likewise opportune that they contend that those forms of speaking are now to be received in the schools after the manner of a general norm, when that manner of speaking is found to be singular and proper to St. Alphonsus

rather than generally common among the Doctors. *An opinion MUCH, VERY, NOTABLY* (add *CERTAINLY*) *more probable*, says the illustrious Father Haringer in explaining St. Alphonsus, *approaches very closely to moral certitude and is no longer strictly doubtful, but morally or quasi-morally certain.* Let us not now inquire whether the same sense constantly underlies these forms of speaking even in St. Alphonsus. But since the Doctors generally did not propose this form of speaking to themselves, the use of these hermeneutical canons for reading the Works of St. Alphonsus will perhaps be useful; but for one examining the Works of the Doctors who through the long succession of centuries adorned the Church and the schools with their labors, it will perhaps lead to distorted and erroneous interpretations.

QUESTION 5. Can Regular Prelates impose a censure upon subjects existing in any place whatever?

Reply. Affirmatively, according to the common opinion. The reason is that the jurisdiction of Superiors is not merely territorial but rather personal; hence a change of place on the part of the subject detracts nothing from the jurisdiction of the Superior. - Thus St. Alphonsus, no. 20.

These things, however, must be understood of censures imposed by a particular sentence or by statutes of the Chapter or of the Superior General. For if some censure has been imposed by a statute by a Superior who has a special territory, for example, a province, then the limitation of place can be attended to, and therefore the exemption of those who sin outside that territory. See Croix, book 7, no. 28.

Article III. On the Subject of Censures

947. ○ Principles. - I. The subject of a censure cannot be except a baptized man, capable of reason, and a subject. 1. He must be baptized, because, according to the Apostle, the Church does not judge concerning those who are outside; 2. capable of reason, because a censure is ordained to the correction of the delinquent, but this has no place in one who lacks the use of reason; 3. a subject, because a censure is an act of jurisdiction, which can be exercised only upon subjects.

II. Minors, although they can absolutely be bound by censures, nevertheless, on account of the levity of their age, through the indulgence and benignity of the Church do not incur them unless it is specially expressed in the law. - St. Alphonsus, no. 14.

But only a twofold case is found expressed in the law, namely: 1. If they have entered monasteries of nuns. Council of Trent, session 25, chapter 5.

2. If they have struck clerics. Chapter *Pueris*, book 5, title 39, *On the Sentence of Excommunication*. - St. Alphonsus, ibid.

948. ○ Questions. - **QUESTION 1. Can Kings and Queens be bound by censures by Bishops?**

Reply. Negatively. For although in spiritual matters they are subject to Bishops, nevertheless by privilege they cannot be punished with censure by them, but only by the Pope [1]. But this privilege was legitimately introduced in the course of time and is commonly attributed to them by the Doctors. - St. Alphonsus, no. 16; Salmanticenses, chapter 1.

[1] Kings, emperors, etc., are subject not only to pontifical censures *latae sententiae* through general statutes, for example, against those invading the goods, territories, rights, etc., of the Church, but can also be punished by censures through a

particular or general sentence.

QUESTION 2. Are Bishops and Cardinals subject to censures?

Reply 1. Certainly they cannot be subject to censures imposed by themselves, because no one is his own subject.

Reply 2. But they are subject to papal censures, because the Pope is the Superior of all, even of Bishops. Nevertheless, by privilege of law they are bound neither by interdict nor by suspension unless in imposing those censures special and express mention is made OF THEM, namely, of the Cardinals. - St. Alphonsus, no. 15.

949. ○ **QUESTION 3. Can exempt religious be bound by episcopal censures by the Bishop of the place?**

Reply 1. More probably affirmatively, if religious, although exempt [2], sin concerning those things in which, by force of the Canons and Constitutions, they are subjected to the jurisdiction of Bishops, for example, in the observance of feasts which the Bishop has commanded to be observed in his diocese, or in the observance of censures promulgated by the Bishop, etc. The reason is that jurisdiction in the external forum cannot be unarmed for executing laws and statutes; for otherwise it would become useless. Therefore, if in some matter a Bishop possesses jurisdiction over religious, by that very fact he can proceed against delinquents even through censures. For one who has contentious power of the external forum can use it in the choice of any penalty whatever, but especially of a spiritual censure, by which ecclesiastical Prelates proceed against subjects. - Thus the laws and the unanimous opinion both of Canonists and of Theologians in Pignatelli (volume 3, consultation 46, no. 24).

[2] If they are not exempt, they are subject to episcopal laws and censures no differently from other clerics. Moreover, if they have the Bishop as their proper Prelate, they can be bound by censures by him just as the other religious by their Superiors. Sanchez (*On the Decalogue*, book 6, chapter 1, no. 11) and Schmalzgrueber (book 3, title 35, nos. 61-62).

But according to the more common opinion, Bishops proceed in these matters not by ordinary power but by power delegated by the Apostolic See. Thus St. Alphonsus, book 7, no. 241 [3]. Moreover, St. Alphonsus enumerates the principal cases in which even exempt religious are subjected to the power of the Bishop in *The Apostolic Man*, tract 20, *On Privileges*, chapter 4 [4]. Nevertheless, this is absolutely denied by not a few authors, whom several decrees of the Pontiffs and of the Sacred Congregation of the Council appear to favor [5].

[3] Namely, after the privilege of exemption, religious are and remain exempt and immediately subject to the Roman Pontiff; wherefore Bishops proceed against them by no other title than that of mere commission or delegation. This must be carefully retained against the false hypothesis of De Luca, who (*Ecclesiastical Miscellany*, discourse 16, nos. 13-14) imagines that native jurisdiction is restored to Bishops in the case and thereby becomes ordinary, so that, namely, he may prove that it must be interpreted broadly.

[4] Barbosa (*On the Office and Power of a Bishop*, part 3, allegation 105, no. 14 and following) numbers fifty-two cases in which religious, even exempt religious, are subject to the jurisdiction of the Bishop; but Chockier (*On the Jurisdiction of Ordinaries over Exempt Persons*, part 2, question 45) numbers altogether one hundred and sixteen. The principal cases, however, are found in Schmalzgrueber (book 5, title 33, nos. 253, 254).

[5] In these things you have a trace of no small confusion introduced into this question; to this it is also due that St. Alphonsus, when the various statements of the same opinion are compared together, compare *On Privileges*, no. 75; ibid., no. 77; and book 7, no. 241, appears less coherent with himself. But the principal cause of this confusion can be held to be

that the authority of certain Doctors who either wrote before the promulgation of certain decrees of the Sacred Congregations or were ignorant of these decrees is nevertheless invoked as though their vote could contribute something toward deciding this question. Since other causes have acceded to this from a distorted interpretation either of Law or of Privileges, it is no wonder if we see called into controversy that which ought to be held beyond controversy. From this it must also be derived that the Author presents as merely more probable the power by which Bishops can use censures against exempt persons, But Benedict XIV (*On the Diocesan Synod*, book 9, chapter 16, no. 5, and book 7, chapter 41, no. 5) testifies that this was established as certain, decreed, and declared by the Sacred Congregation on 17 February 1632 in these words: *In those matters in which jurisdiction over religious has been granted to the Bishop by the common law, by the Holy Council of Trent, and by the Apostolic Constitutions, he can compel them even through ecclesiastical censures*. For this opinion, indeed, both the reasons, the repeatedly issued decrees of the Sacred Congregation, and the vote of Doctors agreeing almost unanimously may be seen in Pignatelli (volume 3, consultation 46, nos. 11 and 12) and Monacelli (part 3, title 3, formula 6, no. 13).

Reply 2. Negatively, if there is question of those religious who enjoy not only the general privilege of exemption but also a further special privilege by force of which, although they can be corrected and restrained by other penalties if they sin in those matters in which the Apostolic See has subjected them to Bishops, nevertheless they cannot be punished through censures. This privilege was never generally abrogated, although Gregory XV derogated from it in certain matters (Constitution *Inscrutabili*, section 6). - St. Alphonsus, no. 241 [6]. whenever it is necessary for compelling them in those matters in which religious are subjected to their jurisdiction.

[6] Care must diligently be taken lest the twofold exemption or immunity of religious from the censures of Bishops be confused. For one arises from this: that religious in certain matters are entirely exempt from the jurisdiction of Ordinaries; wherefore, since with respect to these things they are not their subjects, they are bound neither by their laws nor by their precepts, and therefore can be punished neither by censures nor by other penalties. If, however, in some matter they are subjected to the power of those same Ordinaries, and it has already been premised that in many matters they are so subjected, when sinning in these they can be corrected, punished, and restrained even by censures, as we have already said. But the other arises from this: that by a special privilege certain religious cannot be struck by censures even in those matters in which they are otherwise subject to the jurisdiction of Ordinaries, although they can be restrained and punished by them with other penalties. And indeed, from the lack of this distinction, see both Bonacina (*On Enclosure*, question 3, point 4, no. 8), Henriquez (*Summary*, book 7, chapter 25, no. 7), Ascanius Tamburinus (*On the Right of an Abbess*, disputation 25, question 9, no. 1), Peyrinus (*On Religious*, volume 2, on Constitution 6 of St. Pius V, no. 37), James de Graffis (*Decisions*, part 1, book 4, chapter 6, nos. 2, 3), and finally John Aloysius Riccius (*Practice*, volume 4, resolution 180), and in part also Joseph de Januario (*Selected Resolutions*, resolution 34, no. 16), carried astray.

Moreover, that this special privilege, plainly distinct from the common prerogative of exemption, was granted by the Apostolic See to certain religious is manifest from chapter *Volentes* 1, *On Privileges*, in the *Sext*; for in section 1 there is discussion of those to whom it has been granted by the Apostolic See that they cannot be interdicted, suspended, or excommunicated by anyone; *as*, it says, *are very many religious, in whose privileges it is contained that no Bishop or Archbishop shall presume, for any cause or in any place, to interdict, suspend, or excommunicate the monks of their monasteries*, etc. St. Alphonsus testifies the same concerning mendicants (book 7, no. 241), and that it was granted anew to the men of the Society of Jesus is plainly apparent from the Constitution *Licet Debitum* of Paul III, 18 October 1549. But what the Author says, that something was derogated from this privilege by Gregory XV, pertains only to any exempt persons whatever, both secular and religious, who presume to preach in the churches of others, or in churches which are not of their Orders, without the permission of the Bishop, and in their own churches or those of their Orders without having sought his blessing or while he contradicts; and power is given to Bishops that, against delinquents, as often as and whenever there is need, they may freely and licitly proceed through ecclesiastical censures and other penalties.

But what both De Luca, the most hostile enemy of this privilege (*Ecclesiastical Miscellany*, discourse 16), and Monacelli, who most diligently copied him (part 3, title 2, formula 6), object, that these privileges of religious were derogated by the Council of Trent, is nothing. For, first, privileges are derogated insofar as they conflict with the observance of the synodal decrees. But the faculty of proceeding through censures against religious is granted to Bishops by the Council concerning only these two things, namely: 1. that religious be compelled to restore to novices departing whatever they had given to the monastery; 2. that the enclosure of nuns be observed. Sanchez (*On Matrimony*, book 7, disputation 33, no. 23) adds a third case concerning a religious who celebrates Mass outside a church or oratory. But, moreover, that the mind of the Council

was not to derogate from that special privilege of certain religious is apparent from the Declaration of the Sacred Congregation of 9 April 1587, in which there is question of the same case as in the decree of the Council. Suarez (*On Religion*, tract 8, book 1, chapter 10, no. 27) reports it thus: *Religious approaching monasteries of nuns without the permission of the Bishop incur the penalty of excommunication which the Bishop proposed by his edict, unless those religious had by privilege that they could not be excommunicated; and then they ought to be punished by their Superiors with another penalty.*

And these things are splendidly confirmed from those which Prosper Fagnanus has on chapter *Quanto, On Privileges*, no. 9. For he proposes this question: *Given the Constitution of Gregory XV concerning the privileges of exempt persons, can a religious, approaching without legitimate permission a monastery of nuns subject to religious and there speaking with a nun in the place appointed for conversations, be restrained and punished by the diocesan Bishop as delegate of the Apostolic See?* He replies that the decision is plain: that he falls into excommunication if the Bishop imposed that penalty upon one going to the monastery. But then he expressly subjoins these things: *The Sacred Congregation approved this opinion long ago when it declared that religious approaching monasteries of nuns, even those exempt from the jurisdiction of the Bishop, incur the penalty of excommunication proposed by the Bishop's edict against those approaching, unless they had a privilege by name that they could not be excommunicated; and nevertheless, even in that case, it judged that they were to be punished with other penalties.*

From these things it is also gathered that neither Sanchez (*On Matrimony*, book 7, disputation 33, no. 23) nor Lezana (*Summary of Questions of Religious*, volume 2, part 3, under *Exemption of Religious*, no. 11) touched the matter precisely; for while they defend this privilege of religious, they except those three cases expressed in the Council of Trent. The same must be said of James Pignatelli, who falls into the same error, although otherwise he not only concedes that special privilege of certain religious (volume 3, consultation 46, no. 25, and volume 7, consultation 44, nos. 26, 27), but defends it by the vote of many Doctors.

** Concerning this and the preceding Note the VV. write (page 875): *The things which Father Ballerini hands down here are indeed correct; but he less correctly asserts that St. Alphonsus, when his various statements are compared together, appears less coherent with himself. For from the things to be said it will be apparent that our Holy Doctor coheres well with himself and that the things Father B. hands down are also taught by St. Alphonsus.*

Reply. I would indeed have preferred that the VV. had composed the sentence of the last part more suitably in almost this manner: *Those things which Father Ballerini reported from more accurate Authors are taught by St. Alphonsus.* And the reason is that Father B. advances nothing on his own authority, but everywhere devoted himself to this one pursuit: that those things which appeared to be more accurately arranged among the leaders and masters of every School should be subjected to the eyes and judgment of readers.

Meanwhile it remains that some reason be brought here why in the preceding Note it was said in passing that the opinions of the Holy Doctor Alphonsus concerning this argument, if they are compared together, may appear less coherent with one another.

1. Therefore, in the first place there occur those things which he writes generally of religious in this place (book 7, no. 26): *But religious are simply exempt from episcopal jurisdiction from chapter Ne aliqui, On Privileges, in the Sext. See the Salmanticenses, no. 37.* These things, moreover, appear to be referred to the immunity of all religious when there is question of censures which a Bishop imposes by his own and native authority; for to this also pertains the citation of the Salmanticenses (*On Censures*, chapter 1, no. 57). Let it now be passed over whether all religious of each sex enjoy this immunity and exemption. But as regards the present matter, the citation of chapter *Ne aliqui* would suggest that there is question there not of religious generally but specifically of those who among exempt persons themselves are fortified by a particular privilege.

2. Nearly the same obscurity and uncertain sense are displayed by those things which the Holy Doctor immediately subjoins there thus: *And a Bishop cannot impose censures upon exempt or privileged religious, such as Mendicants and Jesuits* (see below, no. 24, doubt 9), *even if he proceeds as Apostolic Delegate, as Croix, book 7, no. 30, with Pelizzarius and others.* Namely, the citation of Croix introduces a certain confusion. For those words, *Even if he proceeds as Apostolic Delegate*, which are likewise taken from Croix, would suggest that there is question here of exempt persons fortified by a special privilege. But, on the contrary, the Authors cited in that place by Croix, such as Krimer and Rodriguez, lead to a different opinion. For Krimer has these words in the place where he is cited by Croix (on book 5, no. 1681): *It is inferred that exempt persons cannot be bound by censures by the Bishop either through a general or through a special sentence; thus Rodriguez, volume 2, question 59, article 5*; which place of Rodriguez, namely, Croix also cites. But these things are referred to the common exemption of religious. - Moreover, Croix in the cited place, otherwise confusing diverse questions, as is apparent, had circumscribed his opinion by these words: *Unless this has been granted to them*, namely, to Bishops, *specifically.* When St. Alphonsus omits these words, his

assertion becomes too universal under any hypothesis, as the example brought in the Note from the Constitution of Gregory XV suggests concerning religious who presume to preach in the churches of others without the Bishop's permission.

3. But, you will say, St. Alphonsus (book 7, no. 26) refers the reader to no. 241 of the same book. But in this place he treats merely of the enclosure of nuns. Therefore, through this the opinion previously handed down is not sufficiently completed or limited here. But, moreover, what must be thought concerning the opinion of the Holy Doctor about this argument we now have from the VV. themselves. For they, as we saw above, write concerning the things said in the Note that *the things which Father Ballerini hands down here are correct*. But in the Note it is sufficiently shown that through those things which are contained in the Constitution of Gregory XV concerning the enclosure of nuns, the special privilege of religious was by no means derogated, so that those fortified by such a privilege, if perhaps they sinned concerning that matter, could be restrained and punished by the Bishop through censures. On the contrary, St. Alphonsus, in *The Apostolic Man*, tract 19, no. 42, answers affirmatively to the question, *Do religious speaking with nuns incur excommunication reserved and imposed by the Bishop?* And this applies even with respect to religious having a special privilege that the Bishop cannot excommunicate them. He adds this reason: *For Bishops in Monasteries, even those subject to religious, are Delegates of the Apostolic See, as is said in the Bull Inscrutabilis of Gregory XV.* But this reason otherwise can conclude nothing, since, as the Holy Doctor himself had said above, no. 2, a Bishop cannot impose censures against these privileged persons EVEN IF HE PROCEEDS AS APOSTOLIC DELEGATE. He repeats the same thing in book 7, no. 241, saying: *Such a privilege ought to import this, that a Bishop cannot proceed against them even as Delegate of the Apostolic See.* But this itself must also be moderated; because, as is shown in the Note, a Bishop certainly cannot proceed through censures against one privileged in this manner, but a religious of this kind can be restrained and punished with other penalties either by his own Superior or by the Bishop.

Moreover, the Holy Doctor in this place, book 7, no. 241, uses another reason for subjecting a religious of this kind to censures, as though the Constitution of Gregory XV derogated from such a privilege regarding the enclosure of nuns. Wherefore he subjoins: *This, however, must be understood if the privilege was granted after the Bull of Gregory, but not if before it, since in the Bull it is said: They cannot protect themselves by any privileges and exemptions*, etc. But it has already been indicated in the Note that the derogation of Gregory, even according to the testimony of Fagnanus, does not pertain to this; for in that paragraph of the Constitution, as is apparent from the text transcribed even by St. Alphonsus, not even the slightest mention of censures is made; and otherwise the VV. themselves admit that the things read in the Note are correct.

4. Now some things also concerning those which the Holy Doctor has in the Treatise on Privileges. First, therefore, no. 75, he writes: *Here it must be noted that there is a response of the Sacred Congregation to the Bishop of Nebbio, 7 February 1632, where generally speaking it was said: In those matters in which jurisdiction over religious has been granted to the Bishop by the common law, by the Holy Council of Trent, and by the Apostolic Constitutions, he can compel them even through ecclesiastical censures. Wherefore, as Benedict XIV well observes* (*On the Diocesan Synod*, book 9, chapter 15, no. 5), *Bishops, with respect to the celebration of Masses, can compel all, although religious, to observe not only those things established by the Council but also those which are established by themselves. Wherefore the Most Eminent Cardinal Spinelli, when he was Archbishop of Naples, rightly commanded on 5 January 1743, under penalty of suspension from divine things, even religious not to admit any visiting priest to celebrate in their churches without permission of the Ordinary.* Thus St. Alphonsus. But there are altogether many matters, as we said in the preceding Note, in which religious, even exempt religious, whom, namely, we distinguish from those whose Prelate is the Bishop, are subject to the jurisdiction of the Bishop. And Barbosa (*On the Office and Power of a Bishop*, part 3, allegation 105, from no. 14) numbers fifty-two cases; but Chockier (*On the Jurisdiction of Ordinaries over Exempt Persons*, part 2, question 45) numbers altogether one hundred and sixteen. But since, as St. Alphonsus himself teaches above, no. 1, religious are simply exempt from episcopal jurisdiction, it follows that if in some case a Bishop has jurisdiction over religious, it is granted to the Bishop either by the common law, by the Council of Trent, or by the Apostolic Constitutions, and that against them the Bishop, as the same St. Alphonsus teaches, tract 7, no. 241, proceeds in any of these cases as a Delegate. Therefore, according to the aforesaid Response of the Sacred Congregation to the Bishop of Nebbio, which St. Alphonsus adds in *On Privileges*, no. 75, was confirmed on 4 June 1672, and according to the consequences deduced from it by the same St. Alphonsus after Benedict XIV, it must be said that in all the cases which either Barbosa, Chockier, or others enumerate, Bishops can compel religious to their duty even through ecclesiastical censures.

** 5. But behold, the same St. Alphonsus writes (*On Privileges*, no. 77): *In three cases a Bishop can compel religious to obey, even by employing censures: the first is to restore goods to novices, as was said; the second, to observe enclosure, speaking of nuns; the third, to observe everything which has been established by the Bishop concerning the celebration of Masses.* But these things are very far from those just premised, where the same Holy Doctor with Benedict XIV handed down that a Bishop can proceed through ecclesiastical

censures against religious in all cases in which jurisdiction over those religious is attributed to him. For that St. Alphonsus, now recalling these three cases, speaks exclusively is evident from those things which he thus subjoins in the same place: *Whether then in the other cases cited above the Bishop can compel religious by censure; Barbosa, Garzia, and others affirm, but Sanchez, Lezana, and the Salmanticenses with others more commonly deny it, on account of the many papal privileges which they bring forward concerning this matter.*

6. Therefore, just as the things which the Holy Doctor hands down in this paragraph do not cohere with those which he had taught above, no. 4, in the same Treatise, so neither do they cohere with those which he has in book 7, no. 26, where, above no. 2, he generally denies that a Bishop can proceed through censures against privileged persons even if he proceeds as Apostolic Delegate; and again neither do they cohere with those which he discusses in book 7, no. 241, where he denies that a Bishop can proceed through censures even regarding the enclosure of nuns if the religious have those papal privileges which he recalls here.

But the cause of this dissonance of opinions is finally not obscure, if it is observed that St. Alphonsus took those things which he has in *On Privileges*, no. 75, from Lambertini's work *On the Synod*, book 9, chapter 15, no. 5; that he borrowed compendiously from the Salmanticenses (*On Privileges*, chapter 3, section 3) those things which he has in *On Privileges*, no. 77; that he excerpted from Croix, book 7, no. 30, and the Salmanticenses (*On Censures*, chapter 1, no. 37) the few things which he has in book 7, no. 26; and, from another source, those things which he discusses in book 7, no. 241, concerning the enclosure of nuns. For otherwise it is not easy to find an Author who treats this most intricate question exactly in all its parts; and otherwise, in order that the matter may shine forth sufficiently clearly as to each part, prolonged and intense labor is certainly needed, as can sufficiently be conjectured from those few things which are contained in the Note.

QUESTION 4. How ought one who doubts whether he is bound by a censure to conduct himself?

Reply. If he doubts whether he was absolved from a censure, he ought to hold himself as still entangled in the censure until he has questioned the Superior. The same must be said if he doubts concerning the power of the Superior in imposing the censure, since the presumption must always be for him. But it is otherwise if he doubts whether he has incurred the censure, whether the doubt is of fact, for example, concerning the crime, as if he doubts whether the striking of a cleric was gravely injurious; or the doubt is of law, that is, concerning the sentence, for example, in doubt whether the censure is *latae* or *ferendae sententiae*, etc. - St. Alphonsus, nos. 32 and 67.

950. ◦ **QUESTION 5. Can someone be bound by several censures at once?**

Reply. Affirmatively. For nothing prevents someone from being constrained by several bonds at once. For just as someone can commit several sins diverse in species and number, so also can he be bound at once by censures diverse in species and number, for example, by excommunication, suspension, if he is a cleric, and interdict, and also by several excommunications, etc. Indeed, on account of one offense someone can be bound at once *a iure* and *ab homine*, by the Pope and by the Bishop, so that he must be absolved by each, provided that the latter Superior intends to impose a new penalty. - Thus commonly, and absolutely more probably according to St. Alphonsus, no. 28.

Hence: 1. If someone by a single act commits two sins diverse in species, to each of which a censure is annexed, he will incur two censures; for example, one who kills a cleric in a place where homicide is prohibited under penalty of censure. It is otherwise, however, if that one sin does not have malices diverse in species. - St. Alphonsus, no. 28.

2. If someone repeats the same crime to which a censure is annexed by an act morally distinct from the first, he again incurs the same censure; but it is otherwise if the repeated acts are not morally distinct from one another. Thus one striking a cleric three or four times, with a notable

interval posited between each strike, incurs three or four censures, while he incurs one if he strikes him several times continuously.

3. Likewise, an excommunicated Priest who successively absolves several penitents will incur several irregularities, because each time he confers a new Sacrament [7]. - St. Alphonsus, ibid.

[7] This example does not pertain to the matter, because it is not certainly established that several sins distinct in number are had here. See above, no. 211, question 9.

QUESTION 6. Does an appeal excuse from incurring a censure?

Reply 1. A legitimate appeal excuses from a conditional censure, provided that it is made before the lapse of the time granted for fulfilling the condition.

Reply 2. A legitimate appeal from a censure already imposed generally does not suspend it. Hence the common saying of Canonists is that the appeal is then devolutive, but not suspensive. - Thus Benedict XIV, Constitution *A militantis*.

QUESTION 7. Can an entire community be the subject of a censure?

Reply 1. Negatively with respect to excommunication, unless it is established that each and every person of the community is a participant in the crime and contumaciously persists in it.

Reply 2. Affirmatively with respect to suspension, yet so that, if there are any innocent persons, it strikes them only with respect to the functions and rights belonging to the community itself as such, but not with respect to functions and rights which belong to each one individually.

Reply 3. Affirmatively also with respect to interdict; this censure has this peculiarity, that if it is general it binds the entire community, and in it even the innocent, from chapter *Si civitas* 17, *On the Sentence of Excommunication*, in the *Sext*. Nor can the one imposing the censure therefore be accused of injustice; for, properly speaking, through such an interdict the innocent are not punished, but for just causes the Church withdraws her benefits and offices from the guilty and innocent alike. Common opinion. - See Schmalzgrueber, book 5, title 59, nos. 44-46.

Article IV. On Absolution from Censures

951. ○ Principles. - I. Censures are not removed through the repentance alone of the delinquent or through obedience toward the mandates of the Church, nor through the death of the one who imposed the censure; but absolution imparted by a legitimate judge or Superior is necessary. This is manifest from chapter *Cum desideres*, *On the Sentence of Excommunication*, and proposition 44 condemned by Alexander VII.

II. From a censure *ab homine* imposed by a particular sentence, only the following can absolve: 1. the one who imposed the censure; 2. his Superior; 3. his successor; 4. another delegated by any one of these. The reason is that it belongs to him to absolve to whom it belongs to bind [1]. The same must be said of reserved censures *a iure*.

[1] For this reason it applies even if the guilty party changes domicile. Hence St. Alphonsus well observes (book 7, no. 72) that if someone sinned in another territory in such a manner that he was specially excommunicated by the Bishop of that place, he cannot be absolved by his own Bishop except with the permission of the excommunicating Bishop.

But note that this is said of a censure *ab homine* imposed by a particular sentence; for censures which are indeed *ab homine* but imposed by a general sentence are, according to the more probable opinion, equated with those imposed *a iure* which are not reserved; and therefore whoever has jurisdiction over the guilty party can absolve him. See St. Alphonsus (book 7, no. 73) and Schmalzgrueber (book 5, title 39, no. 94).

** But why the VV. here (page 948, no. 162) propose the doctrine of Father Gury as dissenting from the doctrine of St. Alphonsus can scarcely be understood. For after in Principle II he denies to any priest the right to absolve from censures *ab homine*, and then in Principle III likewise denies to any priest the faculty of absolving from censures reserved in any manner either to the Supreme Pontiff or to the Bishop, he appears to embrace everything sufficiently. The sole difference consists in this: that Gury hands down in this same place those things which the Holy Doctor Alphonsus has partly in no. 70 and partly in no. 73, as is apparent from this Note.

III. Any Confessor can absolve from censures not specially reserved to the Pope or Bishop. This is established from chapter *Nuper, On the Sentence of Excommunication*. - St. Alphonsus, no. 70 [2].

[2] St. Alphonsus adds that this absolution is valid also for the external forum; this opinion is admitted as more common and more probable. See Suarez (*On Censures*, disputation 7, section 5, no. 15), who nevertheless rightly warns in the same place, no. 29, that where the censure is public, although not juridically denounced, in order to prevent scandal it ought to be publicly established that absolution has been given, so that someone may publicly conduct himself as absolved. Nevertheless, scandal is sufficiently prevented if it is publicly established that he confessed to one having the faculty of absolving and that satisfaction, if any was necessary, was rendered.

But regarding privileges granted to religious for absolving from reserved censures, Clement X established (Constitution *Superna*, section 6): *By force of the aforesaid privileges it is by no means licit for religious, even when satisfaction has been made to the party, to absolve penitents from censures with respect to the external and judicial forum; and those absolved by them in the penitential forum are certainly not considered absolved in the exterior and contentious judgment. Indeed, those entangled in and denounced by ecclesiastical censures can be compelled by Bishops to conduct themselves as such even if they were absolved by religious.* Urban VIII likewise provided (Constitution *In specula militantis*) concerning those who by privilege of the Bull of the Crusade choose for themselves a Confessor by whom they may be absolved from cases even reserved to the Pope. But this declaration must not be extended to other indults; rather, the formulas of each must be inspected.

But whether and to what extent absolution from censures given in the forum of conscience can avail for the external forum, and how the absolved person ought to conduct himself both when the censure was occult and when it was notorious, and what caution must be employed where the cause has been brought to the external forum, see Laymann (book 1, tract 5, part 1, chapter 7, no. 7) and Bonacina (*On Censures*, disputation 1, question 3, point 10, no. 3).

952. ○ IV. By a privilege granted by the Council of Trent, chapter *Liceat*, Bishops can absolve even from occult papal censures, excepting those which are reserved to the Pontiff in a special manner. See the things said above, *On the Privileges of Bishops*, no. 124. But the Bishops of those regions in which the Council has not yet been received do not enjoy this privilege. See Fagnanus (on chapter *Dilectus, On the Time of Ordinations*, no. 15), Suarez (*On Faith*, disputation 44, section 2, no. 6), Sanchez (*On the Decalogue*, book 2, chapter 11, no. 3), and Lugo (*On Faith*, disputation 23, no. 54). - Moreover, from censures reserved to the Pope, even non-occult ones, in favor of those who are impeded from going to Rome either for a long time or even perpetually, of which sort the aged, children, women, the infirm, the poor, etc., are considered. Recall the things said concerning the privileges of Bishops in the Treatise on States, no. 124, and in the Treatise on Penance, no. 576. - See St. Alphonsus, no. 84 and following. - Hence this rule is commonly received by the Doctors: A papal case, when an impediment to approaching the Pope supervenes, becomes episcopal. Indeed, Castro Palao with certain others thinks that absolution from censures in this case pertains not only to the Bishop but to any Confessor; and this opinion does not appear improbable. - St. Alphonsus, no.

92; Pichler, book 5, title 39, no. 14. But absolution of this kind cannot be given either by the Bishop or by any other priest unless the burden of presenting himself to the Superior when the impediment has ceased is imposed upon the penitent [3].

[3] This burden is not imposed when the impediment can be judged perpetual. See the things said above, no. 575, and the Note there.

V. All Priests, from the Council of Trent, session 14, chapter 7, can absolve from any censure whatever, and therefore not only from excommunications but also from suspensions and interdicts, however reserved, those who are placed at the point of death, but, the Authors say, with the burden of presenting themselves to the Superior or Delegate if they recover. There are nevertheless those who think that the burden of presenting oneself to the Superior has place only when the censure is notorious, or the matter was brought to the contentious forum, or the law itself established such an obligation. - But see the things said in the section on Penance, no. 576.

953. ◦ Resolutions. - 1. An Archbishop or even a Patriarch, indeed also a Legate *a latere*, although superior to a Bishop, cannot absolve the subjects of Suffragans except in the sole case of a just appeal or visitation by virtue of office, because in other cases he does not enjoy jurisdiction properly so called.

2. An ecclesiastical Superior or delegate can absolve from censures even if he is not a Priest. The reason is that the jurisdiction required for absolving from censures can reside in a cleric initiated even by tonsure alone.

3. One who has a general faculty of absolving from papal censures cannot therefore absolve from cases reserved in a special manner, as formerly in the cases of the Bull *Coenae*, unless this is explicitly expressed in the concession; for special things are not contained of themselves in a general concession. Likewise, one who can absolve from specially reserved censures cannot therefore absolve from a censure inflicted upon one absolving an accomplice. Declaration of the Holy Office, 17 June 1866.

4. A faculty granted by a Bishop for reserved sins is not understood for sins reserved with a censure; it is otherwise if the concession was made by the Pope, because all papal cases are reserved with a censure, excepting two, namely: 1. false accusation of solicitation against a priest; 2. acceptance of notable gifts by religious. The moreover, notable gifts are considered those which are equivalent to ten scudi [4]. - See St. Alphonsus, no. 5. Nevertheless, note that this reservation does not affect the sin of accepting gifts; therefore, if someone, recognizing that he cannot retain the gifts accepted, restores them or wishes to restore them, he can be absolved by any Confessor. The reservation, therefore, consists in this: that he cannot be absolved unless he restores them or obtains remission of the debt from the Pope, since the Pontiff has reserved this to himself.

[4] What that means which the Author says concerning the sum of ten scudi you will learn more clearly from Innocent XII in the Constitution *Romanus Pontifex*, 3 September 1692, in which are contained the faculties granted to the Major Penitentiary. *Let him not absolve, nor command to be absolved* (he says), *religious receiving gifts contrary to the Constitution of Clement VIII of happy memory beyond the value of ten scudi in money before restitution has been made; but below the aforesaid value, let him absolve, or command to be absolved, only after an alms has been made at the judgment of the Penitentiary himself or of the Confessor to be chosen by him, which is*

to be expended for the benefit of the Religion or Convent to which restitution would by law have to be made, if it can be done cautiously. And you have this same thing in the Constitution *Pastor bonus* of Benedict XIV, 13 April 1744.

Therefore, the words of the Author are not to be understood as though gifts which do not attain the value of ten scudi cannot be notable, or as though gifts below that value can be retained by the recipient in such a way that he does not need that remission of the debt which the Apostolic See reserved to itself; but those words are to be taken merely in this sense: that one receiving gifts exceeding that value cannot be absolved by the Major Penitentiary unless the obligation of restoring is imposed; but if the gifts do not exceed that measure, the recipient can be absolved with the obligation imposed of only some alms, to be determined at the judgment of the same Penitentiary or of the Confessor to be chosen.

5. Absolution from censures must be given not only to those who certainly or doubtfully incurred them, but also to every penitent before he is absolved from sins, so that any impediment which perhaps exists to receiving the Sacrament may be removed [5]. - (From the Roman Ritual.) But as to what formula is to be used, recall the things said where Penance was treated, no. 430.

[5] Since the use of the sacraments is forbidden to the excommunicated, absolution from excommunication must always precede absolution from sins. But where it is not established that the penitent is bound by it, absolution is merely premised as a precaution.

954. ○ Questions. - **QUESTION 1. Can an absent person be absolved?**

Reply. Affirmatively, at least validly. The reason is that, just as a penalty can be established against an absent person, so also it can be removed. This is also evidently deduced from Canon Law [6].

[6] If, nevertheless, there is question of the faculty granted to Bishops by the Council of Trent in chapter *Liceat* (see above, no. 952), so that they can absolve any of their subjects in their diocese, according to the more probable interpretation, which Lugo also embraces after Suarez (*On Censures*, disputation 41, section 2, no. 11 and following; *On Faith*, disputation 23, nos. 73-76), it seems that it must be said that a Bishop absent from the diocese can indeed absolve a penitent existing in the diocese, but not conversely. Lugo himself confirms this interpretation from a certain Declaration of the Sacred Congregation.

Nor ought it to stand in the way of this resolution that St. Alphonsus (book 6, no. 593, and book 7, no. 81), with Barbosa (*On the Office and Power of a Bishop*, part 2, allegation 59, no. 8) and certain others, thinks that those words of the same Chapter, *For the forum of conscience*, have the same force as *in sacramental Confession*.

For, as Lugo well says (loc. cit., no. 64), the contrary opinion is common to almost all; and this is apparent from the lengthy catalogue of Doctors whom even Barbosa (loc. cit.) presents for it. And indeed (Lugo continues) the contrary cannot be sufficiently proved from the words of Trent; and it seems to be deduced from general principles, since it is established that absolution from censures can be separated from absolution from sins. Nor does that limitation, *For the forum of conscience*, compel this to be done in the sacrament; for those words have another sense, namely, lest this absolution avail for the external forum, in which, although someone has been absolved by the Bishop for the forum of conscience, he will be regarded as not absolved and will be punished with all the penalties of law. He then himself solves the difficulty which perhaps could be drawn from two Declarations of the Sacred Congregation; and that solution fits very well also with what Fagnanus (on chapter *Dilectus*, *On the Time of Ordinations*, nos. 35, 36) relates was declared by Gregory XIII; for the controversy was not then whether a Bishop could absolve within the sacrament of Penance or outside it, but whether by force of chapter *Liceat* he could absolve these or those persons.

Moreover, that anyone who has the power of absolving from a censure in the forum of conscience can perform this even outside confession is the common opinion, with which St. Alphonsus also agrees generally (book 7, no. 126); and it must be attributed only to a lapse of memory that Busembaum (in St. Alphonsus, loc. cit.) presents Suarez and Navarre as opposed, although they plainly agree with the others (see Suarez, *On Vows*, book 6, chapter 16, no. 4, and Navarre, *Counsels*, book 5, *On Privileges*, counsel XI, no. 2).

But what must be especially noted is that this same thing holds even if: 1. a faculty has been given of absolving in the penitential forum. See Bonacina (*On Censures*, disputation 1, question 3, point 6, no. 8) and Suarez (*On Laws*, book 8,

chapter 6, no. 16); or 2. the faculty is committed to a priest, or to a priest-confessor, or even to a priest hearing confessions. See Suarez (*On Laws*, book 8, chapter 6, no. 16); indeed, 3. even if the faculty of absolving is given after confession has been heard. See Sanchez (*On Matrimony*, book 8, disputation 16, no. 11), Emmanuel Rodriguez (*Questions of Religious*, volume 1, question 61, article 7), Gaspar Hurtado (*On Excommunication*, disputation 15, difficulty 5, nos. 17, 18), Avila (part 2, chapter 7, disputation 3, doubt 13), Giles Coninck (disputation 14, *On Excommunication*, doubt 46, no. 252), and, others being omitted, Felix Potestas (*Examination of Confessors*, no. 3460).

Coninck (loc. cit., no. 251) thus indicates what use there can be of this doctrine, namely, that if the guilty party is not prepared to confess immediately and causes are present on account of which it is expedient that he immediately be absolved (from excommunication, suspension, or interdict); and the same could be said when one who has the power of absolving from reserved censures did not have time to hear an entire confession; for then he could hear only the cases which have excommunication annexed to them, and then absolve from this, and send the penitent to another who, after hearing the confession, would absolve from sins. Thus, with others, Avila, part 2, chapter 7, disputation 3, doubt 13.

QUESTION 2. Can an absent Bishop absolve one existing in the diocese?

Reply. Affirmatively, according to all. The reason is that knowledge of the cause and judicial proceedings are not required for absolution; and therefore nothing prevents a Bishop from exercising such an act of jurisdiction in another's territory. It is otherwise, nevertheless, if judicial proceedings should at times be required. - St. Alphonsus, no. 21.

955. ○ **QUESTION 3. Can an unwilling person be absolved?**

Reply. Affirmatively. The reason is the same as that just adduced; for just as a penalty can be imposed upon one absent and unwilling, so also it can be removed from him. Nevertheless, it is not expedient that this be done without a very grave reason, and care must be taken lest, while he has not ceased from contumacy, the censure be held in contempt. - St. Alphonsus, no. 117.

QUESTION 4. Can one who is bound by several censures be absolved from one while the others remain?

Reply. Affirmatively. The reason is that there is no necessary connection among them. Mortal sins indeed can by no means be absolved one without the others; but it is otherwise with censures, whose absolution does not confer sanctifying grace upon the censured person. They are regarded, therefore, after the manner of chains, some of which can be loosed without the others.

QUESTION 5. Can one be absolved from censures who has not yet publicly repaired the scandal on account of which he was subject to those censures?

Reply. Negatively, at least *per se* and speaking generally. This is established from the Declaration of the Sacred Penitentiary, 5 July 1857 [7].

[7] Here belongs the question concerning absolution which is conferred without satisfaction having been made to the party. Concerning it, this is certain: that it is illicit, whether it is thus given by the Ordinary or by a Delegate, both on account of the injury done to the party and because one absolving thus violates the order of law, which prescribes that real satisfaction be premised, if it can be done, as Schmalzgrueber says (book 5, title 39, no. 101).

Nevertheless, three cases, as is fitting, are excepted: 1. when the injured party remits the injury; 2. when the injured party rejects just satisfaction, because then it no longer stands through the guilty party that the one offended is not worthily satisfied; 3. when the guilty party is unable to make satisfaction; for then the judge (as St. Alphonsus notes, book 7, no. 128) not only can but ought to absolve him, and can be compelled to this from chapter *Qua fronte* 25, *On Appeals*, because when contumacy ceases, the guilty party ought to be absolved. Concerning this matter Suarez excellently adds (*On Censures*, disputation 7, section 5, no. 41) these things which pertain to practice: *I think that, according to the quality of the matter and condition of the person and other circumstances occurring, it must be considered whether the penitent can morally make satisfaction effectively*

before he is absolved from the censure, and then this must be premised; but if he cannot, nor can absolution be deferred except for a long time or with great detriment, then I think that he can be absolved if he makes satisfaction in the manner in which he can at present, that is, by furnishing security, either by pledge, if he can, or by oath, if he cannot furnish greater, and by displaying such signs of repentance and purpose that the confessor may probably judge that absolution will both profit the penitent himself and not impede him, or become an occasion why he would not later make satisfaction after acquiring the ability.... But the reason for this opinion is that when the Pontiff says, the party having been satisfied, it is to be understood, insofar as the penitent can make satisfaction; because it is not likely that the Pontiff demands an impossible condition.

Nevertheless, what Diana has concerning the securities to be demanded (volume 5, tract 1, resolution 186, no. 2), citing John Valerus and Henriquez, must not be omitted: *It must therefore be said probably that that procedure of satisfaction and security by pledge and oath appears to be understood for the exterior forum; for in the penitential forum, when the possibility of the penitent is lacking, his firm purpose alone has as much force as the giving of pledges or sureties in the judicial forum. Therefore in the forum of conscience it will suffice to believe the penitent.*

But meanwhile there must be kept before the eyes also the warning which Reiffenstuel hands down (book 5, title 39, no. 270): *Although Laymann rightly notes that, for the internal forum, with the quality of the person considered, even the bare promise or pledged faith of the censured person suffices if the censure is occult, nevertheless he also rightly warns* (book 1, tract 5, part 1, chapter 7, no. 7) *that privileged Regulars ought to beware lest, even for the internal forum alone, they absolve anyone notoriously censured by force of the common law or of a general sentence,*

for example, one excommunicated, or one whose excommunication has already been brought to the contentious forum, before he has actually made satisfaction to the injured party; because otherwise, if such a guilty party already exists as absolved at least for the internal forum, he cannot so easily be driven by the Church to make satisfaction to the injured party. Regular Confessors ought well to observe this; although even in notoriously excommunicated persons of this kind circumstances can persuade that absolution for the internal forum may prudently be given upon only a prior security or promise.

But as regards the validity of absolution imparted without satisfaction having been made to the party, two things are established among all, namely: 1. absolution is valid if it is conferred by the Ordinary; 2. but it is invalid if conferred by a Delegate, if satisfaction of the party is enjoined as a condition; for it is manifestly apparent that a faculty delegated with a condition is not conceded, and therefore does not avail, when the condition has not been fulfilled.

The question turns upon whether, when the faculty of absolving is given by the Pontiff with that clause, *The party having been satisfied*, this is to be taken as a condition without which the faculty is not granted. And St. Alphonsus indeed (book 7, no. 121) holds the affirmative opinion as more probable, although he also concedes that the opposite is probable. But contrariwise, the Salmanticenses (*On Censures*, chapter 2, no. 25) and Bonacina (*On Censures*, disputation 1, question 3, part 9, no. 3) judge the negative opinion more probable, and Sanchez calls it most probable (*On Matrimony*, book 3, disputation 33, no. 6). But other grave Doctors teach it absolutely; among whom it suffices to name Reiffenstuel (*Moral Theology*, tract 15, distinction 2, question 5, section 1, no. 107), Pirhing (on book 5, title 39, no. 163), Hurtado, and others, some of whom St. Alphonsus also recalls (book 6, no. 537, question VII).

And indeed this opinion rests upon a principle received among all. The Doctors distinguish (see Sanchez, *On Matrimony*, book 3, disputation 33, no. 3) whether in a commission or delegation the form of the common law is expressed in the manner in which it is inherent in the law, or whether some limited mode is added to the common form of law. In the prior case, namely, if the common form of law is merely expressed in the delegation, they establish that it is not the intention of the one commissioning to introduce a new form or condition, but that it is a certain admonition that the common form be observed; wherefore, if it is omitted, the act, which otherwise would be valid if that form were not expressed in the commission, is not invalidated. It is otherwise in the latter case; for that addition to the common form of law imports a condition. See Sanchez, who (loc. cit.) both illustrates the matter with examples and confirms it by the authority of the Gloss and the Canonists. Among them Covarruvias (on chapter *Alma*, part 1, section 9, no. 8) says: *It is noted by the common opinion of all that those things which are inherent in law by no means introduce a form or condition, even if they have been expressed by man.* He notes this so that he may establish that an excommunication imposed by a delegate without the threefold warning being premised is valid, though unjust, even if the clause *the threefold warning having been premised* were contained in the mandate.

Navarre, moreover (*Manual*, chapter 27, no. 37), having recalled the Gloss on the sole Clementine *On the Office of a Delegate* at the word *shall find*, which he calls most received and in which the principle under discussion is most expressly contained, after first premising that absolution would be invalid if the delegate did not observe a form other than that of law, adds: *I said, Other than that of law; because, as we answered earlier, absolution given by virtue of the Pope's mandate to absolve according to the*

form of law is valid, although it is not observed, as it would be valid if done without that mandate by the Ordinary through ordinary authority; because it was not the Pope's intention to introduce a new form through those words (The party having been satisfied), *but to admonish the commissioner of that which according to law he ought to do; which Innocent said in a similar matter*, etc. You may see the same principle inculcated also by Reiffenstuel (*Moral Theology*, tract 15, distinction 2, no. 107) and Laymann (*On Censures*, part 2, chapter 6, no. 8).

The sole reason which is usually brought forward for the opposite opinion is that an ablative absolute, of which sort is the form *The party having been satisfied*, imports a condition, as Benedict XIV notes (Instruction 87, no. 68). It is easily answered that this pertains to that kind of arguments which are usually called arguments from congruity and which generally fail, unless at times they are accidentally true by reason of the matter, or, as Laymann says (loc. cit.), because the required condition pertains to the substance of the act. And of this kind, indeed, in the opinion of Benedict XIV, was that ablative absolute of which he was treating, *The party having been informed*; since (as he says) that mandate of the Penitentiary rests upon the common law, which demands a new consent from the spouses for duly ratifying a marriage, etc. On the contrary, it fails in the example which you have in Sanchez (loc. cit., no. 6), when the faculty is given of assisting at a marriage after the banns have been premised.

As to what certain ones say, that the delegating party is not considered to give the faculty of absolving without satisfaction having been made to the party because this is illicit, Schmalzgrueber (book 5, title 39, no. 101) solves it thus from the common opinion: *Nor does it follow from this that the delegating party sins by granting the faculty of absolving validly without satisfaction having been made to the party; for just as the Church does not sin in granting this power to the Ordinary, so neither will the Ordinary sin if he delegates it in that manner in which he himself possesses it; for sufficient provision is made for the right of a third party, while absolution of this kind is prohibited.* But concerning these things, enough has now been said for the measure of a note.

Chapter II. On Censures in Particular, Namely: 1. on Excommunication; 2. on Suspension; 3. on Interdict

Article I. On Excommunication

We must treat: 1. of its nature and division; 2. of its effects; 3. of excommunications in particular.

I. On the Nature and Division of Excommunication

956. ○ Definition. Excommunication is a censure through which someone is deprived of the communion of the Church; or, a censure by which a Christian is deprived, either entirely or in part, of the common spiritual goods of the Church, the distribution of which belongs to her [1].

[1] Since the goods in which the faithful communicate among themselves are of a threefold kind, namely: 1. internal; 2. merely external; 3. mixed; the Church by excommunicating deprives one only of communion in goods of the second and third kinds.

Under the old law it was distinguished into: 1. major excommunication, which deprives one of all the common goods of the Church [2]; 2. minor excommunication, which deprived one only of certain goods. But this latter must be said to have been abolished through the Constitution *Apostolicae Sedis*. For in it it is said: *By this Constitution, to remain in force perpetually, We decree that, of whatever censures, whether of excommunication, suspension, or interdict, which up to this time have been imposed after the manner of a latae sententiae penalty and to be incurred by the fact itself, only those which We insert in this very Constitution, and in the manner in which We insert them, shall henceforth possess force.* But that which is called minor excommunication, concerning which see the following number, question 2, is in no manner inserted in the aforesaid Constitution. Therefore. Nevertheless, the cessation of this penalty does not effect the cessation also of the fault which one incurs by communicating with an excommunicated person to be avoided.

[2] By the name of excommunication in law, Major Excommunication is almost always understood, as St. Alphonsus also notes from the common opinion (book 7, no. 133); nevertheless, before Gregory IX, Minor Excommunication was also at times included. See Schmalzgrueber (book 5, title 39, no. 119).

But the word *anathema* is used in the Sacred Canons sometimes to distinguish it from minor excommunication, as in chapter *Engellrudam* 12, cause 8, question 4; sometimes to signify excommunication inflicted on account of heresy or suspicion of it; finally, to signify certain solemnities, as, for example, when an excommunication is denounced with candles lit and afterward extinguished, and with other ceremonies instituted by the Church (Schmalzgrueber, loc. cit., no. 117).

Of those excommunicated by major excommunication, some are called tolerated, whom the faithful are not bound to avoid; others are called not tolerated, or persons to be avoided, whom the faithful ought to avoid [3].

[3] Under the ancient law, whoever had incurred major excommunication imposed either *a iure* or *ab homine* was to be avoided, with this difference alone: that those whose excommunication was public and notorious were to be avoided publicly; but those whose excommunication was not publicly known were to be avoided only privately by those who were aware of it. A trace of this discipline also exists in chapter *Cum non ab homine* 14, *On the Sentence of Excommunication*. But under the new law, in order to prevent various sins and scandals which it was observed could befall timorous consciences, it was granted to the faithful of Christ that no one should be bound to abstain from communion with anyone bound by any censure, whether *a*

iure or *ab homine*, unless a sentence against a certain person had been specifically and expressly published by a judge, or unless it was so notoriously established that he had incurred excommunication imposed by the canon through a sacrilegious laying of hands upon a cleric that the fact could not be concealed by any evasion or excused by any defense.

In the Constitution of the Council of Constance approved by Martin V, through which this new law was introduced, these words also are added (as it is recited in the Council of Basel and the Bull of Leo X in the Lateran Council): *Nevertheless, through this We do not intend in any respect to relieve excommunicated, suspended, interdicted, or prohibited persons of this kind, nor in any manner to aid them.* From these words there exists the common doctrine of all that no advantage which censured persons can claim by law comes to them from the aforesaid Constitution.

957. ○ Questions. - **QUESTION 1. In order that an excommunicated person to be avoided ought to be avoided, is it necessary that he be publicly known as such?**

Reply. Affirmatively. For it does not suffice that you know he is to be avoided, but it is required in addition that the fact of that excommunication be truly notorious, namely, that he has been excommunicated by name and publicly by a competent judge, or denounced as already bound by excommunication. - St. Alphonsus, no. 137. But he is excommunicated by name who is designated by his expressed name in words or signs so indubitable that he is altogether distinguished from others. - St. Alphonsus, no. 136.

But it must be noted that, although you are not bound to avoid an excommunicated person who has not been denounced, nevertheless, you can avoid him, even publicly, if he is publicly known as excommunicated [4]. - St. Alphonsus, no. 157.

[4] The reason was given above, namely, that the faculty granted to the faithful of not avoiding an excommunicated person of this kind is only in their favor, not for any advantage of his.

But one who has laid sacrilegious hands upon a Cleric is excepted, in such a way that his offense can neither be concealed by any evasion nor excused by any means. Hence he immediately, and before the sentence itself of the judge, incurs excommunication and ought to be avoided. Thus expressly Martin V in the Bull *Ad evitanda scandala* [5].

[5] This Constitution, as it is inserted in the Acts of the Council of Basel and in the Bull of Leo X in the Lateran Council, and as Navarre also read it (*Manual*, chapter 27, no. 35), in its latter part commands that not merely notorious strikers of Clerics, but absolutely all persons notoriously excommunicated, although not denounced by name, are to be avoided. Hence Fagnanus (on chapter *Quod a Praedecessore*, *On Schismatics*, no. 55) contends that whoever is certainly recognized by the notoriety of the fact to have fallen into excommunication is to be avoided. But Navarre himself (loc. cit.) testifies that this was received by custom only with respect to notorious strikers of Clerics (as the Constitution appears to have been issued in the Council of Constance). But Fagnanus's opinion is commonly rejected, as Benedict XIV says (*On the Diocesan Synod*, book 12, chapter 5, no. 4), who then confirms this by the vote of many Doctors.

Benedict XIV adds (ibid.) that it is remarkable that the Acts of the Council of Constance in no Collection whatever of Councils make even the slightest mention of this Constitution, whose entire authority would therefore be derived from the testimony of St. Antoninus. But what he himself found neither in Labbe nor in Vonderhardt nor in the Supplements of Mansi did in fact exist in Hardouin (Councils, volume 8, column 892), from whom it was afterward also received into the very ample new Collection of Councils (volume 27, column 1189).

Moreover, the common opinion, which excepts only notorious strikers of clerics, is established from these words of the Constitution itself: *Except if it is established that someone, for sacrilege and the laying of hands upon the clergy, has fallen under a sentence imposed by the canon so notoriously that the fact cannot be concealed by any evasion nor excused by any defense of law. For We will that communion with him, although he has not been denounced, be abstained from, according to the canonical sanctions.*

QUESTION 2. What must be held concerning MINOR EXCOMMUNICATION, now abrogated?

Reply. Hold these few things:

1. It was not incurred except on account of communication with a person to be avoided. Hence, in the present discipline of the Church it is exceedingly rare, since excommunicated persons to be avoided appear very rarely†.

2. It deprived one only of the reception of the Sacraments [6], and of passive election to benefices and dignities of the Church. Hence it did not deprive one of the faculty of administering the Sacraments. And therefore one who, entangled in such an excommunication, administered the Sacraments sinned neither gravely nor, more probably, venially.

[6] By violating this precept one sinned gravely, from chapter *Si celebrat*, final, *On an Excommunicated Cleric*, which reads thus: *If one bound by minor excommunication celebrates, although he sins gravely, he incurs no mark of irregularity; nor is he prohibited from electing or from exercising those things which belong to him by reason of jurisdiction.* See Schmalzgrueber (book 5, title 39, no. 198).

3. Any Priest approved by the Bishop could absolve from it. For usage had thus prevailed. - Thus all.

958. ○ **QUESTION 3. Was grave fault required for incurring minor excommunication?**

Reply. Negatively; but a fully deliberate venial fault sufficed [7]. The reason adduced was that it does not deprive one of so notable a good, and absolution from it can most easily be obtained from any Priest. Nevertheless, the fault on account of which minor excommunication had been inflicted could not be omitted in confession, although it was venial, because it impeded reception of the Sacrament. - St. Alphonsus, nos. 153, 154.

[7] I think that this must be understood of a venial sin by reason of slightness of matter, as because the communication is slight, in some salutation, conversation, or common table; but if the sin is venial by reason of imperfect deliberation and advertence, it seems to me more probable that the censure is not incurred. Suarez (*On Censures*, disputation 24, section 3, no. 3).

II. On the Effects of Excommunication

959. ○ Eight effects of excommunication are numbered [8], namely: 1. deprivation of the Sacraments; 2. deprivation of divine Offices; 3. deprivation

[8] These effects of excommunication are called immediate, which the Doctors distinguish from others which they call mediate. But these are:

1. Irregularity, which anyone bound by major excommunication incurs when he exercises an act of some Order, for example, by conferring sacraments, etc. Concerning this below, where Irregularity is treated.

2. Suspicion of heresy, which he incurs who contumaciously persists, or grows sordid, in excommunication for an entire year; the reason is that he is presumed to think wrongly concerning the power of the Church, while he cares nothing either for the censures imposed by her or for the sacraments which are omitted by him contrary to the precept of the Church. See Bonacina (*On Censures*, disputation 2, question 2, final part, no. 2) and Suarez (*On Censures*, disputation 17, section 1, no. 6). And to this pertains that statement of the Council of Trent (session 25, *On Reformation*, chapter 3): *If, hardened in mind and bound by censures, he has grown sordid in them for a year, it may be possible to proceed even against him as one suspected of heresy.* Nevertheless, La Croix (book 7, no. 287), whom St. Alphonsus followed (book 7, no. 157), without reason transfers this to all censures; for the context of the Council expressly regards excommunicated persons. But two things are to be noted. The first is that this must be understood of excommunicated persons denounced by name. Thus Covarruvias (on chapter *Alma*, part 1, section 7, no. 10), Sayrus (*On Censures*, book 2, chapter 10, no. 10), Marius Alterius (*On Censures*, book 2, disputation

8, chapter 3), Ugolinus (*On Censures*, table 1, chapter 14, section 3, no. 34), etc. The other is that this is a light suspicion, even though it suffices for enjoining purgation upon the accused. See Schmalzgrueber (book 5, title 39, no. 195).

3. Proof of the offense or cause on account of which excommunication was imposed. For one who has been excommunicated by a judge on account of a civil or criminal cause and perseveres in that excommunication for a year, without showing any impediment or sign of satisfaction, ought to be held as convicted and confessed from chapter *Rursus* 36 and following chapter 37, cause 11, question 3; because that contumacy is regarded as confession by a fiction of law. Nevertheless, he is permitted to allege and prove his innocence. Schmalzgrueber (book 5, title 39, no. 196).

4. Deprivation of benefices obtained, if there is question of an ecclesiastical person and the crime for which he was cited beforehand is worthy of such deprivation. Concerning this matter Schmalzgrueber (book 5, title 39, no. 197) thus briefly presents the common doctrine: *An excommunicated person persevering for three years in excommunication with a hardened mind ought to be deprived by the judge of all benefices; because he is unworthy to enjoy the fruits of the Church who exists in such rebellion against her, and thus the Pontiff acted in chapter Cum bonae 8, On Age and Quality.... On account of perseverance for a year, although judges can inflict this penalty of deprivation of benefices, nevertheless they are not bound to do so, because this obligation is nowhere provided in law.*

** Against that which is said in this Note, no. 2, namely, that Croix without reason transfers to all censures that which the laws and the Doctors say concerning excommunication, namely, that he becomes suspected of heresy who grows sordid in it for a year, the VV. object first of all (page 877) that Croix proves this from the cited text of Trent not directly but indirectly, saying: *It applies also to other censures.*

Reply. The VV. plainly strive by these things to defend the Holy Doctor Alphonsus, who says that this is proved by Croix from Trent. For thus the Holy Doctor writes (book 7, no. 157): *To grow sordid is to persevere for a year with a pertinacious mind and with contempt of the power of the Church in the same excommunication, or in another censure, as Croix says, book 7, no. 287, and proves from Trent, session 25, chapter 3.*

But Croix does indeed prove from Trent what it is to grow sordid, but nothing else. For thus he says (book 7, no. 287): *Insordescence is said principally by reason of excommunication; nevertheless it also applies to other censures. But according to the Council of Trent cited in no. 18, he is said to be growing sordid in a censure who with a pertinacious mind and with contempt of ecclesiastical power perseveres in the censure for a year.* But if from Trent he had wished also to prove what he adds concerning other censures, he would have joined the citation of Trent to those preceding words, *nevertheless it also applies to other censures*, which he added of his own accord and contrary to the opinion of all the Doctors, and would not have appended it to the following period. But Croix can be excused only insofar as he wished to indicate that contumacy, which we shall call insordescence, can occur also in those who have been bound by another censure; which indeed all knew, even if he had remained silent about it.

Moreover, to what purpose would Croix have invoked Trent for that empty and groundless addition, when Trent treats merely of one excommunicated? For thus reads the Decree of the Council (loc. cit.): *But any excommunicated person, if after legitimate warnings he has not come to his senses, is not only not to be received to the Sacraments and the communion and familiar association of the faithful; but if, hardened in mind and bound by censures, he has grown sordid in them for a year, it may be possible to proceed even against him as one suspected of heresy.* Indeed, these words of Trent are so far from being capable of application to those bound by another censure as it is abhorrent to the law and custom of the Church that one merely suspended or interdicted cannot be received into the communion and familiar association of the faithful.

But what is the chief point, Croix in his definition of insordescence omitted that which was to be noted before all else, namely, that in the Decree of Trent there is question of one against whom, after a judicial cause had been instituted, the penalty of excommunication had been imposed by name and *ab homine* on account of contumacy. Although these things afterward can in some manner be inferred from those which the same Croix (loc. cit., nos. 288-291) subjoins concerning diverse causes, nevertheless, since this is entirely omitted in St. Alphonsus, his opinion, thus expressed in general words, can easily lead to absurd conclusions, namely, even to any censures imposed *a iure*.

To defend that anomalous extension by Croix of the Decree of Trent to any censure, the VV. (page 878) thus argue: *Before the Council of Trent the Canonists commonly held that any excommunicated person persevering in excommunication for a year becomes suspected of heresy, although this was not expressed in law. But if it was lawful for them, on account of identity of reason, to extend a particular case circumscribed by certain conditions to all cases of excommunication, by the same right it is certainly lawful to extend the disposition of the Council of Trent to the other censures on account of the same identity.*

Reply. With the historical part omitted: 1. I deny the antecedent; 2. I deny the consequence. I said, with the historical part omitted, because the VV. will never prove that it had not been received by usage that, even before Trent, proceedings were

taken as against persons suspected of heresy against those contumacious for a year after, on account of another preceding contumacy, they had already been excommunicated by name and publicly. Wherefore, even if not by written law, it can nevertheless deservedly be supposed that this had already been introduced by custom.

But I said, I deny the Antecedent, that is, that the Canonists extended a particular case to all cases of excommunication. For in order that there be an extension properly so called, it is required that the same disposition of law and, in the present case, the same penalty be extended to another cause or other subjects. But in the present matter we have in no way either a common penalty or a common cause between the two cases. And this becomes plain in a few words. For the disposition of law which the VV. say was extended by the Canonists to other cases is of this kind (chapter *Cum Contumacia* 7, *On Heretics*, in the *Sext*): *Since contumacy* (especially in a cause of faith) *adds a vehement presumption to suspicion, if one suspected of heresy, summoned by you so that he may answer concerning the faith, has been bound by you with the bond of excommunication* (because he evades obedience or contumaciously absents himself), *which he endures with a pertinacious mind for a year, let him then be condemned as a heretic*. Therefore: 1. the penalty threatened here is the condemnation of the guilty party as a heretic; 2. the crime or cause for which someone had been cited is suspicion of heresy. But in the other case: 1. the crime or cause for which the contumacious person after citation was excommunicated is not suspicion of heresy; 2. the penalty which is threatened against the contumacious person even after excommunication is not the penalty proper to a heretic, but only that the guilty party can thereafter be cited as one suspected of heresy. Therefore nothing is common between case and case, and accordingly no extension properly so called is present here. But much less will even a certain shadow of this extension be found if, with the VV. after Croix and St. Alphonsus, you transfer that aforesaid disposition of law TO ALL CASES OF EXCOMMUNICATION, when the Decree of Trent, as we have already said, regards solely one contumacious for a year in that special excommunication which a judge had inflicted on account of the preceding contumacy of the guilty party, namely, because the guilty party did not obey a citation on account of another cause, whether civil or criminal.

I said in addition, I deny the Consequence, namely, that it is lawful to extend the disposition of Trent concerning a contumacious person excommunicated by name to those bound by lesser censures. For that proceedings can be taken against someone as one suspected of heresy is a most grave penalty. But according to the rules of Law, odious things are to be restricted. And indeed, according to Rule 49 in the *Sext*, a more benign interpretation is to be made in penalties; and according to Rule 155, section final, Digest, *On Law*, in penal causes a more benign interpretation is to be made; and law 42, Digest, *On Penalties*, says that by the interpretation of laws penalties are to be mitigated rather than made harsher; much more, therefore, a penal law ought not to be extended to those cases which the law does not touch in even the slightest degree and which are established to be of much less gravity. And again, even if that were true which, speaking precisely, ought to be called false, namely, that before the Council of Trent the Canonists extended to certain other excommunications (but not all, as the VV. say without reason) that which had been established in chapter *Cum Contumacia*, nevertheless no canon permits us to attribute to the authority of Claude La Croix, introducing this new doctrine without any foundation of reasons or authorities, that weight which we know ought to be attributed to the common doctrine of the Canonists, which the Council of Trent also confirmed.

3. deprivation of the suffrages of the Church; 4. deprivation of ecclesiastical burial; 5. deprivation of ecclesiastical jurisdiction; 6. deprivation of benefices; 7. deprivation of forensic communication; 8. deprivation of civil society.

The goods of which excommunication deprives one are comprised in these little verses:

Sacred things, rites, communion, burial place, power, Sacred estates, court, civil rights are forbidden.

I. Deprivation of the Sacraments

960. ○ Excommunication deprives one both of the right to receive the Sacraments and of the right to administer them [9]. Hence you will resolve:

[9] The Author, in order to consult brevity, wished to treat jointly of this twofold effect of excommunication, namely, the removal of both the passive and active use of the sacraments; and since each case involves a twofold cause, namely, both

that of the excommunicated person and that of the other who either confers the sacraments upon the excommunicated person or asks for the sacraments from him, and in addition since in many matters the case of an excommunicated person to be avoided is one thing, but that of a tolerated person another, it is no wonder that the Author's treatment, very brief in itself, became obscure and exceedingly meager.

Therefore, with respect to the removed passive use of the sacraments, let these things be noted more distinctly.

1. An excommunicated person, even a tolerated one, is barred from receiving the sacraments and sins gravely by violating this prohibition of the Church. Nevertheless, from this illicit reception he incurs no penalty except suspension from the Order which he receives in that state. Schmalzgrueber (book 5, title 39, no. 128) and St. Alphonsus (book 7, no. 160). From the Constitution *Apostolicae Sedis*, this penalty has ceased.

2. Not only inculpable ignorance, but also fear of death, mutilation, infamy, grave loss of goods, etc., excuses the excommunicated person from that fault; and also the necessity of fulfilling the annual precepts of Confession and Communion, if there is no one who can absolve him from the reserved censure. The reason is that an ecclesiastical law does not bind so rigorously and with such grave inconvenience. St. Alphonsus (no. 158) with the common opinion of the Doctors.

3. Although illicitly, indeed sacrilegiously, nevertheless an excommunicated person validly receives the sacraments, Penance excepted. Although even this sacrament will be valid if the penitent, otherwise disposed, approaches in good faith; which can happen either because he himself, through inculpable ignorance or forgetfulness, does not disclose the censure; or because the priest is ignorant of or does not advert to the censure annexed to the sin; or even, while adverting to it and indeed to one reserved, nevertheless without the faculty, thinks that the penitent is to be absolved from the non-reserved sins on account of the aforesaid necessity; or even through malice absolves a penitent who thinks that the priest does not lack the faculty of absolving.

4. Since the excommunicated person sins by receiving the sacraments before he is absolved, by that very fact the minister who knowingly confers the sacraments upon him sins.

5. If the excommunicated person to whom the sacraments are given is tolerated, the minister (as the Author well notes) indeed sins against divine law, but not against the law of the Church. But if he is a person to be avoided, not only does the minister violate the law of the Church, but under the ancient law he also incurred excommunication and also interdict from entering a church, from chapter *Episcoporum* 8, *On Privileges*, in the *Sext*; and suspension from office was added besides if these excommunicated persons had been excommunicated on account of heresy or as supporters of heretics; nor was such a minister to be restored to office without the Pope's dispensation, from chapter *Excommunicamus* 13, section *Credentes*, *On Heretics*. See Schmalzgrueber (book 5, title 39, no. 128). But now he will incur merely an excommunication reserved to the Pontiff if he ministers the sacraments to one excommunicated by name by the Supreme Pontiff himself. From the Constitution *Apostolicae Sedis*, chapter *Significavit* 18, *On the Sentence of Excommunication*, and Clementine 3 under the same title.

6. Moreover, someone licitly administers the sacraments to an excommunicated person whenever, according to the things said (no. 2), the latter licitly approaches to receive them before he is absolved.

But with respect to the active use of the sacraments, these things must be held:

1. In a case of necessity an excommunicated person, whether tolerated or to be avoided, administers the sacraments both validly and licitly, for example, by absolving at the point of death.

2. Outside a case of necessity, in order that a tolerated person administer licitly, the request alone of the faithful suffices, provided that he is otherwise in the state of grace and cannot first obtain absolution from the censure. But in order that the faithful licitly request this, although some require a cause at least of great utility, others nevertheless do not think even this necessary; and St. Alphonsus (book 7, no. 165) also admits their opinion as probable.

3. But if necessity and the request of the faithful (at least tacit, according to St. Alphonsus, no. 169) are lacking, even a tolerated person sins gravely and, on account of the exercise of Holy Orders, also incurs irregularity, according to the things to be said below (St. Alphonsus, no. 171).

4. But a person to be avoided incurs irregularity even if, without necessity, he ministers the sacraments when requested by the faithful. In this case the faithful sin gravely by receiving the sacraments from him, and under the ancient law incurred

minor excommunication (St. Alphonsus, no. 172).

5. Nevertheless, the person to be avoided is excused when, if he does not confer the sacrament, he incurs danger of death, mutilation, infamy, or grave loss of goods; for then, unless that threat is made in contempt of the censure, he can licitly minister the sacraments which he can validly minister, because the Church, a pious mother, is not presumed to wish to bind by her laws with such great loss. Schmalzgrueber (book 5, title 39, no. 144), St. Alphonsus (book 7, no. 170).

6. In addition, by reason of necessity, the Doctors think that an excommunicated person to be avoided can not only confer baptism upon one in danger, but also the Eucharist or Extreme Unction when the dying person cannot receive the sacrament of Penance; because, since any sacrament can make one contrite from being attrite, it will sometimes happen that, on account of the reception of the Eucharist or Extreme Unction, salvation is obtained which would not be obtained if these sacraments were not received. Schmalzgrueber (loc. cit., no. 145), St. Alphonsus (loc. cit., no. 170). Indeed, grave Doctors add that the Eucharist or Extreme Unction can licitly be given by a person to be avoided to a sick person even if the latter has received the sacrament of Penance; the reason is that it is most necessary that the sick person be helped and receive strength from it to overcome the suggestions of the devil in that moment. Schmalzgrueber (loc. cit., no. 146).

7. Finally, a parish priest to be avoided would assist at a marriage validly but illicitly, although he does not incur irregularity through this; but he would deputize another to assist not only validly but also licitly. St. Alphonsus (book 7, no. 166).

1. An excommunicated person, whether to be avoided or even tolerated, who receives or confers the Sacraments sins gravely *per se*; except: 1. if he confers the Sacraments in a case of necessity; 2. if, being tolerated, he confers them when asked by the faithful themselves.

2. Ministers of the Church who confer the Sacraments upon excommunicated persons, whether persons to be avoided or merely tolerated persons, sin gravely, at least *per se*, since they are unworthy. Nevertheless, one who confers the Sacraments only upon tolerated persons sins not against the prohibition of the Church but only against divine law. The reason is that the Church no longer prohibits communication, even in divine things, with tolerated persons. But they sin against divine law, because it is never licit to give holy things to dogs. - See St. Alphonsus, nos. 158, 165 and following.

II. Deprivation of Divine Offices

961. ○ By divine Offices are understood Mass, public Processions, Vespers solemnly chanted, solemn Benediction, the consecration of Chrism, and other ceremonies of this kind which are performed by the institution of Christ or of the Church, or which are proper to the clerical Order, such as the chanting of the Epistle or Gospel with the proper vestments, and ecclesiastical burial.

962. ○ Hence you will resolve. - 1. Every excommunicated person is prohibited under grave obligation from hearing Mass [10] and all other divine Offices properly public, even on days of precept. This is apparent from chapter *Alma* 24, *On the Sentence of Excommunication*, in the *Sext*. - St. Alphonsus, no. 175.

[10] At the time when Mass and the divine offices are celebrated, an excommunicated person is prohibited from entering the church. And if he is a person to be avoided, while the Sacrifice of the Mass is being offered he is to be warned to depart; but if he is unwilling, he is to be expelled even by force, if necessary. But if he cannot be expelled, the Mass, if the Canon has not yet begun, is to be broken off; and if the consecration has been performed, the consumption is to follow, and then one is to withdraw to the sacristy; if the Canon has been begun, the priest can either break off the Mass or continue it up to Communion, with the others nevertheless departing; for if they do not depart, they sin at least venially. St. Alphonsus

(book 7, nos. 176-177). Under the ancient law, if the person to be avoided refused to depart, he incurred a new excommunication reserved to the Pope.

2. Nevertheless, an excommunicated person, even one to be avoided, can pray in the same place in which others pray, but separately and apart from the assembly of the faithful; he can also be present at a sermon, a reading of Sacred Scripture, and a lecture on Theology [11], because these are not included under the name of divine Offices, and the Church willingly permits them to him so that he may be led to conversion. - St. Alphonsus, nos. 174, 177.

[11] Otherwise, the person to be avoided himself is deprived of the faculty of preaching, lecturing in theology, and publicly interpreting canon law. Schmalzgrueber (book 5, title 39, no. 132).

3. He can also use images, relics, holy water, and other sacred things, so that he may obtain the graces which he needs. Nevertheless, he does not gain the Indulgences annexed to sacred things, nor does he receive from holy water and other sacramentals the fruit which proceeds from the blessing of the Church. - St. Alphonsus, no. 174.

4. An excommunicated person bound to the canonical Hours is not dispensed from them, but ought to recite them privately; nor can he employ a companion unless he is tolerated [12]. Nor can he say, *The Lord be with you*; but in its place he ought to say, *O Lord, hear my prayer.* Nevertheless, by saying *The Lord be with you*, he would sin only venially. - St. Alphonsus, no. 178.

[12] Even if he is not tolerated, he can call a companion for some necessity or utility, especially if the latter is subject to him, as a chaplain to a Bishop, a servant to a master, etc.; for a servant is not deprived of communication with his master in those things in which he was bound to serve him. Schmalzgrueber (book 5, title 39, no. 181).

III. Deprivation of the Common Suffrages of the Church

963. ○ The suffrages of the Church are either common or private. The common suffrages are those which come to the faithful from good works done in the name of the Church by her Ministers, such as Masses, the canonical Hours, and other prayers and works which are done by the Ministers of the Church insofar as they are such and are performed in the name of the Church herself. To these must also be referred the satisfactions of Christ, the Blessed Virgin, and the Saints, which constitute the treasury of the Church and are applied by the Prelates of the Church through indulgences.

The private suffrages are those which come from the good works which the faithful perform in their own name. Of this kind are fasts, prayers, and other good works which are done by private faithful or by Ministers of the Church as private persons.

964. ○ Hence you will resolve. - 1. Excommunicated persons to be avoided are deprived of all the common suffrages of the Church. This is apparent, because the Church by her own right prohibits prayer from being made for them [13], or any portion of her goods from coming to them. And this holds even if they were contrite and converted to a better life, because the excommunication still endures. - St. Alphonsus, no. 163.

[13] The reason why prayer in the Mass for an infidel is not forbidden, while nevertheless it is forbidden for an excommunicated Christian to be avoided, must be derived solely from the precept of the Church. See above, note to no. 349.

2. Neither tolerated persons nor even persons to be avoided are deprived of private suffrages. The reason is that the faithful are not prohibited from praying privately for excommunicated persons, even in a church and in a public place; therefore they can apply to them the fruit of good works. - St. Alphonsus, no. 162.

3. Tolerated excommunicated persons are not deprived of common suffrages. The reason is that the Church no longer prohibits the faithful from communicating with tolerated persons, as is deduced from the things said above. - St. Alphonsus, no. 164.

IV. Deprivation of Ecclesiastical Burial

965. ○ Ecclesiastical burial is that which takes place in a sacred place, or one blessed for the burial of the faithful. Hence:

1. An excommunicated person to be avoided cannot be buried in a sacred place; but if he has been buried in such a place, his body ought to be dug up, if it can still be done, and the sacred place polluted by such contact is to be expiated. - St. Alphonsus, no. 186.

2. A tolerated excommunicated person is likewise deprived of ecclesiastical burial; and if he has been buried in a sacred place, he is to be removed from it [14]. Nevertheless, the place is not considered polluted and therefore does not need expiation.

[14] If he gave signs of repentance, he can be buried in a sacred place, although it is fitting that he first be absolved from excommunication. But a person to be avoided who gave those signs cannot be buried in a sacred place unless he is first absolved. Schmalzgrueber (book 5, title 39, no. 127).

3. Clerics who carry forth and bury a person to be avoided incurred major excommunication under the ancient law. - Thus from the Clementine *On Burial*. - From the Constitution *Apostolicae Sedis*, only those commanding and compelling it are excommunicated, as will be seen below.

V. Deprivation of Ecclesiastical Jurisdiction

966. ○ 1. An excommunicated person to be avoided is deprived of all ecclesiastical jurisdiction, or rather of its exercise and use. Hence he cannot absolve in the penitential forum, nor impose laws, censures, or sentences, nor elect to benefices or confer them, etc. But if he performed such acts, they would be altogether null and invalid. - St. Alphonsus, no. 185.

2. A tolerated excommunicated person, even if notorious, validly exercises jurisdiction, because otherwise great confusion would arise in the Church. Nevertheless, his acts can be invalidated and repelled through an exception or objection of excommunication, and he himself acts illicitly outside a case of necessity or unless he has been asked; and indeed in a grave matter he cannot be excused from mortal sin. But if he has been asked, he does not sin, even if he

ministers the Sacraments without cause. For since communication with tolerated persons has been conceded to the faithful, indirectly it has also been granted to these persons to communicate with the faithful who request it. Nevertheless, this holds insofar as the sacraments are requested from an excommunicated person; for insofar as they are requested from a Minister existing in mortal sin, a just cause is required in order to request them licitly. - Thus St. Alphonsus, no. 139, and book 6, no. 88.

VI. Deprivation of Benefices

967. ○ 1. Every excommunicated person, whether tolerated or to be avoided, becomes altogether incapable of obtaining ecclesiastical benefices. The reason is that a benefice is given on account of an office, but an excommunicated person is altogether incapable of an office; therefore also of a benefice. Except if the benefice were conferred by the Pope himself. - St. Alphonsus, no. 180.

2. Nevertheless, excommunication does not deprive one of a benefice already obtained, nor of its fruits before the sentence of a judge. The reason is that neither is clearly expressed in law. If, however, he neglects to obtain absolution for a year, he can be deprived of the benefice by a judge. - St. Alphonsus, ibid.

3. An excommunicated person accepting a benefice [15], and the one from whom he receives it, sin gravely, since they act against a grave prohibition of the Church. But one conferring it formerly incurred minor excommunication and suspension *ipso facto* from the conferral of that benefice if the excommunicated person was one to be avoided. - After the Constitution *Apostolicae Sedis*, these censures ceased.

[15] According to the more common and more probable opinion, the acceptance of a benefice which had been conferred before someone incurred excommunication is valid, although he accepts it when already bound by excommunication (Reiffenstuel, book 5, title 39, no. 65); just as, if an excommunicated person takes possession of a benefice duly conferred upon him or sends another into possession, the possession and the placing into possession are valid, because both possession and the placing into possession are matters of fact, not of law. See Schmalzgrueber (book 5, title 39, no. 150), who adds (ibid., no. 154) that the conferral of a pension which is given to an excommunicated cleric for support while he resigns or exchanges a benefice or yields in litigation is probably valid.

VII. Deprivation of Forensic Communication

968. ○ Forensic communication is understood as communication in those things which pertain to a judgment, whether civil or ecclesiastical.

1. An excommunicated person to be avoided is deprived of every act pertaining to a judgment in the civil forum. Therefore he cannot be a judge, advocate, plaintiff, witness, notary, procurator, etc. Likewise he cannot be a guardian, curator, or executor of a testament. - Thus from the common law, or the ancient Roman law. - St. Alphonsus, no. 184. But those dispositions of law today do not obtain usage in most places.

2. All the more is a person to be avoided deprived of all communication in Ecclesiastical Law. Nevertheless, he can appeal and prosecute an appeal. - Thus from canon law, title *On Exceptions*, chapter 5.

3. A tolerated excommunicated person is deprived *ipso facto* of no forensic communication; hence he acts validly if he uses it, but he can be juridically repelled through an exception both by adversaries and by the judge. - St. Alphonsus, ibid.

VIII. Deprivation of Civil Society

969. ◦ The civil actions in which it is commonly not licit to have association with a person to be avoided are contained in this little verse:

Mouth, to pray, farewell, communion, table are denied.

1. Mouth, that is, conversations, letters, signs of benevolence.

2. To pray, any communication in divine things, for example, assisting at Mass or at the public Offices of the Church.

3. Farewell, altogether particular salutations.

4. Communion, any partnership of business, habitation, contract, cooperation, etc.

5. Table, a reciprocal invitation to table. - St. Alphonsus, no. 188.

But grave causes can excuse reciprocal communication between an excommunicated person to be avoided and the faithful, namely: necessity; the spiritual good of the excommunicated person himself; the matrimonial bond; a state of subjection, for example, minor children of a family; ignorance either of law or of fact. - St. Alphonsus, ibid.

But all these things are said only of persons to be avoided; although the privilege of Martin V by no means favors tolerated persons, nevertheless, from present-day custom, these persons no longer sin by communicating with the faithful in civil matters, even if they were not requested by them. Nevertheless, these persons cannot licitly communicate with the faithful in divine things, because the privilege favors the faithful alone, and not them. This is apparent from the Declaration of the Sacred Penitentiary, 5 July 1867.

III. On Excommunications in Particular

970. ◦ Formerly, for the convenience of students, Writers were accustomed to set before their eyes in this place only the principal excommunications or other censures, and to illustrate them with some annotation. But after the Constitution *Apostolicae Sedis* of Our Most Holy Lord Pope Pius IX, 12 October 1869, by which the *latae sententiae* censures of the common law are limited [16], all of them, and any other that has subsequently been added up to the present, can now be enumerated without difficulty even in a brief compendium of moral theology; and therefore we do not hesitate to do this [17].

[16] ** That the Supreme Pontiff set this end before himself is gathered from the following words of the Constitution: *Since We had long revolved in Our mind that ecclesiastical censures which, after the manner of a latae sententiae penalty and to be incurred by the fact itself, have been enjoined and promulgated through the several ages... had gradually increased to a great number; that some also, with times and customs changed, had fallen away from the end and causes for which they had been imposed, or from their former utility and suitability; and that for this reason doubts, anxieties, and anguishes of conscience not infrequently arise both in those to whom the care of*

souls is committed and in the faithful themselves; We, wishing to meet inconveniences of this kind... after the matter had been weighed long and maturely, of Our own motion, with certain knowledge, Our mature deliberation, and from the plenitude of Our Apostolic power, decree by this Constitution, to remain in force perpetually, that, of whatever censures, whether of excommunication, suspension, or interdict, which up to this time have been imposed after the manner of a latae sententiae penalty and to be incurred by the fact itself, only those which We insert in this very Constitution, and in the manner in which We insert them, shall henceforth possess force.

[17] ** Whatever we may subjoin concerning these matters in the Notes, let the Reader know that it has generally been taken from Commentaries, several of which have now appeared through the study of learned men. Among them the little work of the Most Reverend Joseph D'Annibale, Vicar of the Diocese of Rieti, published at Terni in 1873 under the title *Commentaries on the Constitution Apostolicae Sedis*, easily excels in abundance and solidity of doctrine. We shall indicate this little work by the abbreviation *Rieti Commentary*.

With respect to this exception concerning the publication of books, it must be carefully noted how one Decree differs from the other. For while the Tridentine Decree and the recent Constitution agree in this, that they subject to anathema those who print, or cause to be printed, books treating of sacred matters without the approval of the Ordinary, they nevertheless differ: 1. because the Tridentine Decree treats merely of books published without the name of the Author, but the Constitution displays no restriction of this kind; 2. the Constitution punishes only those printing and causing to be printed, but the Tridentine Decree extends the penalty to those who communicate or publish books in writing, and also to those selling and retaining them. Therefore, the Constitution restricts the Tridentine Decree insofar as it confines the penalty to those only who print or cause to be printed; but it extends it insofar as it also comprehends books bearing the name of the Author.

But as regards the other censures imposed by the Council of Trent, the Constitution of Pope Pius IX reads thus: *Whomever else the Most Holy Council of Trent decreed to be suspended or interdicted by the law itself, We in like manner will and declare the same persons to be subject to suspension or interdict.*

Moreover, all agree that by force of this Constitution only those censures are confirmed which the Council of Trent itself directly inflicted, but not those which it only indirectly renewed or confirmed after they had previously been inflicted; and this either through general words, as, for example, when it thus establishes (session 21, chapter 1, *On Reformation*): *Those who do otherwise... shall by the fact itself incur the penalties inflicted by law*; or through a special citation of some statute, as, for example, when it declares (session 24, chapter 3, *On Reformation*): *He is also to be punished with other penalties according to the Constitution of the Council of Lyons....* But this is openly gathered both from the words and from the purpose of the Constitution of Pius. See Avanzini's Commentary, appendix 3.

Therefore, of whatever censures now exist, the aforesaid Constitution embraces almost all of them, partly explicitly and partly implicitly. We call those explicitly contained which are expressly and individually enumerated in it; but implicitly, when those [18] are confirmed which are found both to have been imposed by the Council of Trent and to be contained in certain particular statutes [19].

[18] ** Thus the Constitution: *Besides those thus far enumerated, We likewise declare excommunicated those whom the Most Holy Council of Trent excommunicated, whether absolution was reserved to the Supreme Pontiff or to Ordinaries, or without any reservation; with the exception of the penalty of anathema established in the Decree of Session IV, On the Edition and Use of the Sacred Books, to which We will only those to be subject who print, or cause to be printed, books treating of sacred matters without the approval of the Ordinary.*

[19] ** To this pertain these words of the Constitution: *But whatever censures, whether of excommunication, suspension, or interdict, have been imposed by Our Constitutions or those of Our Predecessors, or by the sacred Canons, besides those which We have enumerated, and have thus far persisted in their force, whether for the election of the Roman Pontiff, or for the internal governance of any Orders and Institutes of Regulars, and also of any Colleges, Congregations, Assemblies, and Pious Places, of whatever name or kind they may be, all these We will and declare to be firm and to remain in their force.* Concerning these, however, some things are given below.

Meanwhile, with Avanzini note that those remaining censures imposed by the Roman Pontiffs or by the sacred Canons with respect to particular Institutes or particular places, of whatever kind they may be, are merely declared not to have been abrogated. But it is one thing to declare that they have not been abrogated and therefore remain in their force; it is another to affirm that they have been renewed. For renewal adds new force to censures which perhaps have gone into desuetude, and therefore they revive through renewal. But when through some Constitution it is merely said that they have not been abrogated, this one thing is gathered from it: that they remain in that state in which they were found, and by force of this

Constitution are neither destroyed nor renewed. But this is sufficiently indicated by these words of the Constitution: *And have thus far persisted in their force.* Wherefore, if those particular censures in some Institute or Pious Place have perhaps gone into desuetude or have ceased for some other cause, they are by no means to be considered renewed through the Constitution *Apostolicae Sedis*.

971. ○ Even according to the most recent law introduced after the Constitution of Pius, *latae sententiae* censures are of four kinds. For some are reserved to the Roman Pontiff in a special manner [20]; others are likewise reserved simply to the Supreme Pontiff; others are reserved to Bishops or Ordinaries; and finally others are reserved to no one.

[20] ** This fourfold distinction of censures was also seen in the preceding law. But the censures which are now said to be reserved in a special manner correspond generally to those which were contained in the Bull *Coenae*. Wherefore, from those things which were then said both concerning the cases contained in the Bull *Coenae* and concerning the special manner of their reservation, these things are generally to be transferred to the cases now reserved in a special manner. Indeed, by the Decree of the Holy Office, 4 April 1871, it was established that, in the formulas of faculties which the Sacred Congregation for the Propagation of the Faith is accustomed to grant, where mention is made of cases reserved in the Bull *Coenae*, the censures reserved in a special manner to the Roman Pontiff in the Bull *Apostolicae Sedis* are to be substituted.

According, therefore, to this fourfold partition, we shall here subjoin the general *latae sententiae* censures which remain in their force.

Point I. Excommunications Reserved to the Supreme Pontiff

I. Reserved in a Special Manner

972. ○ Concerning these, the Constitution *Apostolicae Sedis* reads thus:

> We declare subject to a *latae sententiae* excommunication reserved in a special manner to the Roman Pontiff:
>
> I. All apostates from the Christian faith [1], and each and every heretic, by whatever name they may be designated and of whatever sect they may be [2], and those believing them [3], and their receivers, supporters, and generally any defenders of them.

[1] ** Understand apostasy here as a withdrawal from the Christian faith, and an apostate as one who has departed from the Christian faith. And since the crime of apostasy consists in a withdrawal of this kind, it therefore makes no difference whether the apostate has gone over to Judaism or to Paganism, or whether he has fallen into Deism, Atheism, or Indifferentism. And to this last is commonly referred the sect of those who call themselves in Italian *liberi pensatori*, and in French *libres penseurs*, whom otherwise you would better call monsters of nature, more foolish than stupid beasts. For beasts follow the guidance of nature. But these two-footed monsters trample upon nature. Namely, just as the bodily eye is ignorant of liberty, so reason and intellect are ignorant of liberty. And just as it is indeed free for you to close your eyes or not to look at the objects placed around you, but it will not likewise be free for you not to see those objects if you look at them with open eyes, so must you also speak concerning truth placed before the eye of the mind which beholds it. Therefore, even the name of the sect itself displays foolishness more stupid than asinine stupidity, so that in this apostasy from the Christian faith that saying of the ancients shines forth most manifestly: *the corruption of the best is the worst.* But what civil society can also hope for in practice or fear from those men, if they are worthy of this designation, who according to their arbitrary manner of thinking and judging fashion right and wrong for themselves at pleasure, anyone easily sees.

[2] ** Concerning the crime of heresy, see where faith was treated (volume I, no. 208). Note this, with the distinguished Author of the *Rieti Commentary*: it makes no difference whether someone has outwardly disclosed heresy by words or only by a deed, for example, if he has attempted to know the secrets of hearts or to divine the future free actions of men, which are open to God alone, through self-moving tables or the so-called *Cristacos* (magnetized persons). See the Encyclical Letter of

the Sacred Inquisition, 30 July 1856 (above, volume I, no. 281), where it is declared that heretical deception is found in these things.

[3] ** By those believing them, understand those who believe heretics either explicitly or implicitly.

These are distinguished in the text from heretics: 1. because someone can adhere to errors condemned by heretics, although he does not formally belong to the sects of heretics; 2. because a believer of this kind is understood both if in the forum of conscience he is a heretic properly so called and if he is not altogether a heretic, namely, when internal pertinacity of mind against the faith is not joined with the external act of believing. For under either hypothesis he shows himself a follower of the errors of heretics, and therefore, as one implicated in the cause of heresy, he is punished in the external forum with the penalty of heretics and is subjected to this censure in such a way that he cannot be absolved without a special faculty.

By receivers understand not those who for any other cause receive or conceal them in their houses or lands, but those who directly intend through this to foster or defend the heretic, for example, so that he may thus escape the penalties of heresy.

> II. Each and every person knowingly [4] reading, without the authority of the Apostolic See [5], books [6] of the same apostates and heretics [7] which defend heresy [8], and also books of any author prohibited by name through Apostolic Letters [9], and those retaining, printing, and in any manner defending those same books [10].

[4] ** *Knowingly*, that is, with knowledge: 1. that the book is by an apostate or a heretic according to the sense of the preceding article; 2. that the book defends heresy; and 3. that the reading is punished by the penalty of this censure. But understand this also of those retaining, printing, etc.

[5] ** That is, without a faculty granted either by the Supreme Pontiff or by those to whom the Supreme Pontiff has committed the faculty of dispensing.

[6] ** Whether journals or newspapers are comprehended by these laws, see below where the reading of bad books is treated.

[7] ** Avanzini raises a doubt (*Commentary*, no. 7) whether the books of those who are added in the preceding article, namely, believers, supporters, etc., are also comprehended if they defend heresy; and he replies: *They do not appear to be comprehended.* But immediately he so tempers the assertion that he all but destroys it: *provided* (he says) *that these two things are not verified, namely: 1. that in the book is contained an indubitable defense of heresy or of apostasy from the faith; 2. and that the defense of heresy is made so pertinaciously that it cannot be doubted that the author of the book is certainly a heretic.*

[8] ** To these matters the excellent *Rieti Commentary* says well: *To defend is, if I judge anything rightly, to undertake the patronage of heresy deliberately and as though with all one's strength; wherefore the excommunication does not bind one who reads a book of an apostate or a heretic if it does not defend heresy, even though it contains it, and indeed even defends it, but incidentally, in a few words, and as though while doing something else.*

[9] ** By books prohibited by name are not understood just any books condemned through Apostolic Letters, unless the proper title of the book has been expressed in those Letters. But understand by Apostolic Letters those which proceed immediately in the name of the Roman Pontiff, whether in the form of a Brief, a Bull, an Encyclical, or in any other form, provided that in them is read *By Apostolic Authority*, or something equivalent. Furthermore, if before this other books not prohibited by name were condemned through Apostolic Letters without any excommunication, or with an excommunication not reserved, one reading them today incurs no excommunication; because our Constitution in the former case does not introduce an excommunication, and in the latter, since it does not enumerate it among the non-reserved censures, has abolished it; and if they were prohibited under some other censure, for example, suspension, this also ceases (*Rieti Commentary*).

[10] ** Concerning those printing, the *Rieti Commentary* has these things: *To this belong all who cooperate proximately in the printing; and therefore: 1. those who furnish any work whatever for this matter, such as those who set the type, coat it with ink,*

moisten the paper, etc.; 2. those who hire their labors, that is, the printer, and all the more the publisher, who is understood to hire the labors of both; and the author of the book, if the book is published through his care. Cretoni adds (*Note on this place*): *With respect to manual workers or subordinate cooperators, in order to incur this censure, besides the required knowledge it must also be judged from the*

circumstances whether in the case they are to be regarded as formal or material cooperators and, under this latter hypothesis, whether they are excused from the fault of cooperation (add, or at least from the penalty) *by a just and proportionate cause or not.*

Those defending the book in any manner are considered (Lugo, *On Faith*, disputation 21, no. 94) those who conceal the book lest it be denounced or burned, or who prevent this by force or fraud; one who tries to persuade others that the book is good and therefore not worthy of prohibition; one who tries to uphold the depraved doctrine contained in it and to defend it from every stain. For all these defend books by deed or word. See Sanchez and Palao, who note that this censure does not comprehend one who approves and praises the good and true doctrine contained in a book, provided that he is not considered to approve the book itself absolutely; nor one who praises the style, eloquence, diction, or talent, provided that he does not assert praise and approval of the book.

III. Schismatics and those who pertinaciously withdraw themselves or depart from the obedience of the Roman Pontiff for the time being [11].

IV. Each and every person, of whatever state, rank, or condition they may be, appealing from ordinances or mandates of the Roman Pontiffs for the time being to a future general Council, and also those by whose aid, counsel, or favor the appeal was made [12].

[11] ** By schismatics properly so called are understood those who not only pertinaciously depart from the subjection owed to the Roman Pontiff, but, erecting themselves into an authority, establish new assemblies separated from the center of unity, such as the promoters of national churches, or follow those same assemblies. And these indeed pertain to perfect schism, even if you understand schism, as they call it, pure, namely, with which no heresy is mingled, which scarcely occurs. For if a schismatic holds something contrary to the faith, for example, that the Roman Pontiff is not the head of the Church, or indeed is, but only the primacy of honor belongs to him, as the Jansenist hypocrites hold, he would in addition be a heretic and therefore entangled in a twofold excommunication.

But by those who pertinaciously withdraw themselves or depart from the obedience of the Roman Pontiff for the time being are signified those who pertain to imperfect schism. And in this sense Avanzini (*Commentary*, no. 10) thinks that those who call themselves liberal Catholics are comprehended, namely, those who, setting aside the laws and mandates of the Roman Pontiff, publicly conduct themselves as though released from his obedience, since these also in the true sense are rebels against the obedience of the Roman Pontiff for the time being.

[12] ** Lest those who pertinaciously withdraw themselves or depart from the obedience of the Roman Pontiff for the time being, concerning whom the preceding article treats, should pretend to do this with impunity under the pretext of an appeal to a future Council, contrary to the defined rights of the Primacy, this special crime of rebellion was punished with a special censure.

But to incur this censure of excommunication it is necessary to appeal to a future Council. Therefore, if an appeal has been made to a future Roman Pontiff or to a present Council, there is no place for the censure. But if not some individual person, but some community or moral person, has interposed an appeal of this kind, it incurs the Interdict reserved in a special manner, as will be said below.

V. All who kill, mutilate, strike, seize, imprison, detain, or pursue in a hostile manner Cardinals of the Holy Roman Church, Patriarchs, Archbishops, Bishops, and Legates or Nuncios of the Apostolic See, or cast them out of their Dioceses, Territories, Lands, or Dominions; and also those commanding these things, or ratifying them, or furnishing aid, counsel, or favor in them [13].

VI. Those directly or indirectly impeding the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and those having recourse for this purpose to the secular forum and procuring or issuing its mandates, or furnishing aid or favor [14].

[13] ** The excellent *Rieti Commentary* thus treats these: *By this censure are punished injuries against the body, liberty, and dignity of the Princes of the Church. Against the body, namely, by killing, mutilating, or striking. To kill is to put to death in any manner, for example, by poison, hunger, etc.; to mutilate is to cut off a member; by striking we understand every injury which is done by the hand.*

Against liberty, namely, by seizing, imprisoning, or detaining. To seize is to apprehend. To imprison is to cast or confine one in any place, even a private one. To detain is to keep one enclosed in any place lest he be able to depart.

Against dignity, namely, by pursuing in a hostile manner or casting out. To pursue in a hostile manner is to pursue with the intention of harming; therefore those who pursue them for the sake of frightening or despoiling them do not incur this excommunication. To cast out is to expel one previously received, and therefore those who do not receive them are not bound by it. From their Lands or dominions: interpreters understand by Lands also those where they maintain a domicile or were born. Nor is it distinguished by what authority they cast them out, public or private, or in what manner, whether by force employed, by threats, or by a bare precept.

Moreover, in this place not only those who strike, mutilate, etc., and those who furnish them aid or favor are excommunicated, but also those who ratify it. But in order that these incur excommunication, it is necessary: 1. that the striking, mutilation, etc., was done in their name, because someone cannot ratify what was not done in his name (chapter 23, *On the Sentence of Excommunication*, in the *Sext*); *2. that at the time when these things were perpetrated, they could have authorized and therefore commanded them, for ratification is retroactive and is equated with a mandate.*

[14] ** The action which is restrained by this excommunication is to impede the exercise of ecclesiastical jurisdiction, both ordinary and delegated, whether of the external or internal forum; of this kind especially is that which the Sacred Penitentiary uses.

Moreover, to the power of jurisdiction belongs the issuing of laws and mandates, binding and loosing, conferring Benefices, deputing to ecclesiastical duties, sending preachers, visiting a Diocese, and committing to others for performance those things which belong to Order. And these things must be distinguished both from those which pertain to the power of Order, such as performing sacred rites, ministering the Sacraments, blessing and consecrating persons and things, etc.; and from those which are more matters of office or right, such as teaching, preaching, acquiring or alienating goods, and, in a word, entering into contracts.

Therefore, in order that someone be said to impede the exercise of jurisdiction, it is necessary that he oppose the one in whom jurisdiction resides, for example, an Ordinary, Pastor, or judge, and indeed oppose him so that he neither begin nor continue to use the jurisdiction. To this also pertains if someone impedes the execution of any sentence or decree of this kind, especially if he does this by appealing or otherwise having recourse in any manner to the lay power, as it is said, on account of abuse.

Or: 2. by issuing mandates, which is understood of one who establishes or decrees a mandate.

Or: 3. by having recourse to the secular forum and procuring its mandates, namely, in order to elude the judgment of the ecclesiastical forum.

Or finally: 4. all those who furnish aid, counsel, or favor in all these things, for example, those who procure mandates for persons wishing to impede.

Thus far from the excellent *Rieti Commentary*, where it is added that, when the effect has not yet followed, neither those impeding, nor those issuing mandates, nor those having recourse, and consequently neither those furnishing aid, etc., contract the excommunication. The contrary opinion, at least with respect to those having recourse, pleased Avanzini (*Commentary*, no. 11). But (the *Rieti Commentary* subjoins at article 8), *I think that one ought not easily to depart from the general rules of law.*

But this excommunication is incurred by those impeding the exercise of this jurisdiction, namely: 1. by some deed, for example, by force, threats, or command, either directly, for example, if someone threatens a Bishop with death, etc., or indirectly, as if by a deed

VII. Those directly or indirectly compelling lay judges to draw ecclesiastical persons before their tribunal contrary to the canonical provisions [15]; likewise those issuing laws or decrees against the liberty or rights of the Church [16].

VIII. Those having recourse to the lay power [17] in order to impede he prohibits those attached to the Ecclesiastical Court from performing their duty in that matter, etc. > any letters or acts [18] proceeding from the Apostolic See or from any of its Legates or Delegates [19], and those

directly or indirectly prohibiting their promulgation or execution [20], or on account of them injuring or gravely frightening either the parties themselves or others [21].

IX. All forgers of Apostolic Letters, even in the form of a Brief, and of petitions concerning grace or justice, signed by the Roman Pontiff, or by the Vice-Chancellors of the Holy Roman Church or those acting in their place, or at the mandate of the same Roman Pontiff; and also those falsely publishing Apostolic Letters, even in the form of a Brief, and also those falsely signing petitions of this kind under the name of the Roman Pontiff or the Vice-Chancellor or of one acting in the place of the aforesaid persons [22].

X. Those absolving an accomplice in a shameful sin even at the point of death > if another priest, although not approved for confessions, can hear the confession of the dying person without grave infamy and scandal being likely to arise [23].

XI. Those usurping or sequestering [24] jurisdiction, goods, or revenues belonging to ecclesiastical persons by reason of their Churches or Benefices [25].

XII. Those invading, destroying, or detaining, by themselves or through others, Cities, Lands, places, or rights belonging to the Roman Church; or those usurping, disturbing, or retaining the supreme jurisdiction in them; and also those furnishing aid, counsel, or favor toward any of the aforesaid acts [26].

[15] ** Formerly (Bull *Coenae*, section 15), judges who drew Ecclesiastics before their tribunal were subject to excommunication; today those who compel the lay judges themselves to this are subject, that is, those who exercise judgment by lay power. Thus the Declaration of the Sacred Inquisition, 1 February 1871: *The word compelling certainly indicates that the excommunication does not reach those who are subordinate, even if they were judges, but was imposed only upon those who, compelled by no one, either perform such acts or compel others to perform them.* Therefore, he contracts the excommunication who, either directly, for example, by threats, or indirectly, for example, through another, compels ecclesiastics to be drawn into court as though accused, whether on account of a penal cause for even a most grave crime, or on account of a civil cause of even a single farthing.

The Constitution limits it: *Contrary to the canonical sanctions*, namely, unless at some time through them an ecclesiastic is permitted to be drawn before a lay tribunal, with the conditions under which this is permitted otherwise observed.

[16] ** With respect to the other part of this article, attention is directed to those issuing, that is, establishing laws or decrees against the liberty and rights of the Church, namely, of the universal Church.

Laws are those which are established in perpetuity by the supreme power; Decrees are those which are issued generally by any power, for example, by the Prefect of a city, Municipalities, etc., but not those which are issued against individual persons or in individual cases, which you would rather call mandates, and therefore not the sentences of judges.

But the words *Against the liberty or rights*, etc., extend most widely and strike altogether every kind of law or decree by which not only the exercise of ecclesiastical power, whether of Jurisdiction or Order, but any other right is intercepted, restricted, or disturbed, such as the right of teaching; promoting to Orders; conducting public supplications outside churches or at night; erecting Churches, Benefices, and Pious Associations; and conferring Benefices without any intervention of the lay power; indeed, also the rights which belong to the Church as a Society, such as the right of acquiring by acts of last will or among the living; alienating; or leasing her goods beyond nine years, etc.

But this excommunication is incurred by those issuing laws or decrees of this kind by lay authority; and if these were proposed by the vote, for example, of the people, senate, etc., all who voted for them are bound by this censure as soon as they have been promulgated.

[17] ** Namely, to persons who exercise some jurisdiction over citizens, of which kind, for example, are judges, presidents, prefects of cities, etc. Nor does it matter in what manner someone had recourse, whether by appealing, by calling upon them, or by presenting a petition.

[18] ** Acts of the Apostolic See are called those which are transacted at Rome by the Roman Pontiff or at his mandate, whether they contain a spiritual or temporal matter.

[19] ** By Delegates understand those to whom the transaction of some matter is committed.

[20] ** *Promulgation*, rather than being taken for dissemination, which consists in fact, appears to be taken for publication in the customary form and manner, which consists rather in law. It is disputed whether, in order to incur this censure, it is necessary that the publication or execution be prohibited by public authority. The *Rieti Commentary* follows those affirming, for the Pontiff appears to speak of that prohibition which flows from recourse to the lay power.

[21] ** *To injure* appears to be taken in the strict signification, by which, namely, the body is said to be injured. But *to frighten* indicates the instilling of fear which is certainly grave. By the parties themselves understand those to whom the Apostolic Letters or Acts pertain, but by others those to whom the publication or execution of the Apostolic Letters pertains.

[22] ** Not all forgers incur this excommunication, but only forgers of Apostolic Letters, whether they contain grace or justice. Those are said to contain grace which contain some favor or liberality of the Roman Pontiff; but letters of justice are those which pertain to lawsuits and therefore to the cognizance or determination of some cause. Indeed, Apostolic Letters or rescripts do not pertain here if they have not yet been signed or furnished with a seal or leaden bulla, because, since they are not yet authentic, they do not yet avail.

Since the crime of forgery concerning letters of this kind can be committed in several ways, it is punished with excommunication if it is done: 1. by corrupting; or 2. by fabricating Apostolic Letters; or 3. by signing petitions, etc. By corrupting, whenever something is varied, deleted, or added, which must be estimated not materially but formally, that is, from the sense principally intended by the Roman Pontiff. By fabricating, whenever a false writing is substituted. Finally, by signing petitions, etc., whenever *Fiat* is falsely subscribed in them.

But in order that the censure be incurred, it is necessary: 1. that these things were committed with evil intent; 2. that, if they concern another, this gravely harms or can harm the other; I said, if another, for if they concern only you, it suffices to have falsified them in any manner; 3. finally, that you have perfected and completed the falsity. But when the falsity has been perfected, the excommunication is immediately incurred even if you do not use the falsified Letters or Rescripts. Except that which is committed by fabricating Apostolic Letters, before whose publication this censure is not incurred. But one who uses these Letters incurs another excommunication reserved to the Bishop, as will be said below.

[23] Concerning this article there is nothing to be added to those things which were said above (at no. 584).

[24] Someone is said to usurp when, as though using a power of ruling and by his own right, he takes prior possession of something (Suarez, *On Censures*, disputation 21, section 2, no. 96). Therefore thieves, robbers, etc., are not comprehended here, as the Sacred Inquisition also declared, 9 March 1870. But to sequester in the present case is to impede something from being received by those to whom it belongs.

[25] By jurisdiction understand either spiritual or temporal jurisdiction (Suarez, loc. cit., no. 95); but by goods understand immovable or movable goods, or even rights; and by revenues, whatever a thing bears or is received in consideration of the thing. Moreover, those jurisdictions, goods, and revenues are understood which belong to ecclesiastical persons by reason of their churches or benefices. Avanzini (*Commentary*, no. 18) thinks that the goods of monasteries also pertain here, as belonging to ecclesiastical persons by reason of their churches. Indeed, in the Bull *Coenae* (section 17), from which this article is taken, it is said: *Belonging to any ecclesiastical persons by reason of Churches, monasteries, and other Ecclesiastical benefices.* But the word *other* there suggests that Monasteries are comprehended under the name of benefices rather than churches; otherwise, as is acutely noted in the *Rieti Commentary*, goods of this kind, etc., belong either to the monasteries themselves, to their Sacristies, or to the Roman Church.

Since by this article only those usurping and sequestering, etc., appear expressly to be subjected to this excommunication, it was doubted whether someone who purchases the aforesaid things from a usurper incurs the same excommunication. But that it is indeed incurred is settled law from the Allocution of Pius IX, 25 July 1873. Add the reply of the Sacred Congregation of the Holy Office, 8 July 1874: *It must by no means be doubted that those purchasing ecclesiastical goods usurped by usurpers fall into the excommunication reserved to the Roman Pontiff. For, setting aside the question whether the aforesaid purchase is in some manner touched by article XI of the Constitution Apostolicae Sedis, it can be doubtful to no one that it is comprehended by the most clear disposition of chapter XI, On Reformation, session 22 of the Council of Trent.*

The replies of the Sacred Penitentiary concerning those who in any manner retain ecclesiastical goods of this kind, see below from no. 1092 in the Appendix.

[26] This excommunication pertains to the defense and protection of the temporal Dominion belonging to the Apostolic See. Therefore, rights and jurisdiction here are taken as temporal, and jurisdiction is understood as supreme, that is, that which belongs to the Prince alone, such as the right of life and death, the right of imposing taxes, creating Magistrates, etc.

But this excommunication is incurred: 1. by those who destroy cities, lands, places, etc., and those who invade them by employing force; 2. by those who disturb the supreme jurisdiction of the Roman Pontiff in them, for example, those who impede Him from promulgating laws in these cities, imposing taxes, etc.; 3. by those who retain this jurisdiction or the cities, etc., even if they received them from others, such as heirs and heirs of heirs. 4. Finally, by those who furnish aid, counsel, or favor toward any of the aforesaid acts.

And as regards these last, it is a difficult matter, as the *Rieti Commentary* well says, to define when they incur excommunication by reason of aid, favor, etc., in detaining. *A twofold kind of these* (it says) *must be distinguished. The one is of those who hold some public office; the other, of those who exercise none. And as regards the former, public offices pertain either to the necessities or utilities of the citizens, or to preserving the government, or to both. It can indeed be harmless to undertake the former, because society cannot kill itself.*

But two things above the rest must be observed: 1. that they do not take an oath by which active obedience, as they say, is promised to the usurper, which would be as the price of the office. And if it is altogether necessary to swear, let them promise only passive obedience, and obedience to laws both divine and ecclesiastical, as was enjoined through the Letter of Pius VII to the Bishops of the Marches, 30 August 1808, and by the Sacred Penitentiary, 10 December 1860, replies 10 and 14.

2. That while they swear, they openly profess that they will do nothing contrary to divine and ecclesiastical laws. Wherefore, if something contrary to these laws should have to be done, it is necessary either to abstain from it or to renounce the office.

But with respect to public duties which do not pertain merely to the utilities and necessities of citizens but to preserving the government, the Sacred Penitentiary had already replied on 10 October 1860 (reply 11) *that they can be tolerated, provided that there is no question of offices which directly and proximately contribute to the spoliation or to the maintenance of that same spoliation, and which cannot be exercised without danger of violating divine and ecclesiastical laws. But those who hold the first or supreme magistracy in any province, city, land, or town are understood to contribute by office to the maintenance of the spoliation. Thus the Instruction of Pius VII, 22 May 1809, declares: It is not lawful to accept employments and charges which have a more or less direct tendency to recognize, assist, and consolidate the new government in the exercise of the usurped power. But what duties are of this kind is declared more expressly thus in the Instruction of 10 June 1809: It is declared that by such employments are understood especially the offices of Governors, Prefects, or Mayors, who under this or another designation represent the first magistrate in each province, city, land, castle, or country whatever.*

But departure from this policy began after it left no hope of impeding the consolidation of the usurpation, and otherwise the office of governing, committed and permitted only to rebels and wicked men, finally produced this sole fruit: that a policy of this kind turned to the destruction of Religion and to ever worse harms of subjects. And indeed, where an unjust usurper permits the oppressed subjects of another to provide in some manner for themselves and the common good, no reason at all appears why either the legitimate prince ought to be considered unwilling, for he would not reasonably be unwilling, or why oppressed subjects ought to be considered free of fault if they refuse offices through negligence. For they will not act thus as though they recognize some right in the most unjust usurper, but as persons who use the law of nature to provide for themselves and society. See the things said in volume I, no. 394, in the Note.

These things concern those holding public duties. But with respect to those who perform no office of this kind, those are understood to favor those detaining who furnish proximate assistance so that the usurpers remain in possession, for example, through money, denunciations, counsels, writings, etc.

Avanzini writes (*Commentary*, no. 19) that, if this article of the Constitution is compared with article XII of the Bull *Coenae*, it appears that adherents, supporters, and their defenders have been removed; concerning which matter he nevertheless subjoins that the Apostolic Letters of the year 1860 still remain in force. But unless by adherents you understand, as some are accustomed, those who merely stand for the usurpers, and by defenders those who contribute nothing to the maintenance of the spoliation, you certainly have these also sufficiently comprehended among those who furnish aid or favor.

973. ○ XIII. From the Bull *Romanus Pontifex* of Pius IX, 28 August 1873, there is added an excommunication likewise reserved in a special manner to the Roman Pontiff against dignitaries and canons (add: and those who, when chapters are lacking, have power to appoint the administrator or Vicar of a vacant Church, or who legitimately administer vacant Churches), > who, before the exhibition of the Apostolic Letters, have dared, under any title, name, or specious pretext, to grant and transfer the care, governance, and administration of a vacant Church either to one elected, even legitimately, by Chapters as Bishop, or to one nominated or presented, even legitimately, by the lay power to the said vacant Church; then also those who, having been nominated and presented to vacant churches, dare to undertake their care, governance, and administration from the concession and transfer made to them by dignitaries, Canons, and others of whom above; and also those who have obeyed the aforesaid persons or furnished aid, counsel, or favor, of whatever state, condition, preeminence, and dignity they may be [27].

[27] ** All who are subjected to the aforesaid excommunication are punished also with another penalty in the same Bull thus: *And We bind them also with the penalties, likewise to be incurred by that very fact, of deprivation of the ecclesiastical fruits of any Benefices whatever and of other ecclesiastical revenues respectively obtained by them, and decree and declare that they shall be bound; and We reserve the relaxation of those penalties... ONLY IN A SPECIAL MANNER to Ourselves and to the Roman Pontiff for the time being.*

Furthermore, with respect to those elected or presented in this manner, it is added: *Moreover, We decree that those nominated and presented are by that very fact deprived of the right which perhaps was acquired for them through nomination and presentation.* And below: *Furthermore, We declare and decree by the tenor of the present Letters that whatever things are done, commanded, decreed, and ordained by those thus nominated and presented, intruded into the administration of vacant Churches, together with each and every thing in any manner following therefrom and in any manner to follow, are and shall perpetually be null, invalid, empty, void, damnably attempted and presumed in fact by those not having power, and of no value, moment, or efficacy; and We condemn and reprobate them.*

The interdict which is added against those nominated, etc., if they are marked with the episcopal character, will be set forth below in its place.

XIV. Likewise: *Whoever in the aforementioned dioceses* (namely, those subject to the Patriarchate of Venice and the Metropolitan See of Milan), *having been elected by the vote of the people to the office of Pastor or Vicar, dare to seize the pretended possession either of the Church or of its rights and goods, and to perform the duties of the ecclesiastical ministry, by that very fact incur major excommunication peculiarly reserved to the Holy See, and other canonical penalties.* See the Encyclical Letter of the Sacred Congregation of the Council, 21 November 1873 [28].

[28] ** In the same place these things follow: *And let all those same persons* (namely, the intruded) *be avoided by the faithful according to the divine warning, as strangers or thieves, who come only to steal, slaughter, and destroy.*

But what these things mean can be learned from those which, under Pius VI, had to be observed by prescription with respect to intruded persons in France. They are as follows:

1. It is not licit to approach an intruded pastor for the administration of baptism except in a case of extreme necessity, namely, if there is no other person capable of baptizing; nor is it licit to perform the office of sponsor if perhaps the intruded person baptizes.

2. It is not licit, even on feast days, to be present at the Mass of an intruded priest, even if another Mass is lacking; nor is it licit to be present at a sermon or other functions of the intruded person, or to ask other ministries from him, or to entrust a Mass to him to celebrate.

3. It is not licit to receive Communion from an intruded person, even when the Paschal season is pressing.

4. Although one must genuflect before Hosts consecrated by an intruded person, care must nevertheless be taken, lest in this worship Catholics appear to communicate with schismatics, that an encounter with the intruded person be avoided while he carries the Holy Eucharist. And it is licit for a Catholic priest, even if not fasting, to consume hosts consecrated by a Catholic, if they cannot be reverently preserved, lest they come into the hands of the intruded person.

5. It is not licit to approach an intruded Pastor for contracting matrimony; wherefore, if no other means is available and the superior cannot provide another Pastor or priest, the faithful ought to contract without the presence of a pastor.

6. It is not licit for women, after completing childbirth, to receive from an intruded person the blessing which is customarily given after childbirth.

7. The obsequies of the dead are to be celebrated by the legitimate pastor even in private houses, if they cannot be performed otherwise; but if the intruded person carries the body to the Church, let Catholics neither accompany the funeral nor recite sacred prayers nor perform other rites of the Church in association with him.

8. But whether in danger of death the faithful can licitly receive absolution from an intruded Pastor, it was replied: *The course which certain Prelates of France entered upon is not to be disapproved, who, in that moment, permitted the sacrament of penance... when any other Catholic priest was lacking and scandal had been removed, to be received from intruded pastors in that necessity.*

But it must be noted here that the Censure and Decree of which there is now question indeed pertain to the ecclesiastical provinces of Venice and Milan; but it must not be thought that persons intruded into parishes in this manner elsewhere are by no means subject to these penalties. For neither will these escape the excommunication set forth above in article XI. For either a legitimate pastor is supposed already to have been given to the parish, and thus we have on the part of the intruded person a usurpation of jurisdiction belonging to another by reason of a benefice; or we suppose that a legitimate pastor has not yet been given, and thus we have the jurisdiction of the Ordinary over the same parish violated. Therefore, the special Decree for the said Provinces can be regarded as a mere consequence or application of article XI.

974. ○ In the same Constitution these things are subjoined: *We declare that absolution from all the excommunications enumerated up to this point is and remains reserved in a special manner to the Roman Pontiff for the time being, and that for it a general concession of absolving from cases and censures or excommunications reserved to the Roman Pontiff in no manner suffices; any indults whatever granted in any form and to any persons, even Regulars of any Order, Congregation, Society, and Institute, even those worthy of special mention and constituted in any dignity, being revoked in addition with respect to those same excommunications* [29]. *But those presuming to absolve* > without due faculty, even under any pretext, are to know themselves bound by a bond of excommunication > reserved to the Roman Pontiff [30], provided that there is no question of the point of death, in which nevertheless the obligation, with respect to those absolved, of standing by the mandates of the Church if they recover remains firm [31].

[29] ** On account of those derogatory clauses a doubt had arisen whether all faculties, whether ordinary, namely, those customarily granted, or extraordinary, granted by the Apostolic See before the promulgation of the same Constitution, had been diminished or taken away by this Constitution, for example, the faculty of absolving from the crime of heresy which was contained in the *Pagella* of the Sacred Penitentiary. But by mandate of the Supreme Pontiff it was declared through the Office of the Sacred Inquisition as follows: *Through the Constitution Apostolicae Sedis the Most Holy Father in no way intends to inflict even the least detriment upon faculties of whatever kind which were granted by the Holy See before the promulgation of the same Constitution, whether they are quinquennial or extraordinary or regard the present Jubilee; and he wills that they remain in their full force while the time defined in the said concessions or indults endures.*

See above, no. 175, and the things noted there; concerning which the Reply of the Sacred Penitentiary, 5 December 1873, must not be omitted. Namely, to the doubt, Whether Regular Prelates, after the Constitution *Apostolicae Sedis*, enjoy the same privileges which they did before, that is, whether or not they can absolve their subjects from papal cases simply reserved in the said Bull, this reply was made: *The Sacred Penitentiary replies to the proposed doubt: Negatively, saving other faculties which proceed from particular Rescripts granted for a time.*

But from this a question could be raised whether through these things something must be said to have been detracted from the Decree of the Sacred Congregation of Bishops and Regulars, confirmed by Pontifical authority, which elsewhere (above, page 114, in the Note) we reported in these words: *The Sacred Congregation of Bishops and Regulars, after the matter had been spoken of with the Most Holy Clement VIII, ABSOLUTELY DECREED that all Bulls and Decrees derogating from the Privileges of Regulars with respect to the faculty of absolving from cases reserved to the Pope are to be understood only in relation to secular persons, but not in relation to their Regular subjects.*

And, saving indeed a better judgment, it seems that it must be answered that these things can be reconciled together very well. For, besides the fact that what belongs to Bishops from chapter *Liceat* also belongs to Regular Prelates, see above, no. 175, the doubt proposed to the Sacred Penitentiary treats of Privileges properly so called. But what is established in the aforesaid Decree ought to be called not so much a Privilege as a certain provident disposition which, by a certain general norm, applies the principles of the common law to the condition and state of Regulars. For it is very well known both from the nature of the matter and from the consensus of all the Doctors that Regulars are numbered among those who are considered to have a perpetual impediment preventing them from being free and unimpeded to approach the Apostolic See personally for absolution from censures. But in these circumstances it is settled law that the faculty of absolving devolves upon the Ordinary, so that he can both absolve by himself and also through another, because this faculty belongs to him by ordinary law, and therefore he can delegate it to another. Thus in chapter *Nuper* 29, *On the Sentence of Excommunication*: *We grant... that he may be absolved by his Bishop or his own Priest.* But no one is ignorant that the Ordinaries of exempt Regulars are none other than their Prelates. Therefore the faculty is given to the Prelates of Regulars to absolve their subjects in the case, not by force of some special privilege, but by a norm taken from the common law. Nevertheless, this norm has a certain appearance of a privilege, insofar as, to remove all doubts for the future, the Apostolic See through the organ of the Sacred Congregation established this canon generally for Regulars. And indeed, what is worthy of note is that a Declaration or Decree of this kind appeared at the time when the same Sacred Congregation of Bishops and Regulars, by the Mandate and Authority of the same Clement VIII, under penalty of excommunication, deprivation of offices, and incapacity for hearing confessions, etc., had forbidden all Regulars to presume to absolve from cases reserved or to be reserved in any manner to the Apostolic See. *For His Holiness* (it is added in that decree) *insofar as there is need, has willed and wills that the faculties and concessions themselves in this part are henceforth to be held as utterly null and void.* Therefore, by this very fact the Sacred Congregation most manifestly declared that that disposition concerning Regulars pertained in no way to that privilege properly so called of absolving from Papal cases which Clement VIII, by that Decree of 9 January 1601, no less than Our Most Holy Lord Pope Pius IX by the Constitution *Apostolicae Sedis*, willed to be annulled, rendered void, and taken away. Therefore, the reply of the Sacred Penitentiary, which regards the privileges of which there is discussion in the proposed doubt, contradicts or detracts nothing from the Decree which, at the command of Clement VIII, established that special canon for the singular condition of Regulars.

[30] ** You have, therefore, another excommunication simply reserved to the Roman Pontiff, and accordingly to be added to the following catalogue.

[31] ** These persons, therefore, will have to present themselves in order to receive mandates, unless nevertheless these are already known and enjoined, for example, those which were prescribed by the Sacred Penitentiary to those who purchased ecclesiastical goods from a usurper, concerning whom in article XI.

II. Latae Sententiae Excommunications Reserved to the Roman Pontiff

975. ° I. Those teaching or defending, whether publicly or privately, propositions condemned by the Apostolic See under penalty of a *latae sententiae* excommunication [32]; likewise those teaching or defending as licit the practice of inquiring from a penitent the name of an accomplice, as it was condemned by Benedict XIV in the Constitutions *Suprema*, > 7 July 1745; *Ubi primum*, 2 July 1746; *Ad eradicandum*, 28 September 1746 [33].

II. Those who, at the instigation of the devil, lay violent hands upon Clerics or monks of either sex [34], excepting, with respect to the reservation, the cases and persons concerning whom it is permitted by law or privilege that the Bishop or another absolve [35].

III. Those perpetrating a duel, or simply challenging another to it, or accepting it, and any accomplices, or those furnishing any assistance or favor, and also those deliberately watching it, and those permitting it or, so far as it is in their power, not prohibiting it, of whatever dignity they may be, even royal or imperial [36].

[32] ** The propositions which it is forbidden by the Apostolic See to teach or defend under penalty of a *latae sententiae* excommunication are commonly enumerated as follows:

1. The 45 Articles of John Wycliffe and the 30 Articles of John Hus. From the Constitution *In eminentis Apostolicae*, etc., of Martin V, dated at Rome, 13 February 1450. (See volume I, page XXXV.)

2. The 41 Errors of Martin Luther, condemned by Leo X in the Bull *Exsurge Domine*, etc., 16 May 1520. (Above, volume I, page XL.)

3. The 79 Propositions of Michael Baius, condemned by St. Pius V in the Bull *Ex omnibus*, 1 October 1567, etc. (Above, volume I, page XLIII.)

4. The Proposition concerning sacramental confession and absolution to be obtained by letters. Clement VIII, through the Decree of the Sacred Inquisition, 20 July 1602. (Above, volume I, page XLVIII.)

5. The 45 Propositions condemned by Alexander VII through Decrees of the Sacred Inquisition, 24 September 1665 and 18 March 1666. (Above, volume I, page L.)

6. The 65 Propositions condemned by Innocent XI through the Decree of the Sacred Inquisition, 2 March 1679. (Above, volume I, page LIII.)

7. The 68 Propositions of Michael de Molinos, condemned by Innocent XI in the Constitution *Caelestis Pastor*, 20 November 1687. (Above, volume I, page LVIII.)

8. The 2 Propositions condemned by Alexander VIII, 24 August 1690. (Above, volume I, page LXIV.)

9. The 31 Propositions condemned by Alexander VIII through the Decree of the Sacred Inquisition, 7 December 1690. (Above, volume I, page LXIV.)

10. The 101 Propositions of Pasquier Quesnel, condemned by Clement XI in the Constitution *Unigenitus*, 8 September 1713. (Above, volume I, page LXVI.)

11. The 5 Propositions *On the Duel*, condemned by Benedict XIV in the Constitution *Detestabilem*, 10 November 1752. (Above, volume I, page LXIX.)

12. The 85 Propositions of the diocesan Synod of Pistoia, condemned by Pius VI in the Constitution *Auctorem fidei*, 28 August 1794. (Above, volume I, page LXXV.)

[33] ** See the things given above concerning this argument, no. 501.

[34] ** Since this privilege, which is customarily called the privilege of the canon, is in favor not of persons but of the Order, it is taken most widely. Therefore, under the name of Clerics are included whoever have received tonsure; but under the designation of Monks, all Regulars of either sex, and their Novices and Tertiaries, indeed also Hermits who by mandate of the Bishop are assigned to the custody and service of some Church or chapel.

A violent laying on of hands is understood whenever injury is done by deeds to a person, namely, by harming either his body, liberty, or dignity; the body indeed by striking, wounding, or even harming by poison, or by in any way causing him to fall, tumble headlong, etc.; liberty, as if you thrust him into a prison or another place, even a private one; dignity, if force is in any manner employed against him, as, for example, by stopping the carriage or horse on which he is being conveyed, by violently taking something from him, such as a hat, purse, or staff; or by committing some other insulting act against him, for example, if you soil him with spittle, mud, or dust, or tear the clothes which he is wearing, etc.

All, even those who have not reached puberty, are subject to this excommunication. Nevertheless, a cleric who lays hands upon himself does not incur it (St. Alphonsus, book 7, no. 274); nor, on account of a defect of full advertence, does one who strikes from sudden anger or in jest, or for the sake of correction or defense, or for some other just cause, as if he finds him acting shamefully with his daughter, sister, etc. Indeed, as can deservedly be held, neither do those commanding or

ratifying it incur the censure, since the law, which expressed others (see article V among the excommunications reserved in a special manner), passes over these here.

[35] ** Namely, if the striking was light, the Bishop can absolve the striker, whoever he may be. But a striking is called light which indeed inflicts grave injury but without grave harm, for example, one done with a fist, foot, stone, or club. But if the striking was grave, the Bishop can absolve only those who live collegiately, from chapter 50, *On the Sentence of Excommunication*; but it is held as grave, besides the fact that it must also be estimated from the place, the person, and other circumstances, from the Extravagant *Perlectis* of John XXII, if, for example, a tooth is knocked out or an abundance of blood is shed. Finally, if the striking was enormous, such as mutilation, the gouging out of an eye, the severing of a member, etc., the Bishop can absolve only those who have not reached puberty, whether they seek absolution before or after puberty, from chapter 60, *On the Sentence of Excommunication*. But in doubt whether the striking was light, grave, or enormous, according to the cited Extravagant the graver classification must be maintained.

But as to what Regular Prelates can do by common law concerning their subjects, compare the things brought forward above from St. Alphonsus in the Note to no. 175.

[36] ** With the *Rieti Commentary*, note that for the character of a duel of this kind it is required that the combat be fought with lethal weapons; and therefore it does not pertain here if there is fighting with fists, sticks, or even iron with a blunted edge, although death follows accidentally. Nor is this contrary to the Constitution *Illius vices* of Clement VIII. at no. 405, page 388, volume I; because, namely, in this place also St. Alphonsus (book 7, no. 220) refers to those things which he had written (book 3, no. 400), namely, that after those five Propositions on the Duel were condemned by Benedict XIV, that opinion which asserts that a Duel can licitly be accepted for the necessary defense of goods of great importance cannot be held as probable. St. Alphonsus indeed attributes this opinion to Lessius, Sanchez, Palao, Coninck, Valentia, Holzmann, Pichler, Reiffenstuel, Sporer, Albel, and others, and adds that it is called probable by Croix and Roncaglia. Indeed, it would certainly be licit for these Authors to add even the vote of St. Alphonsus himself; for he held the same doctrine altogether approved when he wrote these things (Note 1 of the Author on article 3, doubt 4, chapter 2, book 7, edition of the year 1748): *It must be noted that a duel can sometimes be justified by just causes, for example, to avoid a loss of goods which the other challenger threatens; nevertheless the loss ought to be certain, and it ought to be impossible to meet it by another way unless the duel is accepted.* And indeed, since St. Alphonsus afterward departed from this doctrine for no other cause than because he thought that it had been condemned by Benedict XIV, as he himself thus testifies concerning himself (*Catalogue of Reformed Propositions*, no. 97), therefore, when it can prudently be considered that this condemnation is not sufficiently established, nothing now prevents us from numbering the Holy Doctor among the patrons of that opinion.

But this is the argument of that Note to no. 405, volume I; there, namely, it is demonstrated that the falsity of the aforesaid opinion can by no means be logically deduced from the aforesaid condemned Propositions. For otherwise that opinion is by no means defended in the same Note by any positive reason; but, from a weighing of the Propositions proscribed by Benedict XIV, this alone was inferred: *It must therefore be concluded that it is indeed lawful for anyone to seek reasons by which he may attack that opinion and whatever probability it has; but reasons of this kind must plainly be sought elsewhere than from those proscribed propositions.*

And this plainly is what greatly displeases the VV. Wherefore, through fourteen columns (pages 879-885) they labor to establish that that doctrine was truly condemned in the aforesaid propositions. Nor indeed do they hesitate to write thus concerning those things which we said in the Note to no. 405: *Father Ballerini appears to deceive himself. For even by observing the rules which he himself hands down for rightly converting condemned propositions, it is clearly gathered from the same propositions that the acceptance of a duel for preserving one's fortunes with honor is condemned.*

Again, therefore, a few things concerning this argument. Concerning this matter I would note that it by no means appears why the VV. write, *even by observing the rules which he himself* (Father Ballerini) *hands down*, etc., as though Father Ballerini had brought forth here some singular and less well-established rules. For does any rule concerning condemned Propositions exist or can one be devised other than that which all have always admitted, namely, that nothing can certainly be forced from them except that the contradictory of that proposition which was condemned as false must be held as true? The contradictory, I say, but not the contrary, since two contrary propositions indeed cannot both be true, but certainly can both be false. Or can other rules for finding the contradictory of some proposition be produced than those which are everywhere extant in the first elements of dialectic?

Let us therefore come to the matter. The VV., after St. Alphonsus, object with the first and fourth of those five propositions. But the first reads thus: *A military man who, unless he offers OR accepts* (both in St. Alphonsus and in Gury and the VV. it is read

incorrectly, AND accepts) *a Duel, would be regarded as fearful, timid, abject, and unfit for military duties, and would therefore be deprived of the office by which he supports himself and his family, or would have to lack perpetually the hope of a promotion otherwise*

due and merited by him, would be free from fault and penalty, whether he offers or accepts the duel.

But concerning this the VV. write thus (page 881): *The contradictory of the first condemned Proposition can be no other than the following: "A military man who, unless he offers and accepts a duel... would be deprived of the office by which he supports himself and his family,... would not be free from fault and penalty, whether he offers or accepts the duel*"; and they add: *Surely nothing clearer could be desired.*

Yet this is by no means the contradictory of the preceding proposition, but its contrary. For, as the dialecticians teach, the distinction is this: in contradictories, one affirms or denies only as much as suffices for the other to be false; and therefore both can never be true, nor can both be false at the same time. But in contraries, one denies or affirms more than is necessary for the other to be false; whence it happens that both indeed cannot be true at the same time, but both can be false. Yet in this case we have the latter, not the former.

For let the Proposition be reduced to this simpler form: *A military man... is free from fault and penalty, whether he offers or accepts a duel.* Here take care to observe that the words *whether he offers or accepts a duel* are expressed not disjunctively but copulatively, just as if one were to say: *he is free from fault both if he offers and if he accepts a duel.* Hence it follows that, if with the VV. you say, *he is not free from fault both if he offers and if he accepts a duel*, you now deny more than is necessary for the other proposition to be false; and therefore both can be false, namely, when he would be free from fault if he accepts, but not if he offers, or vice versa. You will have the contradictory only if you say: *Either he is not free from fault if he offers, or he is not free from fault if he accepts.* Which part of this disjunction is then true must be determined from elsewhere, and not by force of the proposition itself. It is therefore evident that, by force of the condemned Proposition, it cannot be concluded that both cases are subject to fault and penalty.

Say the same of the other Proposition which the VV., following St. Alphonsus, press: *It is licit in the natural state of man to accept and offer a duel in order to preserve one's fortunes with honor, when their loss cannot be warded off by another remedy.*

Concerning this the VV. write thus (page 882): *The other proposition sounds contradictorily thus: "It is not licit... to accept and offer a duel in order to preserve one's fortunes with honor."* Yet this is opposed to the condemned proposition not contradictorily but contrarily, and can be false just as much as the opposite proposition, because it denies more than is fitting. If you wish the contradictory, say: *Either to offer a duel in order to preserve one's fortunes with honor, or to accept it, is not licit.*

Here the VV. add (loc. cit.): *If the one accepting is not condemned because the proposition is copulative, for the same reason neither can the one offering be condemned; therefore, in the condemned proposition neither is certainly condemned: which is absurd.*

But to these things it must be answered: I concede the whole, except that this must be called absurd. And indeed, if someone should say: *Peter and Paul were crucified at Rome*, its contradictory will not be, *Neither Peter nor Paul was crucified at Rome*, but the disjunctive: *Either Peter or Paul was not crucified at Rome.* **But is that said absurdly because, by force of the proposition, it remains uncertain which of them was, or was not, crucified?** This must be gathered from elsewhere, as we have said, and not by force of the contradictory proposition. And this indeed is also recommended by those things which the VV. themselves bring forward thus from Reuter: *Since a condemned proposition can bear either a universal or a particular sense, while a composite proposition can bear either a copulative or a divided sense, in order that it may be understood in what sense it was condemned and which contradictory opposed to it is true, one must consider both the matter which is proscribed and the weight of the reasons on account of which it deserved to be proscribed, as well as the mind of those who taught that proposition, and finally the common sense of the Doctors.*

Take careful note of those words: *which contradictory opposed to it IS*

TRUE; for several contradictories are disjunctively opposed to a complex proposition, as is evident from the one aforesaid: *either he is not free from fault and penalty while he offers, or he is not free from fault and penalty while he accepts.* Which of these is true, Reuter rightly says must be argued from the matter, from the weight of the reasons, from the sense of the Doctors, etc.

And that recourse must finally be had to this is manifestly evident from innumerable other examples concerning condemned theses. Let there be, for example, proposition 36 among those proscribed by Innocent XI: *It is permitted to steal not only in extreme necessity but also in grave necessity*; which, as regards its form, is certainly equivalent to this other: *It is licit not only to accept but also to offer a duel.* All agree that something false and condemnable lies within it. **But without an inspection of the matter or of the sense of the Doctors, what at length will you extract?** This one thing, namely, which the

contradictory presents: that it is not permitted to steal either in extreme necessity, or in grave necessity, or in both cases. But behold Doctors disagreeing as to whether that thesis is to be understood of formal theft, or merely of the material taking of another's thing, so that *to steal* there is the same as *to carry off another's property*. **I ask, therefore: can this controversy be determined from the mere inspection of the thesis in itself? Or shall we on that account cry out with the VV. that it is absurd that nothing certain is gathered from the condemned Proposition?**

Again, if you understand formal theft there as an unjust taking, **unless you recur to a consideration of the matter, will you be able, from the contradictory thesis inspected in itself, to determine whether all the members of the disjunction, or only one of them, and which one, is to be judged true?**

And again, if with Viva and St. Alphonsus you take that *to steal* not for formal theft but for a material taking, **do you find it thus determined in that condemnation which member of the contradictory thesis is certainly to be held true and which false? Finally, do we not determine solely from an inspection of the matter, from the force of the reasons, and from the sense of the Doctors, what is true and what is false?** And, what is chief, is not the rule which St. Alphonsus provides shown, from the interpretation of this thesis, to be deficient and fallacious, the rule by which the VV. contended that the propositions concerning the duel, as we saw above, ought to be converted? Indeed, according to the rule by force of which they convert the first proposition thus: *he is not free from fault and penalty, whether he offers or accepts a duel*; and the fourth thus: *it is not licit to accept and offer a duel*, etc.; according to this rule, I say, the aforesaid proposition 36 would also have to be converted thus: *it is not permitted to carry off another's thing either in extreme necessity or in grave necessity.* Yet St. Alphonsus (book 3, no. 520) indeed says that by this proposition it is condemned that it is licit to carry off another's things in grave necessity alone; but he acknowledges, with the consensus of all, that it is licit to carry off another's property in extreme necessity. Therefore the rule proposed by the VV. is fallacious; therefore by a fallacious conversion of the propositions premised concerning the duel, the VV. contend that both members of those complex theses must be held as condemned.

Since, therefore, it is not determined by force of conversion upon which member of a proscribed complex proposition the condemnation certainly falls, but in order to argue this it is finally necessary to appeal to the nature of the matter, to the force of the reasons, and to the sense of the Doctors, certainly, if someone should consider that St. Alphonsus too, with many grave Authors, could have agreed with that doctrine that a duel can sometimes be justified by just causes, etc., as we described above, he will plainly be able to deduce a consequence wholly opposite to the consequences which the VV. contend must be elicited from these propositions. Let us, however, be content with that conclusion which in the Note to no. 405 we deduced thus: *It must be concluded that it is indeed lawful for anyone to seek reasons by which he may attack that opinion and whatever probability it has; but reasons of this kind must plainly be sought elsewhere than from those proscribed propositions*.

To that which the VV. add (pages 882-885), that there have been several after Concina and Patuzzi who understand those condemned propositions in the same sense as St. Alphonsus, let this be the very brief reply: Let the VV. themselves assume the care of investigating whence this has happened; whether, namely, because the cited Authors did not inspect the matter attentively enough, or because, without weighing the matter for themselves, they adopted the opinion of others. For it is certainly not right to have thought them so unskilled in dialectic that they were ignorant either of the mode of arguing from condemned theses or of the mode of finding the contradictory of some Proposition. And these things suffice concerning this question.

The VV. have two other things in the Notes to this question (pages 880, 881), which nevertheless pertain to other arguments. First, therefore (page 880, note 1), they bring forth these words of St. Thomas (2.2, q. 64, art. 5, ad 4): *It must be said that, as Augustine says, Samson is not otherwise excused for having overwhelmed himself together with his enemies by the ruin of the house, except that the Holy Spirit, who performed miracles through him, had secretly commanded this. And he assigns the same reason concerning certain holy women who killed themselves in time of persecution, whose memory is celebrated in the Church.* From these words the VV. conclude that St. Alphonsus (book 5, no. 367, q. 2) rightly said that St. Thomas disagrees with the Doctors who more commonly hold that it is licit to set fire to a ship or tower so that the enemies may suffer grave harm, but with the certain loss of one's own life. To these things it must be answered that this was rightly observed when it is established that St. Thomas and St. Augustine had turned their eyes to a question of this kind.

The other observation of the VV. concerns these words of St. Alphonsus (book 3, no. 366): *It is licit in a shipwreck to yield the plank... even if the plank has already been seized, as Sylvius apud Tournely and the Salamancans teach against Soto, Rodriguez, etc.... But Sylvius rightly observes that he cannot, in order to yield the plank, cast himself into the sea, because no one can positively kill himself.* The VV. therefore censure (page 881) that in the Note to no. 391, volume I, page 372, we said that Sylvius's scruple was empty.

I reply: In this third edition (loc. cit.) we added the reason why it must be called a scruple and why this limitation of Sylvius cannot be reconciled with the preceding words of St. Alphonsus. We shall add two things here. The first is that St. Alphonsus says that it is licit to yield the plank even if it has been seized, as Sylvius teaches against Soto. But these are the words of Soto (*On Justice and Right*, book 5, q. 1, art. 6, final proposition): *He who relinquished the plank would be in the same position as if he cast himself into the sea, which is directly to kill himself.* **How then does St. Alphonsus cite Sylvius for himself against Soto, when, as is evident, the doctrine of Soto and Sylvius is the same?** Again, St. Alphonsus cites the Salamancans (*On Restitution*, chapter 2, no. 34) together with Sylvius for his opinion. Yet the Salamancans, when they say that it is licit to give the plank to another, bring forward a reason which overturns the opinion of Sylvius and, in a certain way, even that of St. Alphonsus, namely (they say): *This is not to concur directly in death.... It is not to kill oneself, but to commit oneself to a certain danger of death, which one is not bound to avert by so difficult a means as leaving one's neighbor in danger and not helping him. Besides, for an honorable and praiseworthy cause he exposes himself to such danger, which is always licit*. When all these things have been weighed, this one consequence results: that paragraph of the Holy Doctor would have been most fortunate if he had left to Tournely, that is, to Collet, that citation of Sylvius which thoroughly disturbs everything there.

In this place the VV. cast their complaints against those things which the reader will find noted concerning the duel

> IV. Those giving their names to the Masonic or Carbonari sect, or > other sects of the same kind which plot against the Church or legitimate > powers, either openly or secretly; and likewise those furnishing to those same > sects any favor whatever; and those not denouncing their secret chiefs and leaders until they have denounced them [37].

[37] According to the Constitution of Pius VII (*Ecclesiam a Iesu Christo*, section 10) and that of Leo XII (Constitution *Quo graviora*, section 13), under penalty of excommunication reserved to the Roman Pontiff, all those had to be denounced whom one knew to have given their names to these societies, or to have furnished them assistance, favor, etc., in any manner. But here a limitation is made, so that only those incur this penalty who do not denounce their secret chiefs and leaders.

Moreover, a Confessor must keep two things before his eyes before he indicates to a penitent the obligation of denunciation. The first is that which the Doctors commonly admonish and which Thomas Del Bene expresses in these words (*On the Office of the Holy Inquisition*, part I, doubt 19, no. 9): *You are not bound to denounce on account of fear falling upon a constant man, just as a woman is not bound on account of fear falling upon a constant woman, as if you fear that for this reason you may be killed or maltreated.* And again (ibid., doubt 21, no. 1): *One is not bound to denounce with probable danger of death, infamy, or grave harm to oneself, or to one's father or mother, or wife, brothers, or others most closely joined by blood.*

The other is that which others admonish apud Bonacina (*On the Obligation of Denunciation*, part I, section 4, no. 3): there is no obligation of denunciation when it is certainly known, or probably believed, that no remedy will be applied by the Prelate after denunciation has been made; for no one is bound to a useless work; or, as Scavini says (treatise 8, disputation 1, chapter 4, article 2, section 1): *when there is altogether no hope of punishment; for no one is bound to a useless work*; or, as the Decree of the Sacred Inquisition has it (see above in the Note to no. 593, question 5), *when it is believed that those denounced can easily escape punishment*.

Here it must be observed that, since under the Constitution *Apostolicae Sedis* (above, no. 972, no. II) those reading books of any author prohibited by name through Apostolic letters, and those retaining, printing, or defending those same books in any manner, incur an excommunication reserved in a special manner, a question can be raised whether books of sectaries of this kind are comprehended in this class, concerning which Pius VII thus decreed (Constitution *Ecclesiam a Iesu Christo*, section 11, 13 September 1821): *Finally, that every danger of error may be warded off more efficaciously, We condemn and proscribe all catechisms, as they call them, of the Carbonari, and books in which there are described by the Carbonari the things which are customarily done in their assemblies; also their statutes, codes, and all books written in their defense, whether printed or manuscript; and under the same penalty of major excommunication reserved in the same manner, We prohibit any of the faithful from reading or retaining the aforesaid books or any one of them.* And it seems that it must be answered that those whose title is designated can sufficiently be considered prohibited by name. But here we have Statutes, Codes, Catechisms, and a Description of acts in the Assemblies, etc. Therefore.

Gury has two questions concerning these sectaries. The first is:

Can those who have given their names to the aforesaid sect be absolved if, although they repent of the oath they took, they nevertheless communicate externally with the same associates?

Reply. Negatively, because it is not enough that someone internally renounce his errors if he appears externally to profess those same errors. This is evident from the reply of the Congregation of the Holy Office. For when this doubt had been proposed: *Ecclesiastical penalties have been established by several Roman Pontiffs against those who have given their names to the society which they call that of the Freemasons and have taken an oath to preserve the secret in their little assemblies. The doubt arises whether those who, although they repent of the oath they took, nevertheless persevere in openly exhibiting themselves as true adherents of the same society by communicating with others adhering to the same sect, or by attending their little assemblies, or in any other manner, can lawfully be admitted by a Confessor to participation in the Sacrament of Penance or of the Most Holy Eucharist. Certain Priests are found who in fact admit men of this kind.* ***It is asked: how ought the Confessor to conduct himself?***

To this petition the Sacred Congregation of the Holy Office replied on 5 July 1837: *According to the things set forth, it is not licit.*

The other is:

Are those associations to be held as prohibited which profess that they plot nothing against Religion or the civil Commonwealth and nevertheless secretly enter into a compact confirmed by oath?

Reply. Affirmatively. This is established from the Declaration of the Sacred Penitentiary, 21 August 1850. For it replied: *Those associations are comprehended in the Pontifical Bulls.*

Notwithstanding the aforesaid Declaration, Kenrick contends that associations of workers joining together for their own advantages are licit in themselves, even if signs are employed in them and a secret is maintained. According to this opinion, the workers commonly called *Compagnons du Devoir* would not incur excommunication, at least certainly, since they chiefly enter into a compact to assist one another. But on account of the secrecy the matter is full of danger.

Meanwhile it is known from the Declaration of the Office of the Sacred Inquisition, 12 January 1870, that the society of the Fenians is comprehended among the condemned sects.

V. Those ordering the immunity of ecclesiastical asylum to be violated with rash audacity, or violating it [38].

[38] See below, Appendix *On the Enclosure of Monasteries*.

VI. Those violating the enclosure of Nuns, of whatever class or condition, sex, or age they may be, by entering their monasteries without legitimate permission; likewise those introducing or admitting them, and also Nuns departing from it outside the cases and form prescribed by St. Pius V in the Constitution *Decori* [39].

VII. Women violating the enclosure of male Regulars, and superiors or others admitting them [40].

VIII. Those guilty of real simony in any benefices whatsoever, and their accomplices [41].

IX. Those guilty of confidential simony in Benefices of any kind, of whatever dignity they may be.

X. Those guilty of real simony on account of entrance into Religion.

XI. All who, making profit from indulgences and other spiritual graces, are struck with the censure of excommunication by the Constitution *Quam plenum* of St. Pius V, 2 January 1569 [42].

[39] Which places enjoy the immunity of ecclesiastical asylum has been said elsewhere (volume I, in the Note to no. 285).

But this immunity is violated: 1. if one who has fled to those places is drawn out thence by force; but otherwise if he has been led out by deceit and fraud, or has departed deceived by false promises; for by the right of asylum provision is made for the sanctity and reverence of the place, not for the persons taking refuge; 2. if others are prohibited from carrying there

those things which are necessary for life; 3. finally, if by any device the sacred place is besieged so that one who protects himself there is compelled to surrender himself (Benedict XIV, Constitution *Officii nostri*, section 14).

Moreover, for excommunication to be incurred there must be rash audacity, namely, when someone, in no way compelled by others, deliberately and knowingly either orders the right of asylum to be violated or violates it by executing the order, as one devoid of every excuse (Sacred Inquisition, 1 February 1871).

[40] See the same Appendix.

[41] With regard to this and the following two articles, compare the things said concerning Simony in volume I.

[42] According to this Constitution of St. Pius V, for excommunication to be incurred it is required that someone have made profit by granting or publishing indulgences or other spiritual graces (cited Constitution, sections 1 and 4). But one who orders a list of indulgences to be posted in sacred buildings is also considered to publish (ibid., section 2).

The spiritual graces enumerated by this Constitution are: 1. the faculty of choosing for oneself a priest who may absolve one from reserved cases (ibid., section 1); 2. the sacrifice of the Mass and burial during an interdict (ibid., section 3); 3. the use of prohibited foods (ibid.); 4. the taking of two or more sponsors at sacred baptism contrary to the Decree of the Council of Trent (ibid.); 5. absolution from the guilt of simony reserved to the Apostolic See (ibid.). Moreover, only those inferior to Bishops incur the excommunication (ibid., section 6).

XII. Those collecting alms of greater value for Masses and taking profit from them by causing those Masses to be celebrated in places where Mass stipends are customarily of lesser value [43].

[43] Although sin can be committed in many ways by reason of shameful profit sought from Mass stipends (see above from no. 367), nevertheless, for this excommunication to be incurred, it is necessary: 1. that in a certain proper sense someone be said to collect Masses, or to devote effort to collecting Masses. But one is not of this kind to whom Masses are entrusted to be celebrated by himself; nor one to whom, apart from the character of a collector, they are spontaneously committed to be celebrated even by others; nor, finally, one who seeks them from only one or another person. Avanzini well says (*Commentary*, no. 34): *It is sufficiently indicated that there is no question of one or a few stipends in number, but of a certain abundant collection to be made in the manner of commerce*. 2. That the collection be made of Masses which are customarily called manual; for the word *collecting* seems to import this, and it is sufficiently gathered from the Constitution *Quanta cura* of Benedict XIV. 3. That this be done for the sake of gain or profit; wherefore one who deducts a part from the stipends so that it may be expended upon certain pious uses does not incur excommunication, although the Sacred Congregation of the Council disapproved this on 9 September 1874 (above, in the Note to no. 375); nor one who retains some part for himself as compensation for his labor or effort.

Moreover, all indeed agree that the sanction of Benedict XIV, by which only laics were punished with the penalty of excommunication, was extended by this article, because it also comprehends clerics. But a doubt arises whether it was also limited in some respect. Avanzini (loc. cit.) judged it to have been limited because the article does not say *in the same place* (that is, in the place where the stipends were collected), but *in places where Mass stipends are customarily of lesser value*. Wherefore Del Vecchio (*Compendium of Scavini*, treatise 4, no. 611) thinks it more probable that, for the censure to be incurred, the Masses must be celebrated elsewhere, where stipends are customarily of lesser value. Avanzini, however, adds that the opinion of those asserting that the censure is incurred even if the Masses are celebrated where the stipends were collected is not to be disapproved, attention being given, namely, to the identity, if not of the wording, certainly of the rationale, between the Benedictine Constitution and the present article. Cretoni presses this rationale more tenaciously (Note to this article), adding that it is also gathered from those words of the Benedictine Constitution (section 5): *Whether in the same place or elsewhere... he caused them to be celebrated.*

But whatever this disagreement may be, it makes plain that the matter is somewhat more obscure. Indeed, if the Constitution of Benedict XIV is inspected, the greater stipends are understood (section 5) which customs or synodal statutes require in some place; but the lesser ones (section 1) are those where the alms or stipends, either by custom or by synodal law... are of lesser value, lesser, namely, than custom or a synodal statute requires elsewhere. With these things posited, **it is asked: what do those words of the same Constitution (section 5) mean: "Whether in the same place" (where, namely, the greater stipends are given by custom or statute), "or elsewhere, where lesser stipends are given for Masses to be celebrated, he caused them to be celebrated"?** Certainly, if the Masses are celebrated in the same place, retention of part of the stipend cannot occur unless either a stipend below the synodal rate is given to another

or another is defrauded of the excess from a stipend exceeding the synodal rate. But neither case is easily reconciled with the words of this article XII. Not the former, because the Masses are not celebrated in places where Mass stipends are customarily of lesser value. Not the latter, because a certain abundant collection of stipends exceeding the synodal rate, which is signified in the Article, scarcely can have place. Therefore it is not without cause that it is written in the *Rieti Commentary*: *Nor, finally, does he incur the censure who causes Masses to be celebrated either in the same place in which he collected them or in another where they are celebrated for the same stipend*; although one who retains for himself a part of the stipend, unless it is freely given by the recipient, is guilty of theft, whether grave or light according to the quantity of the matter; and a grave quantity is otherwise required for incurring the censure. And this censure indeed is incurred, not when someone collects stipends with this depraved intention, but when, in handing over a stipend for Masses either celebrated or to be celebrated, he retains a part of it for himself.

XIII. All who are punished with excommunication in the Constitutions *Admonet nos* of St. Pius V, on the fourth day before the Kalends of April 1567; *Quae ab hac Sede* of Innocent IX, on the day before the Nones of November 1591; *Ad Romani Pontificis curam* of Clement VIII, 26 June 1592; and *Inter caeteras* of Alexander VII, on the ninth day before the Kalends of November 1660, which concern the alienation and enfeoffment of Cities and Places of the Holy Roman Church [44].

XIV. Religious presuming to administer the sacrament of Extreme Unction or the Eucharist as Viaticum to clerics or laics outside a case of necessity without permission of the pastor [45].

[44] Concerning this article the *Rieti Commentary*, deducing everything briefly and properly from the cited Constitutions, writes thus: The action which is restrained by this excommunication is to act before the Roman Pontiff concerning the alienation of Cities, Towns, or places belonging either immediately or mediately to the right and ownership of the Holy See, except places confiscated and assigned to the treasury. Nor is one excused under whatever title this may be sought, for example, that of government, Vicariate, fief, census, exchange, etc.; or from whatever cause, even merits toward the Holy See, necessity, or evident utility; or for whatever time, even a long time only, or for life, or only at pleasure.

But the following become subject to this excommunication: 1. those treating, consulting, or otherwise speaking about this matter, and consequently about choosing Orators to the Holy See for this purpose; 2. Orators receiving an office of this kind; 3. finally, any others who by themselves or through another suggest or recommend alienations of this kind to the Roman Pontiff; nor does it matter whether they have acted by voice or in writing. The first indeed incur excommunication as soon as they have proposed Orators, provided these have been elected; the Orators themselves when they have accepted the mandate; and the last when they have spoken with the Roman Pontiff concerning this matter or have offered a writing, even if they have lost their labor and oil.

[45] Four things are required for contracting this censure. 1. That the sacraments of which the Article speaks be administered without the permission of the pastor. But by pastor here is understood one who has the care of souls there, by whatever name he may be called, or one who acts in his place in this matter. Permission is also understood as merely presumed, that is, if the pastor certainly would have given it, or at least is probably believed to be going to ratify it, or if the pastor gave it to the sick person, although perhaps he would not have given it to the one who in fact administers these sacraments.

2. That those sacraments be administered outside a case of necessity. But a case of necessity must be estimated not only from the danger under which the sick person labors, but also from whether the Pastor can easily be summoned. Therefore the excommunication will not be incurred if either of these is not lacking, even though perhaps you falsely judged both to be lacking, since our judgment does not change the truth of the matter; or even if, conversely, you thought that either one was not lacking, that is, either that necessity was urgent or that the pastor would not be unwilling, although in fact both are lacking. The reason is that one administering thus is not said to presume.

3. That the one administering be a Religious properly so called. Therefore the excommunication ceases if either a secular priest or even one who professes an Institute in which only simple vows are emitted administers the sacraments in this manner. For in penal matters Institutes of this kind are called neither Religious nor Regular.

4. Finally, that the Religious administer those sacraments to Clerics or Laics. Therefore the excommunication ceases if a Regular has administered them to Regulars, even of another Order and outside a Monastery; or even to those who are

reckoned as Regulars by law, that is, Novices and servants who actually serve them and live within the enclosure under their obedience; and probably also to their resident pupils (see above, no. 564, and *Extracted Acts*, etc., volume 3, page 61). Add to these the poor dwelling in the hospitals of Regulars and male Tertiaries who live collegiately or dwell with cloistered Religious.

XV. Those removing relics without legitimate permission from the Sacred Cemeteries or Catacombs of the City of Rome and its territory, and those furnishing them assistance or favor [46].

XVI. Those communicating with one excommunicated by name by the Pope in the *crimen criminosum*, namely, by furnishing him assistance or favor.

XVII. Clerics knowingly and voluntarily communicating in divine things with persons excommunicated by name by the Roman Pontiff and receiving them in the offices [47].

[46] From the Edict of 24 August 1613, by command of Paul V, and the Constitution *Ex commissae* of Clement X, 13 January 1672. Since in those same crypts (says Avanzini, no. 37), or catacombs, bones and ashes are everywhere found in open niches, concerning which it is now established that they are not the bones and ashes of martyrs but of the faithful who were laid there, one who, while visiting the crypts, takes for himself something from these bones or ashes as a remembrance or for the sake of devotion does not appear to incur the censure. It is otherwise if there is question of relics concerning which it is not yet established whether they are of Martyrs or merely of the faithful.

[47] By the ancient law, all who had incurred major excommunication, whether imposed *ab homine* or by law, were to be avoided, with this distinction alone: those whose excommunication was public and notorious were to be avoided publicly; but those whose excommunication was not publicly known were to be avoided only privately by those who were aware of it. See chapter *Cum non ab homine* 14, *On the Sentence of Excommunication*.

Then by the new law introduced by Martin V, it was granted that no one was bound to abstain from communion with anyone, whatever censure, whether by law or *ab homine*, bound him, unless a sentence against a definite person had been specially and expressly published by the judge; or unless it was so notoriously established that someone had incurred the excommunication imposed by the Canon through a sacrilegious laying of hands upon a cleric that the deed could not be concealed by any evasion or excused by any defense.

But on account of communication with one to be avoided, minor excommunication was incurred by the law itself, both if one communicated with him in divine and spiritual things and if in other merely civil matters. Nevertheless, in two cases, not minor but major excommunication was incurred by the law itself for this cause: 1. if a cleric had communicated in divine things with one excommunicated by the Supreme Pontiff, not in any manner whatever, but by admitting him voluntarily, freely, and willingly, while knowing that he was excommunicated by the Pope by name and, in addition, denounced (from chapter *Significavit* 18, this title; see Schmalzgrueber, book 5, title 39, no. 179); 2. if someone had communicated with one to be avoided in the *crimen criminosum*, or in the crime on account of which someone was struck with excommunication by name and denounced as such, by furnishing him assistance, counsel, or favor, lest he repent of that crime.

But by the most recent law of the Constitution *Apostolicae Sedis*, first, minor excommunication was entirely abolished. Major excommunication nevertheless remains; but it is not incurred except by those who communicate with one excommunicated by name by the Supreme Pontiff, and this only in the two aforesaid cases, namely: 1. according to article XVI, if they communicate in the *crimen criminosum* with one excommunicated by name by the Supreme Pontiff; and 2. according to article XVII, if Clerics knowingly and voluntarily receive one excommunicated in this manner in divine offices, that is, admit him to the exercise of those offices. To the former, as is evident, both clerics and laics are subject; but to the latter, clerics only. Moreover, by one excommunicated by name by the Pontiff is not understood one who, after he has incurred a papal excommunication, is then denounced by name as excommunicated by any other Ordinary; but one who has been excommunicated by name by the same Pontiff, or one excommunicated by Him who is denounced by name.

XVIII. Those presuming outside the point of death to absolve from excommunications reserved in a special manner to the Apostolic See, without the due faculty, even under any

pretext whatever (Constitution *Apostolicae Sedis*) [48].

XIX. Clerics or laics, in whatever dignity they may shine forth, even imperial or royal, who presume, by themselves or through others, by force or fear inflicted, or even through substituted persons, Clerics or laics, or by any art or under any specious pretext whatever, to convert to their own uses and usurp the jurisdictions, goods, revenues, and rights, even feudal and emphyteutic, the fruits, emoluments, or any proceeds whatever of any Church, or of any secular or regular Benefice, of charitable loan institutions, and of other pious places, which ought to be converted to the necessities of ministers and the poor; or to impede them from being received by those to whom they belong by law. Council of Trent, session 22, chapter 11, *On Reformation* [49].

[48] In this case are not comprehended those who, according to the Canons, absolve persons legitimately impeded from approaching the Apostolic See even from cases specially reserved to the Supreme Pontiff.

[49] That those withholding tithes or impeding them are not comprehended by this Tridentine sanction is sufficiently gathered from the fact that in session 25, chapter 12, *On Reformation*, these are said to be excommunicated thus: *The Holy Synod commands all, of whatever rank and condition they may be, to whom the payment of tithes pertains, that henceforth they pay in full those which they are bound by law to pay.... But let those who withhold or impede them be excommunicated; nor are they to be absolved from this crime unless full restitution has followed.*

Moreover, it is manifest that the purchasers of the ecclesiastical goods of which there is question also fall under this censure: both because (as Avanzini rightly says, no. 62) purchasers convert goods of this kind to their own uses by usurping them under the guise of a contract, although they know that the usurper is neither their owner nor legitimate administrator, and finally that the goods are stolen and cry out for their owner; and because this point of law was defined by the Allocution of 25 July 1873, in which this Decree of Trent is also brought forward.

Avanzini judged (*Commentary*, page LVIII) that the excommunication imposed upon Missionaries engaging in commerce, etc., should be referred to this place. But this will be treated more conveniently below, where there is discussion of excommunications reserved to no one.

Point II. *Latae Sententiae* Excommunications Reserved to Bishops or Ordinaries

976. ○ Concerning these the Constitution *Apostolicae Sedis* declares thus:

We declare to be subject to *latae sententiae* excommunication reserved to Bishops or Ordinaries:

I. Clerics constituted in Sacred Orders, or male or female Regulars after a solemn vow of chastity, presuming to contract matrimony; and also all presuming to contract matrimony with any of the aforesaid persons [1].

II. Those procuring an abortion, the effect having followed [2].

[1] Briefly and at the same time excellently concerning this matter, the *Rieti Commentary* (no. 115) says: In order that this excommunication bind those of whom there is discussion in the article, it is necessary that a matrimony of this kind could otherwise have been valid, apart, namely, from the statute of the Church which prohibits and invalidates the marriages of those persons and punishes those presuming to contract with this penalty. Suarez well says (*On Censures*, disputation 11, section 3, no. 15): *It is not necessary that the act be valid in reality, or have an effect; but it is enough that, insofar as it is done by the agent, it be such; for this is what the law prohibits and intends to punish.* Moreover, as the same Suarez says elsewhere (ibid., disputation 4, section 3, no. 3), for the action to be such, it must be complete; but it is not complete when (as he himself says), *although it was attempted or begun externally, nevertheless in reality it not only does not accomplish the final effect intended by the sinner, but has not even effected anything which would suffice for such an effect.*

Therefore (as the *Rieti Commentary* continues most excellently), the excommunication is not incurred: either 1. if legitimate consent is lacking, whether on both sides or on either one, as if one contracted fictitiously, or was induced by error, or compelled by fear; or 2. if the legitimate form is lacking, as if they contracted without the pastor and witnesses where the Tridentine Decree has been promulgated; or finally, 3. if any other diriment impediment stood in the way, for example, if they contracted with a consanguineous or affinal relative, or an accomplice in crime, or an infidel. Therefore those things by which Avanzini (no. 35) extends this sanction to marriages which would be invalid from another cause must be altogether disregarded, as Cretoni also shows (Note to this article).

The praised *Rieti Commentary* adds pertinently that, since the excommunication strikes those *presuming to contract*, if for this reason either both or one of them labored under ignorance, whether of law or of fact, even crass and supine ignorance, the excommunication does not bind the ignorant person, even if afterward, when the matter has become known, he perseveres in cohabitation; as Sanchez also clearly proves (*On Matrimony*, book 7, disputation 48, no. 20).

[2] By *those procuring* are understood those who directly, studiously, or deliberately seek something or intend it by action; and we see them thus designated in the Constitution *Effraenatam* of Sixtus V (section 1): *All who by themselves or through intermediate persons have procured an abortion or the ejection of an immature fetus by blows, poisons, medicines, etc.* And since in the same Constitution (section 7) from these, as principals, there are distinguished those who knowingly gave assistance, counsel, favor, a potion, or other medicines of any kind for committing such a crime, etc., it ought to be evident that these latter are not contained in the class of procurers. Therefore, since the Article strikes only procurers, the excommunication does not bind these latter.

Avanzini (no. 40), after he said that those procuring an abortion are comprehended under the censure without distinction, and therefore that all fall under this censure, whether the woman herself procures an abortion upon herself or anyone else does so, adds: *Others hold the contrary concerning the woman.* Yet even in the Constitutions of Sixtus V and Gregory XIV the censure was imposed without distinction upon those procuring an abortion. Nevertheless, it is very well known that St. Alphonsus (book 3, no. 395) wrote: *The second opinion, very probable and, with the intrinsic reason considered, more probable, denies that pregnant women incur excommunication*, etc. And he concludes: *Since it is doubtful whether this excommunication was imposed also upon pregnant women, they are very probably excused from it.* And see that the *Rieti Commentary*, Cretoni, Del Vecchio, etc., have agreed in this opinion.

Avanzini adds: *In this article no distinction is made between an animated and an inanimate fetus, and therefore neither ought we to distinguish.* It would have been more expeditious to conclude that no one is now excused from the censure under the pretext of an inanimate fetus. For that the Constitution, in some manner presupposing that ancient distinction, willed to cast aside the moderation of Gregory XIV so as to recall the matter to the severer limits of Sixtus V is altogether improbable. It must therefore rather be said that no distinction of this kind is made in the Article because the hypothesis of an inanimate fetus is to be held as altogether obsolete.

III. Those knowingly using false Apostolic Letters, or cooperating in that crime [3].

[3] You have a clear explanation of this Article in the *Rieti Commentary* (no. 121): *He who falsifies Apostolic Letters incurs excommunication reserved in a special manner to the Roman Pontiff; he who uses false letters, and he who cooperates with him, whether laics or clerics, themselves incur excommunication, but one reserved only to the Bishop. And if someone has committed both, that is, if he falsified the letters and afterward used them, he is entangled in both excommunications. Moreover, by false letters we must understand either altered or supposititious letters; but by users, those who exhibit them so that they may have an effect; finally, by cooperators, those who furnish assistance to the user, not to the falsifier.*

Point III. *Latae Sententiae* Excommunications Reserved to No One

977. ○ Concerning these the same Constitution *Apostolicae Sedis* declares thus:

We declare to be subject to *latae sententiae* excommunication reserved to no one:

I. Those commanding or compelling notorious heretics, or persons excommunicated or interdicted by name, to be given ecclesiastical burial [1].

[1] The censure which under the ancient law, from Clementine 1, *On Burial*, struck those burying in a sacred place persons publicly excommunicated, manifest usurers, etc., has been restricted in two ways by force of this Article. For: 1. it affects not those burying, but only those commanding or compelling burial, etc.; 2. it applies only when there is question of burying notorious heretics, under which class notorious apostates from the Christian faith must also come, and persons excommunicated by name or interdicted by name.

Avanzini writes in this place (no. 42): *To this or another article in which there is question of persons declared excommunicated by name can in some manner be referred those things which are read in the Instruction of the Office of the Sacred Inquisition concerning the duty of the Ordinary to admonish or judicially declare by name those who incur censures reserved to the Roman Pontiff.*

But Cretoni writes somewhat differently (Note to this article): *Since, where there is question of persons declared excommunicated by name, a judicial sentence is presupposed by which the guilty person is declared to have incurred excommunication, it was asked generally whether those who incurred censures are to be admonished by the Ordinary.* I said that the question is proposed here somewhat differently. For Cretoni takes it, according to the words in which it is thus presented in the Instruction, **You asked whether those who incurred the aforesaid censures are to be admonished**, as though it were merely asked whether an admonition must be premised if those who incur censures are to be denounced or declared by name, through a judicial sentence, to be excommunicated or interdicted.

But the Sacred Inquisition does not appear to have understood the question thus. For, setting aside for the present those things which it answers either concerning admonition by a confessor in the forum of conscience or concerning pastoral admonition by the Ordinary, with regard to a judicial sentence it merely has this: *Whether it is expedient that this declaratory sentence be delivered cannot be determined generally, but must be discerned after the circumstances of the deed and persons have been carefully weighed.* But these things answer nothing to the question which Cretoni judged to have been proposed.

Moreover, St. Alphonsus (book 7, no. 137) had resolved the question thus understood by Cretoni from the common doctrine: one excommunicated by law, unless the crime is notorious, must first be cited by his own Superior so that he may defend himself. But the Holy Doctor understands notoriety not only of fact but also of law; for, as he says (loc. cit., no. 144), until the guilty person has confessed or been condemned in judgment, he can always be excused by some defense.

II. Those harming or terrifying Inquisitors, denouncers, witnesses, or other ministers of the Holy Office; those carrying off or burning the writings of its sacred Tribunal; or those furnishing assistance, counsel, or favor to any of the aforesaid persons.

III. Those alienating, and those presuming to receive, ecclesiastical goods without the Apostolic Good Pleasure, according to the form of the Extravagant *Ambitiosae*, *On Ecclesiastical Things Not to Be Alienated* [2].

[2] We shall take the explanation of this Article from the *Rieti Commentary*, than which nothing fuller and clearer can be desired. By this Article, therefore, alienations of ecclesiastical goods without the Apostolic Good Pleasure, according to the form of the Extravagant *Ambitiosae*, are punished with excommunication.

Ecclesiastical goods are said to be: 1. those which are in the patrimony of some Church or Monastery; 2. ecclesiastical Benefices and Chaplaincies, even merely lay ones; 3. finally, the goods of any Pious Places, provided these have been erected by ecclesiastical authority. But ownership of goods of this kind is in the Churches themselves and the Pious Places; administration is in their Rectors or Stewards; care and, as it were, guardianship is in the Ordinaries of Places or of Regulars. Wherefore administrators or stewards cannot alienate them, and if they have alienated them, they effect nothing; but Ordinaries regularly cannot alienate immovable or precious movable goods without the good pleasure of the Apostolic See.

It was said *regularly*; for otherwise they can alienate: 1. estates of small value, under which class there does not come a part of an estate, however small its value, or those which bring more inconvenience than advantage. But estates which formerly were estimated at no more than twenty-five Camera gold pieces, namely, about 212 lire, are held to be of small value; *formerly*, I say, because account of the value of money, altered from the beginning of the seventeenth century down to us, does not appear to be neglected even in these matters. 2. They can alienate anything else if either necessity which does not admit of delay presses, or an opportunity is present which would otherwise pass away; likewise things donated to the Church under the condition that they can be alienated, or purchased with an agreement of resale. Moreover, since according

to law 28, ff., *On the Signification of Words*, *He who does not use an opportunity of acquiring is not understood to alienate, as one who omits an inheritance or does not embrace an option given within a definite time*, they can repudiate things offered to the Church by right, or left to it, but not yet accepted, for example, a donation, inheritance, or legacy; and thus they can fail to satisfy a condition under which something was left or promised to the Church or Monastery; and much more can they fail to employ an exception by which some right would be acquired or restored to the Church. Hence they can also make a settlement, not indeed by diminishing, but by not acquiring. Nor is it alienation to receive money on loan, or to invest money existing in the treasury of the Church, provided that, if by necessity of law it must be invested in a fruitful immovable thing, then, if such is lacking, it be invested in real annuities.

But the word *alienation* is here taken most broadly for any contract by which either: 1. ownership is transferred, as by giving a thing in payment, exchanging a thing, or granting it in emphyteusis; or 2. some real right departs from the Church, understand also a Monastery, etc., or a real burden is imposed upon things, for example, an annuity, mortgage, or servitude, or a servitude owed to it is remitted; or leases are made beyond a useful or fruitful three-year period.

Moreover, since the excommunication is not contracted unless the alienation is made without the good pleasure of the Apostolic See, and since in alienations which are made from Church to Church there is not sufficient agreement as to whether good pleasure of this kind is necessary, it is not established that there is place for the excommunication in these. Likewise, if an alienation has been made from a just cause and without detriment to the Church, the excommunication appears to cease; for the received opinion is that an alienation of this kind is valid in the forum of conscience, although it is not valid in the external forum.

In addition, since the excommunication is not incurred unless the alienation has been completed on both sides, it therefore will not be incurred when the thing has not yet been delivered, and indeed even if it has been delivered but sold under a suspensive condition. Leases beyond three years will also lack both fault and censure if either they were made under the condition that, after each three-year period has ended, the lessor may withdraw from the lease; or they were made by usufructuaries, for example, Beneficiaries or Chaplains, since they fall when their right is dissolved.

Finally, since this sanction strikes only those alienating and those presuming to receive, it therefore does not comprehend those consenting, counseling, favoring, etc.; and much less those who destroy ecclesiastical things or steal or plunder them. Indeed, it does not comprehend all who alienate, but only those to whom their administration is entrusted. And even from these Bishops and Abbots must be excepted, who are punished not with excommunication but with interdict from entrance into the Church. Add that, since that which once departed from me cannot depart from me any further, if someone afterward alienates a thing acquired by him contrary to the form of the Extravagant *Ambitiosae*, neither he nor the one who receives it incurs excommunication. See the praised *Rieti Commentary*, where all these things are seen to rest upon solid foundations.

IV. Those neglecting or culpably omitting to denounce within a month Confessors or Priests by whom they were solicited to shameful acts in any of the cases expressed by Our Predecessors Gregory XV in the Constitution *Universi*, 20 August 1622, and Benedict XIV in the Constitution *Sacramentum poenitentiae* [3].

[3] Since time does not run against one who is ignorant, the month must be computed from the time when someone knows: 1. the obligation of denunciation; 2. the excommunication annexed to this obligation; and 3. the time prefixed to the obligation. Therefore, so long as someone is ignorant of the obligation, he lacks both fault and penalty. But so long as, although he knows the obligation, he is nevertheless ignorant of the penalty of censure added to it, he likewise does not incur it, because contumacy against the sanctioning law is lacking. In the third case, however, if he falsely judged that the denunciation had to be made immediately, and thus he is not bound by excommunication until the month has elapsed, since a false judgment concerning a censure does not suffice for inducing it. But if he believed that the denunciation could be made whenever he pleased, he does not incur it even after a month, so long as in good faith he judges that it can still be deferred.

Moreover, if someone has promised that he will denounce and confidence can be placed in him, he can be absolved not only from sins before the month has elapsed, which is expressly provided in the Constitution of Benedict XIV (above, page 546, note b), but also from the excommunication which he incurred after the month elapsed.

Finally, take care to observe that, although besides penitents who were solicited, anyone else who learned of a solicitation of this kind from persons worthy of trust is also bound to denounce soliciting confessors (above, no. 390, II), these latter nevertheless, if they do not fulfill the obligation of denunciation, do not today undergo excommunication.

V. To this place appears to pertain the excommunication against Missionaries engaging in commerce in the East Indies, and against their immediate Superiors who have not punished delinquents, according to the Constitution *Ex debito* of Urban VIII, 21 February 1633, and *Sollicitudo* of Clement IX, 17 July 1669; which excommunication is known still to be in force by declaration of the Supreme Pontiff from the encyclical letters issued by the Sacred Congregation of Propaganda on 29 March 1873 [4].

[4] The Constitution of Clement IX thus decrees (section 3): *Under the penalties, to be incurred by that very fact, of a latae sententiae excommunication and deprivation of active and passive voice... and also loss of all merchandise and profits,... by the tenor of the present letters We strictly prohibit... them from involving or mixing themselves, in any manner and howeversoever, in commerce and secular business, under any pretext, title, color, cause, occasion, and form, even once, by themselves or through agents.... And from now... after the case has occurred, We apply by the course of these letters any merchandise and profits which have proceeded from commerce and business of this kind... to the uses and benefit of the poor, hospitals, seminaries, etc.; and delinquents are bound to consign merchandise and profits of this kind to the Ordinaries of Places....* (Section 4.) *Furthermore, with the same censures and penalties We bind and declare that there shall be bound the immediate Superiors, and the Provincials and Generals of the aforesaid Orders or Congregations, who have not punished their respective subjects delinquent in the aforesaid matters... in any manner even for a single occasion, at least by removing them from the places where the offense was committed by them.*

But none of the aforesaid delinquents can be absolved from the sentence of an excommunication of this kind by Superiors or by any other person or persons, even supported by any authority, except one constituted at the point of death, unless profits of this kind have first been restored.

Avanzini (*Commentary*, page LVIII) thought that this censure should fittingly be enumerated in the catalogue of excommunications simply reserved to the Roman Pontiff. He derives the reason (*Acts*, volume 7, page 324) from parity with the excommunication inflicted upon those sectaries who do not denounce the secret chiefs and leaders of the sects *until they have denounced them*. For a similar clause (he says) is appended to the excommunication of which we are treating by the words: *unless profits of this kind have first been restored*.

But the argument sought from clauses of this kind appears too weak. These merely prescribe what must by law be required from one who asks to be absolved; nor in any other sense can a case be considered reserved to the Roman Pontiff by force of such a clause, except insofar as He, as legislator, reserves to Himself the relaxation of these obligations, namely, both of denouncing in the one case and of renouncing the profits in the other. Yet the same thing can be said of the obligation of denouncing solicitors, concerning which in the preceding article; for the faculty of absolving one who is not prepared to satisfy this obligation is given to no one besides the Roman Pontiff, and nevertheless that excommunication is not found among those reserved to the Roman Pontiff. Therefore, in order to determine in which catalogue an excommunication furnished with clauses of this kind must be numbered, it appears that one should rather inspect whether the case still remains reserved to the Roman Pontiff when the penitent satisfies his duty. But this happens only when there is question of sectaries; for even after the denunciation of the chiefs has been made, by law the one who failed to denounce can be absolved only by the Roman Pontiff; but in the other cases the penitent can be absolved by any Confessor. For otherwise there would have been no reason why the excommunication against those not denouncing the chiefs of sectaries should be placed among those reserved to the Pontiff, while on the contrary that imposed against those not denouncing a soliciting priest should be placed among those reserved to no one. Since, therefore, no special faculty is necessary to absolve one who has satisfied his obligation, it must be concluded that excommunications of this kind are to be added to the catalogue of those reserved to no one.

Moreover, with regard to those clauses *until they have denounced* and *unless profits of this kind have first been restored*, one must recall those things which the Doctors hand down concerning the clause *the party having been satisfied* and others of this kind. On this matter see above, no. 955, question V, with the Note.

VI. Magistrates are excommunicated if, at the request of the Bishop, they do not furnish assistance against those opposing the enclosure of nuns [5]. Council of Trent, session 25, chapter 5, *On Regulars*.

[5] Nevertheless, this censure (says Avanzini, no. 63) appears in the present condition of society already to have passed into desuetude through nonuse. It is, namely, a consequence of the apostasy by which governments have defected from the Christian religion to paganism, or rather to atheism.

VII. Likewise, abductors of women, and those furnishing counsel, assistance, and favor to abductors of this kind. Council of Trent, session 24, *On the Reformation of Matrimony*.

VIII. Likewise, those who violate the liberty of contracting matrimony. Council of Trent, session 24, chapter 9, *On the Reformation of Matrimony*.

IX. Those compelling a woman to enter a monastery, or impeding her from entrance. Council of Trent, session 25, chapter 18, *On the Reformation of Regulars* [6].

[6] The Tridentine Decree adds: *Except in the cases expressed in law.* But in law it is excepted that a Bishop can compel a wife to enter a monastery if, after her husband with her consent has entered Religion and already emitted solemn vows, she is suspected of incontinence, from chapter *Significavit* 18, *On the Conversion of Spouses* (see above, no. 761, page 741, in the Note). Likewise, that a Bishop can compel into a monastery a wife whom a husband, after she has fallen and repented, does not wish to receive (chapter *Gaudemus* 19, same title).

Moreover, since all are struck with this anathema *if in any manner they have compelled any virgin or widow, or any other unwilling woman whatever... to enter a monastery, or to receive the habit of any Religion whatever, or to emit profession...; and those who, knowing that she does not voluntarily enter a monastery, or receive the habit, or emit profession, have in any manner interposed either presence, consent, or authority in that act*, Sanchez rightly says (*Decalogue*, book 4, chapter 4, no. 12), with respect to entrance, that the limitation which Emmanuel Rodriguez thus appends is pleasing to him (*Summary*, tome 2, chapter 8, no. 10): *Nor does a father incur it* (the excommunication) *who, with the permission of the Ordinary, provides that his daughter, orphaned of her mother, be placed in some monastery until she becomes fit to contract matrimony.* Therefore someone will incur the censure (as Sanchez says) when that compulsion is ordered toward afterward receiving the habit, whether by the persuasions of the nuns or for another reason, but not when this is in no manner intended. See Bonacina (disputation 2, question 2, part 2, no. 6) and Ferraris (*Nun*, article 1, nos. 53 and 55).

Point IV

978. ° Above we said (above, no. 970) that certain censures are implicitly comprehended in the Constitution *Apostolicae Sedis*, and that to this place pertain also these words of the same Constitution:

> But whatever censures, whether of excommunication, suspension, or interdict, besides those which We have enumerated, have been imposed by Our Constitutions or those of Our Predecessors, or by the sacred Canons [1], and have hitherto remained in force, whether for the election of the Roman Pontiff or for the internal governance [2] of any Orders and Regular Institutes whatever, and likewise of any Colleges, Congregations, Associations, and Pious Places, of whatever name or kind they may be, all these We will and declare to be firm and to remain in their force.

[1] Therefore, censures imposed by the Superiors of Regulars or by provincial or general Chapters for the proper subjects of the Order do not pertain here.

[2] There is question, namely, of censures sanctioning obligations which pertain to the governance of Regulars as such, whether at length they regard the general state of Regulars or some particular Institute. Therefore, for example, there does not pertain here the excommunication imposed under Clement VIII against Regulars who presumed to absolve from cases which the Ordinaries of places had reserved to themselves; for this does not concern internal governance, and therefore has ceased. The *Rieti Commentary* judges that the same must be said of the excommunication imposed against Regulars who

usurp the tithes of Churches (Clementine 1, *On Tithes*); or who persuade others to choose burial in their Churches by interposing a vow or oath, or not to alter one chosen (Clementine 3, final section, *On Penalties*).

It is certainly not the purpose of our Institute to investigate what censures have hitherto been imposed for the internal governance of all those Associations which we see enumerated here, and much less which of those censures have still remained in force. It will be useful to touch only upon a few things concerning the Association of Regulars, as being the most extensive of all.

979. ○ Therefore Regulars who rashly lay aside the habit of their religion are punished with a *latae sententiae* excommunication. From chapter *Ut periculosa* 2, title *That Clerics or Monks*, in the Sext [3].

[3] There are some who infer from this text of law that apostates from Religion are excommunicated by that very fact. But Sanchez writes well concerning these (*On the Decalogue*, book 6, chapter 8, no. 45) that apostasy from Religion has altogether no bearing upon contracting this excommunication; for the text in that second chapter excommunicates only religious who rashly lay aside the habit of religion. But this laying aside can occur without apostasy, and conversely there can be apostasy without this laying aside. Wherefore a religious rashly laying aside the habit without apostasy with the intention of apostatizing incurs it; and conversely, however much he may be an apostate, if he does not lay aside the habit, he does not incur this censure.

Furthermore, since the Canon strikes one who *rashly lays aside the habit of his religion*, and does so in order that dangerous occasion for wandering about may be removed from Religious, it is manifest that this excommunication is not contracted by those who, for a reasonable cause, go about after laying aside or changing the habit of their religion.

Likewise, monks or Regular Canons, if, in order to inflict some harm upon their Prelates or Monasteries, they have presumed to have recourse to the courts of Princes. From Clementine 1, *On the Status of Monks*, section 5.

Likewise, monks keeping weapons within the enclosures of monasteries without the permission of the Abbots. From the same Clementine, loc. cit.

But Superiors of Regulars incur an excommunication reserved to the Supreme Pontiff if they do not denounce any Religious, even those not their subjects, whom they know to be infected with the stain of heresy or even to be suspected of it. Paul V, Constitution *Romanus Pontifex*, and Alexander VIII, Constitution *Licet alias*.

Likewise, if in cases pertaining to the Holy Office the same Superiors dare to intermeddle in any manner. From the aforesaid Constitutions.

Likewise, if the same Superiors in any manner turn aside, withdraw, or dissuade their subjects who wish to have recourse to the Holy Office. From the same Constitutions.

Religious subjects incur the same reserved excommunication if they do not denounce confreres or even Superiors of the same Order whom they know to be in any manner, even lightly, suspected concerning the faith. From the cited Constitutions.

All these same persons incur it if, under the pretext of fraternal correction or another pretext, they deter or delay persons seeking counsel from them from making a denunciation. From the cited Constitutions.

Point V. *Ferendae Sententiae* Excommunications

980. ○ The following can be subjected to them: 1. the faithful who do not satisfy the precept of Paschal Communion. This censure has passed into desuetude in most places [1]; nevertheless it is still in force at Rome. 2. Incestuous persons and adulterers, from various Synods of France. 3. Diviners, magicians, sorcerers, and those having recourse to them. Pichler. They incur a *latae sententiae* censure if their conduct savors of heresy. 4. Those striking a consenting Cleric. St. Alphonsus, no. 274. 5. Laics frequenting monasteries of Nuns in order to converse with them outside the enclosure. For Clerics there is the penalty of suspension, and for Regulars deprivation of office. St. Alphonsus, no. 232. 6. Those plundering gifts of hospitals and charitable loan institutions [2]. Other *ferendae sententiae* excommunications are found in the common law, but in practice they are little encountered. Most are different for different regions and dioceses. Moreover, in practice knowledge of these appears to be of the least importance, since they cannot be incurred except after a sentence of the ecclesiastical judge, which very rarely has place, at least in our times.

[1] The Author states a mere fact and signifies that in most places the faithful are not customarily compelled by the penalty of excommunication to fulfill the Paschal precept; for no one will say that the law itself has been so abrogated by desuetude that an ecclesiastical Superior, where the matter requires it, cannot use this means to break the contumacy of certain persons.

[2] The Council of Trent, session 22, chapter 11, *On Reformation*, subjects to an anathema reserved to the Roman Pontiffs all presuming to usurp or convert to their own uses, by themselves or through others, the jurisdictions, goods, revenues, feudal and emphyteutic rights, fruits, emoluments, or any proceeds whatever of Churches, benefices, charitable loan institutions, or another pious place; or to impede them from being received by those to whom they belong by law; and Clerics who devise or consent to fraud and usurpation of this kind. See above, no. 975, XIX.

In practice the Confessor ought especially to attend to the cases in force in individual places, which are found in the booklet of censures and reserved sins proper to each diocese. But for the most part they are reserved to the Ordinary by particular law.

Appendix I. On the Crime of Heresy, the Reading of Depraved Books, and the Index

I. On the Crime of Heresy

981. ○ Excommunication on account of heresy is the first and principal one of the Bull *Apostolicae Sedis* [1]. Not only heretics incur it, but also their supporters.

[1] See above, no. 972, I.

With respect to heretics themselves, for excommunication to be incurred, it is required that true heresy be present, that is, a voluntary error, externally manifested and pertinacious, against some article revealed by God and proposed by the Church. Hence:

1. Even vincible, indeed crass, ignorance excuses; but more probably affected ignorance does not excuse, because contumacy is present. St. Alphonsus, no. 301 [2], nevertheless holds the contrary as more probable on account of the defect of contumacy.

[2] This judgment is not that of St. Alphonsus alone, but is almost common. See the things said in volume I, in the Note to no. 210.

2. A positive doubt externally disclosed does not excuse, because one who doubts judges positively that the truth proposed by the Church can be false. St. Alphonsus, no. 302.

3. One who holds heresy within his mind, or who, while manifesting it externally, dissents internally, is excused from the censure. *A fortiori*, one who manifests his heresy in order to seek counsel is excused, because he does not manifest the error with the intention of professing it. St. Alphonsus, no. 304.

Principles concerning Absolution from Heresy

I. A Bishop can absolve from heresy which is notorious and brought into the judicial forum, either by himself or through a delegate. Benedict XIV, *On the Synod*, book 9, chapter 4.

II. The Pope alone can absolve from heresy, whether notorious or occult, which has not yet been treated in the judicial forum. But an occult heretic is said to be one who, although he has exchanged heretical conversation with another, is nevertheless not notoriously held as such; or one who, although he has communicated his heresies to no one, has nevertheless performed some external acts from which he could be recognized as a heretic. Benedict XIV, Constitution *Pastor bonus*, 13 April 1744.

Hence it is clear that no one guilty of heresy can be absolved by an inferior judge before he has been summoned into the judicial forum or has spontaneously presented himself to it. A Bishop, however, can receive the abjuration of Protestants in either forum.

According to Laymann, a usage is in force in Germany of not sending to the Bishop Protestants who wish to embrace the Catholic Church; but after they have been taught the true Faith and have abjured heresy, they are admitted to sacramental confession and the reception of the Eucharist. A practice of this kind also obtains elsewhere.

But with respect to the rite of absolving heretics in the external forum and receiving their abjuration, see the rules which Father Maurel gives in the excellent work entitled *Guide pratique de la Liturgie romaine*.

II. On the Reading of Depraved Books

982. ○ It was said above (no. 972, II) which books after the Constitution *Apostolicae Sedis* are forbidden to be read under penalty of censure, namely, that all and each knowingly reading, without authority of the Apostolic See, books of Apostates and heretics defending heresy, and also books of any author, even one not a heretic, prohibited by name through Apostolic letters, are punished with excommunication reserved to the Roman Pontiff. Therefore the penalty of excommunication incurred by the act itself, although not reserved, has ceased, by which according to the Rules of the Index there were prohibited all books of heresiarchs, or of those who are considered the chiefs or leaders of heretics, and also books of heretics treating expressly of Religion; or even books of an author, whether a heretic or not a heretic, condemned and prohibited on account of heresy or the suspicion of false dogma.

With respect to writings whose reading we have said is forbidden under censure, several teach that those reading a letter or sermon separately printed do not incur excommunication, because it is not a book. But St. Alphonsus, no. 293, rightly notes that in the Roman Expurgatory issued from the Tridentine Decree, all writings, even brief ones, were prohibited under excommunication, which we have said has ceased. But because public journals, commonly *les journaux*, are subject to ecclesiastical censure, it is evident that they are included under the aforesaid law if they are written by heretics and defend heresy. This is evident from the following Response of the Sacred Congregation of the Inquisition, directed in the year 1832 to the Bishops of Switzerland:

QUESTION 1. Whether newspapers or journals ought to be subject to the censure of the Ordinary, and whether also with respect to political opinions?

Reply. Affirmatively, with respect to both parts.

QUESTION 2. Whether not only doctrinal articles, but also articles in which facts are narrated, are subject to the same censure [3]?

[3] By the name *censure* in this Response of the Sacred Congregation there does not appear to be meant the penalty either of excommunication or suspension, etc., but merely the ecclesiastical examination and approval which is required by law before books are printed. Wherefore from it, in itself and directly, it is not proved that the aforesaid newspapers are subject to excommunication. Indirectly, however, it pertains to the matter in some manner, insofar as it sufficiently indicates that the care concerning books or writings to be published, which ecclesiastical power exercises by its own right, extends also to this kind of writing; and thus that with respect to these also it can appear not incongruous that it use the customary remedies for forestalling dangers to the faithful.

On this matter, that which we observe in the Decrees concerning books prohibited but not expressed by name in the Index is plainly worthy of notice. For in section 1 the title is prefixed: *Books Written or Published by Heretics*; then in no. 6 there is read: *Poems, Orations, Images*; and in no. 9: *Confessions, Articles, or Formularies of Faith*. Therefore in the Decrees concerning the reading of Books the name BOOKS extends also to these. Say the same of section 2, whose title is: *BOOKS of Certain Subjects Prohibited*. Nevertheless, see mentioned therein, in nos. 5, 6, and 7, *Pamphlets, Letters, Ordinances, Arrests, Decrees, Epistles*. Therefore, if in Decrees which condemn the reading of books even under censures it must be judged that the name *Books* is used in that sense in which it is generally accustomed to be employed in Decrees of this kind, the argument sought by others from the common appellation of a book, by which, namely, the reading of a letter, poem, oration, or some newspaper is exempted from the condemnation and added penalties, could appear empty. And this can be confirmed by another reason. For, after the Decrees have been inspected, it is sufficiently evident that by the name of a book there is understood anything whatever whose reading contributes to the detriment and corruption of faith and morals. But this belongs not only to writings which commonly have the name of books, but to any little writing. Therefore.

It is useful here to subjoin those things which the *Rieti Commentary* adds after relating the contrary opinion of Bouvier: *The most learned writers of the periodical whose title is La Civilta Cattolica think otherwise* (series VIII, volume VI, from page 648), *being led chiefly by this reason, that newspapers differ from books in this: the former are issued from individual sheets or leaves on individual days, while the latter coalesce into books from several joined sheets published at the same time; a brief and pressing reason. However that is altogether indubitable, that newspapers whose reading is dangerous to faith or morals are forbidden under grave obligation by the natural law itself. And this is most certainly so after the Letters of Our Most Holy Lord Pope Pius IX given to the Most Eminent Vicar of the City on 30 July 1871....*

Reply. Affirmatively.

But one who hears another reading does not incur excommunication, at least probably, because he does not read. Nor does one who reads some small portion, on account of paucity of matter. But the gravity of matter cannot be strictly determined; sometimes a few lines suffice if heresy occurs. St. Alphonsus, no. 284. Nor does one who reads from necessity in order to refute a heretic incur it, if recourse to the Superior is not available. St. Alphonsus, no. 283. Nor one who retains a book for a

short time, for example, one or two days. St. Alphonsus, no. 295. Nor if he retains a book while awaiting an opportune time to hand it over to the Superior; but otherwise if he retained it for a long time, even though he abstained altogether from reading it. St. Alphonsus, ibid.

III. On the Index of Prohibited Books

983. ○ The Index was composed and promulgated by command of Paul IV in the year 1558; Pius IV perfected it with the Council of Trent and published it in the year 1564. Clement VIII enlarged it in the year 1595. The Congregation of the Index was instituted by St. Pius V. See St. Alphonsus, Appendix *On the Prohibition of Books*, book 1, at the end, no. 17, etc.

The Index presents three principal classes of prohibited books. The first class contains all books of heretics which contain heresy or treat expressly of Religion. The second class embraces books of Catholics against the Faith or good morals. The third class contains books published without the name of the author which hand down depraved doctrine. St. Alphonsus, no. 289.

Books of the first class, which by the ancient law were all prohibited under penalty of excommunication, still all remain prohibited; but which are now forbidden under penalty of excommunication, and indeed a reserved one, was said above. Books of the second and third class are not considered prohibited unless they are specially designated in the Index, unless nevertheless they pertain to certain general classes of matters which are designated in the Rules of the Index. Furthermore, in the Index all books of heresiarchs are prohibited generally in hatred of the author, even if they do not contain heresy or treat of Religion [4].

[4] Avanzini notes (*Commentary*, no. 8) that, with account taken of penalties, books prohibited or to be rejected can be divided into three classes, namely: 1. books prohibited under penalty of excommunication reserved to the Roman Pontiff, concerning which above, no. 972, II; 2. books prohibited under penalty of fault according to the Index of Prohibited Books and its rules in force. To this class can also be referred books or writings forbidden only by the law of nature, although not yet placed in the Index, which nevertheless can otherwise easily be referred to certain general classes of prohibited books; likewise, books prohibited by Bishops in individual dioceses. That Decree, however, both as regards the force of a positive precept and as regards the censure, if any were added, would bind only the subjects of each diocese. 3. Books which, according to the ancient usage in the Church, we shall call apocryphal, which, namely, we hold as destitute of all that authority, force, or use to which they might appear to be ordained. In this class we call a monument, canon, testament, decree, etc., apocryphal; but the Church simply repudiates these books without any sanctioned penalty. Of this kind are books treating of sacred matters but printed without the approval of the Ordinary. To this class can be referred all books of indulgences, journals, summaries, pamphlets, and sheets in which their concessions are contained but which were published without permission of the Sacred Congregation of Indulgences; likewise ritual books issued without the approval of the Congregation of Sacred Rites, etc.

Principal Rules of the Index Issued by Command of the Council of Trent

984. ○ 1. All books condemned before the year 1515 are prohibited, even if they are not found described in the Index.

2. All books of heresiarchs are altogether forbidden, even if not erroneous or not treating expressly of Religion. Other books of heretics which are not erroneous and do not treat of Religion can be permitted, provided they have been examined and approved [5].

[5] This clause does not appear now to be in force.

3. The Scriptures and books of controversies in the vernacular language cannot be read unless they have been approved by the Holy See or published with notes taken from the holy Fathers of the Church or from learned Catholic men [6].

[6] POSTULATUM. Since it has been reported with certainty to the Sacred Congregation of the Index that in some places the most sacred books of the Bible are printed in the vernacular language without the most salutary laws concerning this matter being observed, and since it is therefore to be feared that, such being the conspiracy of wicked men especially in these times, errors wrapped in the more sacred array of the divine word may be insinuated perversely, the same Sacred Congregation judged that those things which were otherwise decreed must again be recalled to the memory of all: namely, that vernacular versions of the Bible are not to be permitted unless they have been approved by the Apostolic See or published with annotations taken from the holy Fathers of the Church or from learned Catholic men. 13 June 1757. Likewise, 7 January 1836.

4. Books treating expressly of obscene things are absolutely prohibited, although they are not found in the Index.

5. Likewise, all books treating of astrology, divination, and sorceries are forbidden, more probably under an excommunication not reserved.

6. All books condemned on account of suspicion of false dogma are prohibited under penalty of excommunication, but see above, no. 972, II; others under guilt of mortal sin.

Besides the ten Rules issued by command of the Council of Trent, there exist other general Rules established by the Sacred Congregation of the Index itself and published by command of the Pontiffs in the volume of the Index of Prohibited Books, under this title: *Decrees Concerning Prohibited Books*, etc.

By the ancient law, books of heretics treating of Religion or containing heresy were prohibited under excommunication in two ways: one reserved to the Roman Pontiff through the Bull *Coenae*; the other not reserved. For the new law see above, no. 972, II.

985. **Questions. - QUESTION 1. Whether the law of the Index, prohibiting the reading of certain books, binds by natural law or only by positive law?**

Reply. It obliges by both laws, at least of itself, because it does not prohibit books except because they are pernicious and induce proximate danger of perversion or sin; but by natural law everyone is bound to flee danger of this kind. Hence, even if the obligation of the Index were not acknowledged somewhere, nevertheless the reading of books placed in the Index would be prohibited under grave obligation. Concerning this St. Alphonsus observes: *All theologians add that even with the permission of the Pontiff the reading of that book which could be an occasion of ruin to someone cannot be permitted.* Appendix *On Prohibited Books*, chapter 1, no. 12.

Two things must furthermore be noted.

1. Private persons ought to obey the commands of the Confessor in those things which concern the reading of books. Thus the Sacred Congregation of the Inquisition replied in the year 1832 to the Bishops of Switzerland asking: **Can the faithful, with conscience safe, read newspapers or books which have not undergone the censure of the Ordinary?** Reply. *Let them have recourse to the Confessor* [7].

[7] Indeed, even when the faculty of reading prohibited books is given to someone, a clause is sometimes added that in this matter the counsel and judgment of the confessor are to be employed.

2. The Confessor himself ought carefully to seek the direction of the Bishop and diligently to keep before his eyes the most grave admonition which St. Alphonsus handed down, namely: *In this matter it is ordinarily expedient to follow the stricter opinions.* Chapter 5, no. 8.

986. ○ **QUESTION 2. Whether the law of the Index is binding in France?**

Reply. Not all agree concerning this matter. Some affirm it because the law is general. Others, however, deny it both because, they say, the law of the Index was not received, which the opponents otherwise say is historically false, and because of the long desuetude of the law. But others, walking a middle way, used to say that the prohibition of the Index was not received in France as regards the penalty of excommunication, but was binding as regards the guilt of sin, which is generally committed on account of the danger of perversion or of evil delight from reading such books.

But whatever not a few theologians of France formerly said, it does not now appear that there should be any further doubt on account of the unambiguous Declarations of Pius IX. For the Pontiff not only acted by persuasions to induce the Bishops of France to put the laws of the Index into execution, but also displayed such authority that henceforth it is licit for no one to affirm that the law of the Index is not in force in France. It suffices to bring forward the testimony of the Sacred Congregation of the Council, and consequently of the Pontiff himself, in the acts of the Council of Rheims in the year 1857, namely: *Moreover, let the Rules of the Index be observed.* See Cardinal Gousset, *Exposition des principes du Droit canonique*.

It is also worthy of note that the Bishops of France strive daily that the laws of the Index be put into execution, as is evident from the Provincial Councils of Avignon, Toulouse, Bordeaux, Auch, La Rochelle, etc.

987. ○ **QUESTION 3. Does one violate the law of the Index who reads, for example, manuscripts of larger format written by a heretic?**

Reply. It appears that this must be affirmed with St. Alphonsus, no. 293, Suarez, La Croix, and others more commonly. The reason is that in common usage manuscripts are often accustomed to be designated by the name of books; for thus all writings were called before typography had been invented. Several nevertheless contradict this because manuscripts do not come under the name of books [8].

[8] Yet it must not be neglected that in the Decree *On Prohibited Books*, section 2, nos. 4, 5, 6, 8, 10, 11, and 13, mention is expressly made also of manuscripts. Therefore, according to the proper sense of the Curia, manuscripts too come under the name of a book.

988. ○ **QUESTION 4. From whom must permission to read prohibited books be obtained?**

Reply. Ordinarily speaking, from the Roman Pontiff alone, or from the Congregations of the Sacred Inquisition or of the Index. For the faculty of permitting belongs to him whose office it is to forbid.

Bishops, however, are sometimes delegated to this office. Viva judges that they can grant this permission when some necessity urges.

Bishops and other Ordinaries of Churches possess the power of prohibiting the reading of depraved books, and indeed even under penalty of a censure to be incurred. Leo XII recalled this power to the memory of Bishops on 26 March 1825, and Pius IX more recently confirmed it on 24 August 1864, when he commanded Bishops to discharge this duty as by delegation of the Apostolic See.

Moreover, since in a matter so grave and difficult far more things would have to be said than the brevity of our work permits, we refer the reader to the Canonists.

Appendix II. On the Enclosure of Monasteries

With Respect To: 1. Those Entering; 2. Those Departing; 3. Those Conversing at the Grilles Without Faculty — I. With Respect to Entrance into Monasteries

989. ○ 1. All the faithful of either sex entering monasteries of Nuns, and the Nuns admitting them, incur the reserved excommunication mentioned above at no. 975, VI. In France, however, excommunication for those entering monasteries of women does not now appear admissible according to the things said concerning States, since there are not there Religious in the strict sense, or solemnly Professed women.

2. Likewise, women entering monasteries of men for any cause, except Queens or others from the families of Princes; likewise, Religious admitting or introducing them, incur the reserved excommunication mentioned above at no. 975, VII. But this must be understood only of monasteries or houses of Regulars who emit solemn vows. For with regard to Congregations in which they bind themselves only by simple vows, it is nowhere provided in the Sacred Canons that they are subject to the aforesaid law of enclosure. The following can enter monasteries of Nuns: 1. Bishops in a case of necessity or visitation, but accompanied by a few mature persons; 2. Regular Prelates once a year, for the sake of visitation; 3. the ordinary Confessor for administering the Sacraments in necessity, but vested with surplice and stole; 4. the ordinary physician, who must renew his permission every three months, and an extraordinary physician in the absence of the ordinary one; 5. artisans and other necessary persons who cannot exercise their craft outside the enclosure.

The Bishop, or anyone else delegated by him, for example, the Vicar General or the Confessor of the Nuns, or the Abbess herself, etc., can grant permission to enter monasteries; but a grave cause is required, though a lesser one for a woman than for a man, for entrance by day than by night, and for the entrance of relatives than of strangers.

II. With Respect to Departure from Monasteries

990. ○ I. On the Part of Nuns.

1. Nuns departing from a monastery without the most urgent necessity incur a reserved excommunication, even if it is done secretly.

The Constitution, however (see above, no. 975, VI), excepts the cases and form prescribed by St. Pius V in the Constitution *Decori*. But this Constitution of St. Pius (section 2) has the following: *We will, decree, and ordain that henceforth none of the Abbesses, Prioresses, or other nuns... of any Orders whatever... be permitted, even on the occasion and pretext of illness, or of visiting other monasteries, even those subject to them, or houses, parents, or other blood relatives, or on any other occasion and pretext, to depart from the aforesaid monasteries, except from the cause of a great fire or an illness of leprosy or epidemic; which illness, however, besides being known by the other Superiors of the Orders upon whom the care of the monasteries would be incumbent, must also be known and expressly approved in writing by the Bishop or another Ordinary of the place, even if the aforesaid monasteries are found to be exempt from the jurisdiction of Bishops and Ordinaries; nor even in the aforesaid cases is it permitted to remain outside them except for the necessary time.* Moreover, that cases of fire or epidemic disease are mentioned here by way of example and not exclusively with respect to cases inducing a similar danger, see demonstrated apud St. Alphonsus (book 7, no. 229).

St. Alphonsus (loc. cit.), with Sanchez and Bonacina, holds as more probable that there is no paucity of matter in this matter, and therefore that excommunication is incurred both if a nun departs even one step from the enclosure or if someone enters even one step within the bounds of the enclosure. Others apud the same St. Alphonsus (ibid.) nevertheless deny this.

991. ○ II. On the Part of Male Religious.

1. By custom and by the end of their state, Religious are so bound to enclosure that they cannot depart from their own convent without permission.

2. Nevertheless, they are not subject to the penalties of Apostates unless they depart after laying aside the habit and with the intention of not returning. But a furtive departure by night is a case capable of being reserved.

3. Departure is a grave sin of its kind because it disturbs the order and end of religious life; by reason of matter it can be venial, for example, if it is done by day and for a brief time, etc.

III. With Respect to Conversation at the Grilles with Nuns

992. ○ 1. Laics frequenting monasteries of Nuns incur a *ferendae sententiae* excommunication, or in various places a *latae sententiae* excommunication.

2. Clerics, however, incur a suspension to be imposed by the Bishop.

3. Regulars, moreover, undergo deprivation of voice and office *ferendae sententiae*, even if the conversation takes place once and for a quarter-hour and a half-quarter, according to the Decree of the Sacred Congregation in the year 1669. St. Alphonsus, no. 236. According to the earlier Decree of Sixtus V in the year 1590, deprivation of office and of every voice is incurred by the act itself if they presume to frequent the place in order to converse with any woman dwelling there. St. Alphonsus, no. 232. The Abbess outside Rome is probably excepted.

4. Frequency consists in this: that someone approaches a monastery on three continuous days, or once in each month for about a year, or four times in a week.

Article II. On Suspension

993. **Definition.** - Suspension is a censure by which a Cleric is deprived for a time, in part or in whole, of the use of the power which he has by reason of Order, office, or benefice.

Suspension is a censure because of itself it is imposed medicinally by way of admonition, so that the delinquent may cease from contumacy. Thus: 1. it differs from deposition and degradation, which are mere and perpetual penalties for the vindication of a crime; 2. it differs from irregularity, which is not of itself a penalty, but a mere impediment or inability preventing not only the exercise of ecclesiastical power but also its reception.

Nevertheless, suspension is not necessarily and essentially a censure; for sometimes it is imposed either for a definite time or perpetually to punish fault which is merely past, and therefore it is then not medicinal. This is established from the practice of the Church, from book 2 of the Decretals, title 20, chapter 33.

Division. A twofold suspension is distinguished:

1. Total, by which a Cleric is barred from every ecclesiastical function or right.

2. Partial, by which he is deprived only of some function or right.

But partial suspension is threefold: 1. from Order, which deprives one of the exercise of the functions of Order, for example, the celebration of Mass, the solemn chanting of the Gospel or Epistle, etc.; 2. from office, which deprives one of the use both of Order and of jurisdiction, whether in the external forum or even in the internal forum; 3. from benefice, which deprives one of the revenues and administration of the benefice. But each of these can again be subdivided into total or partial suspension, whether from Order, office, or benefice. See St. Alphonsus, no. 315 and following.

994. **General Rules.** - I. Rule. A suspended Cleric sins gravely if he solemnly exercises a forbidden act of sacred Order, unless he is excused by invincible ignorance or another legitimate cause, for example, necessity. The reason is that in a grave matter he resists the Church.
Nevertheless, he can do all those things which are customarily done by laics, for example, sing in choir in the manner of laics, etc. But one suspended from Order, if he exercises it, not only sins gravely but also incurs irregularity, as we shall say in its place.

II. Rule. Suspension absolutely and simply, without any determination to this or that, is always considered total and therefore deprives one of every use of Order, jurisdiction, and benefice. But partial suspension deprives one only of that part of this power which is expressed in the law, statute, mandate, or sentence.

III. Rule. Suspension from Order absolutely and simply deprives one of the exercise and use of every Order, whether major or minor. Suspension from jurisdiction imports deprivation of all jurisdiction.

IV. Rule. Suspension from office simply and without limitation deprives one of the use both of jurisdiction and of Order, or of every ecclesiastical ministry. Hence a Pastor suspended from Office can neither celebrate Mass, nor preach, nor preside over offices, nor administer the Sacraments.

995. **Resolutions.** - 1. One simply suspended from Order is not understood to be suspended from jurisdiction, and vice versa. One suspended from a higher Order is not thereby suspended from a lower one. Likewise, one suspended from a benefice is not considered suspended from office, nor vice versa.

2. Irregularity is not incurred by violation of a suspension imposed on account of an offense which is merely past, or imposed perpetually. St. Alphonsus, no. 314 and following. The reason is that such a suspension has the character of a mere penalty and not of a censure, as was said above, no. 941; therefore, there is not then a violation of censure. *A fortiori*, this is so if the suspension was imposed on account of an inculpable defect of mind or body. Nor is irregularity incurred through the exercise of any act from which someone was suspended, except the solemn exercise of sacred Order. Thus commonly.

3. A Bishop suspended from pontificals, if he celebrated Mass, even with pontificals, would not incur irregularity, because he would not exercise a substantial act of episcopal Order. St. Alphonsus, no. 314, etc.

4. Acts of Order of a suspended Cleric which do not depend upon jurisdiction are valid, because the Church cannot take away the power of Order, but can only prohibit its exercise. But acts of jurisdiction are invalid if the suspended person has been denounced by name, because he is deprived of actual jurisdiction; they are valid, however, unless he has been denounced, because the Church, by the very fact that it tolerates the suspended person, does not take away his jurisdiction, for the good of the faithful. St. Alphonsus, no. 314, etc.

996. **Questions. - QUESTION 1. Can a suspended Priest be absolved from sins by a simple Confessor before he is released from the censure by the Superior?**

Reply. Affirmatively. The reason is that the effect of suspension is not to deprive one of the reception of the Sacraments. It suffices, therefore, if he is disposed for the Sacrament of Penance, namely, if he is at least attrite concerning his sins and promises that as soon as possible, insofar as it lies in him, he will procure absolution from the censure, and that in the meantime he will not use the prohibited power or rights.

QUESTION 2. Can a partial suspension be imposed for only a venial fault?

Reply. Affirmatively, according to the common opinion, provided it is for a brief time [1], and therefore imposed *ab homine*. The reason is that it does not then introduce a great burden, and therefore proportion between fault and penalty is not lacking. It is otherwise, however, if it were for a long time or imposed by law so that it is incurred without a previous admonition; for such a censure is not incurred except on account of mortal sin. St. Alphonsus, no. 320, etc.

[1] But the Author himself has already admonished several times that suspension for a definite time, whether long or brief, is not a censure properly so called. Concerning these things the *Rieti Commentary* speaks briefly and clearly thus (section 13): *Suspension and interdict are sometimes imposed by way of punishment alone or of a certain deprivation. By way of punishment, when contumacy is not restrained, but they are imposed upon individuals for offenses altogether past, that is, which have no successive course, as they say; or are established perpetually, or until a certain day, or for as long as it shall seem good to the Ordinary. But by way of a certain deprivation, when they are imposed upon some College or University. Between censures and penalties or deprivations this especially differs: one who violates a censure by exercising Order incurs irregularity; but violation of a penalty or deprivation makes no one irregular unless*

something else is provided in law, as in chapter Cum aeterni 1, On Sentences and Matters Adjudged, in the Sext, where a judge is declared irregular if he damnably intrudes himself into divine things during the suspension otherwise imposed upon him for a year.

997. ○ **QUESTION 3. How is suspension removed?**

Reply 1. If the suspension has the character of a censure, it is removed like excommunication, namely, by absolution alone, and indeed that of the Superior if it is reserved. Nevertheless, if it was imposed for a definite determined time or under a condition, it ceases of itself when the time has elapsed or the established condition has been fulfilled.

Reply 2. But if it was imposed perpetually on account of fault altogether past, it is removed as a mere penalty by dispensation alone of the Prelate or his delegate, because it is not then a censure. Thus commonly.

QUESTION 4. What form must be employed for removing suspension?

Reply 1. If the suspension is occult, it is removed by absolution under the general form: *I absolve you from every bond*, etc.

Reply 2. If it is public, it is removed in the internal forum by the same form; but in the external forum the solemn form determined in the Ritual must be employed. But no one can solemnly absolve from suspension except the Superior himself or another specially delegated for this.

QUESTION 5. Can a Priest simply approved absolve a person suspended by censure at the point of death if the Superior or delegate is lacking?

Reply. Not a few deny this, being led by the reason that no cause appears why the Church should confer such power upon him; for suspension does not deprive one of the faculty of receiving the Sacraments, if you except promotion to a higher Order. It therefore suffices for eternal salvation that one suspended and constituted in such danger be absolved from sins. Others, however, probably judge that a Priest in this case can absolve the dying person. The reason is that the Council of Trent says generally and without distinction, *from any censures*; and thus, since it excepts no censure, it is not ours to distinguish where the law of the Council distinguishes nothing. See Diana, tome V, treatise 1, resolution 205.

Latae Sententiae Suspensions Reserved to the Roman Pontiff

998. ○ I. Those who, already marked with the episcopal character, having been nominated and presented or elected to vacant churches, see above, no. 973, dare to undertake their care, governance, and administration before the exhibition of the Apostolic Letters incur the penalty of suspension from the exercise of Pontificals [2], reserved in a special manner to the Roman Pontiff. From the Constitution *Romanus Pontifex* of Pius IX, 28 August 1873.

[2] By the name of Pontificals is understood the authoritative use of Pontifical insignia, such as the miter, pastoral staff, and pallium. Therefore, one suspended from Pontificals is barred from acts of episcopal Order which are customarily performed with the aforesaid insignia. Therefore, without dispensation he cannot confer the sacrament of Confirmation or Orders, nor consecrate virgins, Churches, etc., because these are numbered among Pontificals. Nevertheless, he can celebrate Mass in the manner of other priests, hear confessions, baptize, and even impose censures, confer benefices, and exercise other acts of jurisdiction, for these do not pertain to Pontificals.

From the Constitution *Apostolicae Sedis*.

999. ○ II. Chapters and Convents of Churches and monasteries, and all others, who receive for the governance and administration of those Churches or monasteries Bishops or other Prelates provided in any manner by the same Holy See for the aforesaid Churches or Monasteries before they have exhibited the Apostolic Letters concerning their promotion, incur by the act itself a simply reserved suspension from the receipt of revenues from their Benefices at the good pleasure of the Holy See [3].

[3] This suspension strikes moral persons or communities, see above, no. 950, question 7, such as chapters and monasteries, if they have received Bishops or Prelates provided by the Holy See for their respective Churches or Monasteries, but who have not yet exhibited the Apostolic Letters concerning their promotion, and accordingly have shown obedience and subjection to them as endowed with legitimate authority.

But since suspension can be imposed either upon a Chapter as a moral person, or upon the individual Clerics of that Chapter, or simultaneously upon the Chapter and the individuals, **the question is whether Chapters and monasteries here incur suspension only from the benefices which they possess in common, as Suarez judged (On Censures, disputation 31, section 5, no. 23, and disputation 28, section 3, no. 5), or also from those which individuals obtain, as Bonacina thought (tome 3, disputation 3, question 4, point 10, no. 4)?** The opinion of Suarez, says the *Rieti Commentary*, agrees better both with the words of our Constitution and with the rules of Canon Law; and in doubt, since we are dealing with penal matters, it is to be preferred.

Bonacina was moved (loc. cit.) by the fact that in the Extravagant *Iniunctae*, *On Election*, chapter 1, from which this censure is taken, it is said *and any others*, just as in our Constitution it is said *and all others*. But since all those others do not belong to the Chapter or monastery, let it be granted that they are punished with deprivation of those things which the individuals obtain, since they undergo no other deprivation; but if the members of the Chapter or monastery were punished thus in addition, they would now undergo a double penalty in comparison with those others.

But here take care to observe that both in the Constitution *Iniunctae* and in the text of our Constitution, under the name of benefices come also goods which pertain to monasteries. Hence that which we indicated above, in the Note to no. 972, XI, is confirmed: how, under the appellation of benefices, the usurpation of goods pertaining to monasteries falls under the censure of excommunication reserved in a special manner.

III. Those ordaining someone without the title of a Benefice or patrimony, with an agreement that the ordained person not seek support from them, incur by the law itself a suspension for three years from the conferral of Orders. From the Constitution *Apostolicae Sedis* [4].

[4] This suspension is imposed generally upon a Bishop who promotes to sacred Orders a cleric not possessing suitable means of support through a Benefice, patrimony, etc. And since the Holy Synod of Trent decreed, session 21, chapter 2, *On Reformation*, that henceforth no secular cleric be promoted to sacred Orders unless it is first legitimately established that he peacefully possesses an ecclesiastical benefice or patrimony which suffices for his honorable support; and since the laws, chapter *Cum secundum* 16, *On Prebends*, require that whoever promotes to sacred Orders a cleric lacking a benefice or patrimony be bound to supply him with what is sufficient for honorable support; it is therefore established that a Bishop prevaricates who ordains one destitute of the title of a benefice or patrimony and at the same time, by entering into an agreement, exempts himself from the burden of providing him with those things necessary for support. And indeed, the penalty of suspension inflicted for agreements of this kind is seen inserted in the canonical laws concerning Simony, chapter *Si quis* 45, since these agreements savor of a certain simony. This canon, however, has a limitation in our Constitution; for in it a three-year suspension from the Order thus received was also inflicted upon the ordained person, but by force of the new law only those ordaining incur the suspension. See Avanzini, *Commentary*, no. 49, where he suitably resolves at length the doubts concerning this matter.

Moreover, when a cleric is or is not to be judged, in the present matter, destitute of every title, the *Rieti Commentary* embraces briefly and properly thus (section 145): *The Pontiff says, without a title. But one is understood to be ordained without a title also if he is ordained with a false title,*

(which, namely, does not exist, whether the estates, instruments, or names of those establishing it are fictitious), or with one from which no right of receiving fruits passes to the ordained person. Not so, if my opinion is of any worth, for we are dealing with penal matters, if a right of

this kind does indeed pass but: 1. the title is not sufficient; or the title is sufficient but the right of receiving the fruits was established, 2. from a certain day, for example, from the day of ordination to the subdiaconate, or 3. perhaps only until a day, for example, for three years. For in the first case some title exists; in the second it exists in law; in the third it exists in fact and reality. Nor does one incur the suspension if he ordained him under a fictive title, which, namely, really exists but was established for appearance's sake, that is, perfunctorily and without the intention of establishing it, *or a fiduciary title,* which, namely, is established under the condition that it be afterward restored following ordination, or that the ordained person not receive the fruits, *because it is valid,* according to the Sacred Congregation of the Council, 14 May 1671, apud Benedict XIV, Notification 26, no. 18; *or under a title subject to restitution in integrum or rescission, because meanwhile it is valid; or under an unjust title,* which, namely, was made without the form of law being observed, *because it is uncertain whether it is invalid, at least in the forum of conscience,* as St. Alphonsus has it, book 3, nos. 711 and 927.

IV. Those ordaining the subject of another [5], even under the pretext of a Benefice immediately to be conferred or already conferred but by no means sufficient, without dimissorial letters from his Bishop [6]; or even their own subject who has remained elsewhere for so long a time that he could have contracted a canonical impediment there, without testimonial letters from the Ordinary of that place [7]. From the same Constitution *Apostolicae Sedis* [8].

[5] By the subject of another we must understand one who is not a subject of the one ordaining, either by reason of origin, domicile, benefice, or service or familiarity, although he may by chance have been born in the latter's diocese; for the Bishop of origin is said to be the one in whose Diocese his father had a domicile when the one to be ordained came forth into the light, or his mother if he is illegitimate. See the *Rieti Commentary,* section 140.

But the one ordaining will avoid the suspension intended here if he has ordained a cleric after first conferring a benefice upon him; for from this he has now begun to be his subject, provided that the benefice exists in his Diocese, from the Constitution *Speculatores*, section 3, of Innocent XII; that it is sufficient; and that the one to be ordained is in peaceful possession of it.

I said, *that it is sufficient*, etc.; for Innocent XII had provided all these things in the cited Constitution, section 3: *Although a cleric by reason of any Benefice obtained in another Diocese is said to be subject to the jurisdiction of that Bishop in whose Diocese the Benefice is situated, nevertheless We will that henceforth in this matter the following rule be observed unshaken: that no one be considered to acquire a subjection of this kind for the effect of receiving Orders unless the aforesaid Benefice is of such revenue that, after burdens have been deducted, it suffices of itself for a fitting support of life, whether according to the synodal rate or, if that is lacking, according to the custom of the region for those to be promoted to sacred Orders, and unless it is peacefully possessed by the one to be ordained; every faculty of supplying what is lacking from the fruits of the same Benefice by the addition of patrimony, even abundant, which the one to be ordained might possess in the same or any other Diocese, being removed.*

[6] Those are called dimissorial letters by which faculty is given to another Bishop to ordain one's own subject under the condition that he nevertheless remain a subject of his own Bishop. Moreover, these letters can be given not only by the proper Bishop of the one to be ordained, but also by the Vicar General if the Bishop dwells in remote places; and even by the Capitular Vicar while the See is vacant, and indeed even within the year to those *constrained*, that is, those for whom, by reason of a benefice either received or to be received, it is necessary that the conferral of some sacred Order or tonsure not be deferred.

[7] Those are called testimonial or commendatory letters by which the Ordinary certifies that the cleric to be promoted is adorned with such morals that he is fit to receive Orders. Moreover, testimonials must always be sought from the Bishop of domicile; likewise from the Bishop of origin and from the Bishop of that place where someone was born by chance, Constitution *Speculatores*, sections 4 and 5; and in addition where someone has remained for some time, where, finally, he has remained so long at that age that he could have contracted a canonical impediment there. For after seven years he could have contracted censures and irregularities; but a stay longer than six months recommends that testimony of a state free from the bonds of matrimony be required.

[8] Those things said in the preceding Notes concerning testimonial and dimissorial letters pertain also to those who have given their names to Pious Societies or Congregations in which simple vows are vowed. Therefore, these too cannot be promoted to tonsure or Orders without dimissorials or testimonials from that Bishop in whose Diocese they are staying, Sacred Congregation of Bishops, 6 May 1864. The law is otherwise with Regulars. For them their one Ordinary is the superior of the domicile, that is, of the monastery in which the one to be ordained dwells. Therefore, they are not bound to

present dimissorials of the Ordinaries of their own origin, Sacred Congregation of the Council, 28 February 1754, but those of their Regular Superiors; these nevertheless can be given only to the diocesan Bishop, Benedict XIV, Constitution *Impositi nobis*. And although formerly it was not sufficiently agreed by whom dimissorials should be given to Novices, St. Alphonsus, book 6, no. 765, today it is provided that, during the three years after novitiate and before solemn profession, they can be given by Regular Superiors only with respect to tonsure and minor Orders, Sacred Congregation of Regulars, 12 January 1858. But if they have deserted Religion or have been dismissed from it, whether the former after (before?) simple vows or the latter before solemn vows have been emitted, they fall again under the jurisdiction of the Bishop to whom they were subject before they entered Religion, Sacred Congregation of Regulars, 20 January 1860; Sacred Congregation of Bishops, 6 March 1864.

In addition to these, according to the Council of Trent: 1. one who ordains either his own subject or another's in the Diocese of another without the express permission of its Ordinary, session 6, *On Reformation*, chapter 5; 2. titular Bishops, if they promote anyone to minor Orders or first tonsure, session 14, *On Reformation*, chapter 2; finally, 3. Capitular Vicars who, within the year, grant dimissorials to Orders to persons who are not constrained, incur suspension: the former indefinitely, the second for one year from the exercise of Pontificals, and the third likewise for one year from office and benefice.

V. One who, except in a case of legitimate privilege, has conferred sacred Order without the title of a Benefice or patrimony upon a Cleric living in some Congregation in which solemn profession is not emitted, or even upon a religious not yet professed, incurs by the law itself a suspension for one year from the conferral of Orders [9]. From the same Constitution.

[9] That which the Council of Trent established concerning the title necessary for sacred Orders for the secular clergy, St. Pius V likewise sanctioned for the Regular clergy, Constitution *Romanus Pontifex*, 15 October 1568. The inconvenience which he willed to forestall he thus explains (section 2): *Since... certain Religious or canons or clerics of certain Orders, as We have received with displeasure, living in common in the manner of Regulars within the cloisters of monasteries or houses, who never or only for a definite time emit profession and can freely and licitly depart from the cloister or be dismissed and return to the world, under the pretext of Religion presume to be promoted to sacred Orders neither with the title of a sufficient Benefice nor according to the tenor of the Decree, and are everywhere promoted by certain Bishops, and thence for the most part this inconvenience occurs, that those thus promoted and departing from the cloister and wandering through the world are compelled either to beg or to exercise sordid gain, not without their own disgrace, contempt for the Order, and the scandal of very many*

of Christ's faithful. But St. Pius supplies the remedy thus (section 3): *The aforesaid decree (namely, that of Trent, session 21, chapter 2, On Reformation), speaking of secular Clerics, by the tenor of these presents We extend and enlarge to each and every Religious Cleric of whatever Order, or secular Cleric living in common after the manner of Religious, not professed; and We interdict and prohibit the aforesaid Religious and other non-professed persons from being promoted to sacred Orders, and likewise all... Bishops... from conferring those Orders upon Religious persons of this kind, unless the form of the said Decree is observed...; and We suspend by the law itself for one year from the conferral of such Orders those who act contrary thereto.*

In our Constitution is added: *except in a case of legitimate privilege*; that this was granted, for example, to the Society of Jesus is evident from these words of the Constitution of Gregory XIII (Constitution *Ex Sedis Apostolicae*, 28 February 1573): *And likewise that those who have emitted the aforesaid three vows in the same Society may, with the permission of their Superior General, be promoted even to the sacred Orders of the priesthood, even before solemn profession has been emitted... approving the aforesaid Institutes, by the tenor of these presents and by Apostolic authority, insofar as there is need, We grant this anew.*

VI. Expelled Religious living outside Religion incur by the law itself perpetual suspension from the exercise of Orders [10]. From the same Constitution.

[10] The canonical reason why an expelled Religious remains suspended is also this: one who is expelled from his Religion thereby lacks the title of his ordination, and indeed also a church to which he is attached. Thus Avanzini (*Commentary*, no. 53), who then asks why Apostates and fugitives do not incur the same penalty.

For, as the *Rieti Commentary* excellently states, two things are necessary for Religious to contract this suspension, namely, that they have been expelled and that they are living outside Religion. Therefore, apostates and fugitives do not incur it; nor are expelled Religious still bound by it if they have entered another Religion, even one less strict. And it is further necessary that someone have been justly expelled, that is, for a just cause and with the order of law observed; for there must be no

departure here from that law which is constantly observed in other laws. Hence one who has been unjustly expelled ought indeed to abstain from the exercise of Orders, lest he cause scandal; but if he does not abstain, he sins against charity, but does not act against a censure; and therefore guilt binds him, not irregularity; and not even guilt, if scandal is absent, for example, if he celebrates where it is unknown that he has been expelled and this cannot easily become known.

VII. Those who have presumed to receive an Order from one who has been excommunicated, suspended, or interdicted by name, or from a notorious heretic or schismatic, incur by the law itself suspension from the Order received; but We declare that one who in good faith has been ordained by any one of them does not have the exercise of the Order so received until he is dispensed [11]. From the same Constitution.

[11] One who receives Orders, as the *Rieti Commentary* observes, incurs suspension under our Constitution in this case alone, namely, if he has received them from a Bishop excommunicated, suspended, or interdicted by name, or from a notorious heretic or schismatic.

And indeed, if someone receives Orders from one excommunicated by name by the Supreme Pontiff, he incurs in addition an excommunication reserved to the same Pontiff, according to what was said above, no. 975, XVII.

For the rest, under the Constitution it makes a difference whether someone received Orders in bad faith or in good faith. If in bad faith, that is, if he presumed to do so, he will be bound by perpetual suspension, from which it pertains to the Roman Pontiff alone to dispense; but if in good faith, he will not properly be called suspended, but only the exercise of the Order is interdicted to him until his Bishop has dispensed him. **But what if he doubted**

and, from culpable negligence indeed, but not broad, gross, or supine, neglected to inquire? Can he not be dispensed by the Bishop because he was not in good faith? Or can he, because he did not presume? And it replies: Since that which is more favorable to the accused must always be adopted, I think the latter. Furthermore, for someone to incur this suspension it is necessary that he have received an Order; therefore, if he was invalidly ordained, suspension cannot even be conceived.

VIII. Secular Clerics from outside Rome who have remained in the City for more than four months and have been ordained by someone other than their own Ordinary without the permission of the Cardinal Vicar of the City, or without a previous examination held before him, or even by their own Ordinary after they have been rejected in the aforesaid examination; and likewise Clerics belonging to any of the six suburbicarian Bishoprics, if they are ordained outside their own Diocese with dimissorial letters of their Ordinary directed to someone other than the Cardinal Vicar of the City; or if, before receiving sacred Order, they have not first made spiritual exercises for ten days in the Roman house of the Priests called the Congregation of the Mission, incur by the law itself, at the pleasure of the Holy See, suspension from the Orders thus received; while the Bishops ordaining them incur suspension from the use of Pontificals for one year. From the same Constitution.

1000. **Suspensions Imposed by the Council of Trent, of Which Some Are Reserved to Bishops and Others to No One.** - I. No Bishop may, under the pretext of any privilege, exercise Pontificals in the Diocese of another unless with the express permission of the Ordinary of the place and only upon persons subject to that Ordinary. If otherwise has been done, the Bishop is suspended by the law itself from the exercise of Pontificals, and those thus ordained from the exercise of their Orders (session 6, chapter 5, *On Reformation*) [12].

[12] By this Decree it is not excluded that Clerics of other Dioceses also can be ordained by an outside Bishop in another Diocese when the Clerics both have dimissorial letters from their own Ordinary and this outside Bishop exercises Pontificals there with the express permission of the Ordinary of the place.

And according to a Resolution of the Sacred Congregation, 22 February 1630, which is customarily cited, a Bishop present in another Diocese can, with the aforesaid prior permission of its Ordinary, ordain both his own subjects and those of the Bishop granting permission without incurring the penalties.

II. Those who were not constrained by reason of a Benefice received or to be received and, while the See was vacant, were ordained within a year from the day of the vacancy by dimissorial letters received from the Chapter, if they were thus constituted in minor Orders, are to enjoy no clerical privilege, especially in criminal matters; but if thus constituted in major Orders, they are suspended by the law itself from the exercise of their Orders at the pleasure of the future Prelate (session 7, chapter 10, *On Reformation*) [13].

[13] It pertains to the Capitular Vicar, and not to the Chapter, to grant dimissorial letters after a year, as is reported to have been decided in the Sacred Congregation of Bishops, 12 January 1604.

But the Vicar of the Pope is not prohibited from granting dimissorial letters even immediately after the Apostolic See becomes vacant; for the Tridentine Decree in no way restricts the jurisdiction of the Apostolic See, even when vacant.

But while an episcopal See is vacant, recourse for receiving Orders within the year must be had neither to the nearest Bishop nor to the Metropolitan, but to the Apostolic See.

Nevertheless, while the See is vacant, the Chapter can within the year give testimony of fitness, or testimonial letters.

III. None of the Bishops who are called titular, even if they reside or remain in a place of a Diocese *nullius*, even exempt, or in some monastery of any Order, may, by virtue of any privilege granted to him for the time being of promoting whomever comes to him, promote or ordain the subject of another, even under the pretext of familiarity and continual sharing of his table [14], to any sacred or minor Orders or to first tonsure without the express consent or dimissorial letters of his own proper Prelate. One who acts contrary is suspended by the law itself from the exercise of Pontificals for one year, and the one so promoted from the exercise of the Orders thus received until it shall seem good to his Prelate (session 14, chapter 2, *On Reformation*).

[14] Namely, Pius IV had decreed that titular Bishops could ordain no one by reason of familiarity, Constitution *Cum sicut accepimus*, 12 May 1562.

IV. If anyone petitions to be promoted by someone other than his own Bishop, this is by no means to be permitted to him, even under the pretext of any general or special Rescript or privilege, unless his uprightness and morals are commended by the testimony of his Ordinary. If otherwise is done, the one ordaining is suspended from the conferral of Orders for one year, and the one ordained from the exercise of the Orders received for as long as it shall seem expedient to his own Ordinary [15].

[15] Here the matter concerns only a lack of testimonial letters, and not the absence of dimissorial letters. And it can in fact happen that a Cleric approaches either with dimissorial letters or under the pretext of some general or special Rescript or privilege, and lacks the testimony of his Ordinary by which his uprightness and morals are commended (session 25, chapter 8, *On Reformation*).

V. Abbots and other exempt persons, or any colleges or Chapters [16], even of cathedral churches, are not to grant dimissorial letters to any secular Clerics [17] that they may be ordained by others. But those granting dimissorial letters contrary to the form of the Decree are suspended by the law itself from office and Benefice for one year (session 23, chapter 10).

[16] Understand Chapters which by some special right have jurisdiction in some part of a Diocese; for another decree exists concerning Chapters while the See is vacant.

[17] Namely, just as Abbots established within the boundaries of some Diocese can confer tonsure and minor Orders upon their own Regular subjects only, but not upon secular subjects, so the same thing has been established concerning the granting of dimissorial letters.

VI. If any pastor or other priest, whether Regular or secular, even if he contends that this is lawful for him by privilege or immemorial custom, has dared to join in matrimony or bless the betrothed of another parish without the permission of their pastor, he remains suspended by the law itself until he is absolved by the Ordinary of that Pastor who ought to have assisted at the matrimony, or from whom the blessing ought to have been received (session 24, chapter 1, *On Reformation*).

VII. If Bishops, which God forbid, have not abstained from this crime of concubinage and, after being admonished by the Provincial Synod, have not amended themselves, they are suspended by the fact itself (session 25, *On Reformation*, chapter 14).

Short Appendix — On Deposition and Degradation

1001. ○ Deposition and degradation are most grave penalties very closely allied to suspension and are customarily likened to it, because they affect Clerics alone and in the same manner induce privation of ecclesiastical rights and Benefices. Nevertheless, they are not properly censures, because they are inflicted only as punishment and not as medicine.

Deposition is an ecclesiastical penalty by which a Cleric is deprived of the use of ecclesiastical power and of every radical title for exercising it, and also of every right validly to possess Benefices, and this perpetually. It is therefore of itself an irremissible penalty. See St. Alphonsus, no. 324 and following.

Degradation is the solemn privation of all titles, goods, privileges, and ecclesiastical goods, so that the degraded person, with only the indelible character of Order remaining, is reduced to the lay condition. Hence it differs from deposition: 1. because degradation is a solemn privation of ecclesiastical goods, but deposition is not such; 2. because degradation deprives one of both clerical privileges, namely, of canon and forum, whereas deposition does not deprive one of these privileges. Hence one who struck a deposed person would incur excommunication, but not if he laid violent hands upon a degraded person; for the latter does not differ from a layman.

Degradation cannot be inflicted except for monstrous crimes, such as the manifest crime of heresy, falsification of Apostolic letters, habitual and notorious sodomy, a most grave calumny laid against a Bishop, etc. See St. Alphonsus, ibid.

QUESTION. Is a degraded person bound to the canonical Hours and to the vow of chastity?

Reply. Affirmatively as to both, because he ought not to be released from this burden and receive an advantage from his own malice. Hence he would contract matrimony invalidly. St. Alphonsus, no. 327.

Article III. On Interdict

1002. **Definition.** - An interdict is a censure by which, as punishment for some crime, the use of divine Offices, of certain Sacraments, and of ecclesiastical burial is prohibited to certain persons or in certain places.

Hence an interdict differs: 1. from excommunication, which deprives one of greater goods than an interdict and affects not places but persons alone;

2. from suspension, which affects Clerics alone and deprives them of sacred things only insofar as these are the use of some ecclesiastical ministry, but not insofar as they are goods of the faithful; moreover, an interdict affects places and deprives one of ecclesiastical burial, but suspension does not; 3. from irregularity and from cessation from divine Offices, which properly and of themselves do not have the character of a penalty and therefore not of a censure. See St. Alphonsus, no. 328 and following.

Division. An interdict is manifold, namely: 1. personal, local, or mixed, insofar as it immediately affects a person, a place, or both together.

2. General or particular, insofar as it extends to an entire region, city, and community, or is restricted to an Oratory, a particular Church, or determinate persons.

1003. **Rules.** - I. A general interdict falls only upon the persons or places designated. Hence: 1. if the Clergy of some place is interdicted, the people are not thereby interdicted, nor are Regulars interdicted; and conversely. 2. If a city is interdicted, innocent inhabitants are not interdicted and can go elsewhere to assist at divine Offices. If the citizens of a city are interdicted, the Churches are not subject to the interdict; travelers can assist at Offices there. Bishops are always exempt unless they have been specially designated.

II. An interdict imposed without limitation upon some whole affects all its parts. Hence: 1. the interdict of a city includes all the Churches of that city, even those exempt from the jurisdiction of the one imposing the interdict, because then they are interdicted by law. 2. The interdict of a family or community embraces each of its members, even all those who began to be members of that community after the interdict was imposed. 3. The interdict of a Church extends to each chapel contained within it, but the converse cannot be said.

III. An interdict imposed upon certain places, for example, a fortress or city, also affects the suburbs and contiguous buildings. Hence, if a Church is interdicted, chapels which immediately touch it and contiguous cemeteries are interdicted; but not conversely, because the accessory follows the principal, and not the principal the accessory.

1004. **Questions. - QUESTION 1. What are the effects of an interdict?**

Reply. There are three, as is clear from the definition given above, namely:

1. Prohibition from divine Offices, namely, from Mass, public and solemn prayer, public recitation of the Hours in choir, public blessing of water, oil, a church, candles, etc. Clerics who do not fall under the interdict can celebrate, but with the doors closed and without the sound of bells. St. Alphonsus, no. 333.

2. Prohibition from administering and receiving certain Sacraments, namely, the Eucharist, Order, and Extreme Unction. Viaticum can be administered to the dying, and according to some, Extreme Unction also. Baptism, even solemn, Confirmation, and Penance are permitted to all

except those who gave cause for the interdict, even by aid or favor. Matrimony also is more probably permitted, but without the blessing. See St. Alphonsus, no. 334.

3. Prohibition from ecclesiastical burial. In a local interdict it extends even to infants and the insane. Nevertheless, Clerics not interdicted by name can be buried in a Church, with Mass; indeed, even if the Church were specially interdicted, but without Mass. St. Alphonsus, no. 335.

1005. ◦ **QUESTION 2. How do those who violate an interdict sin, and what penalties do they incur?**

Reply 1. As to Clerics. 1. They sin gravely by violating a personal interdict, because the matter is grave, unless slightness of matter excuses, for example, if they exercise functions which can be performed by laymen, or if they leave the door of a church open for a short time, etc. 2. They also sin gravely by violating a local interdict, if the place is specially or generally interdicted and they act publicly, with the doors open, against the prohibition; otherwise they sin only venially. But if, notwithstanding the interdict, they exercise sacred functions, they incur irregularity. Finally, by the fact itself they incur interdict from entrance into a Church if they celebrate or cause divine Offices to be celebrated in an interdicted place, or admit to divine Offices, the Sacraments, or ecclesiastical burial those excommunicated by name [1], as is said below. St. Alphonsus, no. 336.

[1] Understand this if they are excommunicated by name by persons other than the Roman Pontiff. For if Clerics knowingly and of their own accord conduct themselves thus with persons excommunicated by name by the Roman Pontiff, they incur an excommunication reserved to the same Pontiff. See above, no. 975, XVII.

Reply 2. As to laymen. 1. Those who violate a personal interdict sin gravely, since it affects them directly. 2. Those who violate a local interdict likewise sin gravely if they compel Clerics to celebrate divine Offices contrary to the interdict. Likewise, if they were to receive the Sacraments in an interdicted place, because they would cooperate in that which is prohibited to Clerics under grave sin. 3. But they sin only venially if, while the place is interdicted but they are not personally interdicted, they merely assist at divine Offices. St. Alphonsus, ibid.

QUESTION 3. For what cause can an interdict be imposed?

Reply. Properly speaking, it cannot be imposed except for grave fault opposed to the common good. Thus, for a personal interdict, the fault of the one interdicted is required, for punishment is imposed because of fault. But for a general and local interdict, the fault of the one who is head of the community, or of its principal members, suffices. This is gathered from Canon Law. St. Alphonsus, no. 337.

Interdicts Reserved to the Roman Pontiff

1006. ◦ I. Those who, already distinguished by the episcopal character [2], and nominated, presented, or elected to vacant Churches, dare to undertake their care, government, and administration before the presentation of the Apostolic Letters, incur the penalty of interdict from entrance into a Church reserved in a special manner to the Roman Pontiff (from the Constitution of Pius IX, *Romanus Pontifex*, 28 August 1873).

[2] See above, no. 973, XIII, and no. 998, I.

II. Universities, Colleges, and Chapters, by whatever name they are called, which appeal from ordinances or mandates of the reigning Roman Pontiff to a future general Council, incur by the law itself an interdict reserved in a special manner to the Roman Pontiff (from the Constitution *Apostolicae Sedis*) [3].

[3] This interdict differs from the excommunication likewise imposed against those appealing to a future Council, concerning which above, no. 972, IV; for there individual persons are punished, whereas here moral persons are punished. Nevertheless, the interdict binds the individual members of these bodies; otherwise it would be useless (chapter 16, *On the Sentence of Excommunication*, in the Sixth).

Furthermore, since an interdict of this kind does not have the force of a censure, Clerics who did not give cause for it do not contract irregularity if they violate it by exercising an Order.

The question is asked whether those incurring this interdict also contract the excommunication concerning which no. 972, IV? I do not think so, says the *Rieti Commentary*, chiefly because there the matter concerns individuals, but here moral persons. From this it can furthermore be understood that those who furnish aid, counsel, or favor to these moral persons do not incur this interdict, because our Constitution passes them over; but neither do they incur that excommunication, because they furnish these things not to the individuals mentioned there, but to a moral person. See the cited *Rieti Commentary*, no. 158.

An Interdict Not Reserved

1007. ○ Those who knowingly celebrate or cause divine Offices to be celebrated in places interdicted by the Ordinary, by a delegated Judge, or by law; or who admit persons excommunicated by name to divine Offices, ecclesiastical Sacraments, or ecclesiastical burial, incur by the law itself an interdict from entrance into a Church until they have duly made satisfaction at the discretion of him whose sentence they have contemned (from the Constitution *Apostolicae Sedis*) [4].

[4] This penalty, says the *Rieti Commentary*, as formerly, so also today, binds Clerics alone; for the Pontiff says, *those causing celebration... those admitting*; but these are acts of those who have authority in sacred places.

This article has two parts. The first pertains to those who celebrate or cause divine Offices to be celebrated in interdicted places. But by *divine Offices*, as elsewhere, see above, no. 975, XVII, in the Note, we understand those things which it is lawful for ministers of the Church alone to perform. That it is unlawful to celebrate, etc., must be understood as in the old law, excepting those days and places, and with the conditions observed, in which it was then lawful. Now, under the old law, in a specially interdicted Church it is lawful to offer the sacred rite once a week for renewing the Eucharist, lest it be lacking to the dying; and in Conventual Churches it is lawful to recite the canonical Hours in groups of two or three. But if the interdict is general, it is lawful daily to offer the sacred rite and perform other divine Offices, but without the bells being rung, with the doors closed, those under interdict excluded, and in such a way that by those who are outside nothing can be heard and nothing seen. See the *Rieti Commentary*, no. 160.

The other part of the article pertains to those who admit persons excommunicated by name to divine Offices or to the Sacraments, namely, excepting Penance and Viaticum at the point of death. The word *admitting* indicates those to whose care it pertains to prohibit or admit someone to an act of this kind, that is, it pertains to those who have governance of the Church or cemetery. Therefore these alone are bound by the interdict, and not other Clerics who assist at divine Offices in the manner of laymen or accompany a funeral; nor those who furnish counsel or favor to the persons admitting.

Moreover, not every fear or compulsion excuses those admitting, but only grave fear; for *of their own accord* is not added here as elsewhere, see above, no. 975, XVII, nor is it to be believed that this was omitted without deliberation. Furthermore, besides the interdict, the other canonical penalties concerning which chapter 8, *On Privileges*, in the Sixth, do not bind them.

Interdicts Imposed by the Council of Trent

1008. ○ I. Chapters of Churches, while the See is vacant, are not permitted within a year from the day of the vacancy to grant permission for ordination or dimissorial letters to anyone who has not been constrained by reason of an ecclesiastical Benefice received or to be received. If otherwise is done, the Chapter acting contrary is subject to an ecclesiastical interdict (from session 7, chapter 10, *On Reformation*).

II. As the contumacy increases, namely, of a Bishop absent beyond the second six-month period, the Metropolitan is bound within three months to denounce the absent Bishops to the Roman Pontiff by letter or messenger, and the oldest resident suffragan Bishop to denounce the absent Metropolitan, under penalty of interdict from entrance into a Church incurred by the fact itself (from session 6, chapter 1, *On Reformation*).

Appendix I. On Cessation from Divine Offices

1009. ○ Cessation from divine Offices is a prohibition made to Clerics that they abstain from divine Offices, from the administration of the Sacraments, and from ecclesiastical burial in some determinate place.

This cessation is distinguished from an interdict: 1. because an interdict can be personal, but cessation from divine Offices cannot. 2. Because an interdict is a censure, whence one who violates it becomes irregular; but a transgressor of cessation from divine Offices, although he sins gravely, incurs no censure and does not become irregular. For this cessation is not employed to correct delinquents. 3. Because during a general interdict it is lawful to celebrate divine Offices with the doors closed and in a low voice, and even solemnly on certain feasts; but in cessation from divine Offices even these things are prohibited.

A twofold cessation from divine Offices is distinguished:

1. One from law, which exists by the fact itself when a Church is polluted or execrated.

2. One from a man, which is imposed by a Superior having jurisdiction having jurisdiction in the external forum, as a sign of sorrow or for the reparation of a grave injury inflicted upon God; and then it affects all who remain in that place.

The causes of cessation from divine Offices by law are reported in the Treatise on the Eucharist, where the place of celebration is treated. The Sacraments which can be administered during an interdict are also permitted during cessation.

QUESTION. By whom can cessation from divine Offices be imposed?

Reply. It can be imposed by the same persons who can impose censures, with the requisite admonitions preceding. St. Alphonsus, no. 340.

Appendix II. On Ecclesiastical Burial

1010. ○ The bodies of the faithful deceased are, by precept of the Church, to be buried in a sacred place blessed and consecrated for this purpose, or in the Church itself. But those

who do not belong to the Church of Christ can be buried neither according to the ecclesiastical rite nor in a sacred place. Ecclesiastical burial must also be denied to Christians who are deemed unworthy of it because they have either abandoned the faith, departed from the living in contumacy and impenitence, or were rebellious children, as is evident from what was said concerning the effects of excommunication and interdict.

1011. **Questions. - QUESTION 1. Who are to be deprived of ecclesiastical burial?**

Reply. By common law they are the following:

1. All infidels, whoever they may be, whether pagans, Jews, Mohammedans, or even infants who died without Baptism.

2. Apostates from the Christian Faith. Moreover, all impious men who teach atheism, deism, or pantheism in writings, or in one word, all who deny Christian revelation, must be numbered among apostates.

3. Heretics who profess their errors openly, and their notorious supporters, as well as public schismatics.

4. Public and notorious excommunicated persons, and persons interdicted by name, if they have died without signs of repentance and have manifested no desire for reconciliation with the Church.

5. Suicides who have inflicted death upon themselves under the impulse of anger or despair, unless they gave signs of repentance or insanity. Burial is not denied, however, to those who killed themselves in a state of delirium or during another paroxysm of disease.

1012. ◦ 6. Duelists, if they have perished in the conflict itself. Council of Trent, session 25, chapter 19, *On Reformation*. Indeed, according to the Roman Ritual, they are to be deprived of burial even if they gave signs of repentance; and according to the Bull of Benedict XIV, even if they were absolved, and even if they died outside the place of the conflict with signs of repentance.

7. Public and notorious sinners who met death in impenitence. Such are, for example, those who publicly live in adultery or concubinage. But for this it is required: 1. that the impenitence be altogether certain; 2. that it be so public that burial cannot be granted without new scandal.

QUESTION 2. Are guilty persons who are punished by death to be buried in a sacred place?

Reply. Affirmatively, if they confessed before death or gave undoubted signs of repentance. But they are to be buried without solemnity.

1013. ◦ **QUESTION 3. What is to be done in doubt whether ecclesiastical burial must be denied or not?**

Reply. The Bishop is to be consulted if easy recourse to him is available; otherwise action must be taken in favor of granting burial according to the principle: In doubt, odious things are to be

restricted. For since great inconveniences, especially in our times, are accustomed to arise from the denial of burial, it is expedient that such denial not be made unless its obligation is certainly established.

QUESTION 4. Is burial to be denied if the Priest alone was a witness to the dying person's rejection and impenitence?

Reply. Negatively, unless burial ought to be denied to him from some other source because of one of the causes set forth above, for example, because of a censure, etc. But the Priest must remain silent concerning the impious disposition of the dying person and allow it to be believed that he was duly purified by the Sacraments. For scandals must be avoided insofar as possible. Indeed, it will be worthwhile for a Priest who is doubtful concerning the disposition of the dying person to speak with him without witnesses and induce him to confession, lest his evil disposition become known, provided that some scandal need not necessarily be repaired. Prudence counsels this, which has been established in various Dioceses.

1014. ◦ **QUESTION 5. Is burial to be denied to mimes and actors?**

Reply. Negatively, provided they have not refused the Sacraments of the Church, as was said concerning other sinners in the preceding question. For no canonical law is found which excludes them from ecclesiastical burial. Gousset, *On Extreme Unction*, no. 637.

When a cemetery is blessed, some outer part of it is to be left without blessing so that it may serve for the burial of infants who departed from the living without Baptism, of infidels who died in Christian places, and also of any others to whom ecclesiastical burial must be denied. It is not absolutely required that this part be separated from the rest of the cemetery, for example, by a wall, hedge, or some trench, but it suffices that it can be distinguished in some way.

End of the Treatise on Censures.

Treatise On Irregularities

Chapter I. On Irregularities in General

1015. **Definition.** - Irregularity strictly taken is a canonical impediment prohibiting someone from being enrolled among the Clergy, ascending to a higher Order, or exercising the functions of an Order received.

Hence irregularity differs from censures, and especially from deposition and degradation, principally in this respect: deposition and degradation always presuppose fault and have the character of a penalty; but irregularity does not always presuppose fault, and if it is sometimes imposed by way of penalty, this is done only secondarily, not for punishing the guilty person, but for guarding against unbecomingness in the sacred ministry.

1016. **Division.** - A manifold irregularity is distinguished:

1. Irregularity from defect or from delict, insofar as it arises from certain defects expressed in law, or is contracted from certain delicts determined in law.

2. Total or partial irregularity, insofar as it excludes one from every Order, from the use of an Order, and from every ecclesiastical Benefice, or excludes one only from receiving some Order, but not from the use of those already received.

3. Perpetual or temporary irregularity, insofar as of itself it always endures unless removed by dispensation or by other ways to be determined below; or it endures only for some time and afterward ceases without any dispensation. Thus irregularity from defect of age vanishes when the time required for Orders has been completed.

1017. **Principles.** - I. No irregularity is ever incurred unless it is expressed in Canon Law. Hence: 1. irregularity from a man is not admitted; 2. irregularity is incurred by the fact itself before any sentence of a judge, and even because of an occult defect or crime. From chapter *Is qui* 18, *On the Sentence of Excommunication*, in the Sixth.

II. Irregularity from defect is always incurred while the defect remains, because it does not have the character of a penalty but only that of an impediment. But irregularity from delict is not incurred without fault, and indeed grave fault, because although the end of irregularity is neither to punish nor to correct the guilty, nevertheless it is not contracted except by reason of a properly voluntary and truly grave delict. St. Alphonsus, no. 348.

1018. **Questions. - QUESTION 1. For incurring irregularity FROM DELICT, besides knowledge of the divine law, is knowledge of the prohibiting ecclesiastical law required?**

Reply. Affirmatively, more probably. The reason is that this irregularity has the character of a penalty. St. Alphonsus, no. 350, calls this opinion the more probable and most common. Except homicide, however, because of the particular unbecomingness which it induces. St. Alphonsus, ibid.

QUESTION 2. Is knowledge of the penalty, or of the irregularity, also required?

Reply. There are two probable opinions.

FIRST OPINION. It denies this, because irregularity is not a medicinal penalty, but an incapacity, or a merely punitive penalty. Thus Lacroix, Elbel, etc.

SECOND OPINION. It affirms this. The reason is that irregularity from delict is considered a true and indeed extraordinary penalty, imposed in vindication of a crime, although its primary effect is to constitute incapacity. Now, where so great a penalty is inflicted, the Church is not considered to proceed with such rigor that it is incurred by one who is ignorant of it. This opinion seems sufficiently probable, says St. Alphonsus, no. 351.

QUESTION 3. Are you considered irregular when it is doubtful whether you have incurred irregularity?

Reply 1. Negatively in a doubt of law, or in a doubt whether such a case is subject to a law establishing irregularity. Thus nearly all Theologians. The reason is that, where doubt is present, this irregularity is not certainly expressed in law. Therefore, etc. Besides, odious things are to be restricted. St. Alphonsus, no. 346.

Reply 2. In a doubt of fact, distinguish: either there is a doubt concerning a homicide committed [1], or concerning another delict. If the former, more probably and more truly you have incurred irregularity because of the special unbecomingness found in homicide, as is gathered from law. If the latter, more probably and more truly you have not incurred it, because in doubt no one is to be condemned. St. Alphonsus, no. 347.

[1] These words of the Author, *Either there is a doubt concerning a homicide committed*, are indeed somewhat obscure. You will obtain their meaning more clearly from St. Alphonsus, book 7, no. 347, doubt 3, whom the Author himself cites. Thus the Holy Doctor: *This proceeds in the case in which someone is certain of the homicide, as is supposed in the aforesaid texts, but doubts only whether he himself by his action was the cause of it*. Therefore the Author's words, *Either there is a doubt concerning a homicide committed*, are not to be understood of a doubt whether, for example, the one who was wounded has actually died, but of a doubt whether you were the cause of the death which in fact followed. Hence the VV. could properly have noted this passage of Father Gury as obscure, but not properly have presented it, page 948, no. 163, as dissenting from the doctrine of St. Alphonsus.

1019. ○ **QUESTION 4. Is irregularity incurred because of a crime which is indeed external and consummated, but altogether occult?**

Reply. Affirmatively, more truly, says St. Alphonsus, no. 349. The reason is that the Church, in reserving crimes, reserves even the most occult, provided they are subject to her jurisdiction, namely, provided they are external, just as she imposed excommunication for altogether occult heresy, etc. This is proved also from chapter 6, *Liceat*, in Trent, session 24, where the Council grants Bishops the faculty of dispensing from and absolving occult irregularities and censures.

QUESTION 5. How is irregularity removed?

Reply. It is removed in the following ways:

1. By dispensation: 1. of the Pope in every case, provided there is not an impediment of natural law, or one which renders the exercise of sacred Order impossible; 2. of the Bishop and of Regular Superiors, if the irregularity arises from an occult delict, except homicide; 3. of any

delegate according to the faculty received, as was said concerning absolution from censures, no. 951.

2. By cessation of the cause, for example, upon attaining the age required, if the irregularity arises from defect of age; likewise by change of domicile or place, or by amendment, if it arises from infamy. For infamy of law, however, a dispensation is required. See St. Alphonsus, no. 352 and following.

1020. ◦ **QUESTION 6. How is dispensation from irregularity made?**

Reply. No form is found prescribed in law; hence no determinate form necessarily must be employed. It can, however, be made by the following formula or another equivalent: *I dispense you from the irregularity which you incurred because of...* such a cause, *in the name of the Father*, etc.; or, *By the authority granted to me by the Holy Father or by the Bishop, I dispense you,* etc., *and I render you capable and restore you to the exercise of your Orders and offices, in the name of the Father*, etc.

Chapter II. On Irregularities in Particular

Article I. On Irregularities from Defect

1021. ○ Eight species of these are numbered, namely, from defect of: 1. mind; 2. body; 3. birth; 4. age; 5. freedom; 6. Sacrament; 7. lenity; 8. reputation.

These defects, or rather the qualities opposed to them, are expressed in these little verses:

Birth, mind, freedom, body, and age; Not a bigamist, gentle, nor marked by evil fame.

I. From Defect of Mind

1022. ○ A threefold defect of mind is assigned, namely, of reason, knowledge, and confirmed faith.

1. Of reason. Hence those perpetually insane, lunatics, the furious, epileptics, and the possessed are irregular, even if they have lucid intervals. Nevertheless, the exercise of Orders already received is permitted to them less reluctantly than the reception of new ones.

2. Of knowledge. Those who do not have the knowledge necessary for the several Orders are irregular, whether they are in fact ignorant or incapable of learning. This is deduced from what was said in the Treatise on the Sacrament of Order and from the Decree, part 1, distinction 36, canon 1.

3. Of confirmed faith. Neophytes recently baptized at an adult age are irregular until they are judged worthy by the Bishop. This is evident from Canon Law. See St. Alphonsus, no. 397 and following.

II. From Defect of Body

1023. ○ This irregularity is incurred on two grounds: 1. if someone is unfit for the exercise of an Order; 2. if he causes notable horror in others or displays something unbecoming.

Hence the following are regarded as irregular:

1. The mutilated, those bearing a wooden leg, and those unable to use a hand, thumb, or index finger.

2. The blind, those altogether lacking sight, or those so dim-sighted that they cannot read in the Missal.

3. The deaf, who hear nothing, so that they cannot at all hear the voice of the server responding.

4. The mute or stammerers, who cannot pronounce whole words, or cannot do so except with great difficulty, such that they provoke the laughter or contempt of those present.

5. The lame, who cannot stand at the altar without a staff.

6. Those lacking a nose, or having one enormously distorted, sunken, or protruding.

7. The monstrous, for example, those having an enormous hump which produces great deformity, etc. See St. Alphonsus, no. 403 and following. See, however, what was said concerning the Eucharist, no. 404, in the Note.

1024. **Questions. - QUESTION 1. Is one who lacks one eye irregular?**

Reply 1. Negatively, if he lacks only the right eye, because it is less necessary for the celebration of Mass, provided no notable deformity arises from it.

Reply 2. Affirmatively, if he lacks the left eye, which is called the Eye of the Canon, because it is necessary for reading the Canon of the Mass. Except if he can read the Canon with the right eye without deformity. This, however, must be submitted to the judgment of the Bishop. Thus commonly with St. Alphonsus, no. 404.

QUESTION 2. Can one who, already promoted to the Priesthood, has an impaired thumb or index finger celebrate and administer the Eucharist?

Reply 1. It seems that this must be denied absolutely as to the celebration of Mass, at least more probably according to the common opinion. St. Alphonsus, no. 408 and book 6, no. 244.

Reply 2. Negatively also of itself as to the administration of the Eucharist, excepting nevertheless cases of necessity in which he can use other fingers.

III. From Defect of Birth

1025. ○ Defect of birth induces irregularity. This is evident from the Decretals, book 1, title 18.

Hence: 1. the illegitimate, even occult, are irregular, or all who were born from fornication, adultery, or incest; 2. those who were born from a clandestine matrimony and within a prohibited degree, even if unknown; 3. but those who were illegitimate at the time of their conception or birth, whose parents were then capable of contracting matrimony and afterward contracted it, are not irregular, because they were legitimated by the subsequent matrimony. See St. Alphonsus, no. 420 and following.

Those illegitimately born from a public but invalid matrimony because of an impediment unknown to at least one party are not irregular. St. Alphonsus, ibid.

QUESTION. How is irregularity from defect of birth removed?

Reply. It is removed: 1. by the subsequent legitimate matrimony of the parents, as was just said; 2. by religious profession; 3. by legitimate dispensation.

IV. From Defect of Age

1026. ○ 1. Those who have not attained canonical age are regarded as irregular. But this is not irregularity strictly so called, since it ceases when the required age is completed.

2. Those who knowingly receive Orders before canonical age sin gravely.

V. From Defect of Freedom

A defect of freedom arises from a threefold bond, namely, from the bond of servitude, matrimony, and office. Hence:

1. All who are properly called slaves are irregular until they obtain full freedom.

2. Married men are irregular and cannot receive Orders unless their wife consents, vows chastity, and enters Religion, at least if she is young.

3. Those who by office and oath are involved in secular business, such as judges, magistrates, etc., are irregular [1]. See St. Alphonsus, no. 355 and following.

[1] Except if they have a special dispensation of the Pope for those offices, or if custom, with the Pope's knowledge, permits it. St. Alphonsus, book 7, no. 456.

VI. From Defect of Sacrament

1027. ○ By defect of Sacrament in the present case is understood the Sacrament of Matrimony received several times, or bigamy. That bigamists are irregular is evident from Canon Law in the title *On Bigamists*. The reason of congruity is that in bigamy there is lacking a perfect signification of the union of Christ with the Church, which union is altogether simple and not multiple. This is inferred from the Apostle, 1 Timothy 3:2: *A Bishop must be blameless, the husband of one wife.*

Bigamy in Canon Law is of three kinds, namely, true bigamy, interpretative bigamy, and similitudinary bigamy.

1. True bigamy exists when someone successively marries several wives and consummates the matrimony with each.

2. Interpretative bigamy is that by which someone is regarded as a bigamist by interpretation of law, although he has married only one wife. Such is: 1. one who marries and has carnal knowledge of a widow who was carnally known by her former husband; 2. one who marries any woman corrupted by another and consummates the matrimony; 3. one who has carnal knowledge of his own wife after adultery committed by her; 4. one who contracts two marriages, one valid and the other invalid, although in good faith. Indeed, even if both marriages were invalid, one who consummated both with marital affection would become irregular. This is proved from various passages of Canon Law.

3. Similitudinary bigamy occurs when someone contracts matrimony after a solemn vow of Religion or after sacred Order has been received, although the matrimony is null. The reason is that he is deservedly considered to have contracted two marriages, the first spiritual with Christ, the second carnal with a woman. This is deduced from the title *On Bigamists*. See St. Alphonsus, no. 436 and following.

VII. From Defect of Lenity

1028. ○ All who voluntarily, actively, efficaciously, and proximately concur in the death or mutilation of someone, even justly, by an action of its nature ordered to that end, contract irregularity from defect of lenity. See St. Alphonsus, no. 457 and following.

Resolutions. 1. Executioners, judges, and all who cooperate in a judgment of this kind are irregular. Except: 1. compelled witnesses; 2. accusers seeking compensation for their damages.

2. Nevertheless, physicians and surgeons are not irregular, although they amputate limbs or hasten death by remedies given in good faith, unless grave negligence intervenes. St. Alphonsus, no. 385.

3. Nor are Clerics who practice medicine or surgery without incision and cauterization. Indeed, neither are they irregular if they employ incision or cauterization in a case of necessity, for necessity is governed by no law. Indeed, even outside necessity, if the Clerics are not constituted in sacred Orders, provided death or mutilation does not follow. St. Alphonsus, nos. 384, 385.

4. Those who kill an aggressor in just defense are not irregular, because it is not considered a defect of lenity to defend one's own life with due moderation of blameless defense, even with the death of an unjust aggressor.

5. Soldiers do not become irregular in a just defensive war, nor in a just offensive war unless they killed with their own hand; but in an unjust war the whole army becomes irregular even if only one man perishes. St. Alphonsus, no. 474.

VIII. From Defect of Reputation

1029. ○ A twofold infamy is distinguished: 1. infamy of fact, which is contracted before any sentence from the notoriety of some enormous crime or through the practice of a dishonorable occupation; 2. infamy of law, which is contracted in a threefold manner, namely, from a crime noted in law, from the sentence of a judge, and from the crime of parents.

1030. **Questions. - QUESTION 1. What are the crimes to which infamy is attached by law?**

Reply. They are the following: homicide, perjury committed in judgment, simony, sodomy, adultery, the practice of usury, and an attack upon Cardinals or Bishops. Thus from Canon Law. In addition, from Trent, session 24, chapter 6, *On Reformation*, are added the abduction of women, a duel, and the preparation of arms against parents. Nevertheless, irregularity is not incurred unless these crimes are truly notorious; otherwise reputation is not lacking. See St. Alphonsus, no. 362 and following.

QUESTION 2. Are innocent persons irregular who, because of false testimony, were condemned to infamous penalties?

Reply. Affirmatively, until the sentence has been revoked or they have obtained legitimate dispensation; the reason is that in fact they are infamous.

QUESTION 3. Are the sons of executioners irregular?

Reply. Negatively, properly and of itself; nevertheless, it is fitting that they not be promoted to sacred Orders except in another Diocese, lest disgrace redound upon the Church.

Irregularity from infamy of fact ceases when the infamy itself ceases, without dispensation; it is otherwise if infamy of law is in question. See St. Alphonsus, ibid.

Article II. On Irregularities from Delict

1031. ○ Irregularity from delict is incurred on five grounds, namely: 1. from the improper reception of Baptism and from its repetition; 2. from the improper reception and usurpation of Orders; 3. from violation of a censure; 4. from the perpetration of certain enormous crimes; 5. from homicide and mutilation.

These are presented in the following little verse:

Guilty at the font, in sacred things, by censure, by crime, by death.

I. Repetition and Improper Reception of Baptism

1032. ○ Hence the following are irregular:

1. One who at an adult age received Baptism from a declared heretic outside a case of necessity, because he appears to communicate in his error.

2. One who publicly and solemnly rebaptizes; likewise one who knowingly is rebaptized; likewise a Cleric assisting at Baptism conferred a second time. Thus from several passages of Law. See St. Alphonsus, no. 356.

According to Benedict XIV, *On the Diocesan Synod*, book 7, chapter 6, one who culpably, or without just cause, rebaptizes even conditionally becomes irregular. But he himself held this as a private Doctor, against many others, and when he was in minor Orders. Now, certainty is required for contracting irregularity.

Questions. **QUESTION 1. Does one who secretly rebaptizes become irregular?**

Reply. It seems more probably to be denied, because in Canon Law the matter appears to concern only one who publicly rebaptizes. Thus Laymann, Sylvius, etc.

QUESTION 2. Is one who rebaptizes or is rebaptized because of fear irregular?

Reply. Negatively, at least probably, although fear does not remove voluntariness nor excuse from sin. Thus St. Alphonsus, no. 356, etc.

II. Usurpation or Illicit Reception of Orders

1033. ○ 1. Usurpation. Those who solemnly exercise an act of sacred Order which they do not possess are irregular. Probably, however, only Clerics are subject to this irregularity.

2. Illicit reception. Thus those incur irregularity who are ordained furtively, that is, who, not examined nor admitted, by deceit and without the Bishop's knowledge mingle themselves among those being ordained; those who arrange to be promoted by another Bishop without dimissorial letters; those who receive several sacred Orders on the same day; probably also those who are ordained *per saltum*; and finally, those who are ordained by a suspended, heretical, schismatic, or simoniacal Bishop. St. Alphonsus, no. 357 and following.

III. Violation of a Censure

1034. ○ Those who, bound by the bond of some censure, solemnly exercise a sacred Order are irregular, as was already said above. Hence:

1. Not only would a Priest who celebrated Mass while under censure be irregular, but also a Deacon who chanted the Gospel with a stole, etc., and a Priest who compelled one under censure to celebrate.

2. One who, bound by two censures, exercises a sacred Order, incurs two irregularities; and these must be expressed in the petition for dispensation. The same must be said of one who celebrates several times while under the same censure. But it suffices that the petition be expressed in the plural number.

3. A Priest who, suspended from Order, absolves sacramentally is irregular, because absolving also is an act of the power of Order, and not an act of jurisdiction alone, such as would be, for example, an act of excommunicating, approving Confessors, assisting at matrimony, dispensing from vows, etc.

IV. Enormous Crimes

1035. ○ By this appellation are understood heresy and apostasy from the Faith. The supporters, receivers, and defenders of heretics and apostates, and even their sons, also incur this irregularity, chapter *Statutum*, *On Heretics*, in the Sixth. But these crimes, in order to induce irregularity, must be public; hence this irregularity falls back into irregularity from defect of reputation, as St. Alphonsus says, no. 362.

V. Homicide and Mutilation

1036. **Principle.** - Irregularity is incurred from voluntary and gravely culpable homicide, even occult, whether willed directly or indirectly, and perpetrated by an action either physical or moral. The same must be said concerning mutilation.

Mutilation is understood to occur when some principal member is separated from the body, or a part of the body which has an office distinct of itself, for example, a foot, hand, eye, etc.

1037. **Resolutions.** - 1. Those who are the immediate cause of someone's death are irregular, even if they repent before the injured person dies. The reason is that a physical cause operates necessarily. Likewise those who mutilate others or themselves. If someone mortally wounds a man and another kills him, each is truly a homicide.

2. Those giving a command and those giving counsel are irregular if the effect followed from the counsel or command. Except if they revoked the command before its execution and the revocation became known to the mandatary. St. Alphonsus, no. 371.

3. Likewise those cooperating so that a homicide is committed more quickly, boldly, or securely. Thus the following become irregular: 1. those who mutually incite one another, although only one kills; 2. all fighting in an unjust war, if anyone perishes there; 3. those who furnish arms or money for a homicide; 4. all unjust accusers, judges, and witnesses.

4. Likewise those consenting, if the consent effectively influenced the homicide. Hence one who approves a homicide, even one committed in his name or gratuitously, is not irregular, because he did not influence it.

5. Those who apply themselves to a licit matter, sufficient diligence having been employed lest homicide occur, do not become irregular. Hence the following are not irregular: 1. those who commit accidental homicide, unless gravely culpable negligence intervenes; 2. those who in good faith furnish a sick person with some harmful food or drink, or who, by moving or turning him, are the cause of his death; 3. physicians who have given a deadly medicine to the sick, provided they are skilled or act in good faith. Except, however, Clerics in sacred Orders who perform an incision or cauterization outside a case of necessity. See St. Alphonsus, no. 384.

1038. **Questions. - QUESTION 1. Does one incur irregularity who, while applying himself to an illicit matter, kills someone, for example, if a Cleric while hunting accidentally kills a man?**

Reply. More probably, negatively. The reason is that the homicide is voluntary neither in itself nor in its cause; for the work undertaken, although illicit of itself, is not of itself death-dealing. It would be otherwise if, by reason of the circumstances, a proximate danger of death were brought upon someone, for example, if someone set fire to a cannon where there was a crowd of people. St. Alphonsus, no. 387, etc.

QUESTION 2. Does one become irregular who kills another in defense of his own life or that of an innocent person?

Reply to the first. Negatively, unless he exceeds the moderation of blameless defense. The reason is that he is guilty of no fault. This is further confirmed from Canon Law. Consult St. Alphonsus, no. 388.

Reply to the second. Negatively likewise. The reason is that irregularity from private homicide is not incurred except with mortal sin, as is gathered from chapter *Ex litteris, On Homicide*. Thus St. Alphonsus, no. 388, etc.

1039. ◦ **QUESTION 3. Does one become irregular who kills another in defense of liberty, honor, or temporal goods, with the moderation of blameless defense?**

Reply. Negatively, according to the more common opinion. This appears to be proved from Canon Law. Moreover, since no sin is present there, irregularity cannot be incurred except from defect of lenity; but irregularity from defect of lenity is not incurred except in cases expressed in law, and the present case is not found in law. Therefore, etc. St. Alphonsus, no. 389.

QUESTION 4. Is one to be regarded as irregular who doubts whether he committed a homicide or not?

Reply 1. Negatively, when it is not established that the homicide was committed, or if there is doubt concerning the homicide itself, whether it followed or not. The reason is that a penalty is not to be inflicted unless the delict itself is established. Thus commonly. St. Alphonsus, no. 347.

Reply 2. Affirmatively, however, if it is established that a homicide was committed and the only doubt is whether you were its cause by your action. The reason is that, although irregularity generally ought not to be incurred in doubt, nevertheless in the present case it is to be incurred by the provision of Canon Law, because of the special odium which homicide merits. This is evident from chapter *Significasti* and chapter *Ad audientiam*, etc. St. Alphonsus, no. 347.

1040. ◦ **QUESTION 5. Is one irregular who doubts whether he influenced the mutilation of another, the fact of the mutilation being established?**

Reply. Negatively. The reason is that the law imposed irregularity for doubt concerning homicide alone. St. Alphonsus, no. 347.

QUESTION 6. Is one to be regarded as irregular who procured an abortion while doubting whether the fetus was animated or not?

Reply. Negatively. The reason is that then homicide is not properly established [1]. St. Alphonsus, ibid. See what was said in the Treatise on the Fifth Precept of the Decalogue, nos. 402 and 403.

[1] It was observed elsewhere, volume 1, no. 402, Note, page 382, that the hypothesis of an inanimate fetus is now scarcely, if indeed scarcely at all, admitted. Hence this question, as resting upon a hypothesis now already antiquated, becomes useless.

End of the Treatise on Irregularities.

Appendix. On Indulgences and the Jubilee

Chapter I. On Indulgences

1041. ○ Indulgence, as the word itself indicates, is the same as favor, condonation, mercy, remission. For an indulgence is the condonation of the penalty due to sins through the application of the satisfactions of Christ and the Saints; for Christ our Savior offered His satisfactions to God the Father for the full remission of our sins. These satisfactions of infinite value, to which are also added the satisfactions of the Blessed Virgin and the superabundant satisfactions of the Saints, are called the treasure of the Church, in which we participate through Indulgences.

Definition. An indulgence is the remission of temporal penalty due to God for sins remitted as to guilt, granted by a legitimate minister outside the Sacrament of Penance through the application of the treasure of the Church.

Division. An indulgence is distinguished in manifold ways:

1. Plenary or partial, insofar as the whole temporal penalty is remitted, or only a part of it.

2. Personal, local, or real, insofar as it is granted immediately to persons, for example, to a Confraternity; or is attached to some place, for example, a Church, Oratory, etc.; or is joined to some thing, for example, an Image, Cross, Rosary, etc.

3. Temporary or perpetual, insofar as it is granted for a determinate time or without any prescribed term.

1042. **Principles.** - I. The Church has true power to grant Indulgences. This is of Faith against the Protestants. For Christ, as is evident from Sacred Scripture, gave the Church full power of binding and loosing, both in the internal forum and in the external spiritual forum. Thus Christ Himself said to Peter, Matthew 16:19: *Whatsoever thou shalt bind upon earth, it shall be bound also in heaven; and whatsoever thou shalt loose upon earth, it shall be loosed also in heaven.* Therefore He gave Peter, that is, His Church, the power of loosing whatever is bound, and therefore also the power of freeing from the penalty due to sins. To this is added the definition of the Council of Trent, session 25, Decree *On Indulgences*, where those who assert either that they are useless or that the Church lacks the power to grant them are condemned by anathema. It is further evident from the universal tradition and perpetual practice of the Church.

1043. ○ II. The Prelates of the Church alone have the power to grant Indulgences. For this faculty can belong only to those who have power over the mystical body of Christ and who can dispense the treasure of the Church.

Hence:

1. The Pope alone can grant Indulgences with respect to all the faithful, for he alone has jurisdiction over all the faithful. Suarez; Lacroix, no. 1317.

2. Bishops can indeed by common law grant Indulgences to their Diocesans. But their power is so restricted by the Decree of the Fourth Lateran Council, canon 62, that ordinarily they can grant only Indulgences of forty days, and on the day of the consecration of a Church, of one year.

3. A delegate can grant the same Indulgences as the one by whom he was delegated [1]. The reason is that acts of jurisdiction can be exercised through delegates, as is acknowledged by all.

[1] Understand this according to the measure which the delegating person has prescribed for the delegate.

4. Cardinals can grant Indulgences of one hundred days in the Churches of their titles; Nuncios, however, can grant to their subjects Indulgences of one hundred, two hundred, or three hundred days, but of less than one year. Lacroix, no. 1322.

5. Prelates inferior to a Bishop cannot grant any Indulgences; neither can Vicars General, except by express delegation of the Bishop; nor Capitular Vicars while the See is vacant; much less can Pastors. Lacroix, no. 1323.

1044. ○ III. Four things are required in the subject for gaining Indulgences:

1. That he be baptized, because the treasure of the Church cannot be dispensed to infidels; and that he not be excommunicated, because otherwise he is deprived of the communion of spiritual goods.

2. That he be a subject of the one granting [2], as is evident from what has been said.

[2] Nevertheless, travelers are not excluded from Indulgences which have been granted generally in some place to those visiting a Church, altar, image, etc. Marchant, apud Diana, tome 4, tract 5, resolution 50, no. 4.

3. That he fulfill the works enjoined within the prescribed time, because Indulgences are granted under this condition.

4. That he be in the state of grace, at least when he performs the last prescribed work, because the penalty is not remitted unless the guilt has been remitted. St. Alphonsus, no. 433, etc.

1045. **Questions. - QUESTION 1. Is the grant of an Indulgence made without cause valid?**

Reply. Negatively. The reason is that the Prelates of the Church are only delegates of Christ for dispensing the treasure of the Church. But Christ cannot ratify the lavish distributions of His treasure made by prodigal dispensers. Furthermore, it does not belong to the faithful, nor to simple Priests, to judge concerning the sufficiency of the cause for which an Indulgence is granted; for they ought simply to judge it to be just. St. Alphonsus, book 6, no. 532, etc.

QUESTION 2. Is venial sin an obstacle to gaining an Indulgence?

Reply. Negatively, unless the matter concerns an altogether plenary, or most fully plenary, Indulgence. The reason is that although the penalty due to this sin cannot be remitted, nevertheless the penalty due for other sins already blotted out can be remitted; for just as it is not repugnant that the guilt of some venial sin be remitted without the guilt of others being remitted, so neither is it repugnant that

the penalty of remitted venial or mortal sins be blotted out, although the penalty for one or more venial sins remains to be discharged. Thus St. Alphonsus, book 6, no. 534, etc.

1046. ○ **QUESTION 3. Can an Indulgence which is granted as PLENARY be obtained at least PARTIALLY if there is an obstacle preventing it from being obtained in its entirety, for example, an attachment to some venial sin?**

Reply. Affirmatively. The reason is: 1. because, from what was said in the preceding question, some unremitted venial sin does not prevent the penalty due for other sins from being remitted; 2. because the Supreme Pontiff, in granting a plenary Indulgence, is not presumed to will to restrict it only to those to whom all venial sins are remitted, but rather is deservedly considered to grant it according to the capacity of the subject, so that at least the penalty which can be remitted is remitted, namely, the penalty of remitted sins. For otherwise plenary Indulgences would often be of no benefit, since the faithful rarely cast off every, even the least, attachment to any venial sin and conceive sufficient sorrow for all venial sins in such a way that they obtain the remission of all. Hence it would come about that partial Indulgences were preferable to plenary ones, which is repugnant to common sense. St. Alphonsus, book 6, no. 534.

Nevertheless, some teach that a plenary Indulgence is not granted except plenarily or most fully, as they say, so that it must obtain either the whole effect or none. But this opinion does not appear probable.

1047. ○ **QUESTION 4. What is understood by Indulgences of ten or fifteen days, years, forty-day periods, etc., etc.?**

Reply. According to the common opinion, there is to be understood a remission of as much penalty as formerly was remitted, or would have been remitted, through canonical penance of the same duration. Thus, for example, through an Indulgence of seven years, as much penalty is remitted as was remitted through a penance of seven years customarily imposed according to the ancient Canons. But how much canonical penances availed before God, and how much partial Indulgences of so many days or years now avail, is altogether unknown to us, because we do not know what proportion our satisfactions bear to the penalty due to our sins. Thus commonly.

QUESTION 5. Does one gain Indulgences who does not completely perform the work prescribed for them?

Reply 1. Negatively, if he omits a notable part of the work, such that according to moral estimation he does not perform it as to its substance; because he is not considered simply to satisfy the required conditions.

Reply 2. Otherwise, if he omits a very small part, because then the prescribed work is considered to be performed morally, or as to its substance. But a very small part must be taken relatively. Thus, in the Rosary, omission of one *Pater* and *Ave* seems very small; but it is otherwise if five *Paters* and *Aves* are required, because omission of a fifth part of the work is notable. Thus St. Alphonsus, book 6, no. 534; Voit, no. 658, etc.

1048. ○ **QUESTION 6. Can Indulgences be applied to the deceased, and how?**

Reply 1. They can be applied if the following two conditions are present: 1. that they be specially granted in the Rescript of the Pontiff as applicable to them; 2. that there be an intention of making such an application. Thus all; Suarez, disputation 53, section 4.

Reply 2. Nevertheless, an Indulgence cannot be applied to the deceased by way of absolution, but only by way of suffrage, namely, by beseeching God that He may benignly will to accept such an application and apply it to the souls in Purgatory. The reason is that the Pontiff does not have jurisdiction over the souls of the deceased. Hence he cannot absolve them from penalties as though by a sentence. Thus Lacroix, no. 1336; Lugo, disputation 27, no. 58.

1049. ○ **QUESTION 7. Does an Indulgence infallibly benefit the souls in Purgatory to whom it is applied?**

Reply. It is disputed.

FIRST OPINION. It affirms. The reason is that Christ gave the Church infallible power by these words: *Whatsoever thou shalt loose...*, etc. But the grant of an Indulgence for the deceased is truly an act of the keys, since it proceeds from Apostolic authority; and a key always opens when the requisite conditions have been met. Therefore, an Indulgence is always efficacious and infallible for the deceased as well as for the living, provided the requirements are present. Thus Suarez.

SECOND OPINION. It denies. The reason is that there is no divine promise by force of which God is considered certainly to accept an offered Indulgence. Hence He appears to admit it for application according to His good pleasure alone. Moreover, the Church maintains the practice of celebrating Masses for many years and for the same souls, for example, anniversary Masses, even at privileged altars, or altars to which the privilege of a plenary Indulgence adheres. But that practice would be empty if they were freed immediately by the first Mass applied to them. St. Alphonsus, no. 534; Billuart, Appendix, article 6.

It is certain, however, that Indulgences benefit the deceased at least for the most part; for otherwise the Church would do something useless in applying them to the deceased, which certainly cannot be said without impiety.

1050. ○ **QUESTION 8. Must a special application be made to certain determinate souls, or does a general application suffice?**

Reply. A general application made to all the souls dwelling in Purgatory suffices, because suffrages are divisible and therefore can be distributed to all souls. This is further clear from the practice of the Church, which commands Masses to be celebrated for the deceased in general, especially on the second day of November. Likewise, when collections are made in Churches for the souls in Purgatory, the Masses to be celebrated from them must be applied for all in general. But if someone wishes to restrict his application, he must then specially determine certain souls. It is a pious practice by which Indulgences are applied to the souls needing greater assistance [3]. Furthermore, let each follow his own devotion.

[3] Piety is never lacking in any work by which the souls in Purgatory are aided. Furthermore, piety seems to shine forth more if, with the order of charity preserved, greater help is given to the souls of those to whom we owe more under some title.

QUESTION 9. Is the state of grace required for gaining an Indulgence for the deceased?

Reply. There are two probable opinions:

FIRST OPINION, the more common [4]. It affirms, because no one can apply an Indulgence to another unless he first makes it his own; but one who remains in the state of mortal sin cannot make Indulgences his own. Therefore, etc. St. Alphonsus, book 6, no. 534, calls this opinion more probable.

[4] But Naldus, *Summa*, word *Indulgence*, no. 7, says that the negative opinion is more received; and those who prefer it certainly judged it more probable.

SECOND OPINION. It denies, because the work is performed only as a condition upon which, once it is fulfilled, the Supreme Pontiff applies the Indulgence, or the satisfactions of Christ and the Saints, to the deceased [5]. Billuart, Suarez, Navarre, Toledo, Praepositus, etc.

[5] According to Toledo, the reason is that the cause of satisfaction, or the price of the penalties, is not the work of the one who is in sin, but the Indulgence itself and the treasure of the merits of Christ and the Saints. But that particular work through which the Indulgences are applied is done in the name of the Church, in which grace is never lacking. An example is at hand in one who gives alms and sends them through the hands of a man existing in mortal sin; for the fruit of the alms is not lost from the fact that the one who executes the work is in sin. See Diana, tome 4, tract 5, resolution 36.

The VV. here object, page 948, no. 164, to the first opinion the words of St. Alphonsus, book 6, no. 534, at Busembaum's resolution 10: *This seems truer to me with Wigandt, because no one can apply an indulgence to another unless he first makes it his own.* Then, ibid., they add in a Note: *When St. Alphonsus calls some opinion truer, he no longer regards the other as probable.*

Reply 1. St. Alphonsus did not say here that this opinion *is truer*, but, *this seems truer to me*; and the word *seems* is that of one opining, while opinion signifies assent with prudent fear concerning the opposite. 2. The names of Toledo, Suarez, Navarre, etc., for several others may be seen cited in Diana, both loc. cit. and tome 4, tract 1, resolutions 4 and 5, can bring it about that, with the reverence due to the Holy Doctor Alphonsus preserved, it is lawful without the note of temerity to doubt concerning this judgment of his, or better, opinion; especially since the authors of the opposite opinion easily answer the reason adduced by Wigandt by denying the supposition, namely, as though in the case the faithful first gain an Indulgence for themselves, or make it their own, and then yield or apply it to another. For from the fact that the Church herself thus applies the merits of Christ and the Saints, and that the work enjoined to the faithful is something like a condition, it is also argued therefrom that no one has considered it to be within our power to apply Indulgences to another living person; although, if someone truly makes Indulgences his own, no reason appears why he cannot yield them to another living person, or why the authority of the Church is necessary for applying Indulgences to the deceased, which authority is not necessary for anyone to apply to the deceased the satisfactory merit of fasts, alms, mortifications of the flesh, etc.

The first opinion is to be recommended as safer. Therefore the faithful are to be urged most strongly that, whenever they find themselves guilty of grave sin, they take care to be reconciled with God before they endeavor to make satisfaction for others [6].

[6] The care of bringing it about that the faithful are reconciled with God is certainly excellent. But care must be taken at the same time lest, while a reason of this kind is urged more fervently than is fitting, an effect altogether contrary to the desire of the preacher should follow and souls be deprived of the suffrages of very many. Diana cries out to the contrary, loc. cit.: *No one is excused when some indulgence is applied by the Supreme Pontiff to the deceased by way of suffrage if they do not take it for them. For, as was said, both the just and sinners can obtain it for the deceased.*

1051. ○ **QUESTION 10. Are CONFESSION and ABSOLUTION, even from venial sins, required for gaining Indulgences which are granted with the clause: CONTRITE AND CONFESSED?**

Reply 1. Confession is certainly required notwithstanding the state of grace. The reason is that although confession is then not necessary for the remission of sins, nevertheless it is required as a condition, or a prescribed work. This is evident from the Decree of the Sacred Congregation of

Indulgences approved by Clement XIII on 19 May 1759. Hence the probability of the opposite opinion, which formerly was defended by many theologians, falls. Confession can, however, be made on the vigil of the day on which the Indulgence is to be gained. Thus the same Congregation established. See St. Alphonsus, no. 534, etc.; Bouvier.

Reply 2. Absolution, however, is not required. This is evident from a recent Declaration of the Sacred Congregation of Indulgences on 15 December 1841. See the work of Father Antonin Maurel entitled *Le Chretien eclaire sur la nature et l'usage des Indulgences*, page 64. This work was approved by a special decree of the Sacred Congregation of Indulgences.

1052. ○ **QUESTION 11. Is confession required as often as a plenary Indulgence is to be gained?**

Reply 1. It is not required with respect to all plenary Indulgences, for there are several Indulgences for the gaining of which no confession is required. Such are the Indulgences granted for the exercise of the Way of the Cross.

Reply 2. It is required with respect to most plenary Indulgences. This is proved from the Rescripts of many grants.

Nevertheless, by a special indult granted in perpetuity, the faithful who are accustomed to confess once a week can gain all plenary Indulgences occurring during the week, provided they remain in the state of grace. Thus from the Decree of Clement XIII, 9 September 1763; and it is also confirmed by the Decree of the Sacred Congregation of Indulgences, 15 November 1841.

Indeed, not a few Bishops, especially in France, obtain from the Roman Curia an extension of this privilege to every other week, or to those who confess twice a month.

Likewise, according to a Decree of the Sacred Congregation of Indulgences approved by Pius VII on 12 June 1822, the faithful who are not accustomed to confess every week can make the confession necessary for gaining an Indulgence on a feast day eight days before the feast.

1053. ○ **QUESTION 12. Can someone gain DIFFERENT Indulgences, or THE SAME Indulgences several times, on the same day?**

Reply 1. As to different Indulgences, the faithful generally can gain them, at least if they are partial and attached to different works, or to the same works which can be repeated several times in a day. Thus commonly the Theologians, and this is confirmed by the practice of the Church and of the faithful.

Reply 2. As to the same Indulgences, this depends upon the mind of the Pontiff granting the Indulgences. Hence attention must be given to the letters of grant; and if these determine nothing, one must stand by the common interpretation and practice of the Church.

Thus the Indulgences of stations, or of the visitation of a Church, cannot be obtained several times on the same day, as is evident from a Decree of the Sacred Congregation of Indulgences approved by Innocent XI. Voit, no. 653; Lacroix, no. 1370. On the contrary, it is lawful to gain several times in a day the several Indulgences attached to the Rosary and to each of its parts, or to the recitation of the acts of Faith, Hope, and Charity, etc., because in the Rescript of the Pontiff it is said: *as often as*.

QUESTION 13. Can someone gain several Indulgences by the same act or work?

Reply 1. Affirmatively, if the prescribed work cannot or is not customarily repeated on the same day, such as fasting, Communion, etc., and different Indulgences to be gained concur, for example, Indulgences of different Confraternities, or those attached to different Churches, granted under different titles and on the same day.

Reply 2. Negatively, however, if the Indulgences concur under the same title, for example, if someone has two medals, to each of which an Indulgence of one year has been granted with the burden of repeatable works; for then several Indulgences cannot be obtained together at the same time unless the enjoined works are repeated, because such is considered to be the mind of the one granting when he enjoins works which can be repeated. Thus with Voit, no. 655, etc.

1054. ◦ **QUESTION 14. Can several plenary Indulgences be acquired on the same day?**

Reply 1. No one can gain a second Indulgence at the same time if, after the first, no penalty to be discharged any longer remains [7].

[7] The reasons which were adduced by both parties to the dispute, see reply 2, manifestly show that those things which are said in this first response do not pertain to the matter.

Reply 2. Otherwise, affirmatively. This is proved by a recent Decision of the Sacred Congregation [8]. Formerly it was disputed in the Schools. Some denied it, at least for the most part, because Communion, which is generally customarily prescribed for gaining an Indulgence, cannot be repeated on the same day. Others affirmed it, because Communion was not imposed as a work to be fulfilled, but rather as a condition necessary for gaining the Indulgence. But with the aforesaid Decision intervening, the entire dispute has been removed.

[8] To the question, ***Can several plenary Indulgences be gained on the same day when the reception of the divine Eucharist is prescribed for each?*** the Sacred Congregation replied: *Affirmatively, provided, however, that the other conditions imposed respectively are observed.* 27 May 1841.

1055. ◦ **QUESTION 15. Is an intention required for gaining Indulgences, and if so, what kind?**

Reply 1. An intention at least virtual is certainly required whenever an Indulgence is granted with a certain intention to be formed by the recipient; otherwise it would be null.

Reply 2. In other cases it is disputed.

FIRST OPINION, which seems more probable, teaches that a positive intention, at least virtual, is required. The reason is that the prescribed work must be directed to the end intended by the Church; but one who does not at least virtually intend to gain the Indulgence cannot accomplish this. Thus Billuart, Appendix on Indulgences, article 5. This, however, must be understood only when the matter concerns an end expressly prescribed by the Church.

SECOND OPINION. It holds that a habitual intention suffices. The reason is that of itself no intention is required; for the effect of the Indulgence, or the remission of penalty, depends wholly upon the grant of the Church and not upon the intention of the agent. Hence, although he conducts himself passively and does not attend to the Indulgence, indeed, does not know that he is gaining it

when it accrues to him, nevertheless he obtains a right to it. For an Indulgence is granted by the Church by way of payment for the work performed; but for the validity of a payment it is not necessarily required that the one for whom it is made know of it.

In practice the former opinion seems to be recommended as safer and more efficacious for exciting pious movements of the soul. From another consideration, the use of probability does not avail in the matter of Indulgences [9], since not probability, but truth produces the effect. Furthermore, it is commonly admitted that an intention formed in the morning suffices for gaining all the Indulgences occurring during the day. Praiseworthy and most useful is the practice of pious souls who always renew in the morning the intention of gaining all the Indulgences attached to the good works which they will perform on that day. Lacroix, etc.

[9] Others will easily deny this. For it is a very well-known principle that, whenever probable opinions concerning matters situated within the power of the Church are advanced and put into practice, she supplies, wherever there is need, that which pertains to the validity of acts. Now in the present matter, see Diana, tome 4, tract 5, resolution 18, both parties to the dispute have recourse to the mind and will of the Roman Pontiff granting the Indulgences. For those who contend that the performance of the work does not suffice give as their reason that such does not appear to be the intention of the Pope; and conversely those who contend that the performance of the work suffices prove this because it is not to be thought that the Supreme Pontiff requires in one gaining an Indulgence an actual intention, actual being opposed to habitual and interpretative, because neither does the nature of an Indulgence necessarily demand it, nor do the words of the grant signify it, etc. See Laymann, book 5, tract 7, chapter 6, no. 5.

Furthermore, the reason adduced for the first opinion, as the Author says it is to be

1056. ◦ **QUESTION 16. If a faculty is granted to commute the works enjoined for gaining Indulgences, must the commutation necessarily be made in confession?**

Reply. Affirmatively. For one must stand by the rule handed down by Benedict XIV, Constitution *Inter praeteritos*, section 63, where he establishes that commutations of this kind must be made in confession alone.

For, after recalling the controversy concerning the commutation of vows, absolution from censures, and the power of dispensing in other matters, or of commuting the prescribed works, namely, whether all these things must be done by the Confessor in the act of sacramental confession or not, he concludes thus: *But We, in order to remove every difficulty, have enjoined in the instruction*, Constitution *Convocatis, that no absolutions, commutations, or dispensations can be given by penitentiaries outside the act of sacramental confession. This has seemed to Us both congruous and fitting to the gravity of the matter and the quality of the ministry; it removes every occasion of controversy and is conformable to the practice of Our Apostolic Penitentiary* [10].

[10] Benedict XIV, as is clear, speaks here of faculties granted and of the manner of using them on the occasion of the Jubilee of 1750; he does not establish a general law. Hence, in the Instruction which he had handed down in the Constitution *Convocatis*, and which he expressly indicates in this place, he imposed for the use of the granted faculties not only this condition but other conditions at the same time, which surely no one has judged should be held as general laws. *Let them understand*, he says in sections 24 and 25, *that they cannot use peculiar faculties of this kind granted to them by Us, as above, for this Holy Year, except with those penitents who sincerely and seriously will to obtain the present Jubilee of the same Holy Year... Let them further observe that the aforesaid absolutions, commutations, and dispensations cannot be exercised by them outside the act of sacramental Confession, NOR OUTSIDE EACH ONE'S OWN BASILICA OR CHURCH....* Therefore let us conclude that commutations, etc., must necessarily be made in Confession only when a condition of this kind is expressly provided in the grant of the faculty.

1057. ○ **QUESTION 17. Can deaf-mutes gain Indulgences to which vocal prayers are attached, and if so, how?**

Reply. Formerly they could not gain these Indulgences, since they could not satisfy the required conditions. But by the benign understood, leads rather to the second opinion. For he establishes that only that end must be intended which the Church expressly prescribes. But the Church certainly has never expressly prescribed that the faithful have the intention of gaining an Indulgence. Therefore. But if the Church sometimes prescribes that the faithful pray for this or that end, for example, that God may deign to humble the enemies of Holy Church, this pertains to the work enjoined, not to the intention of enjoying the gain of the Indulgence. Hence it can happen that someone directs prayers to that end, but neither thinks nor knows anything concerning the gain of the Indulgence. grant of Pius IX on 15 March 1832, they can enjoy this benefit, provided they observe the following: 1. if some Church is to be visited, it will suffice if, in approaching it, deaf-mutes pray to God in mind and affection; 2. if public prayers are to be offered, nothing else is required of them except that they unite themselves with the assembled faithful with a pious mind; 3. if private prayers are to be recited, they can obtain from a Confessor a commutation into any other pious works. See the newspaper *L'Univers*, 1 February 1854; *L'Ami de la Religion*, 2 February 1854.

1058. ○ **QUESTION 18. Are Indulgences lost if a movable thing to which they are attached is handed over to another?**

Reply 1. Affirmatively, if ownership of that thing is transferred to another. The reason is that the Church intends to grant the Indulgences only to the person for whom some thing was blessed, or to the first person who uses it. The Church most wisely established this to forestall abuses which otherwise would creep in if Indulgences could be transferred and given from one person to another.

Reply 2. Negatively, however, if ownership of the thing is not transferred by the handing over, that is, if the thing is delivered to another only on loan, provided nevertheless that the lender does not intend to grant the borrower the benefit of the Indulgence. This is proved from the Decision of the Sacred Congregation, 26 November 1714. Gousset, no. 906, etc.

QUESTION 19. To what things can Indulgences be applied?

Reply. Indulgences can be applied to any solid things whatsoever, not even iron or wood being excepted, as formerly. Even a chaplet made of solid glass can be blessed with the Indulgences attached. Therefore, only things which can easily be broken or torn, such as paper, blown glass, etc., must be excepted. This is evident from a recent Decision of the Sacred Congregation of Indulgences. Father Maurel, work cited, page 184.

1059. **Resolutions.** - 1. A Bishop can grant Indulgences to his subjects staying outside his Diocese, because he has personal jurisdiction over them. Bishops, however, can grant Indulgences only by way of absolution, and therefore for the living alone. Thus commonly.

2. Anyone can gain Indulgences for any other living Christian by way of payment or satisfaction; for although the fruit of merit is not applicable to another, nevertheless the fruit of satisfaction is applicable, provided that the other person is in the state of grace. But for this a special intention of gaining the Indulgence determinately for that person is required. The application

of satisfaction can be made for one who is ignorant, does not request it, or is absent, etc. Thus Suarez, Lugo, Lacroix, no. 1327, etc. [11].

[11] Croix does not assert that absolutely anyone can, at his own discretion, apply to any other living Christian those Indulgences which he himself can gain; rather, as is evident from the following no. 1329, book 6, part 2, he admits this when the Pope has expressly granted that some Indulgence can be applied to another living person, as is customarily done for the deceased; this, however, is not customarily done.

Suarez also supposes the same thing, writing thus, *On Penance*, disputation 52, section 8, no. 6: *If the form of the Indulgence is only that one who does this or that obtains such a remission, then the Indulgence cannot be applied to another, because an Indulgence effects no more than it expresses. Hence, just as it does not extend beyond the quantity expressly granted, so neither does it extend beyond the persons expressed. Likewise... because an effect granted ex opere operato in favor of one who performs such a work can never be applied to another by that person's will unless this very thing is expressed in the grant, because it is as it were a personal privilege.... But if the very form and tenor of the Indulgence is expressed such that the one acting thus can obtain such a fruit either for himself or for another, then there is no doubt that one can act for another to gain that Indulgence.*

Lugo speaks thus concerning the same matter, *On Penance*, disputation 27, no. 77: *A just man could, from the same faculty of the Pontiff, gain an Indulgence for other baptized persons, whoever they might be. Commonly, however, the faculty of gaining an Indulgence for other living persons is not granted, because, since they themselves can also assist themselves, it is not expedient to foster their sloth, so that they take care neither to make satisfaction nor even to gain Indulgences for themselves.*

3. Indulgences attached to some thing are not lost unless that thing has been completely changed so that it can no longer be called the same thing; for example, if a Church were entirely or almost completely demolished, the Indulgences adhering to it would cease. They are not lost if it is totally renewed through successive repairs, since it would remain morally the same. Therefore, neither does a chaplet which is successively repaired lose its Indulgences, although its beads have from time to time been completely renewed in parts. Gousset, no. 905.

4. Indulgences do not expire by the death of the one granting, since they are favors, nor before knowledge of their revocation. Indulgences are to be accepted as they read; nevertheless, since they are favors, they are to be interpreted broadly, while the proper meaning of the words is nevertheless preserved. Hence they are to be considered perpetual if they were given without a restriction of time. St. Alphonsus, no. 524.

1060. ○ 5. An Indulgence granted for the point of death does not require the application of a Confessor or the ministry of another. Nevertheless, it is expedient that the dying frequently invoke the names of Jesus and Mary and that the gaining of the Indulgence be recalled to their minds.

6. If a dying person has several blessed Images, Crosses, Medals, or Rosaries, he can gain an Indulgence *toties quoties*, as often as he repeats the name of Jesus or performs the required work, at least more probably, whether the Indulgences proceed from the same grant or from different grants. Nevertheless, any time during which the point of death is verified suffices for gaining them, even if death follows only several days afterward. Thus St. Alphonsus, ibid.; Suarez, etc. Dying persons can likewise gain several Indulgences under the title of various Confraternities, even if they are ignorant of them or do not remember them. St. Alphonsus, ibid.

7. It is required, however, that the dying person have with him the things to which the Indulgences are attached, namely, Rosaries, Crosses, etc. Nevertheless, it is not necessary that he have these suspended from his neck or wrapped around his arm, as is customary to be done for the deceased, or grasped in his hand; but it suffices that these things be in the bed or suspended near the dying person, although he neither sees nor touches them, nor knows or remembers that he has them. St. Alphonsus, no. 534.

8. Although it is expedient that all the works be performed in the state of grace, nevertheless this is not necessary according to the common opinion; rather, it suffices that the last work be performed in grace. St. Alphonsus, ibid.

Chapter II. On the Jubilee

1061. ◦ According to many, the word Jubilee is derived from the Hebrew *iobel*, which signifies fiftieth, because among the Hebrews the year of Jubilee recurred in the fiftieth year; or, according to others, from the same word signifying the sound of a trumpet by which the fiftieth year was announced. According to still others, Jubilee is derived from *iubal* or *iobal*, which signifies to sprout, because in the fiftieth year the land was not cultivated and the inhabitants fed upon fruits springing up spontaneously.

In imitation of the Jubilee of the Old Testament, the ecclesiastical Jubilee was instituted, which is now celebrated at Rome and throughout the world with a most full indulgence of sins, great joy, and solemnity. After its first institution by decree of Boniface VIII in the year 1300, it was held every fiftieth year; by decree of Urban VI, however, every thirtieth year; finally, by the statute of Paul II, it began to be celebrated every twenty-fifth year.

1062. **Definition.** - A Jubilee is a solemn plenary Indulgence which the Supreme Pontiff sometimes grants to all the faithful with the obligation of performing certain pious works, at the same time giving Confessors a special power of absolving from reserved sins and censures and of commuting most vows.

Hence a Jubilee differs only accidentally from an ordinary plenary Indulgence, namely, by reason of the solemnity and the privileges attached to it, and also by reason of the most abundant and extraordinary graces which accompany it. For the marvelous and astounding effects which a Jubilee is accustomed to produce demonstrate these altogether special graces, even if solemn assemblies of the faithful are not held and the divine word is not preached.

1063. **Division.** - A manifold Jubilee is distinguished:

1. A greater Jubilee, which regularly occurs every twenty-fifth year, which is called a Holy Year. It is also called an ordinary Jubilee because it is fixed and determined by law.

2. A lesser Jubilee, which is customarily granted by individual Supreme Pontiffs after the elevation of each and in other particular circumstances, and is called an extraordinary Jubilee.

3. General, which is granted to the whole world, as the greater Jubilee always is, and sometimes also the lesser Jubilee; but it is customarily granted to the City, or to Rome alone, before it is granted to the world.

4. Particular, which is granted to some province, city, or particular place, such as the most celebrated Jubilee granted to the Church of Anicium whenever the feast of the Annunciation of the Blessed Virgin falls upon the sacred day of Parasceve.

An entire year is ordinarily granted at Rome for gaining the greater Jubilee, and in the following year it is customarily granted by extension to all other regions of the Christian world. But only fifteen days

or three weeks are granted to individual parishes for gaining the Jubilee. Nevertheless, the Bishop can for just causes prolong that time. The lesser Jubilee is also first held at Rome, but for a few weeks, and then is extended to the whole world, so that during the course of the year it can be held for a time to be determined by the Bishop.

Conditions Required for the Jubilee

1064. ◦ I. For a general Jubilee, whether greater or lesser, the following conditions are required: 1. a fast of three days, Wednesday, Friday, and Saturday; 2. some alms according to the means of each; 3. visitation of Churches, praying piously for the intention of the Supreme Pontiff. Formerly it was placed in the Indult: *Those who have taken part in the procession or have visited the Churches.* Now a procession is not enjoined as a condition of the Indulgence. 4. Confession of sins performed with sincere sorrow. 5. Communion made in the state of grace. Thus from many Constitutions, especially that of Benedict XIV, Bull *Inter praeteritos*, 3 December 1749, for the Jubilee of the Holy Year. See the compendium of this Bull in St. Alphonsus, no. 536.

II. For a particular Jubilee, attention must be given to the tenor of the Indult granted; ordinarily only three things are required, namely, confession, Communion, and visitation of some Church.

1065. **Questions. - QUESTION 1. Can children, the elderly, the sick, or others who cannot fast gain the Jubilee without fasting?**

Reply. Negatively, unless they obtain a commutation of the fast into another work. The reason is that fasting is expressly prescribed as a condition for gaining the Indulgence. For it is not enjoined as a precept from which necessity excuses, but is assigned as a counsel with the promise of an Indulgence. Confessors approved for the Jubilee, however, enjoy the faculty of a commutation of this kind. Thus Laymann, book 5, tract 8, chapter 8, no. 12; Voit, no. 663.

QUESTION 2. Can the enjoined fasts be satisfied through fasts otherwise due, for example, if the Jubilee is held during Lent or the Ember Days?

Reply. Of itself, negatively, with St. Alphonsus, book 6, nos. 536 and 538. The reason is that by one payment a double burden cannot be satisfied, and the Pontiff, when he imposes a fast, always intends to impose a special obligation concerning a matter not yet commanded.

Nevertheless, if the Pontiff determines, or permits to be determined, for gaining the Jubilee a time in which a fast must already be observed by precept of the Church, such as the time of Lent or the Ember Days, by that very fact he is considered to dispense the faithful from the obligation of obtaining a commutation of the fast into another work. St. Alphonsus, no. 536. This doctrine is confirmed by a recent Decision of the Sacred Penitentiary [1].

[1] Questions proposed to the Sacred Penitentiary on the occasion of the Jubilee granted by Pius IX in the year 1863:

1. Whether Bishops who determine the time of Lent for gaining the Jubilee in their Diocese ought to commute the prescribed fasts into other pious works, abstinence being observed in places where, by Pontifical faculty, they are accustomed to dispense from it?

2. Whether Bishops in whose Diocese the Jubilee falls during Paschal time can declare to the faithful that a single Communion, namely, the Paschal Communion, suffices for obtaining the grace of the Jubilee, with that which is

prescribed by the Pontiff omitted?

3. Whether Bishops can assign different times for the various places of a Diocese to obtain the Indulgence of the Jubilee during the course of the year?

4. Whether Confessors, during the time of Jubilee, can absolve those who cooperated in the usurpation of Pontifical territory, notwithstanding the reservation made in the Bull of 26 March 1860?

The Sacred Penitentiary, after a report of the foregoing was made to our Most Holy Lord Pius IX, according to the mind of the same Most Holy Lord, replied on 20 January 1865:

To 1: Through the Lenten fast, even if there is necessity of using milk foods, the double burden is satisfied.

To 2: Affirmatively.

To 3: Affirmatively, from a new Indult of His Holiness.

To 4: Negatively, and recourse must be had to the Ordinaries of the places, who will provide according to the instructions.

1066. ○ **QUESTION 3. Can the visitation of Churches be commuted for those impeded?**

Reply. Affirmatively. Thus Nuns, those detained in prisons, the sick, and any others impeded from visiting a Church for a grave cause can obtain from a Confessor a commutation of this work into another. Thus Benedict XIV established in the Bull *Inter praeteritos*, and the other subsequent Supreme Pontiffs.

QUESTION 4. Can confession and Communion be commuted?

Reply. Negatively, at least generally speaking. The reason is that Bulls speaking of works to be commuted do not speak of confession or Communion, at least for adults. Indeed, they are expressly excluded by Benedict XIV in the Bull cited, section 1, where it is said that the faculty of commuting pious works is not understood to be given concerning confession and Communion, except for children, or the prayer necessary in the visitation.

Nevertheless, as it seems, if someone intending to communicate on the last day were prevented from Communion by an unforeseen occurrence, he could obtain a commutation of Communion or a prolongation of the Jubilee. Thus commonly, says Bouvier, little work on Indulgences and the Jubilee, chapter 3, section 4.

1067. ○ **QUESTION 5. Can children not yet refreshed by Communion gain the Jubilee with it omitted?**

Reply. Negatively, unless they obtain a commutation. For it is gathered from the Bull of Benedict XIV, ibid., and of Leo XII for the Jubilee that, with the Bishop's permission, they can gain the Jubilee when Communion is commuted into another pious work. Bouvier, ibid.

1068. ○ **QUESTION 6. Does Paschal Communion suffice for gaining the Jubilee if the Jubilee is celebrated during Paschal time?**

Reply. Affirmatively, unless a special Communion for acquiring the Indulgence of the Jubilee is required in the Bull or Rescript of the Pontiff. This is evident from the Declaration of the Sacred Congregation of Indulgences on 14 December 1841, as will be said below at the end of this appendix, no. 1086.

QUESTION 7. Are those who have only venial sins bound to confess?

Reply. Altogether affirmatively. Formerly a great controversy was conducted concerning this, but it fell after the express Declaration of Benedict XIV, ibid., section 77. Absolution, however, is not necessarily required, since no mention is made of it.

1069. ◦ **QUESTION 8. Does a confession made on the vigil of the first day of the Jubilee suffice?**

Reply. Negatively. The reason is that all the works must be performed within the interval of time established for gaining the Jubilee. Nevertheless, confession can be begun either on the vigil or before, provided it is completed during the time of the Jubilee. Bouvier, ibid. Nevertheless, confession could be made in that part of the vigil which follows first Vespers, because the first day, according to ecclesiastical custom, is usually reckoned from first Vespers; and this is constantly observed in the ordinary Jubilee of the City, as is evident from the Bull *Peregrinantes* of Benedict XIV, section 4. Moreover, the days for performing the enjoined works, as is evident from section 6 of the same Constitution, can be taken either as natural or ecclesiastical, namely, from first Vespers of one day until the full evening twilight of the following day.

QUESTION 9. What quantity of alms must be given?

Reply 1. If in the Bull it is said, *He who shall have given alms*, any quantity suffices, provided it is not so small that it appears to be almost nothing.

Reply 2. If it is said, *As much as shall have seemed fitting to each according to his means*, then the quantity ought in some way to bear proportion to the means of each; hence to give a small coin would suffice for a poor person, but not for a rich person. Thus sufficiently commonly; St. Alphonsus, no. 528.

1070. ◦ **QUESTION 10. Must the poor, Religious, and children under parental authority give alms, and if so, how?**

Reply 1. All are bound either to give alms in some way, at least through another, or to substitute another pious work determined by the Confessor. The reason is that, where the obtaining of some favor is in question, impossibility of fulfilling the condition does not excuse from it, as impossibility of fulfilling a precept does, as was already said above. Laymann, chapter 8, no. 12; Lacroix, nos. 1428-1430.

Reply 2. The poor can satisfy by giving the smallest thing, for example, a penny or a small piece of bread, etc. But it is more prudent to commute this work into another for them, as Lacroix expressly says, ibid., and Laymann, ibid.

Reply 3. Religious and children under parental authority satisfy if some alms are given by their Superiors in their name and with their knowledge. Wives can likewise satisfy through their husbands, and servants through their masters.

1071. ◦ **QUESTION 11. Must all the works enjoined be completed in one week?**

Reply 1. Affirmatively as to the fasts. This is clearly proved from the formula which reads thus: *Those who shall have taken part in the procession or visited the Churches, and shall have fasted on Wednesday, Friday, and*

Saturday of one of the two weeks, and likewise shall have confessed their sins, been refreshed by Holy Communion, and given alms..., etc. From these things it is plainly evident that the three fasts are to be performed in the same week.

Reply 2. Negatively, however, as to the other works. The reason is that in the cited formula, which is customarily employed, it is said only that the fasts are to be performed in the same week, but not the remaining works, as will be evident to one attending to the grammatical order. Moreover, otherwise an absurdity would follow, namely, that if a procession were enjoined, and indeed only one, for example, at the beginning of the Jubilee, no one could gain it in the second week.

Nevertheless, St. Alphonsus and several others affirm, relying both upon the text of the Indult and upon the custom of the faithful. But from each the contrary can deservedly be maintained.

Furthermore, the difficulty vanishes, and the mind of the Church is most clearly evident from the Bull of Pius IX granted for the Jubilee after his elevation, 20 November 1846, where it is said: 1. For the City: *Those who, from the sixth day of December until the twenty-seventh day of the same month, shall have visited twice within those three weeks* the Basilicas, etc., *and shall have prayed devoutly there for some space of time, and within the same weeks shall have confessed their sins and reverently received the most holy Sacrament of the Eucharist*, etc. 2. For the World: *Those who... shall have visited twice during the space of three weeks* the designated Churches *or one of them, and shall have devoutly performed the other works*, etc.

1072. ◦ **QUESTION 12. Can travelers gain the Jubilee, and if so, how?**

Reply. 1. The time of the Jubilee can be prolonged for them until their return, and one is not bound to delay his journey unless he can conveniently do so. 2. If they are found on a journey when the Jubilee begins in their own place, they can likewise gain it there after their return. 3. If they pass through places where the Jubilee is being celebrated, they can gain it there. Thus St. Alphonsus, no. 538, commonly with others. This is evident from the Bulls for the Jubilee. Consult the Bull of Pius IX just cited.

1073. ◦ **QUESTION 13. Can the Jubilee be gained several times?**

Reply. It seems that this must be denied unless it is found specially expressed in the Bull or Rescript of grant [2].

[2] This was said less exactly. For Benedict XIV, Constitution *Inter praeteritos*, no. 84, hands down as a general canon that this holds when the Jubilee is granted for a short time, for example, two weeks, but otherwise if the Jubilee of the Holy Year is in question. *We*, he says, *have judged it opportune to declare Our mind concerning this controversy proposed elsewhere. For, considering that the matter here is by no means a Jubilee of two weeks, but a Jubilee which endures for an entire year; that the matter does not concern enjoined works which can be fulfilled several times in a day;... but concerns visits, not few in number, to Basilicas which are separated and distant from one another and which can be made only on many distinct days, We have by no means doubted to declare that the Holy Indulgence can be acquired several times during the Holy Year by repeating the enjoined works.*

It is added in the same place: *But since other favors and graces are joined to the Indulgence of the Jubilee,... We have declared that one who has once become a participant in them the first time he obtained the Jubilee cannot again become a participant in them if, after the first acquisition of the Jubilee, he again incurs censures, commits reserved cases, or needs new commutations or dispensations from Vows.* By these words the question raised elsewhere is sufficiently clearly resolved: **Can one who has already obtained the Jubilee, but did not then become a participant in favors and graces of this kind because he did not need them, afterward enjoy them if perhaps he later needs them?** For in the Constitution the discourse is most expressly about those who perhaps need to become participants AGAIN, those who AGAIN incur censures and commit reserved cases, and finally NEW

commutations of Vows, etc. And the Sacred Penitentiary also, in a Response of 1 June 1869, when it denied that the Jubilee could be gained several times with respect to absolution, expressly limited this to absolution from censures and reserved matters into which one already absolved had FALLEN ANEW. Therefore, for anyone who has not yet been a participant in these graces, the exception that he obtained the Jubilee the first time certainly does not hold; for it must be denied that, besides the Indulgence, he in any way became a participant in those graces the first time.

QUESTION 14. Through an INVALID confession during the Jubilee, are censures and the reservation of sins removed?

Reply 1. More probably affirmatively, if the confession was inculpably null.

Reply 2. Probably affirmatively, even if the confession was culpably null, provided the penitent did not omit the reserved sins themselves through sacrilegious silence. See the Salmanticenses, *On Penance*, chapter 13, no. 41; Lugo, *On Penance*, disputation 20, no. 110, etc. [3].

[3] Compare what was said above concerning this question, no. 580, question 9.

1074. ○ **QUESTION 15. Does one sin gravely who, after he has been absolved from reserved matters, does not fulfill the other prescribed works?**

Reply. Negatively, with the common opinion. The reason is that such an obligation does not appear to have been imposed either from the nature of the Jubilee or from a precept of the Pontiff or Confessor. Thus St. Alphonsus, no. 557; Lugo, disputation 20, no. 100; the Salmanticenses, chapter 13, no. 57, against some.

QUESTION 16. Can one who confessed during the time of the Jubilee and forgot to confess his reserved sins afterward be absolved by any Confessor?

Reply 1. Affirmatively, if the Confessor had the express intention of absolving from all sins, even reserved sins.

Reply 2. More probably affirmatively even if the Confessor did not think about this, because by force of the Jubilee the penitent acquired the right to be absolved by any Confessor. Thus more commonly with St. Alphonsus, no. 537, question 4; Lacroix, no. 1449, etc.

But if someone began confession within the Jubilee, he can afterward be absolved from all reserved sins. Laymann, Navarre, etc.

1075. ○ **QUESTION 17. During the Jubilee, is it lawful to choose as Confessor anyone approved by the Ordinary?**

Reply. Affirmatively, and this faculty particularly regards Nuns and their Novices, and indeed Regulars themselves. Thus Benedict XIV declared after Gregory XIII and Alexander VII. St. Alphonsus, no. 536.

Except, however, the case of an accomplice. For Benedict XIV declared that outside the point of death a Priest can never, even during the Jubilee, absolve his accomplice in a shameful sin, Bull *Inter praeteritos*.

QUESTION 18. How far does the extraordinary power concerning the absolution of sins extend?

Reply. Unless otherwise and expressly declared, all Confessors have the faculty of absolving from any sins whatsoever, even those reserved to the Apostolic See in the Bull *Coenae* or otherwise reserved in any manner; and also from sins reserved to the Bishop, even if this is not expressed.

1076. ○ **QUESTION 19. Can a Confessor absolve from all reserved censures?**

Reply. Affirmatively, and there belongs to him full power of absolving from any censures whatsoever, whether imposed by law or by a man, in any manner and for any cause, even those reserved to the Ordinaries of places, or to the Pope and Apostolic See, or contained in the Bull *Coenae*, and otherwise reserved in any way. Observe, however, that the faculty of absolving from censures of the Bull *Coenae* does not include the faculty of absolving from heresy. St. Alphonsus, etc.

1077. ○ **QUESTION 20. Can a Confessor grant DISPENSATIONS from vows?**

Reply. Negatively; for, says Benedict XIV, the faculty of dispensing is not included in the faculty of commuting. Not a few Theologians assert that one who confessed during the time of the Jubilee can afterward receive from any Confessor a commutation of vows, although he did not request the aforesaid dispensation then. This opinion is called probable by St. Alphonsus. Ibid., no. 536.

QUESTION 21. Does the faculty of absolving from censures include the faculty of absolving from irregularities?

Reply. Negatively. Thus the common opinion against some who consider irregularities from delict to be comprehended under the name of censures. There are, however, several examples of a grant of this kind.

Two things should be noted here.

1. During the Jubilee of a Holy Year, or greater Jubilee, all other Indulgences, both plenary and partial, granted for the living are suspended for the entire year, but not those which are granted for the deceased. Indeed, by the grant of Benedict XIV, all Indulgences, even those which otherwise were not applicable to the deceased, can be applied to them in this year. See the Bull of the same Pontiff already cited several times.

The following are excepted from the suspension of Indulgences for the living: 1. Indulgences for the dying; 2. Indulgences for the prayer *Angelus*; 3. Indulgences for the visitation of the Most Holy Sacrament solemnly exposed; 4. Indulgences for those who accompany the Most Holy Sacrament carried to the sick; 5. all Indulgences granted by someone other than the Pope. These things are deduced from the Constitutions of Benedict XIV and Leo XII.

2. No order is necessarily required in performing the works, provided the last work is performed in the state of grace. But if someone falls into mortal sin after confession, he is not bound to repeat the visitations of Churches, the fasts, or the alms; nevertheless, he is bound to confess again. Thus Benedict XIV in the Bull just cited.

More Recent Decisions of the Roman Curia — Concerning Indulgences — Petition — Concerning the Confession Required for Gaining Indulgences

1078. ◦ Doubt 1. By a Decree of the Sacred Congregation of Indulgences issued on 12 June 1822, it is granted that a sacramental confession made within a week before a feast can avail for gaining an Indulgence.

QUESTION 1. Do the words, within a week, signify only the eight days immediately preceding the feast; or the entire and complete week which runs before the feast, so that, for example, a confession made on Sunday would avail for gaining an Indulgence on Saturday of the following week, on which day the feast would fall, although thirteen days would then have intervened between the confession and the feast?

QUESTION 2. Does a confession made on the eighth day before the feast, by force of this Indult, avail only for gaining one Indulgence; or can other Indulgences also be gained through this confession which occur within the aforesaid time and for the gaining of which sacramental confession would otherwise be required?

Doubt 2. **QUESTION. When confession is prescribed as a condition *sine qua non* in the Bull or Brief by which an Indulgence is granted, is it necessary that sacramental absolution be given to the penitents for gaining the Indulgence?**

The Sacred Congregation appointed over Indulgences and Sacred Relics judged on 15 December 1841 that the response should be:

As to the first Doubt:

To 1: Affirmatively as to the first part; negatively as to the second.

To 2: Negatively as to the first part; affirmatively as to the second.

As to the second Doubt: The response is negative. In testimony whereof, etc.

Petition — Concerning the Tablets Used for the Exercise of the Holy Way of the Cross

1079. ◦ **1. The Bishop of Saint-Flour in France asks whether the Indulgences which are gained in contemplation of the stations of the Way of the Cross cease if the Crosses or tablets are removed for whitewashing the walls, for**

adorning the same walls with painting, or for another cause, although afterward both the Crosses and the tablets are restored to their places?

2. What if not all but only some are removed for the aforesaid causes? What if all the Crosses with the tablets are removed for about a month, as very often happens for whitewashing the walls?

3. What if, in the first erection, the Crosses and tablets adhere to one another in such a way that no symmetrical order exists? Can they be moved from place to place within the bounds of the same Church so that they are equally distant, without the Indulgences being lost; and in what cases is a new canonical erection required?

From the Secretariat of the Sacred Congregation of Indulgences, on 21 March 1836, the response to the proposed doubts is:

To 1: They do not lose the Indulgences.

To 2: They enjoy the Indulgences, notwithstanding, etc.

To 3: Affirmatively; and the Indulgences do not cease unless the material perishes.

Concerning the Requirements for Gaining Indulgences for the Exercise of the Way of the Cross

1080. ○ **QUESTION. For gaining the Indulgences granted for the visitation of the fourteen stations of the Way of the Cross, is the recitation of six *Paters*, *Aves*, and *Glorias* required in addition to the visitation of the aforesaid stations?**

RESPONSE. For obtaining the Indulgences granted for the visitation of the fourteen stations of the Way of the Cross, nothing else is required than to pass from one station to another while meditating upon the Passion of the divine Redeemer Jesus Christ, insofar as the multitude of persons visiting the aforesaid stations, or the capacity of the place in which they are erected, permits. The matter is thus evident from the Bull *Inter plurima* of Benedict XIII, 3 March 1726, confirmed by another Bull, *Exponi nobis*, of Clement XII, dated 16 January 1731, and by a Decree of the Sacred Congregation of Indulgences dated 3 April 1731, and also by the Brief of Benedict XIV which begins *Cum tanta*, dated 30 August 1741. Hence it is that *We adore Thee, O Christ*; *Our Father*; *Hail Mary*, etc.; and *Have mercy upon us, O Lord*, are only a praiseworthy custom introduced by pious faithful of Christ into the exercise of visiting the stations of the Way of the Cross. In testimony whereof, etc. 22 September 1829.

Response — Of the Sacred Congregation of Indulgences Concerning Various Indulgences

1081. ○ **QUESTION 1. Does a Priest satisfy the obligation of celebrating Mass for a deceased person by observing the rite of the feria or of any Saint, even if it is not semidouble or double?**

QUESTION 2. Must one who has a personal privilege for four Masses in each week celebrate in vestments of black color on days not impeded, so that he can gain a plenary Indulgence for the souls of the deceased?

QUESTION 3. Must one who celebrates at an altar privileged for every day always use black vestments on days not impeded in order to obtain the Indulgence of the privilege?

QUESTION 4. For gaining the plenary Indulgence granted to the prayer, *O good and most loving Jesus*, is it necessary to add another prayer for the intention of the Supreme Pontiff?

QUESTION 5. For Indulgences applicable to Crosses, Rosaries, etc., is any rite necessary besides the sign of the Cross made by the Priest who has received this faculty?

QUESTION 6. Does the granted Indulgence adhere only to the figure of Christ made of bronze, wood, or any other material, such that it can be transferred from one Cross to another without danger of losing the Indulgence conferred upon it?

The Sacred Congregation appointed over Indulgences and Sacred Relics judged that the responses to the foregoing Doubts should be as follows, 11 April 1840:

To 1: Affirmatively.

To 2: Affirmatively.

To 3: As in the second.

To 4: Negatively. Nevertheless, afterward Pius IX, by a Decree issued on 31 July 1858, declared that some prayers must be recited for the intention of the Church in order to gain the Indulgence granted to the prayer *O good and most loving Jesus*.

To 5: Negatively. Nevertheless, according to a Declaration of the Sacred Congregation on 11 April 1864, a formula and sprinkling with blessed water are required for blessing chaplets of St. Dominic and of the Seven Sorrows of the Blessed Virgin Mary.

To 6: Affirmatively.

Indult of His Holiness Pope Gregory XVI

1082. ○ By which the members of the Confraternity of St. Mary of Mount Carmel are henceforth exempted from the inscription of their names in the registers of the aforesaid Confraternity so that they may be able to gain its Indulgences. At the petition of the Reverend Father General of the Discalced Carmelites, from an audience of His Holiness on 30 April 1832, Our Most Holy Lord Pope Gregory XVI, in view of the particular circumstances and with prior sanation as to the past, benignly assented to all things according to the petition, those things nevertheless which are customarily to be observed in other respects being observed according to the form of the preceding grants, anything whatsoever to the contrary notwithstanding. The present grant is to remain in force in perpetuity without any issuance of a Brief.

Questions Concerning Indulgences

1083. ○ **1. For gaining the Indulgence or fruits of the prayer *Sacrosanctae*, etc., must this prayer necessarily be said on bended knees, or, at least in a case of legitimate impediment, can it be recited while walking or sitting?**

2. Must small habits or scapulars necessarily be worn immediately upon the body so that they physically touch it, or can they be retained over the clothing?

3. Do the Indulgences attached by Pius V of holy memory to the recitation of the Little Office of the Blessed Virgin Mary avail for the Roman Office alone, or for the various Offices of the Blessed Virgin Mary composed by episcopal authority after the pattern of the Roman Office?

4. Does one who recites the hymn *Veni Creator*, etc., not according to the correction of the meter but according to the former meter, gain the Indulgences? Is the variation of the doxology of the hymn *Veni Creator* within and outside Paschal time of the essence of the work for gaining the Indulgences?

In France, the hymn *Veni Creator* has a doxology proposed by episcopal authority; **can those who recite the aforesaid hymn with that doxology make its Indulgences their own?**

5. The antiphon *Regina caeli*, which is customarily said during Paschal time in place of the prayers *Angelus Domini*, is recited in some places with versicles and responses different from those given in the Roman Breviary; does the recitation of the aforesaid antiphon with this change give an equal right to the Indulgences?

These Doubts having been maturely considered by the Most Eminent Fathers appointed over sacred Indulgences in a general Congregation held at the Vatican on 5 March 1855, and the vote of the Consultors having been heard, on 16 July 1855 they were of the opinion that the rescript should be:

Question	First part	Second part
To the first	Affirmative	Negative
To the second	Negative	Affirmative
To the third	Affirmative	Negative
To the fourth	Negative in all respects	-
To the fifth	Negative	-

Concerning Chaplets Made in the Form of Rings

1084. ○ To the question: ***Can gold or silver rings surrounded by ten knobs, which certain pious persons use for reciting the Rosary of the Blessed Virgin, be blessed with the Indulgences attached?***

The Most Eminent Cardinal Castracane, Major Penitentiary, replied by mandate of His Holiness Gregory XVI: Negatively.

Concerning the Intervention of the Ordinary with Respect to Indulgences Granted by the Apostolic See

1085. ○ **QUESTION 1. Are local Indulgences, that is, those which are attached to a certain place, for example, to a Church or altar, null and of no value, so that the faithful would strive in vain to gain them as long as the Bishop of that place has not permitted them to be published?**

Reply. Negatively as to the nullity of the Indulgences. Nevertheless, the publication of the Ordinary must be awaited after he has reviewed them, so that the faithful may know whether the Indulgences are plenary or partial and what conditions are assigned for acquiring them.

QUESTION 2. Are personal Indulgences, privileges, and faculties, that is, those granted to some private person, for example, an Indulgence granted to someone for the point of death, a personal Indult of a privileged altar, or the faculty of blessing chaplets of the Blessed Virgin Mary with the application of Indulgences, likewise null and of no value as long as the Bishop has not reviewed them and permitted them to be put into effect?

Reply. Negatively.

1086. ○ **QUESTION 3. Are Indulgences which the Supreme Pontiffs have granted to all the faithful of the whole world in Bulls or Rescripts already published and cited by most approved authors null and of no value, so that the faithful cannot gain them**

unless they have first been promulgated by the Ordinaries of the places in their respective Dioceses?

Reply. Negatively.

QUESTION 4. Supposing the necessity of that promulgation, can any Bishop promulgate in his Diocese those Indulgences concerning which the third Doubt treats, provided he finds them related by authors worthy of faith, for example, Ferraris or *La Raccolta*?

Reply. Affirmatively from the things explained above, and in the case concerning which the said Doubt treats. Sacred Congregation of Indulgences, 31 August 1844, for all these questions.

1087. ○ **QUESTION 5. Must one who obtains various faculties from the Apostolic See, namely, of a personal privileged altar, of erecting stations of the Way of the Cross, or of blessing Crosses and Medals, exhibit the said faculties to the Ordinary, even if no mention was made of this in the Rescripts of the grants?**

Reply. Affirmatively as to the erection of the Way of the Cross; negatively with respect to the other faculties, unless it is otherwise provided in the grants obtained. Sacred Congregation of Indulgences, 6 February 1844.

Concerning the Indulgence at the Point of Death

1088. ○ **QUESTION 1. Does the recitation of the confession, that is, the *Confiteor*, made in the Sacrament of Penance suffice for the prescribed recitation of it when the blessing with an Indulgence at the point of death is to be imparted?**

Reply. Negatively, according to the practice and Rubrics, unless necessity urges.

QUESTION 2. Is it necessary to recite the *Confiteor* three times when sacred Viaticum and Extreme Unction are administered and the Indulgence at the point of death is imparted?

Reply. Affirmatively, according to the practice and Rubrics.

QUESTION 3. Can a sick person gain the plenary Indulgence at the point of death several times from several Priests having the faculty of imparting it?

Reply. Negatively, in the same point of death.

QUESTION 4. Does a Priest validly confer the plenary Indulgence at the point of death if, because a book is lacking, he omits the formula prescribed by the Supreme Pontiff?

Reply. Negatively, because the formula is not merely directive but preceptive. 5 February 1841.

Concerning the Privileged Altar

1089. ○ **QUESTION 1. What is the efficacy of a privileged altar?**

Reply. By the Indulgence attached to a privileged altar, if the intention of the grantor and the use of the power of the keys are considered, there is to be understood a plenary Indulgence which immediately frees a soul from all the punishments of Purgatory; but if the effect of the application is

considered, there is to be understood an Indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy. Sacred Congregation, 28 July 1840.

QUESTION 2. Must one who celebrates at an altar privileged for every day always use black vestments on days not impeded in order to obtain the Indulgence of the privilege?

Reply. Affirmatively. Sacred Congregation of Indulgences, 11 April 1840. But one who celebrates for a deceased person gains the Indulgence of the privileged altar even though he reads the Mass of the occurring feast when the day is impeded. Sacred Congregation of Indulgences, 11 March 1851.

The privilege inheres in the altar, not in the stone, which can be substituted for another as necessity or convenience may require (Sacred Congregation, 20 March 1839); thus, if the altar is demolished, the privilege does not perish, but revives when the altar is rebuilt under the same title. Indeed, the privilege does not perish if the altar is erected under the same title but in a different place in the Church. Sacred Congregation of Indulgences, 30 August 1847.

Decree of the Sacred Congregation of Indulgences Concerning a Privileged Altar

1090. ○ Angers. In the general sessions of the Sacred Congregation of Indulgences held on 29 February 1864, the Bishop of Angers proposed the following Doubts for resolution:

I. Can the privilege of a privileged altar, whether real or personal, be applied to the souls of several deceased persons in the Mass of any day?

II. Can the Apostolic faculty granted to the Ordinary of Angers, that in all the parish Churches of the Diocese of Angers Masses of Requiem be celebrated with chant three times in each week when Offices of double rite occur, only certain ones being excepted,

be freely put into practice; or must the Masses of Requiem be deferred to other days of the week on which a semidouble rite occurs? III. Can a Priest enjoying the personal privilege of an altar celebrate and gain the Indulgences in a week when a double feast recurs, or must he await semidouble feasts in order to gain them?

The Sacred Congregation judged that the response should be as follows, 20 August 1864:

To 1: Negatively.

To 2: Affirmatively, insofar as semidouble feasts do not occur in the week.

To 3: As to the second.

Concerning the Indulgence of the Portiuncula

1091. ○ **It is asked: Do those visiting Churches of the Order of St. Francis on the second day of August gain a plenary Indulgence *toties quoties*, as often as they enter them and pray there for a short time; and is it required that Communion be received in the same Church?**

The Sacred Congregation replied on 22 February 1847: Affirmatively to the first part; negatively to the second part.

Second Appendix — Responses of the Sacred Penitentiary Prescribing the Norm for Absolving Those Who Have Incurred a Censure Both for the Invasion of the Pontifical Territory and for the Usurpation of Ecclesiastical Goods

1092. ○ Since Confessors need a special faculty to absolve these persons, it must be sought either from the Sacred Penitentiary or from the Ordinaries, to whom most ample faculties for this purpose were granted by Apostolic Letters of 11 April 1869. The norm to be observed in the use of these faculties is sufficiently evident from the following Responses or Declarations of the Sacred Penitentiary given on 1 June 1869.

1093. ○ **QUESTION 1. By force of the faculties granted through the Apostolic Letters of 11 April, can Confessors approved by the Ordinaries absolve those who carried into effect the invasion or rebellion of the territories of the Holy See, and those who commanded, adhered to, and cooperated with them; and also those who promoted unjust laws or contributed their labor to their execution?**

Reply. Affirmatively, provided the penitents exhibit signs of true repentance, have repaired the scandal, or at least are prepared to repair it as soon as possible in the best manner they can, and have sincerely promised obedience to the Holy See and to its commands to be issued concerning the matter. Public officials, however, whose office appears to involve some cooperation in acts condemned by the Holy See, or to be opposed to divine and ecclesiastical laws, are not to be absolved unless they have first resigned the office; and insofar as they cannot resign it, the officials themselves are to consult the Ordinary of the place, who is to decide and provide according to the Letters of the Sacred Penitentiary of 26 July 1867, which Letters must be followed in every respect.

1094. ○ **QUESTION 2. Can those Clerics who composed petitions concerning the abdication of the temporal Dominion of the Holy See, or subscribed to them, be absolved by Confessors, and how?**

Reply. Affirmatively, after a retraction has first been made and sufficiently published according to the Letters of the Sacred Penitentiary of 28 May 1863.

1095. ○ **QUESTION 3. Can violators of personal and local Ecclesiastical immunity and of enclosure be absolved by Confessors?**

Reply. Affirmatively, after satisfaction has been made to the injured party and the injury done to the Church has been repaired in the best manner possible.

1096. ○ **QUESTION 4. Can those who acquired or possess immovable ecclesiastical goods sold by the treasury, commonly called the State Domain, be absolved, and how?**

Reply. Penitents who retain goods of this kind are not to be absolved unless they first deliver to the Ordinary of the place, or to other ecclesiastical men designated throughout the Diocese by the Ordinary himself according to his prudence, a written instrument signed by them, or subscribed before witnesses, to be transmitted as soon as possible to that same Ordinary and carefully preserved

in the Diocesan Chancery or elsewhere, by which they declare that they subject themselves and their heirs and successors to the following obligations or conditions:

1. To retain those same goods at the will of the Church and thereafter to obey its commands.

2. To preserve the goods themselves and to administer them profitably.

3. To fulfill the pious works attached to those goods.

4. To assist, from the fruits of those goods, the Persons or Pious Places to which they belong by right [4].

[4] In other rescripts it reads: *And to expend the revenues of those goods which, after a proportion has been made, exceed the price paid, either in favor of the persons or Pious Places to which the said goods belong by right, or in satisfaction of the price paid in the purchase, insofar as the purchaser may wish to seek its recovery and with the consent of the Ordinary.*

The conditions prescribed in this entire paragraph for those who retain goods purchased without permission are customarily prescribed likewise for those who purchased goods of this kind with permission. But today this faculty is not granted so easily unless extraordinary circumstances are present and with the recommendation of the Ordinary. To obtain this faculty, recourse is made to the Sacred Penitentiary, which, for this grant, sends it to the Ordinary of the Diocese; he imparts this faculty under the aforesaid conditions, which are to be accepted and subscribed by the same persons and carefully preserved in the episcopal Chancery.

5. To admonish their heirs and successors, by a signed written instrument, concerning obligations of this kind, so that they too may know to what they are bound.

1097. ◦ **QUESTION 5. Can those who acquired immovable ecclesiastical goods and afterward sold them to others, and those who cooperated in contracts concerning those same goods, be absolved, and under what conditions?**

Reply. Affirmatively, after the profit unjustly received from them has been deposited in the hands of the Ordinary so that he may preserve it in favor of the Pious Places which suffered losses; after the scandal has been repaired; after the new purchasers and other accomplices have been admonished to take counsel for their own conscience; and after the obligation has been imposed upon each to abide by the commands of the Holy See to be issued concerning the matter.

1098. ◦ **QUESTION 6. Can those who acquired movable ecclesiastical goods be absolved, and what must be enjoined upon them?**

Reply. Affirmatively, after some alms have been imposed upon them in favor of the Pious Places to which the said goods belong, insofar as they purchased them at a price which, in the judgment of the Ordinary or Confessor, was less than just. But if the matter concerns things which are not consumed by use, or which can be preserved by being kept, or ecclesiastical furnishings and sacred vessels, the obligation is to be imposed upon the Penitents of having recourse as soon as possible to the Ordinary of the place, so that he may provide concerning those same things according to the Indult already granted to the Ordinary himself by the Sacred Penitentiary [5].

[5] *The Sacred Penitentiary is accustomed, namely, to grant Bishops the faculty: 1. of permitting those who have recourse to them lawfully to acquire provisions, fruits of the earth, and movable things belonging to Churches or Pious Places and usurped by the Government, after scandal has prudently been removed and some alms have been expended, especially in favor of the Churches or persons to whom the things*

themselves belonged, to be assessed by the Ordinary or by the Confessor, insofar as they purchased them at a price which, in the judgment of that Ordinary or Confessor, was less than just; 2. of providing under the same conditions, and after their absolution with a suitable salutary penance, for those who have already purchased those same things.

But if the matter concerns things which are not consumed by use, the purchasers are to be bound to deliver a list of them to the Ordinary, and to be prepared to restore them whenever required to the Churches or Pious Places upon receipt of the price paid, and to take care according to their ability that ecclesiastical furnishings, vessels, and sacred utensils be transferred to the uses of other Churches or Oratories and not appropriated to profane uses. The case in which the things purchased exceed the value of five hundred scudi is excepted.

1099. ○ **QUESTION 7. Can those who leased ecclesiastical goods unjustly occupied or sold by the treasury, commonly called the State Domain, be absolved, and how?**

Reply. Affirmatively, after the obligation has been imposed upon the Penitents of having recourse as soon as possible to the Ordinary of the place, so that he may provide concerning the goods leased according to the Indult likewise already granted to the Ordinary himself by the Sacred Penitentiary [6].

[6] *The Sacred Penitentiary is accustomed to grant the Ordinaries of places the faculty of permitting the faithful to lease, or to retain already leased, ecclesiastical goods occupied by the Government, after some alms have been imposed upon them in favor of the persons or Churches to whom those same goods belong by right, insofar as they leased them at a price which, in the judgment of the Ordinary or Confessor, was less than just; and with the obligation of doing as much as they can under the direction of the Ordinary for the preservation especially of sacred edifices and*

churches which were attached to those goods; and after prior absolution with a salutary penance, insofar as they leased them illicitly, and after the scandal has been removed and repaired.

Although it is most desirable that leases of this kind be made for a short time, nevertheless, the Sacred Penitentiary declares that it is no obstacle if, because the Government so commands, the lease is made for more than three years, since a contract of lease of this kind is null by the law itself, and the Apostolic Indult is granted to the lessee only for the peace of his conscience and is entirely revocable at the will of the Holy See.

1100. ○ **QUESTION 8. Can those who received ecclesiastical goods in emphyteusis from the Government be absolved, and how?**

Reply. Penitents of this kind are not to be absolved unless they first deliver to the Ordinary of the place, or to other ecclesiastical men designated by the Ordinary as above in Doubt 4, a written instrument by which they declare that they subject themselves and their heirs and successors to the following obligations or conditions:

1. To preserve those same goods and to administer them profitably.

2. Not to use any privilege or law, whether enacted or to be enacted, concerning redemption from the rent.

3. To retain the goods themselves at the will of the Church and thereafter to obey its commands concerning the restitution of those goods.

4. To fulfill the pious burdens attached to those goods, insofar as they are not fulfilled from elsewhere.

5. In the meantime to pay the annual rent, and to increase it according to the paths of justice and according to the valuation of experts of a timorous conscience, if one too small was imposed in the stipulation of the contract.

6. To admonish their heirs and successors concerning obligations of this kind by a written instrument, so that they too may know to what they are bound.

1101. ◦ **QUESTION 9. Can those who not only received ecclesiastical goods in emphyteusis from the Government but also redeemed them from payment of the rent be absolved, and how?**

Reply. Provision is to be made for Penitents of this kind as in the preceding response to Doubt 4.

1102. ◦ **QUESTION 10. Can those who redeemed Censuses and ecclesiastical rights redeemable of themselves be absolved, and how?**

Reply. Affirmatively, provided they first pay into the hands of the Ordinary whatever amount short of the capital sum they paid to the Government, so that he may preserve it in favor of the Pious Places to which the censuses or redeemed rights belonged.

1103. ◦ **QUESTION 11. Can those who redeemed rents, ground-rents, payments, or other ecclesiastical rights not redeemable of themselves be absolved, and how?**

Reply. They can be absolved, provided they first deliver a written instrument, as in the response to Doubt 4, by which they declare that they subject themselves and their successors to the following obligations and conditions:

1. To retain the estates thus invalidly enfranchised at the will of the Church and thereafter to obey its commands.

2. To preserve those same estates and to administer them profitably.

3. To preserve the Pious Places unharmed at any time concerning the complete receipt of the rent, ground-rent, and payment and concerning any other rights which belonged to those Pious Places; and also to fulfill according to law the pious burdens attached to the estates, insofar as they are not fulfilled from elsewhere.

4. To admonish their heirs and successors concerning obligations of this kind by a signed written instrument, so that they too may know to what they are bound.

1104. ◦ Moreover, we read the faculties granted for absolving those who incurred censures in the foregoing matters as follows: *The Sacred Penitentiary, by special and express Apostolic authority, the circumstances set forth having been considered, grants to all Venerable Fathers in Christ, Archbishops, Bishops, and other Ordinaries of places in Italy the following... faculties, which they may lawfully use for the flock committed to them, either by themselves or through suitable ecclesiastical Persons specially deputed for this purpose.*

To absolve by Apostolic Authority from Censures and ecclesiastical Penalties each and every penitent who voted for laws concerning the usurpation of goods and other rights belonging to the Church and to Pious Places and the suppression of Regular Orders, or adhered to the same laws, or cooperated in their promulgation or execution; provided, however, that they have first exhibited signs of true repentance and have retracted an illicit oath, insofar as

they made one; a suitable salutary penance being enjoined upon each according to the measure of his faults, together with reparation of the scandal given in the best manner possible and the imposition of the other things to be enjoined by law.

Public Officials, however, who were newly created or assumed for executing the said laws, or who, through the exercise of an office which they previously held, culpably cooperate, according to the rules handed down by approved Authors concerning theft and rapine, with the aforesaid laws or usurpations, or with their maintenance or consummation, are not to be absolved unless the obligation of resigning the Office has been imposed upon them. But the remaining Officials, whose office in the judgment of prudent men does not appear to involve culpable cooperation of this kind, insofar as they cannot resign it without grave detriment to themselves or their own family, may be tolerated, but under the condition that they abstain altogether from praising, approving, counseling, or promoting the said usurpations; indeed, that according to their abilities they take care to delay and mitigate them in favor of the Church and ecclesiastical Persons, directing themselves by the counsel of a pious and learned Confessor. 26 June 1867.

1105. ◦ But with respect to Patrons of Benefices, by grant of the Sacred Penitentiary of 23 January 1868, Bishops have the faculty *of permitting the Patrons to pay to the Government what is demanded from them for the said Benefices and, with scandal removed, to obtain those same goods according to the norm of the law, under the following conditions:*

1. To retain those goods at the will of the Church and thereafter to obey its commands;

2. To preserve those goods and to administer them profitably;

3. To expend the fruits in equitable satisfaction of the sum paid to the Government by the patrons, if they wish it to be recovered, and in the restoration of those same Benefices. So that this restoration may be obtained more easily, the Sacred Penitentiary grants by Apostolic Authority the appropriate faculties, so that for a time the Ordinary may suspend the nomination and provision of the said vacant Benefices, and, as it shall seem to him after all things have been considered, may reduce for a time, or even suspend altogether, the pious burdens attached to them. Yet in such a way that, if Mass obligations are in question, some number of Masses to be celebrated annually is imposed upon the patrons, the remainder being supplied from the treasury of the Church. But when the restoration has been made, the patrons are to present someone to whom the totality of the fruits, with all the burdens according to the foundation, may pass;

4. To inform their heirs and successors concerning an obligation of this kind by a written instrument, so that they too may know to what they are bound.

1106. ◦ The faculties granted to Ordinaries for absolving, either by themselves or through suitable ecclesiastical persons, those who incurred censures because of the invasion of or rebellion against the Pontifical Territory are as follows:

1. To absolve by Apostolic Authority from censures and ecclesiastical penalties each and every penitent who cooperated in the rebellion of the Pontifical Territory, or adhered to it, or in any way offered their labor or favor, or voted for the union of Italy under one king, or violated ecclesiastical immunity; provided, however, that they have first exhibited signs of true repentance, have repaired the scandal given in the best manner they can according to the prudent judgment of the Ordinary or Confessor, and have promised under oath obedience to the Holy See and to its commands to be issued concerning the matter; a suitable salutary penance being enjoined upon each according to the

measure of his faults, together with the other things to be enjoined by law. Excepted, however, are the leaders, chiefs, and instigators of the rebellions and public officials, and also those who violated ecclesiastical immunity by laying hands upon Cardinals, Bishops, or other ecclesiastics constituted in dignity; for all of these recourse must be had in individual cases to the Sacred Penitentiary.

2. To absolve under the aforesaid conditions and exceptions Ecclesiastics, if any were culpable in the foregoing matters, but only after they have entered some religious house and there devoted themselves to spiritual exercises for at least a month; and mercifully to dispense with them by Apostolic Authority concerning an irregularity contracted in any manner from violation of the said censures; a suitable salutary penance being enjoined upon each, together with the things to be enjoined by law; the persons excepted in no. 1, however, always being excepted.

3. Likewise to absolve, under the conditions expressed in no. 1, from censures and ecclesiastical penalties, soldiers who took up arms and fought against the Pontifical Territory, provided, however, that they are prepared in mind to desert the unjust military service as soon as they can without danger to life, and meanwhile to abstain from all acts of hostility against the subjects and soldiers of the legitimate Prince and from acts against ecclesiastical goods, rights, and Persons; a suitable salutary penance being likewise enjoined upon each according to the measure of his faults, together with the obligation of repairing damages according to law if they inflicted any upon a certain person by their own private action, and the other things to be enjoined by law. Excepted, however, are the commanders and officers who could have withdrawn and deserted the military service without danger to life or of another most grave penalty, and, as above, those who violated Ecclesiastical Immunity by laying hands upon Cardinals, Bishops, or other Ecclesiastics constituted in Dignity; for all of these recourse must be had in individual cases to the Sacred Penitentiary.

Response of the Holy Office of the Holy Inquisition Concerning Fasting

1107. ○ **A Doubt was proposed by the Bishop of Bayonne: Does the obligation not to mix fish with meat on days of Lent extend to all who by force of an Indult can eat meat, or only to those who fast?**

On 23 June 1875, in the General Congregation of the Holy Roman and Universal Inquisition held before the Most Eminent and Most Reverend Cardinals, General Inquisitors, the above-written Doubt having been proposed and the vote of the Lord Consultors having first been received, the same Most Eminent and Most Reverend Fathers commanded that the rescript be: Affirmatively as to the first part; negatively as to the second part; and that the Decree of 24 March 1841 be given, namely, to the Doubt: **Does the law against mixing permitted and forbidden foods also regard those who are not bound to a single meal, such as youths before they have completed their third septennium, and others reasonably excused from it because of incapacity or labor?** The Most Eminent Fathers decreed: It is not lawful [7].

[7] Namely, that those also who are in any way exempted from the law of fasting which prescribes a single meal are forbidden to eat meat with fish at the same repast. The reason is by no means obscure. For the eating of meat on fast days is granted under this express condition: that whoever wishes to use this Indult not mix meat with fish at the same repast. But even those who for a just cause are excused from observing a single meal can eat meat only by force of the Indult. Therefore, they too are bound to observe that condition.

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Therefore, the Sacred Congregation did not wish to disapprove that Decree; but it gave the aforesaid Response to the twofold doubt proposed by the same Bishop, **whether, those inconveniences having been removed, both those entrusting and those accepting Masses to be celebrated as above would act illicitly.**

Third Appendix — Note of the Editor to No. 819, Note (d), Volume II of Father Gury

The conclusion which Father Ballerini hands down in this note against the opinion of Father Gury was determined by Our Most Holy Lord Leo XIII on 17 March 1879.

The Sacred Congregation of the Council had been asked: **Does the act commonly called civil marriage produce the impediment of public propriety?** On 13 March 1879, the Sacred Congregation replied: Negatively; and the Most Holy Father was to be consulted so that he might deign to declare and establish it. The Most Holy Father thus established and decreed: ...*Our Most Holy Lord Pope Leo XIII, having heard the entire relation of the matter in an audience on the seventeenth day of the same month and acceding to the vote of the Sacred Congregation, by the present decree declares and establishes that the aforementioned act, commonly called Civil Marriage, in places where the decree of the Council of Trent, session XXIV, chapter 1, On the Reformation of Marriage, has been promulgated, whether the faithful performing the act itself intend, as is fitting after ecclesiastical marriage has already been duly celebrated or with the intention of celebrating it as soon as possible, to perform a merely civil ceremony; or intend to enter betrothals concerning a future marriage; or finally, from ignorance or in contempt of ecclesiastical laws, intend to contract a present marriage, does not produce the impediment of the justice of public propriety....*

Fourth Appendix — Note of the Editor to No. 867, Note (b. 39), Volume II of Father Gury

Since Father Ballerini in this note presents the history of the controversy concerning the question whether incestuous intercourse had between the petitioners must necessarily be expressed in a petition for a dispensation concerning any prohibited degrees whatsoever, and there teaches the reader how great is the weight of Declarations of the Sacred Congregations, from the responses which exist concerning the same question we transcribe here one which was given after the death of Father Ballerini and confirms certain preceding ones.

Wednesday, 1 February 1882

I. In the General Congregation of the Holy Roman and Universal Inquisition held before the Most Eminent and Most Reverend Lords Cardinals of the Holy Roman Church, General Inquisitors in matters of faith, the following doubt was proposed: **For the validity of dispensations which are granted concerning any prohibited degrees whatsoever of consanguinity, affinity, spiritual and legal relationship, and also public propriety, whether directly by the Apostolic See or by Pontifical Delegation, is it necessary to express incestuous intercourse had by the spouses before the obtaining or execution of the aforesaid dispensations, and also to express the design and intention with which they entered upon intercourse in order to obtain a dispensation more easily?**

The same Most Eminent and Most Reverend Lords, the vote of the Lord Consultors having first been received, decreed that the response should be: *The Decrees of the Holy Office, Wednesday, 8 August 1866, and of the Sacred Penitentiary, 20 July 1869, are to be followed*, namely:

Wednesday, 8 August 1866

II. *The Most Eminent Fathers decreed that dispensations which are granted concerning any prohibited degrees whatsoever of consanguinity, affinity, spiritual and legal relationship, and also public propriety, whether directly by*

the Apostolic See or by Pontifical Delegation, are surreptitious and valid nowhere and in no manner if, before the execution of those dispensations, whether before or after obtaining them, the spouses perpetrated the guilt of incest and, whether questioned or even not questioned, maliciously or even ignorantly concealed the incestuous intercourse entered upon between them, whether it was publicly known or occult, and concealed the design and intention with which they entered upon that intercourse in order to obtain the dispensation more easily. It suffices, however, that one of the spouses disclose this offense of his or the aforesaid wicked intention. This indeed is not only commonly handed down by approved authors but is also confirmed by the Supreme Pontiff Benedict XIV in the Constitution which begins Pastor bonus.

The Sacred Penitentiary replied on 20 July 1869:

After the Constitution Pastor bonus of Benedict XIV, there can no longer be any doubt about the nullity of a dispensation obtained when incestuous intercourse was concealed, or when the depraved intention of obtaining the dispensation more easily was entertained in perpetrating it.

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The response of the Sacred Congregation, which is related on page 258 concerning the Decree of the Bishop of Caltanissetta, ought to be read thus: **THE DOUBT HAVING BEEN REFORMULATED - Whether, and how, a response is to be made to the Bishop of Caltanissetta in the case?** - Negatively in all respects, to both.

For the Decree of the aforesaid Bishop, by which it was forbidden that Masses to be celebrated should be entrusted or accepted in exchange for books or journals, etc., had in view the averting of certain inconveniences, which the Sacred Congregation also disapproves.

Therefore, the Sacred Congregation did not wish to disapprove that Decree; but it gave the aforesaid Response to the twofold doubt proposed by the same Bishop, **whether, those inconveniences having been removed, both those entrusting and those accepting Masses to be celebrated as above would act illicitly.**

Each reference is a link to the passage it cites; a reference into the other volume is left as the print sets it.

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